

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of:

DOCKET TG-200083

RIDWELL, INC.

BRIEF ON BEHALF OF COMMISSION STAFF

June 12, 2020

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I. INTRODUCTION

1 Ridwell asks the Commission to do something that no adjudicative body should ever do: determine a legal and factual question by working backwards from a preferred outcome. Even if this request was not antithetical to basic legal principles,¹ the Company fails to demonstrate that the premise of the request is even accurate. Ridwell asks the Commission to classify it as a common carrier rather than a solid waste carrier because it claims that the statutory requirements for solid waste collection companies are too burdensome for the Company. This is contradicted by case law, the evidence presented at the hearing, and the history of solid waste collection companies classified and regulated by the Commission. The Commission has the authority both to define the scope of solid waste collection services authorized by a certificate, and to exempt solid waste collection companies from Commission rules. The evidence presented at the classification hearing demonstrated that Ridwell could operate under a solid waste certificate. Although Ridwell suggested that it would be unable to operate if classified a solid waste carrier, the Company provided little evidence in support of that claim. Solid waste carriers much smaller than Ridwell are able to comply with the Commission's solid waste carrier regulations, and companies have been granted special solid waste certificates that authorize them to offer specialized services across the state. In essence Ridwell asks the Commission to conclude, before the matter has been tried, that the exemptions from specific solid waste rules requested in its' petition would be insufficient to allow the Company to operate.

2 Ridwell's entire argument is a distraction, the issues it raises are irrelevant to the question of classification. The facts and the law are clear: Ridwell is providing solid waste

¹ *E.g., Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10 (2002) ("The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.").

collection services under Chapter 81.77 RCW. A classification hearing asks one question: Is this company providing services that are regulated by the Commission? If the answer to that question is yes, then regardless of the consequences of that conclusion, the company should be classified as a solid waste carrier. If a company truly cannot operate under its current business model and be in compliance with the law, then it should not operate under that business model. The Commission has a great deal of discretion in the subject matters it has jurisdiction over. But that authority is not limitless, the Commission has a duty to implement the statute as it is currently written. It is for the legislature, not the Commission, to decide whether Chapter 81.77 RCW is in need of amendment. Although the Commission does have the discretion to accommodate Ridwell's business model under Chapter 81.77 RCW, the Commission does not have the discretion to disregard the classification standards and definitions set in statute.

II. FACTS AND PROCEDURAL HISTORY

3 On April 23, 2019, Commission staff (Staff) began an investigation to determine if Ridwell Inc. (Ridwell or Company) violated RCW 81.77.040 by transporting residential recyclables without first obtaining a certificate of convenience and necessity. Over the course of 2019, Staff and Ridwell sent each other a series of letters regarding the Company's need to apply for a solid waste certificate from the Washington Utilities and Transportation Commission (Commission).² On September 12, 2019, Staff became aware that Ridwell was expanding service to Kirkland, Washington. The email advertisement discovered by Staff indicated that Ridwell would begin offering services in Kirkland on October 8, 2019.³ Throughout the course of the investigation, Staff engaged in a dialog with the Company,

² *In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Order 01, 2 ¶ 9 – 4 ¶ 21 (March 5, 2020) (Order 01).

³ McPherson, Exh. KM-19a at 71 (Attachment P).

informing Ridwell that it needed to apply for a solid waste certificate, providing technical assistance, and urging the Company to come in and file an application voluntarily. The discussions between Staff and the Company ultimately led to Ridwell filing a petition and applications for authority.

4 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 certificate under Chapter 81.77 RCW.⁴ In the alternative, it requests exemptions from specific rules pertaining to solid waste carriers. In its petition, Ridwell argues that it does not need a solid waste certificate because the Company’s “primary business involves transporting items, such as used clothing, to non-profit organizations for reuse without any reprocessing.”⁵ The petition alleges that “Ridwell most often transports the material it collects from residential generators to partnering non-profit organizations...”⁶ It therefore requests that the Commission determine under WAC 480-70-016 or WAC 480-70-011(2) that the Company does not require a solid waste certificate.⁷

5 On March 5, 2020, the Commission filed Order 01 of this docket, which set a brief adjudicative proceeding to determine the proper classification of Ridwell and assess the recommended \$5,000 in suspended penalties.⁸ The hearing was converted to a full adjudication and set for May 12, 2020, with no change to the scope of the hearing.⁹

⁴ *In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Petition and Request for Determination, Clarification, and Exemption, 1:11-13 (Filed January 17, 2020) (Ridwell Petition).

⁵ *Id.* at 4:13-14.

⁶ *Id.* at 9:17-10:1.

⁷ *Id.* at 1:11-13.

⁸ Order 01 at 9 ¶ 43-45.

⁹ *See In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Order 02 (April 17, 2020).

III. ARGUMENT

A. If Ridwell is Classified as a Solid Waste Collection Company, the Commission has the Discretion to Grant a Certificate that Allows it to Operate under its Current Business Model.

1. Legal Standard

6 The Commission has broad authority to define the territory and type of services authorized under a solid waste certificate. Although Ridwell claims that complying with the solid waste collection statutory requirements would be overly burdensome, past and present solid waste certificates granted by the Commission demonstrate otherwise. Under RCW 81.77.040, the Commission must consider, but is not limited to, the following factors when determining whether to issue a certificate:

The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

7 Although most solid waste certificates grant companies a monopoly within a given territory, it is not required under the statute. RCW 81.77.040 states that if an applicant requests a certificate to operate in a territory already served by a certificate holder:

[T]he commission may, after notice and opportunity for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

8 The Commission has interpreted the “service to the satisfaction of the Commission” statutory standard as “indicat[ing] that *any* lack of Commission satisfaction with how the

incumbent company provides service – not just with “flawed” or “deficient” service – would justify authorizing an additional provider.”¹⁰ The Commission has determined that the “standard is whether the overall quality of service is satisfactory, and the Commission must apply its judgment and expertise in making that determination. The determination must be based objectively on all of the facts and circumstances in the formal record.”¹¹

9 The Commission can grant authority to operate statewide,¹² and can also limit the authority granted to providing only very specific types of solid waste services.¹³ The Commission can also grant a company nonexclusive or competitive authority.¹⁴ Competition indicates that there is no obligation to serve every customer within the territory. Finally, the Commission commonly grants solid waste certificates to companies that haul solid waste along with other materials.¹⁵ The Commission’s authority under RCW 81.77.040 to define the services authorized under a solid waste certificate allows it the flexibility to consider a

¹⁰ *In re Application of Waste Management of Washington, Inc.*, Docket TG-120033, Order 10, 3, ¶ 7 (July 10, 2013). Although the Commission was considering a biomedical waste carrier application in this docket, rather than a solid waste carrier, the same statute, RCW 81.77.040, applies to both subsets of carriers. On appeal from this docket, the Court of Appeals agreed that “the Commission has broad authority to determine to its satisfaction whether service is satisfactory.” *Stericycle of Washington Inc. v. Washington Utils. and Transp. Comm’n*, 190 Wn. App. 74, 87 (2015). However, the court also noted that “the Commission has differentiated biomedical waste from neighborhood garbage collection due to the unique attributes of the biomedical waste collection industry.” *Id.* at 88. Therefore, it is unclear whether the Commission wields less discretion to determine whether a solid waste carrier’s service is to the satisfaction of the Commission relative to specialized solid waste carriers, despite the shared statutory language. *See Id.* (holding that *Superior Refuse*, 81 Wn. App. 43 (1996) was “inapplicable here because that case was concerned only with neighborhood garbage collection service” as oppose to biomedical waste collection).

¹¹ *In re Superior Refuse Removal Corp.*, Commission Decision and Order Denying Reconsideration, Order M.V.G. No. 1537, Hearing No. GA-849, 4 (February 11 1992).

¹² *See Stericycle*, 190 Wn. App. at 87.

¹³ RCW 81.77.040: “...In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.”; *see also In re Application No. GA-079358 of DB Hauling LLC, For Authority to Transfer All Rights Under Certificate No. G-198, Standing in the Name of Haney Truck Line, Inc., to DB Hauling LLC.*, Docket TG- 050239, Order 02, 7, Appendix A (August 11, 2005) (Authorizing “solid waste collection service ... limited to cannery waste that cannot otherwise be recycled or reused, consisting of wet food by-products and processing material containing wet food by-products, from points in the cities of Yakima and Toppenish.”).

¹⁴ *See e.g., Stericycle*, 190 Wn. App. at 87.

¹⁵ *See WAC 480-70-016.*

wide range of possible regulatory requirements the Commission could place on Ridwell if the Company was classified as a solid waste collection company, and determine the outcome that best serves the public interest.

2. Ridwell’s Claim that it Would be Prevented from Expanding Territory if Classified as a Solid Waste Carrier is not true, the Commission can Define the Services Offered Under a Solid Waste Certificate and Approve the Certificate over the Objections of Incumbents.

10 The Commission has the authority to grant Ridwell a certificate to provide specialized recycling services nonexclusively and statewide. At the evidentiary hearing, questions from the Company’s attorney raised the concern that Ridwell would have difficulty expanding into new territories in the future because it would have to submit an application for authority, and this application could lead to a challenge by incumbents.¹⁶ Ridwell’s claim that it would be prevented from expanding into new territories if classified as a solid waste collection company is untrue. The Company stated at the hearing that it intends to only provide services that are not already provided by the incumbent solid waste companies already providing recycling services.¹⁷ If that is the case, then Ridwell should not have difficulty overcoming potential objections to its application by incumbents.

11 The Commission has reasoned that while multiple solid waste carriers may serve the same area, solid waste collection tends to favor monopoly service:

[T]he Commission believes that in the context of neighborhood solid waste collection, the statute [81.77.040] contemplates an exclusive grant of authority as the best and most efficient way of serving all customers in a given service territory. In this general context, it is assumed that all or most people and businesses in a given territory are also customers needing garbage

¹⁶ Metzger, TR 156:2-5.

¹⁷ *Id.* at 161:4-10; *see also* Metzger, Exh. RM-1T at 2:19-22; 25:22-26 (“Our intention was always to offer reuse and recycling categories not offered by local jurisdictions, and that is how we designed Ridwell to operate...Solid waste carriers do pick up some materials in that we pick up, but they do not transport them for reuse or recycling as we do. They simply take them to transfer stations (and ultimately landfills). The one exception are special pickups in Seattle noted above.”).

service. Under these circumstances, an exclusive grant of authority in a given service territory promotes service, efficiency, [and] consistency and is generally in the public interest.¹⁸

12 However, as noted above, the Commission has the ability to grant multiple companies authority in the same territory. In instances where competition is allowed, the company obviously no longer has an obligation to serve every customer within that territory. The court in *Stericycle* concluded that the Commission “has broad authority to determine to its satisfaction whether service is satisfactory” when considering objections to applications for a solid waste certificate.¹⁹

13 In *Stericycle*, a company applied for a biomedical waste carrier certificate that would allow it to operate throughout the entire state. Incumbents that had objected to the application appealed the Commission’s order granting the application for authority. The court found that

[s]ubstantial evidence on the record supports the Commission’s finding of consumer need for and benefit from competition with existing service providers for biomedical waste collection...[t]he Commission found that the public benefits of a statewide competitive market outweighed “unsubstantiated claims” of economic harm to the existing companies, including *Stericycle*.²⁰

The court found the Commission’s authority to make this determination stemmed from RCW 81.77.040, the same statute that objections to *Ridwell*’s application would be considered under.²¹

14 The case in favor of a competitive market in the collection of biomedical waste and the specialized recycling of materials such as batteries, lightbulbs, plastic film etc., is quite

¹⁸ *In re Application of Waste Management of Washington, Inc.*, Docket TG-120033, Order 10, 5, ¶ 10 (July 10, 2013) (quoting *In re Application GA-868 of Sureway Incineration, Inc.*, Order M.V.G. No. 1451, 16-17 (Nov. 30, 1990)).

¹⁹ *Stericycle*, 190 Wn. App. at 87.

²⁰ *Id.* at 89-90.

²¹ *Id.* at 79-80, but see discussion in n. 10.

similar. Like in *Stericycle*, Ridwell occupies a niche market. It offers to collect specific types of recyclable materials that are (for the most part) not picked up from residences under the local comprehensive solid waste management plan. Like biomedical waste, these materials are a special subset of solid waste. As with biomedical waste, the rationale for granting a territorial monopoly in the collection of these materials is weak. These recyclables are items that customers could deliver to designated drop off locations themselves, and most residential customers likely do not require weekly or bi-monthly pick up of these particular recyclable materials. If, during the application phase of this docket, the Company presents evidence that the public would benefit from a statewide, competitive market in this particular subset of recyclable materials, the Commission has the authority to grant such a certificate.

15 Potential objections to granting this certificate by incumbents would hold little merit, given that Ridwell has stated that it only intends to offer pick up services where they are not offered by incumbents. An applicant may demonstrate that an incumbent will not provide service to the satisfaction of the Commission by showing that the applicant is offering to provide a different service than the service offered by the incumbent.²² The fact that incumbents may object to Ridwell’s application is not a valid reason to avoid classifying Ridwell as a solid waste collection company. In fact, if incumbents provide the same service as Ridwell under a solid waste certificate and Ridwell provides that service under a common

²² *In re Application of Speedishuttle Washington, LLC d/b/a Speedishuttle, Shuttle Express, Inc., v. Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle, and Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle v. Shuttle Express, Inc.*, Dockets TC-143691, TC-160516, and TC-161257 (consolidated), Order 20/13/10 , 15 ¶ 40 (Nov. 17, 2017). While the cited dockets pertain to transportation carriers other than solid waste carriers, the Commission has previously relied on non-solid waste carrier standards in a solid waste carrier application case. *See In re Application of Freedom 2000*, Dockets TG-081576 and TG-091687 (consolidated), Order 05/02, 14-15, ¶ 34 n.56 (Jan. 27, 2020) (“Here and elsewhere in this Order, we cite cases relating to various transportation companies other than solid waste companies. They are relevant because, in relevant respects, the statutory framework, if not the actual language, is similar to that relating to solid waste companies”).

carrier permit, incumbents will not have an opportunity to object to Ridwell operating in their territory, even though the statute allows them to do so. Classifying Ridwell as a common carrier when it provides solid waste collection services deprives incumbents of their right to raise objections to the application, because the Commission will have already determined that the Company is not providing solid waste collection services. It would also create conflict with companies under the jurisdiction of local authorities. Under RCW 36.58.040(1), the legislative authority of a county may "...award a contract to collect source separated recyclable materials from residences within unincorporated areas. The legislative authority has complete authority to manage, regulate, and fix the price of the source separated recyclable collection service." If Ridwell were classified as a common carrier and operated in an area that the local legislative authority granted to another company through contract, this could result in an interjurisdictional conflict between the UTC and the county regarding Ridwell's classification.

16 To summarize, the Commission has broad discretion to authorize a solid waste certificate for Ridwell that allows the company to operate competitively and throughout the state, allowing the Company to offer residential recycling services that incumbent solid waste collection companies are not currently offering under their Commission authorized certificates or contracts with local authorities. This is exactly how Ridwell characterized its business model, and there is no reason the Commission cannot grant the company such a certificate if it is found to be in the public interest at future proceedings.

3. Setting Prices and Separating Solid Waste Collection from the Other Service Ridwell Provides is not Burdensome.

17 Under RCW 81.77.030, the Commission regulates solid waste companies by "fixing and altering its rates, charges, classifications, rules and regulations..." Ridwell suggested

during the evidentiary hearing that this would be detrimental to its business model.²³ As noted in WAC 480-70-016, the Commission requires companies that conduct other activities (whether regulated or unregulated) to obtain a solid waste certificate if the company engages in solid waste collection. This requirement is something other solid waste collection companies are able to comply with. For example, under Certificate G-198, DB Hauling, LLC is authorized to offer “solid waste collection service ... limited to cannery waste that cannot otherwise be recycled or reused, consisting of wet food by-products and processing material containing wet food by-products, from points in the cities of Yakima and Toppenish.”²⁴ Under Certificate G-211, Emerald Services Inc. is authorized to transport “extremely hazardous semi-solid waste, including acids, chemicals, and residuals in Pierce, King, Snohomish and Whatcom Counties and intercounty.”²⁵ Complying with the minimum statutory requirements of Chapter 81.77 RCW has not driven these companies out of business. In instances where aspects of the rate making process was overly burdensome, the Commission has been willing to grant exemptions from Commission rules.²⁶

18 As for price setting, RCW 81.04.250 it is not as rigid as the Company suggests. Under the statute, the Commission sets rates using “any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.”²⁷ The Commission regulates many companies that provide both regulated and nonregulated services, separating the two for rate making

²³ Perkinson, TR 119:1-121:15.

²⁴ *In re Application No. GA-079358 of DB Hauling LLC, For Authority to Transfer All Rights Under Certificate No. G-198, Standing in the Name of Haney Truck Line, Inc., to DB Hauling LLC.*, Docket TG-050239, Order 02, 7, Appendix A (August 11, 2005).

²⁵ *In re Joint Application GA- 79232 for authority to transfer all rights under Certificate of Public Convenience and Necessity No. G-211*, Docket TG-031863, Order Authorizing Transfer, 3, Appendix A (March 11, 2004).

²⁶ *In the Matter of the Petition of Waste Management of Washington, Inc., d/b/a Waste Management of Sno-King*, Docket TG-091945 and TG-091933, Order 04/03 (March 23, 2010).

²⁷ RCW 81.04.250.

purposes is a process the Commission and Staff are familiar with. Also, if the Commission authorizes competition in this this type of solid waste service as discussed above, separating out regulated and unregulated services for rate setting may not be necessary.

4. Ridwell may opt to Contract with Local Authorities to Provide Services if the Commission’s Requirements are Burdensome.

19 Classification would not necessarily require Ridwell to be economically regulated by the Commission. The Company could seek a contract with the counties it operates in under RCW 36.58.040, or cities and towns under RCW 81.77.020. Under RCW 36.58.040:

[t]he legislative authority of a county may: (1) By ordinance award a contract to collect source separated recyclable materials from residences within unincorporated areas. The legislative authority has complete authority to manage, regulate, and fix the price of the source separated recyclable collection service. The contracts may provide that the county pay minimum periodic fees to a municipal entity or permit holder...

RCW 81.77.020 gives similar authority to cities and towns.²⁸ Ridwell, if it truly found the Commission’s regulation of solid waste carriers overly burdensome, has the option of seeking a contract with the local authorities.

5. In Raising these Issues that are not Properly Before the Commission, Ridwell is Attempting to Circumvent the Burden of Proof.

20 The sections above clearly demonstrate that the Commission has the discretion to grant a solid waste certificate allowing Ridwell to operate under its current business model without unduly burdening the Company. However, Commission Staff’s investigation report, the exhibits admitted at the evidentiary hearing, and the testimony provided were all prepared with the understanding that the question at issue was classification,²⁹ not the Company’s requests for exemption from specific solid waste rules, or issues related to the

²⁸ RCW 81.77.020: “...the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town....”

²⁹ See Order 01 at 10 ¶ 50 (citing RCW 81.04.510 as the authority under which the Commission would conduct the hearing).

applications for authority. By raising these issues out of turn, the Company hopes to shift the burden of proof onto Staff to demonstrate that the Company will not be unduly burdened if classified as a solid waste collection company. To be clear, nothing discussed in the sections above is relevant to the issue of classification. But if these *were* relevant concerns, then the Company has the burden of proving the concerns have merit.

21 Under RCW 81.04.510:

[w]hether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission... *the burden shall rest upon such person or corporation of proving that his or her or its operations or acts are not subject to the provisions of this chapter.* (Emphasis added.)

The evidentiary hearing was held pursuant to RCW 81.04.510.³⁰

22 It is not Commission Staff's burden at this point in the regulatory process (or at any point) to prove that Ridwell will be able to operate under a solid waste certificate with little or no difficulty. Had the scope of the evidentiary hearing included the petition's requests for exemptions, the applications for authority, or any potential objections to the application from incumbent solid waste carriers, then the burden would have been on Ridwell to prove that the exemptions requested were in the public interest,³¹ that its application should be granted, and that incumbents were not providing service to the satisfaction of the Commission.³² The Commission should not accept unsupported assertions by the Company that, if classified, these issues would present insurmountable obstacles to the Company's continued operation. If that is indeed the case, the Company failed to meet its burden of

³⁰ See *Id.*

³¹ WAC 480-07-110(2)(c); WAC 480-70-051.

³² See RCW 81.77.040.

providing sufficient evidence. Mere assertions that the solid waste regulatory framework is too difficult for a Company to navigate should not be sufficient for the Commission.

23 Once the parties either submit a settlement proposal or develop an evidentiary record through a contested hearing on the application and requested solid waste rules exemptions, it will become clear that the concerns raised by Ridwell at the classification hearing are unwarranted. The Commission deserves to have a sufficient record on these issues before it decides them. But with respect to classification, the Commission has more than enough evidence to determine that Ridwell is operating as a solid waste collection company.

B. The Commission must Classify Ridwell as a Solid Waste Collection Company Because the Record Clearly Demonstrates it is Providing Solid Waste Collection Services as Defined by Statute.

24 The Commission has limited discretion in this matter because the facts and law clearly point to one conclusion. It is unmistakable that Ridwell is providing its' customers solid waste collection services. The collection of recyclable materials from residents is a subset of solid waste collection, thus requiring a certificate from the Commission. The facts about the service Ridwell offers, established through both Staff investigation and admitted by the Company, match the statutory definition. Commission rules can only grant discretion where the statute also gives the Commission discretion. Rules cannot expand Commission authority to allow the agency to contradict statutory language.³³ The Company does not meet the criteria for exemption under either WAC 480-70-011 or WAC 480-70-016. As established at the hearing, Ridwell is not what is commonly referred to as a 'junk hauler,' and the fact that Ridwell picks up some items that are not recyclable materials is insufficient to grant an exemption.

³³ See *Ass'n of Wash. Bus. v. Dep't of Ecology*, 195 Wn.2d 1, 9-10 (2020).

1. Legal Standard

25 The collection of source-separated recyclable materials from residential customers, for compensation, where the collection is not incidental to some other service performed, meets the definition of solid waste collection. Therefore, this activity requires a certificate of authority from the Commission. Solid waste collection companies are common carriers.³⁴ For the purposes of Title 81 RCW, every common carrier is a public service company, and therefore subject to Commission regulation.³⁵ 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.”³⁶ The term “person” includes an “individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.”³⁷ 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.’”³⁸

26 “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[.]” Under RCW 70.95.030(22), solid waste is defined as “all putrescible and

³⁴ RCW 81.04.010(11).

³⁵ See RCW 80.01.040(2); RCW 81.01.010.

³⁶ RCW 81.77.010(3).

³⁷ WAC 480-70-041.

³⁸ RCW 81.77.010(7).

nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ... and recyclable materials.” Recyclable materials are defined under RCW 70.95.030(17) 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 of recyclable materials 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” are 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.”³⁹

27 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.⁴⁰ “Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide” such services.⁴¹ Ridwell’s petition cites WAC 173-350-021 during its discussion of the definitions of solid waste and recyclable materials.⁴² However, WAC 173-350-021 applies to “determining whether a material is a solid waste as defined in WAC 173-350-100.”⁴³ Chapter 81.77 RCW defines “solid waste” by referencing RCW 70.95.030,⁴⁴ but it does not indicate that the Commission’s jurisdiction is further defined by rules adopted by the Department of Ecology.⁴⁵ The services Ridwell offers meet the statutory definitions outlined above.

³⁹ WAC 480-70-041.

⁴⁰ RCW 81.77.040.

⁴¹ *Id.*

⁴² Ridwell Petition at 5:4-6:15.

⁴³ WAC 173-350-021(1).

⁴⁴ RCW 81.77.010(9).

⁴⁵ 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

28 Finally, WAC 480-70-011 and WAC 480-70-016 are Commission rules that help parties distinguish between the types of service that are and are not governed by Chapter 81.77 RCW. Agency rules do not expand the agency’s authority, and because Ridwell meets the statutory definition, these rules do not allow the Company to be classified otherwise.

2. Ridwell Meets the Statutory Definition of a Solid Waste Collection Company.

29 In large part, the parties do not dispute the relevant facts regarding the services Ridwell offers to its’ customers. The disagreement between the parties in this case is the application of the law to those facts. At the evidentiary hearing, Ridwell described its’ services as picking up various categories of items from residential customers, including the four categories the Company picks up on a regular basis.⁴⁶ All four of these categories are designated as recyclable under the King County comprehensive solid waste management plan.⁴⁷ To determine whether Ridwell’s services meet the statutory definition, the Commission needs to answer five questions regarding the facts presented in the record.

30 First question: are the items collected by Ridwell recyclable materials? Yes. “Recyclable materials” is defined by whether the item is in the county’s comprehensive solid waste management plan as recyclable.⁴⁸ King County and Kirkland designate a majority of what Ridwell collects as recyclable under their plan.⁴⁹ Although Ridwell considers textiles to be reusable rather than recyclable, the King County comprehensive solid waste management plan designates textiles as recyclable.⁵⁰ The second question is:

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.”

⁴⁶ Metzger, Exh. RM-1T at 12:3-4.

⁴⁷ Metzger, TR 162:10-163:15.

⁴⁸ RCW 70.95.030; RCW 81.77.010(9).

⁴⁹ McPherson, Exh. KM-1 at 98; Exh. KM-3.

⁵⁰ *Id.*

does the Company collect from residential customers? Yes, this fact is not disputed by the parties. The third question is: does the Company have a contract with the local government under RCW 36.58.040 or RCW 81.77.020? No. Ridwell does not have a local contract. Fourth question: is the collection of recyclable materials incidental to a primary service Ridwell is providing? No. While Ridwell collects other items that are not recyclable, the collection of recyclable materials is not incidental to the collection of non-recyclable materials. The fact that Ridwell collects non-recyclable materials does not make the collection of recyclable materials incidental.⁵¹ The fifth and final question is: is the collection of recyclable materials Ridwell's primary business? Yes. The majority of what Ridwell collects is designated as recyclable materials in the areas it offers service.⁵² And even if the collection of recyclable materials was not the Company's primary business, WAC 480-70-016(1) states:

Persons holding permits issued by the commission under the provisions of chapter 81.80 RCW, whose primary business is not the collection of solid waste, normally will also need to obtain a certificate of public convenience and necessity if they transport solid waste to a disposal site on more than an occasional basis, or if they hold themselves out to the public as providing solid waste collection service.

31 The important facts in this case are not disputed by the parties. Ridwell collects recyclable materials,⁵³ from residential customers,⁵⁴ for compensation.⁵⁵ The Company does not engage in any cleanup activities at the residence,⁵⁶ it picks up the materials in bags that Ridwell provides to customers and transports them to its recycling facility in Seattle. The Commission should classify Ridwell as a solid waste collection company. Because Ridwell

⁵¹ See WAC 480-70-011(2)(a)(i)-(ii).

⁵² McPherson, Exh. KM-1 at 98; Exh. KM-3; Exh. KM-15HC.

⁵³ Metzger, TR 160:19-161:3.

⁵⁴ McPherson, TR 2 56:15-18.

⁵⁵ Metzger, TR 159:8-11.

⁵⁶ McPherson, TR 46:19-47:2.

unambiguously falls under the statutory definition, agency rules such as WAC 480-70-011 and WAC 480-70-016 do not grant the Commission discretion to classify the Company in contradiction to the statute.

3. The Commission Rules that Allow for an ‘Exemption’ from Classification as a Solid Waste Carrier Simply Clarify the Statute, these Rules do not Expand the Commission’s Authority or Allow it to make a Classification Decision that is Contrary to Statute.

32 In the Company’s petition, it requests an exemption under either WAC 480-70-011 or WAC 480-70-016.⁵⁷ The first subsection of WAC 480-70-016 states:

Persons holding permits issued by the commission under the provisions of chapter 81.80 RCW, whose primary business is not the collection of solid waste, *normally will also need to obtain a certificate of public convenience and necessity if they transport solid waste to a disposal site on more than an occasional basis, or if they hold themselves out to the public as providing solid waste collection service.* (Emphasis added.)

As mentioned above, Ridwell holds itself out as a solid waste collection service through advertising.⁵⁸ Ridwell may argue that WAC 480-70-016(2) allows the Commission discretion to grant it either certificate, because that subsection states:

In some instances carriers may be engaged extensively in both motor freight and solid waste collection operations. *In cases where such operations are separable,* carriers may be required to hold both a solid waste certificate under the provisions of chapter 81.77 RCW and a motor carrier permit under the provisions of chapter 81.80 RCW in order to provide both services. In each case it is within the discretion of the Commission to determine whether a carrier is required to hold both a motor carrier permit and a solid waste certificate. (Emphasis added.)

This does not mean that if a company is engaged in both solid waste and motor freight activities, then the Commission has discretion to issue only a common carrier permit.

Rather, because solid waste carriers are common carriers, the rule indicates that a solid waste company may be required to obtain a common carrier permit for activities that are

⁵⁷ Ridwell Petition at 1:11-13.

⁵⁸ McPherson, Exh. KM-19a at 16, 35-6, 71 (Attachments D, H, and P).

separable from its' solid waste collection services. The Commission's discretion mentioned in the rule is to determine whether the solid waste certificate is sufficient to cover the motor freight services the company offers, or if those services are distinct enough that they require a separate certificate. The rule does not allow the Commission to classify a solid waste collection company as a common carrier.⁵⁹ As discussed above, it goes without saying that the Commission's discretion is limited by the statute.⁶⁰

33 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.

34 In the order adopting WAC 480-70-016, the Commission discussed the process of amending the language to this rule:

WAC 480-70-016 Determination of authority required to transport specific commodities or provide specific services. Two comments were received on this proposed rule. The commenters...suggested that paragraph (1) be amended to include additional language clarifying that persons operating under common carrier permits issued subject to the provisions of Chapter 81.80 RCW might also be required to obtain certificates of public

⁵⁹ See WAC 480-70-006(3): "...the commission may waive or modify...any rule in this chapter *except when such provisions are fixed by statute.*" (Emphasis added.)

⁶⁰ See *Ass'n of Wash. Bus. v. Dep't of Ecology*, 195 Wn.2d 1, 9-10 (2020).

convenience and necessity authorizing solid waste collection if they were holding themselves out as providing solid waste transportation. The Commission adopted this suggestion, including alternate language provided...⁶¹

35 It is clear from this discussion that the Commission intended this rule to require a solid waste certificate, regardless of the factors in subsection (4), if the company holds itself out as a solid waste company. Ridwell has offered and advertised to pick up recyclable materials from residential customers.⁶² Subsection (4) is therefore inapplicable to the Company.

36 Even if this restriction to the rule did not exist, Ridwell would not meet the factor test under WAC 480-70-016(4). The Company is not “primarily engaged in the business of providing a service other than the collection of solid waste” under WAC 480-70-016(4)(f). 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.⁶³ Although Ridwell may not consider the clothes it collects recyclable, the relevant question is whether the local comprehensive solid waste management plan designates the material as recyclable, not whether the company does.⁶⁴ For similar reasons, Ridwell does not meet 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.

⁶¹ *In re Amending Chapter 480-70 WAC, Relating to Solid Waste Collection Companies*, Docket TG- 990161 General Order No. R-479, 16, ¶ 70 (filed with office of the recorder March 23, 2001; dated April 4, 2001 in Commission record) (Adoption Order).

⁶² McPherson, Exh. KM-19a at 16, 35-6, 71 (Attachments D, H, and P).

⁶³ *Id.* at 71.

⁶⁴ RCW 70.95.030(17).

37 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.

38 The rulemaking adoption order also mentioned WAC 480-70-011 when it discussed a suggestion made by a stakeholder during the rulemaking process:

(4) Occasional. Polly McNeill, Summit Law Group, suggested the phrase “Any company holding itself out to the public to transport solid waste will be deemed to be providing solid waste collection services, even if the collection of solid waste is only a small portion of the company's operations or is performed only occasionally” be added to the definition of the term “occasional.” The Commission rejected this suggestion. The recommended language does not enhance or clarify the definition of the term “occasional.” Further, WAC 480-70-011 and WAC 480-70-016 already adequately address the concept engendered in the recommended addition; adding it to this definition would be redundant.⁶⁵

39 The Commission states that the recommended change would be redundant because both -011 and -016 “adequately address the concept engendered in the recommendation.” In other words, the recommendation was redundant because under both -011 or -016, a company is already required to have a solid waste certificate “even if the collection of solid

⁶⁵ Adoption Order at 17 ¶ 75.

waste is only a small portion of the company's operation or is performed only occasionally." The Commission has implemented this understanding of the rules in practice.

40 Companies that engage in proportionally small amounts of solid waste collection are still required to obtain a solid waste certificate from the Commission. For example, Petland Cemetery, Inc. under Certificate G-257, has authority to transport "[s]olid Waste consisting of biomedical sharps of five gallons or less per pickup in conjunction with animal cremation service from veterinary clinics, humane societies, and animal control shelters..." Petland Cemetery is a company that offers pet cremation and pet urn services,⁶⁶ it hardly fits the mold of a traditional solid waste company. Another example is Mountain Barge Services, LLC, a company which utilizes a barge on Lake Chelan to haul dumpsters to pier side, where they are emptied into another company's solid waste collection truck. Under Certificate G-191, Mountain Barge Services is authorized to collect "...compacted and packaged solid waste from Stehekin to landfill sites in Chelan County under contract with the UNITED STATES NATIONAL PARK SERVICE."

41 Simply put, if these activities require a solid waste certificate from the Commission, then so do Ridwell's activities. Ridwell's operations are much closer to a traditional solid waste collection company than these companies. Again, the four major categories of what the Company collects (light bulbs, plastic film, batteries, and clothes) are all designated as recyclable under the King County/Kirkland comprehensive solid waste management plan.⁶⁷

42 Lastly, 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. Ridwell argues in

⁶⁶Available at: <https://www.peturnspl.com/>

⁶⁷ McPherson, Exh. KM-1 at 98; Exh. KM-3.

its' petition that it does not hold itself out to the public as a transporter of solid waste.⁶⁸ However, Commission rules define solid waste to include “[s]ource-separated recyclable materials collected from single and multifamily residences.”⁶⁹ Advertisements to collect recyclable materials from residences therefore falls under holding itself out to the public as a transporter of solid waste.

43 In conclusion, while the Commission generally has broad discretion in determining how it regulates the businesses and activities under its' jurisdiction, it does not have the discretion to act in a manner contrary to the statute. The exemptions under -011 and -016 are better described as clarifying what the statute defines as solid waste collection services in the first instance, not an exemption from statutory requirements, the word ‘exemption’ is merely convenient shorthand. Ridwell cannot meet the tests articulated in these rules for that very reason: these rules do not contradict the statute,⁷⁰ and the Company falls squarely within the statutory definition of a solid waste collection company. Under these facts, the Commission has little discretion on the question of classification.

IV. CONCLUSION

44 Staff's hope moving forward in this case is to work with Ridwell to help it achieve compliance with the Commission's solid waste regulations while minimizing disruptions to the Company's current practices as much as possible. Staff recognizes that Ridwell's business model is not the same as a traditional solid waste carrier, and throughout this case Staff has been willing to think outside the box in order to come to a resolution on these issues. But what Staff isn't willing to do is think outside the statute, and neither should the Commission. It is undeniable that Ridwell is providing solid waste collection services. For

⁶⁸ Ridwell Petition at 10:7-8.

⁶⁹ WAC 480-70-041.

⁷⁰ WAC 480-70-006(3).

that reason, Staff asks that the Commission classify Ridwell as a solid waste collection company and assess \$5,000 in suspended penalties for the Company's operation and advertisement without proper authority from the Commission.

Respectfully submitted,

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