

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the  
Proper Carrier Classification of:

RIDWELL, INC.

DOCKET TG-200083

ORDER 01

ORDER INSTITUTING SPECIAL  
PROCEEDING; COMPLAINT  
SEEKING CLASSIFICATION

AND

NOTICE OF BRIEF ADJUDICATIVE  
PROCEEDING (Set for April 21, 2020,  
at 9:30 a.m.)

**I. INTRODUCTION**

1 The Washington Utilities and Transportation Commission (Commission) on its own motion and through its Staff alleges as follows:

**II. PARTIES**

2 The Commission is an agency of Washington State authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including motor freight carriers, household goods carriers, and solid waste collection companies under the provisions of Title 81.

3 Ridwell, Inc. (Ridwell or Company) is allegedly conducting business as a solid waste collection company in the state of Washington.

**III. BACKGROUND**

4 The Commission has information from which it believes and therefore alleges that Ridwell violated provisions in Title 81 RCW that forbid operating for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission.

5 RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Ridwell that violates any law, order, or rule of the Commission. RCW 81.04.380 authorizes the Commission to impose financial penalties

of up to \$1,000 for each instance that Ridwell operated for the hauling of solid waste without a Commission-issued certificate of public convenience and necessity.

6 Ridwell has never held a certificate of public convenience and necessity from the Commission authorizing it to operate as a solid waste collection company.

7 The following facts, set forth in Staff's publicly-docketed Investigation Report, establish probable cause for the Commission to complain against the activities of Ridwell.

8 On April 23, 2019, Staff began an investigation to determine if Ridwell violated RCW 81.77.040 for transporting residential recyclables without first obtaining a certificate of convenience and necessity.

9 On May 3, 2019, Staff sent Ridwell a letter alleging the Company engaged in service that requires a solid waste certificate.<sup>1</sup> Staff requested Ridwell either submit a complete application for a solid waste certificate or explain in writing why the Company's operations do not require authority from the Commission.

10 On May 16, 2019, Staff received a response letter from Ridwell dated May 14, 2019.<sup>2</sup> In the letter, the Company stated it did not believe it should be classified as a solid waste company.

11 On June 17, 2019, Staff spoke with Hans Van Dusen, Contracts Manager for Seattle Public Utilities (SPU). Hans Van Dusen confirmed SPU has no contract or agreement with Ridwell to provide residential recycling.

12 On July 12, 2019, Staff received a call from Ryan Metzger, CEO of Ridwell. Staff notes reflect that Mr. Metzger called to inquire about the status of the compliance investigation of Ridwell.<sup>3</sup> Staff explained that the company was operating as a solid waste transporter without a solid waste certificate in violation of Washington law because it was transporting residential recycling in the city of Seattle without having a contract with the city.

13 On July 16, 2019, Staff sent an email notifying Ridwell the Commission had closed its compliance investigation of the company's business practices. In the email, the Company was notified the reason for the closure was determined after the city of

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<sup>1</sup> Docket TG-200058, Staff Investigation Report, Attachment K (Staff Investigation Report).

<sup>2</sup> Staff Investigation Report, Attachment L.

<sup>3</sup> Staff Investigation Report, Attachment N, *see also*, RCW 81.77.130.

Seattle stated it would assert jurisdiction over Ridwell's transportation of residential recycling. The Company was notified that if it expanded outside the city of Seattle it would be required to obtain a certificate from the Commission.

- 14 On July 24, 2019, Staff met with the Company, Rory O'Rourke and Yolanda Pon of Public Health – Seattle and King County, Dawn Marie Mauer of the Department of Ecology, and Hans Van Dusen of Seattle Public Utilities.<sup>4</sup> The purpose of the meeting was to determine the roles of each agency in Ridwell's compliance. Meeting notes acknowledge the Company's transportation of recyclables and that Ridwell would need a solid waste certificate if the city did not take jurisdiction.<sup>5</sup>
- 15 On September 12, 2019, Staff became aware that Ridwell was expanding service to Kirkland, Washington. The email advertisement indicated that full services Ridwell offers would begin October 8, 2019.<sup>6</sup>
- 16 On September 25, 2019, King County Public Health official Rory O'Rourke emailed Mr. Metzger regarding Ridwell's recycling facility located in Seattle and its compliance with King County Public Health regulations.<sup>7</sup> The email stated in part that Ridwell is required to apply for a solid waste certificate with the Commission if the city of Kirkland opts not to pursue a contract.
- 17 On October 8, 2019, Staff communicated with officials in Kirkland regarding Ridwell's transportation of residential recycling in Kirkland, and asked if the city intended to assert jurisdiction over the Company. They informed Staff that Kirkland would not assert authority over Ridwell.<sup>8</sup>
- 18 On October 22, 2019, Staff sent Ridwell a second compliance letter after confirming that the cities of Seattle and Kirkland solid waste programs opted not to assert authority over the Company transporting residential recycling.<sup>9</sup> The letter included technical assistance directing the company to review the Revised Code of Washington (RCW) and Washington Administrative Code (WAC) for the definitions regarding transporting solid waste, including residential recycling. The Company was instructed

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<sup>4</sup> Staff Investigation Report, Attachment O.

<sup>5</sup> *Id.*

<sup>6</sup> Staff Investigation Report, Attachment P.

<sup>7</sup> Staff Investigation Report, Attachment S.

<sup>8</sup> Staff Investigation Report, Attachment T.

<sup>9</sup> Staff Investigation Report, Attachment V.

to cease operations until it submits and is approved for a solid waste certificate, or provide information why a certificate is not required. Staff requested Ridwell respond by November 4, 2019.

- 19 On November 6, 2019, Staff received a response from the Company.<sup>10</sup> The information provided in the November 2019 letter did not change Staff's assessment regarding the Company's need to acquire a solid waste certificate.
- 20 On December 13, 2019, Staff sent a third compliance letter to Ridwell stating Staff believes that the Company is operating as a solid waste company.<sup>11</sup> The letter provided Ridwell with a deadline to apply or cease operation by December 27, 2019. The letter included information regarding exemptions or modifications. An email was sent with the letter attached as a courtesy to the Company.
- 21 On December 24, 2019, Staff received an email from the Company with an attached letter.<sup>12</sup> The letter requested an extension to provide time for the Company to research exemptions, petitions, and applications for solid waste transportation. Staff responded to the Company granting an extension until January 17, 2020, as requested.
- 22 On January 17, 2020, Ridwell filed applications for authority to operate as a solid waste carrier and as a common carrier, along with a petition for exemptions from various rules. The petition for exemption requests that the Commission find that Ridwell's operations do not require a solid waste handling certificate under Chapter 81.77 RCW.<sup>13</sup> In the alternative, it requests exemptions from certain rules pertaining to solid waste carriers.
- 23 In the petition, Ridwell argues that it does not need a solid waste handling certificate because the Company's "primary business involves transporting items, such as used clothing, to non-profit organizations for reuse without any reprocessing."<sup>14</sup> The petition also alleges that "Ridwell most often transports the material it collects from

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<sup>10</sup> Staff Investigation Report, Attachment Z. Emails with the Company indicate there was an issue with mailing the letter that may have caused a delay.

<sup>11</sup> Staff Investigation Report, Attachment AA.

<sup>12</sup> Staff Investigation Report, Attachment AB.

<sup>13</sup> *In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Petition and Request for Determination, Clarification, and Exemption, at 1:11-13 (Filed January 17, 2020) (Ridwell Petition).

<sup>14</sup> Ridwell Petition at 4:13-14.

residential generators to partnering non-profit organizations...”<sup>15</sup> It therefore requests that the Commission exercise its discretion under WAC 480-70-016 or WAC 480-70-011(2) to determine that the Company does not require a solid waste certificate.<sup>16</sup>

- 24 Based on the information collected over the course of its investigation, Staff believes that the factors outlined under WAC 480-70-016(4) would lead the Commission to conclude that Ridwell’s operations do require a solid waste certificate. Specifically, Staff does not believe that Ridwell is “primarily engaged in the business of providing a service other than the collection of solid waste” under WAC 480-70-016(4)(f). As mentioned above, the Company has a recycling facility located in Seattle.<sup>17</sup> While not all of the items Ridwell transports are recyclable materials, Ridwell’s advertisements indicate that the Company picks up items such as plastic film, batteries, and light bulbs on a regular schedule, while other items are picked up intermittently.<sup>18</sup>
- 25 For the same reason, Staff does not believe that Ridwell meets the requirements for an exemption under WAC 480-70-011(2). The collection of recyclable materials is not a minor aspect of Ridwell’s operations, it is the Company’s primary business. Furthermore, the exemption under WAC 480-70-011(2)(a) does not apply to Ridwell, because the Company has held itself out to the public as a transporter of solid waste.<sup>19</sup>

#### IV. JURISDICTION

- 26 The Commission has jurisdiction over the subject matter of this complaint under RCW 80.01.040, RCW 80.01.060, RCW 81.01.010, RCW 81.04.020, RCW 81.04.110, RCW 81.04.160, RCW 81.04.460, RCW 81.04.510, chapter 81.77 RCW, chapter 81.80 RCW, and chapter 34.05 RCW.

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<sup>15</sup> Ridwell Petition at 9:17-10:1.

<sup>16</sup> Ridwell Petition at 1:11-13.

<sup>17</sup> Staff Investigation Report, Attachment G.

<sup>18</sup> Staff Investigation Report, Attachment P.

<sup>19</sup> Ridwell argues in its petition that it does not hold itself out to the public as a transporter of solid waste. Ridwell Petition at 10:7-8. However, Commission rules define solid waste to include “[s]ource-separated recyclable materials collected from single and multifamily residences.” WAC 480-70-041.

**V. APPLICABLE LAWS AND REGULATIONS**

- 27 Solid waste collection companies are common carriers. RCW 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company and therefore subject to Commission regulation. *See* RCW 80.01.040(2); RCW 81.01.010.
- 28 The term “common carrier,” in the context of solid waste collection, means “any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules.” RCW 81.77.010(3).
- 29 The term “person” includes an “individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.” WAC 480-70-041.
- 30 Under state law, the definition of “solid waste collection company” includes every person “owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a ‘common carrier’ or as a ‘contract carrier.’” RCW 81.77.010(7).
- 31 “Solid waste” is defined under RCW 81.77.010(9) as: “[T]he same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences[.]”
- 32 RCW 70.95.030(22) defines solid waste as “all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.”
- 33 RCW 70.95.030(17) defines recyclable materials as “those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass that are identified as recyclable material pursuant to a local comprehensive solid waste plan...” This definition is incorporated into the definition of “solid waste” under RCW 81.77.010(9) through RCW 70.95.030(22). Under Commission rules, “recyclable materials” is defined as “materials that are transported for recycling, reprocessing, reclamation, or for any process that extracts or modifies the commodity for reuse or another commercially valuable purpose.” WAC 480-70-041.

34 No solid waste collection company may operate for the hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission. RCW 81.77.040. "Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide" such services. RCW 81.77.040.

35 Under WAC 480-70-016(2), the Commission has discretion to determine whether it will require a carrier that is "engaged extensively in both motor freight and solid waste collection operations" to hold both a motor carrier permit and a solid waste certificate. WAC 480-70-016(4) outlines the factors the Commission considers when making this determination:

"(4) In determining whether operations require a solid waste certificate or a motor carrier permit, the commission will consider factors including, but not limited to:

- (a) The intent of the shipper;
- (b) The intended destination of the shipment;
- (c) The actual destination of the shipment;
- (d) Special handling or conditions placed on the shipment by the shipper and/or receiver;
- (e) The value of the commodity being transported;
- (f) Whether the carrier is primarily engaged in the business of providing solid waste collection or is primarily engaged in the business of providing a service other than the collection of solid waste; and
- (g) Whether the carrier holds itself out to the public as a transporter of solid waste."

36 WAC 480-70-011(2) outlines hauling operations not regulated by the Commission as solid waste. Under WAC 480-70-011(2)(a), this includes:

"The operations of a carrier operating under a permit issued by the commission under chapter 81.80 RCW (motor freight) that occasionally transports to a disposal site, but whose primary business is not the collection of solid waste. This exemption does not apply if the carrier holds itself out to the public as a transporter of solid waste. Examples of this type of operation include, but are not limited to:

- (i) A dump truck operator, who as a part of performing dump truck operations in conjunction with building or construction projects, hauls an occasional load to a disposal site; or
- (ii) A household goods carrier who transports to a disposal site the

used packing materials from a shipment of household goods that the carrier transported.”

- 37 Any solid waste collection company operating for the hauling of solid waste for compensation without the necessary permit is subject to a penalty of up to \$1,000 per violation. RCW 81.04.380. Where alleged violation concerns advertising, each advertisement reproduced, broadcast, or displayed by a particular medium constitutes a separate violation. RCW 81.77.090(2).
- 38 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.
- 39 Ridwell’s petition cites WAC 173-350-021 during its discussion of the definitions of solid waste and recyclable materials.<sup>20</sup> However, WAC 173-350-021 applies to “determining whether a material is a solid waste as defined in WAC 173-350-100.”<sup>21</sup> Chapter 81.77 RCW defines “solid waste” by referencing RCW 70.95.030,<sup>22</sup> but it does not indicate that the Commission’s jurisdiction is further defined by rules adopted by the Department of Ecology.<sup>23</sup>

## VI. COMPLAINT

- 40 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 1 through 25, above.
- 41 The Commission alleges that Ridwell violated RCW 81.77.040 on at least five occasions by advertising and offering solid waste carrier services without first having obtained from the Commission a certificate of public convenience and necessity.

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<sup>20</sup> Ridwell Petition at 5:4-6:15.

<sup>21</sup> WAC 173-350-021(1).

<sup>22</sup> RCW 81.77.010(9).

<sup>23</sup> See RCW 70.95.320: “Nothing in chapter 156, Laws of 1998 may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission.” See also, RCW 70.95.900: “Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers.”; 2010 c 154 § 5: “Nothing in this act changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this act change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020.”



Specifically, two offers of service, one in Kirkland, and one in Mercer Island, plus three advertisements on the Company's website, Instagram page, and Facebook page.

#### **VII. REQUEST FOR RELIEF**

- 42 Staff requests that the Commission order Ridwell to cease and desist activities subject to regulation under Title 81 RCW until it has obtained the necessary authority from the Commission.
- 43 Staff requests that the Commission set a brief adjudicative proceeding on the issue of classification as a solid waste collection company and common carrier.
- 44 Staff requests that the Company's applications and other issues raised in the petition are addressed in this docket after the classification hearing.
- 45 Staff is recommending suspended penalties of \$5,000. Staff believes this is justified based on the Company's ongoing communication with Staff throughout the investigation, and its eventual decision to file applications for authority as instructed by Staff in the technical assistance letters.
- 46 Finally, Staff requests that the Commission order such other or additional relief as is appropriate under the circumstances.

#### **VIII. PROBABLE CAUSE**

- 47 Based on a review of the Staff Investigation Report documenting the violations alleged above, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

#### **IX. ORDER AND NOTICE OF BRIEF ADJUDICATIVE PROCEEDING**

- 48 The Commission has jurisdiction to institute a special proceeding to determine whether Ridwell is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.01.010, and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.04.020; RCW 81.04.380, RCW 81.77.010, RCW 81.77.040, RCW 81.77.090, and RCW 81.80.010. This matter also involves the administrative rules set forth in chapters 480-07 and 480-70 WAC.
- 49 Pursuant to RCW 34.05.482 and WAC 480-07-610, the Commission determines that a brief adjudicative proceeding is appropriate for resolving the issues in this docket.

- 50 **THE COMMISSION ORDERS** Ridwell to appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9:30 a.m. on April 21, 2020, in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington, to give testimony and evidence under oath as to its operations. The burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Ridwell as provided by RCW 81.04.510.
- 51 **THE COMMISSION GIVES NOTICE THAT** it will conduct a brief adjudicative proceeding concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9:30 a.m. on Tuesday, April 21, 2020, in the Commission's Richard Hemstad Hearing Room, 621 Woodland Square Loop SE, Lacey, Washington.
- 52 **THE COMMISSION GIVES NOTICE** that any party who fails to attend or participate in the hearing or any other state of this proceeding may be held in default in accordance with RCW 34.05.440 and WAC 480-07-450.
- 53 If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that the Commission may appoint a qualified interpreter at no cost to the party or witness.
- 54 The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Ryan Metzger  
d/b/a Ridwell, Inc.  
PO Box 19737  
Seattle, WA 98109

Representative: Jay Derr  
Van Ness Feldman LLP  
719 Second Avenue, Suite 1150  
Seattle, WA 98104-1728  
(206) 623 9273

Commission Washington Utilities and Transportation  
Commission  
621 Woodland Square Loop Lacey, WA 98503  
(360) 664-1160

Representative: Nash Callaghan  
Assistant Attorney General  
621 Woodland Square  
Loop SE, Lacey, WA  
98503  
(360) 664-1187

55 Administrative law judge Samantha Doyle from the Commission's Administrative Law Division will preside at the brief adjudicative proceeding.<sup>24</sup>

DATED this 5th day of March, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*/s/ Rayne Pearson* \_\_\_\_\_  
RAYNE PEARSON  
Administrative Law  
Director Administrative  
Law Division

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<sup>24</sup> Judge Doyle can be reached at [samantha.doyle@utc.wa.gov](mailto:samantha.doyle@utc.wa.gov) or by phone at (360) 664-1164.

**NOTICE**

Hearing facilities are accessible to persons with disabilities. Smoking is prohibited. If limited English-speaking, hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

If you need an interpreter, or have other special needs, please fill out this form and return it to Washington State Utilities and Transportation Commission, Attention: Mark L. Johnson, 621 Woodland Square Loop SE, Lacey, Washington 98503 (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket: \_\_\_\_\_

Case Name: \_\_\_\_\_

Hearing Date: \_\_\_\_\_ Hearing Location: \_\_\_\_\_

Primary Language: \_\_\_\_\_

Hearing Impaired (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Do you need a certified sign language interpreter:

Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be contacted if there are questions:

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone No.: (\_\_\_\_) \_\_\_\_\_