

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of)	DOCKET TG-081576
)	
FREEDOM 2000, LLC,)	
)	ORDER 03
For a Certificate of Public Convenience)	
and Necessity to Operate Motor Vehicles in)	INITIAL ORDER DISMISSING
Furnishing Solid Waste Collection)	PROTESTANT AND
Services.)	INTERVENOR AND
)	SUSPENDING ADJUDICATIVE
)	PROCEEDING
.....)	

1 ***Synopsis:** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. This Initial Order dismisses the protest filed by Points Recycling and Refuse, LLC, and the intervention filed by Washington Refuse and Recycling Association. This Initial Order also suspends the adjudicative phase of this matter.*

2 **NATURE OF PROCEEDING.** Docket TG-081576 involves an application for a certificate of public convenience and necessity filed by Freedom 2000, LLC (Freedom), with the Washington Utilities and Transportation Commission (Commission) to operate as a solid waste collection company within Point Roberts, Washington.

3 **APPEARANCES.** David Gellatly, owner/operator, Point Roberts, Washington, represents Freedom. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents the Commission Staff.¹ Arthur Wilkowski, owner/operator, Point Roberts, Washington, represents Points Recycling and Refuse, LLC (Points Recycling). James Sells, Ryan, Sells, Uptegraft, Inc., PS, Silverdale,

¹ In formal proceedings, such as this, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as other parties to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455.*

Washington, and Brad Lovaas, Executive Director, Lacey, Washington, represent Washington Refuse and Recycling Association (WRRRA).

4 **PROCEDURAL HISTORY.** On August 26, 2008, Freedom filed with the Commission an application for a certificate of public convenience and necessity to operate motor vehicles in furnishing solid waste collection service consisting of only source-separated recyclable materials collected from single and multifamily residences within Point Roberts, Washington.

5 On October 16, 2008, Points Recycling and Refuse, LLC, (Points Recycling), the certificated hauler of solid waste for Point Roberts, Washington at that time, filed a protest to the application.

6 Washington Refuse and Recycling Association (WRRRA) filed a petition to intervene on October 29, 2008.² The Commission granted WRRRA's petition to intervene at the prehearing conference.

7 On December 8, 2008, the Commission convened a prehearing conference in this matter. At the prehearing conference, the parties requested a continuance of the prehearing conference for a period of six months. The parties explained that the application filed by Freedom would be affected by the action the Commission would take in the consolidated matter of Dockets TG-080913, TG-080914,³ and TG-081089, relating to the provision of service by Points Recycling and the possible revocation of Points Recycling's authority as the designated hauler in Point Roberts, Washington.⁴ The Commission granted the parties' request for a continuance in Order 01 in this

²The state of Washington Department of Ecology, the Whatcom County Public Works Department, and the Whatcom County Council filed comments with the Commission regarding Freedom's application but did not request intervener status.

³On January 15, 2009, the Commission entered Order 05 in Dockets TG-080913, TG-080914, and TG-081089 and Order 03 in Docket TG-082129 granting Points' request to withdraw its tariff revision filing in Docket TG-080914 and closing the docket.

⁴On November 26, 2008, Reneé Coe, Shelley Damewood, and Shannon Tomsen, residents of Point Roberts, Washington, filed a complaint, under Docket TG-082129, against Points Recycling alleging that the company had failed to comply with state law and county code and had abused the public trust. On December 31, 2008, the Commission issued Order 03 in Dockets TG-080913, TG-080914, and TG-081089 and Order 01 in TG-082129. The order consolidated the four dockets.

matter on December 9, 2008, and directed the parties to file joint status reports on February 9, 2009 and April 6, 2009.

- 8 On May 28, 2009, Points Recycling filed a request to voluntarily relinquish its certificate, G-155, in Dockets TG-080913, TG-081089, and TG-082129, effective July 1, 2009. The Commission granted Points Recycling's request in Order 11 in those consolidated dockets, entered on June 17, 2009, and cancelled Points Recycling's certificate.
- 9 On June 23, 2009, Freedom filed an amended application with the Commission requesting authority to provide all solid waste and source separated recycling services that were previously provided by Points Recycling in Point Roberts.⁵
- 10 The Commission convened a status conference on July 6, 2009, to address the issue of Points Recycling's protest given that the company was no longer operating in the Point Roberts service area and the company's certificate had been cancelled.
- 11 **STAFF'S MOTION.** At the status conference, Staff moved for dismissal of the protest filed by Points Recycling since the company's certificate had been cancelled on June 17, 2009. Staff argued that, pursuant to WAC 480-70-106(2), only certificated solid waste haulers or solid waste collection associations, on behalf of existing certificate holders, may protest an application for certification as a solid waste hauler. Staff asserted that Points Recycling is no longer the certificated solid waste hauler in the Point Roberts area that Freedom has requested to serve, and thus, Points Recycling's protest should be dismissed. Freedom agreed with Staff's characterization of the protest and supported Staff's motion. WRRRA took no position on the matter.
- 12 **Discussion/deliberation.** As Staff has pointed out, WAC 480-70-106(2) dictates that two groups have standing to protest an application for authority to operate as a certificated solid waste hauler: 1) currently certificated solid waste haulers and 2) solid waste collection organizations, associations, or conferences on behalf of an

⁵On June 29, 2009, Freedom filed replacement pages to its application, correcting information that it had previously provided to the Commission. Freedom also filed revisions to its proposed tariff on July 2, 2009.

existing hauler. When Freedom first filed its application, Points Recycling was the only certificated solid waste hauler operating in the Point Roberts service area. Since then, the Commission has granted Points Recycling's request to voluntarily relinquish its certificate. Likewise, Points Recycling does not qualify as a solid waste collection organization, association, or conference. As such, Points Recycling's protest will be dismissed.

13 **WRRRA'S MOTION.** Also at the status conference, WRRRA expressed a desire to withdraw from the proceeding as an intervener. WRRRA stated that it no longer intended to participate in the proceeding and requested that the Commission dismiss its intervention.

14 **Discussion/deliberation.** Pursuant to WAC 480-07-380(3)(b), once the Commission has commenced an adjudicative proceeding, a party may withdraw from a proceeding only upon permission granted by the Commission. After the adjudicative proceeding has begun, the Commission will grant a party's motion to withdraw from a proceeding when the party's request is in the public interest.⁶ The adjudicative process commenced in this matter on October 24, 2008, when the Commission issued the Notice of Prehearing Conference.⁷

15 It would appear from WRRRA's request that it is satisfied that it no longer possesses a substantial interest in the proceeding. Therefore, the Commission finds that granting WRRRA's request and dismissal of the association's intervention would be in the public interest.

16 Given the absence of any protestants or interveners in this matter, and because staff must evaluate the company's amended application, and if it is complete, allow 30 days from publication on the transportation docket to determine if any other certificate holder files a protest, there is no need to continue for an adjudicative proceeding. Thus, the Commission should suspend the adjudication in this docket while Staff considers the application, and if appropriate publish it in the docket.

⁶WAC 480-07-380(3)(b).

⁷See, RCW 34.05.413(5).

FINDINGS OF FACT

- 17 Having discussed above the history and factual background of this matter and having
stated findings on relevant issues, the Commission now makes and enters the
following summary of those facts, incorporating by reference the discussion above:
- 18 (1) The Washington Utilities and Transportation Commission is an agency of the
State of Washington, vested by statute with authority to regulate the rates,
rules, regulations, practices, and accounts of public service companies,
including solid waste companies.
- 19 (2) Freedom 2000, LLC, has requested a certificate of public convenience and
necessity to provide solid waste collection services in Point Roberts,
Washington.
- 20 (3) Points Recycling and Refuse, LLC, was the certificated solid waste hauler in
Point Roberts at the time that Freedom filed its original application.
- 21 (4) Points Recycling filed a protest against Freedom's original application.
- 22 (5) Washington Refuse and Recycling Association requested and was granted
intervener status in this proceeding.
- 23 (6) On June 17, 2009, the Commission granted Points Recycling's request to
relinquish its certificate and cancelled certificate G-155.
- 24 (7) There is currently no certificated solid waste hauler in Point Roberts.
- 25 (8) Washington Refuse and Recycling Association has requested to withdraw
from the proceeding.

CONCLUSIONS OF LAW

26 Having discussed above all matters material to this decision, and having stated
findings above, as well as the reasons for this decision, the Commission now makes
the following summary conclusions of law, incorporating by reference pertinent
portions of the preceding conclusions:

- 27 (1) The Commission has jurisdiction over the subject matter and the parties to
these proceedings.
- 28 (2) Pursuant to WAC 480-70-106(2), Points Recycling does not have standing to
protest Freedom 2000's application.
- 29 (3) The WRRRA's request to withdraw from the proceeding as an intervener is in
the public interest pursuant to WAC 480-07-380(3)(b).
- 30 (4) With the dismissal of the sole protestant and intervener from the proceeding,
the Commission suspends the adjudication of the application in this docket,
pending further action by staff.

ORDER

THE COMMISSION ORDERS:

- 31 (1) Points Recycling and Refuse, LLC's protest against Freedom 2000, LLC's
application for a certificate of public convenience and necessity to operate
motor vehicles in furnishing solid waste collection services is dismissed.
- 32 (2) Washington Refuse and Recycling Association's intervention in this
proceeding is dismissed.

33 (3) The adjudicative proceeding in this docket is suspended.

DATED at Olympia, Washington, and effective July 9, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after service of this Initial Order to file a *Petition for Review*. What must be included in any *Petition* and other requirements for a *Petition* are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a *Petition for Review* within seven (7) days after service of the *Petition*.

RCW 80.01.060(3) and WAC 480-07-610(9) provide that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

One copy of any *Petition* or *Response* filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any *Petition* or *Response* must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250