

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
Complainant,

v.  
POINTS RECYCLING AND REFUSE,  
LLC

Respondent.

.....

WHATCOM COUNTY,

Complainant,

v.

POINTS RECYCLING AND REFUSE,  
LLC

Respondent.

.....

RENEÉ COE, SHELLEY DAMEWOOD,  
and SHANNON TOMSEN,

Complainants,

v.

POINTS RECYCLING AND REFUSE,  
LLC, and WHATCOM COUNTY,

Respondents.

DOCKETS TG-080913  
TG-080914 (consolidated)

DOCKET TG-081089  
(consolidated)

DOCKET TG-082129  
(consolidated)

COMMISSION STAFF'S  
RESPONSE TO MOTION TO  
DISMISS COE COMPLAINT

*I* Pursuant to the Commission's December 31, 2008, Notice of Opportunity to Respond, Commission Staff submits the following response to Points Recycling and

Refuse's ("Points" or the "Company") motion to dismiss the Complaint of Reneé Coe, Shelley Damewood, and Shannon Tomsen (the "Complainants") in Docket TG-082129 (consolidated).

2           The Coe Complaint raises allegations related to (1) Points' failure to comply with Whatcom County Code provisions mandating curbside recycling, (2) a nascent proposal by one member of the Whatcom County Council to remove the Point Roberts area from the curbside recycling mandate, and (3) various issues potentially going to the Company's fitness to provide certificated solid waste collection service.

3           The Complainants seek three forms of relief based on these allegations: (1) cancellation of Points' certificate, (2) a prohibition against Whatcom County from enacting any ordinance exempting Point Roberts from curbside recycling, and (3) penalties.

4           In its December 24, 2008, letter, Points asserts that portions of the relief sought in the complaint are outside the Commission's regulatory authority.

5           Although it is not relevant to whether the complaint should be dismissed as against Points, Staff agrees with Points that the Commission lacks authority to prohibit Whatcom County from taking any action, including enacting any ordinance exempting Point Roberts from curbside recycling. The Commission's authority with respect to a county's solid waste management plan<sup>1</sup>—let alone specific ordinances implementing that plan—is limited to advising the county on the plan's impact on rates charged by solid waste collection companies regulated under RCW 81.77.<sup>2</sup> Moreover, the Commission is authorized to hear complaints only against public service companies or persons acting as public service

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<sup>1</sup> See RCW 70.95.090.

<sup>2</sup> RCW 70.95.096.

companies, and not against county governments acting within their own sphere of regulatory authority.<sup>3</sup>

6           With respect to those matters that Points apparently concedes to be within the Commission’s jurisdiction (Points’ failure to provide curbside recycling in compliance with Whatcom County ordinance<sup>4</sup>), Points argues that the Commission should dismiss the Coe Complaint because the Complainants have an opportunity to comment to the Commission on this issue in docket TG-080913 or through the Consumer Affairs process.

7           Although the issues raised against Points by the Coe Complaint do substantially overlap with the issues in the County’s complaint against Points, this is not a basis for dismissing the Coe Complaint. The Title 81 complaint statute<sup>5</sup> (applicable to industries regulated under RCW Title 81, including solid waste collection companies regulated under RCW 81.77), includes a very broad “standing” provision, and affords “any person”<sup>6</sup> the right to be heard with respect to a complaint “setting forth any act or thing done or omitted to be done by any public service company. . . in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.” The statute specifically states that “[n]o complaint may be dismissed because of the absence of direct damage to the complainant.” RCW 81.04.120 states that “At the time fixed for the hearing mentioned in RCW 81.04.110, *the complainant* and the person or corporation complained of *shall be entitled to be heard* and introduce such evidence as he or it may desire.” [Emphasis added.]

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<sup>3</sup> RCW 81.04.110.

<sup>4</sup> As indicated in the complaint, under RCW 81.77.030(5), the Commission is to “supervise and regulate every solid waste collection company in this state, . . . [b]y requiring compliance with local solid waste management plans and related implementation ordinances.”

<sup>5</sup> RCW 81.04.110.

<sup>6</sup> Compare RCW 80.04.110, applicable to complaints against public service companies regulated under RCW Title 81, which imposes various restrictions on who may make formal complaint against a company.

8           Although a complaint may be dismissed for failure to state a claim on which relief may be granted,<sup>7</sup> Points has not demonstrated that the Coe Complaint fails to state a claim. The complaint alleges that the Company failed to pay regulatory fees and suggests various other possible rule violations. As to what relief may be granted, both RCW 81.04.110 and 120 are silent as to what relief the Commission may order in the event that the Commission finds that a public service company is in violation of a provision of law as alleged in the complaint. Arguably, the Commission would have the discretion to revoke a solid waste company's certificate or to impose penalties if it deemed it appropriate to do so and if consistent with RCW 81.77.030 (authorizing revocation of a certificate upon complaint) or RCW 81.04.380 (authorizing monetary penalties for failure to comply with provisions of RCW Title 81 or any order, rule, or any direction, demand or requirement of the Commission).

9           Unlike Points, the County has not made a motion to dismiss the complaint as against it, though Staff believes there plainly is no basis for the Commission to grant the relief sought against the County.

10          In summary, Staff does not believe that Points has demonstrated that the Coe Complaint fails to state a claim on which relief may be granted. Staff does believe,

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<sup>7</sup> WAC 480-07-380(1).

however, that the Commission could, *sua sponte*, dismiss the Coe Complaint as against the County, or could wait for the County to make such a motion.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

Respectfully submitted,

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