

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF DETERMINING THE  
PROPERTY CARRIER CLASSIFICATION  
OF:  
  
RIDWELL, INC.

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No. TG-200083

POST-HEARING BRIEF OF  
RIDWELL, INC.

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## I. INTRODUCTION

|/ “*[I]t seems a fair generalization that regulation has on balance been obstructive both of competition and of the innovation it helps stimulate and justify.*”

– Alfred E. Kahn<sup>1</sup>

2 Ridwell, Inc. (Ridwell), has an innovative business model that does good things for the environment.<sup>2</sup> It picks up materials that certificated solid waste haulers do not and gives them a new life or takes them to an appropriate recycler, in accordance with Washington’s laws and policies for handling waste, and without interfering with the operations of the certificated carriers. According to a Commission Staff witness, Ridwell does “great work.”<sup>3</sup> The Washington’s Utilities and Transportation Commission (Commission) should reject the Commission Staff’s efforts to thwart this innovation and subject Ridwell to a panoply of regulatory requirements under the solid waste statutes, RCW 81.77. Rather, the Commission should interpret those statutes to further innovation and the State’s environmental goals.

3 During the hearing, Administrative Law Judge (ALJ) Kopta expressed concern about how Ridwell’s operations would work if it is classified as a solid waste company, indicating that it “is not a perfect fit for this particular company.”<sup>4</sup> The ALJ’s concern about how and when to apply RCW 81.77 to companies that transport some “solid waste” but also are engaged in other pursuits is not a new one. Indeed, it was a substantial concern in implementing RCW 81.77 when it was enacted in 1961. In this brief, we first describe that initial uncertainty and its resolution by a formal opinion of the Attorney General issued shortly after the statute’s enactment. We then

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<sup>1</sup> 2 A. Kahn, *The Economics of Regulation* 247 (1988 ed.).

<sup>2</sup> The lead Commission staff person so admitted at the hearing. Perkinson, TR. 127: 6-14;145:11-15; *see also* Metzger, Exh. RM-1T at 1:16 to 2:24.

<sup>3</sup> McPherson, TR. 62: 15-16.

<sup>4</sup> ALJ Kopta, TR. 119:13-14 (overruling objection to testimony regarding how the Commission would regulate Ridwell’s rates); 167:8-9.

describe Ridwell’s operations, set forth arguments on why the Commission should not classify Ridwell as a solid waste company, and finally address the questions posed by Judge Kopta about the extent to which the Commission has “discretion and flexibility” in classifying Ridwell and, once classified, in applying various regulatory requirements to Ridwell.

## II. OVERVIEW OF SCOPE OF RCW 81.77

4 Prior to 1961, the Commission regulated the collection and transportation of solid waste as common carriage under RCW 81.80.<sup>5</sup> In 1961, the Legislature moved such regulation from RCW 81.80 to RCW 81.77<sup>6</sup> and required such companies to obtain from the Commission a certificate of public convenience and necessity.<sup>7</sup> Shortly after the effective date of the new law, the Commission sought a formal opinion of the Attorney General seeking clarification on the whether carriers that carry some “refuse” must be regulated under RCW 81.77 or whether they can remain regulated under RCW 81.80. Indeed, the Attorney General later noted that the 1961 statute “was not a masterpiece of clarity . . . .”<sup>8</sup> Specifically, the Commission asked:

5 Do the provisions of chapter 295, Laws of 1961, apply only to those carriers who are in the business of transporting garbage and refuse for collection and/or disposal for regular customers in a specified area or does it also include those carriers having permits as general freight or as special commodity carriers, among which is included the commodity “refuse?”<sup>9</sup>

The Attorney General summarized his conclusion:

Section 5 of this act, in pointing out the factors to be considered in issuing certificates, refers to area and territory to be served, and sentiment in the community

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<sup>5</sup> *City Sanitary Service v. Washington Utilities & Transportation Comm’n*, 64 Wn.2d 739, 742, 393 P.2d 952 (1964). This was the result of the decision in *State v. Diamond Truck Transport, Inc.*, 2 Wn.3d 13, 97 P.2d 145 (1939).

<sup>6</sup> Ch. 295, Laws of 1961.

<sup>7</sup> *Id.* §5.

<sup>8</sup> AGO 65-66, No. 78, at 4 (March 16, 1966) (1966 AGO), available at <https://www.atg.wa.gov/ago-opinions/qualifications-grandfather-certificate-convenience-and-necessity-under-chapter-8177-rcw>. All formal opinions of the Attorney General are available on the Attorney General’s website. See <https://www.atg.wa.gov/agoopinions>.

<sup>9</sup> AGO 61-62, No. 67, at 1 (Oct. 2, 1961) (1961 AGO), available at <https://www.atg.wa.gov/ago-opinions/offices-and-officers-state-public-service-commission-interpretation-carriers-used>



to be served. *It is our opinion that these provisions of chapter 295 show a legislative intent that the act apply only to those carriers who are in the business of hauling for regular customers in a specified area and would not include general freight or special commodity carriers.* This interpretation of the language of the act is consistent with the past practice of the commission in regulating garbage and refuse haulers under permit.<sup>10</sup>

6 In support of that conclusion, the Attorney General relied on evidence of the historic practice of the Commission in regulating carriers transporting garbage and refuse. It noted that carriers seeking to transport garbage and refuse in a certain area tended to specialize in that service, and the Commission, over time, started “to confine these specialized garbage hauling and disposal carriers to specified areas to prevent duplication of service and overlapping.”<sup>11</sup> This is because “[e]xperience has shown that having exclusive territories for garbage haulers serves and protects the public interests far better than when competition exists.”<sup>12</sup>

7 The Attorney General concluded: “As to those carriers having permits for general freight or special commodity carriers, among which is included the commodity ‘refuse,’ it was the legislative intent to have these carriers remain under the present permit law, chapter 81.80 RCW.” In other words, not all carriers who transport solid waste need a permit under RCW 81.77: those providing service to customers in a specified area do, but those carrying general commodities or are “specialty commodity carriers” do not. As this is not a bright line, the Attorney General suggested the Commission adopt rules. In December 1961, the Commission did so, “defin[ing] the phrase ‘the business of transporting garbage and refuse for collection and/or disposal for compensation’ as

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<sup>10</sup> 1961 AGO at 4 (emphasis added).

<sup>11</sup> *Id.* at 5, quoting a memorandum provided by the Commission to the Attorney General summarizing “past commission regulatory procedures toward garbage and refuse haulers operating under permit” (*see id.* at 4).

<sup>12</sup> *Id.* at 5.

applying ‘only to those carriers who are primarily in the specialized business of transporting garbage for collection and/or disposal for all potential customers within a specified area.’”<sup>13</sup>

### III. RIDWELL’S OPERATIONS

8           Ridwell meets a market demand not met by certificated haulers. Ridwell’s customers pay Ridwell to pick up commodities that the customers, for whatever reason, do not want to transport or get rid of themselves. For a flat monthly fee, Ridwell provides its residential customers with a bin and cloth bags, and an opportunity to request pick-up for five categories of items: four standard items (clothing/shoes, batteries, light bulbs, and plastic film<sup>14</sup>) and a fifth rotating category. Examples include kitchenware, bottle caps, eyeglasses, pet supplies, jewelry, and wrapped Halloween candy. Recently, Ridwell picked up items for the needy to help in the response to the COVID-19 health crisis.<sup>15</sup> Ridwell then works with a variety of partners to ensure that these items are reused or, if reuse is not possible, recycled.<sup>16</sup> Between November 4, 2019, and April 1, 2020, Ridwell offered 26 categories for pickup.<sup>17</sup> Customers can also, for an additional fee, pay for pickup of some specialty items, such as car seats.<sup>18</sup>

9           Certificated solid waste companies must pick up and transport solid waste, including recyclables, that the local solid waste management plan requires them to pick up. While this includes some recyclables, it by no means require them to pick up all recyclables.<sup>19</sup>

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<sup>13</sup> 1966 AGO, at 3.

<sup>14</sup> These are described in detail in the Testimony of Ryan Metzger. Metzger, Exh. RM-1T at 12:1 to 15:21.

<sup>15</sup> Metzger, Exh. RM-1T at 24:5-26.

<sup>16</sup> Metzger, Exh. RM-1T at 17:20 to 23:18.

<sup>17</sup> Metzger, Exh. TR. 155:17-20.

<sup>18</sup> Metzger, Exh. RM-1T at 25:9-18

<sup>19</sup> For the requirements in the King County Solid Waste Management Plan, see McPherson, Ex. KM-1 at 98 (Table 4-2 “Designated Recyclables”); 114 (Table 4-5 “Single-family minimum collection standards”); Metzger, Exh. RM-1T, at 28:1 to 29:28.

Ridwell picks up what the certificated carriers do not.<sup>20</sup> That is what makes Ridwell's business model attractive to its customers.<sup>21</sup> Ridwell also only picks up from a relatively small percentage of the customers in the counties (or zip code areas) in which it operates, unlike the certificated carriers who must, and do, pick up from everyone. And Ridwell's operations do not economically impact the certificated carriers. Commission Staff seems to dispute this, expressing concern that by removing items, such as clothing, from the waste stream, Ridwell is decreasing revenues to the certificated haulers who otherwise would take such reusable items to the dump.<sup>22</sup> That position flies in the face of the State's solid waste priorities that lists waste reduction as the top priority.<sup>23</sup> Indeed, getting many reusable materials out the waste stream can help the certificated haulers by reducing operating costs and by keeping some materials, like plastic film, out of recycling facilities.<sup>24</sup> As stated by the Sustainability Manager for the City of Mercer Island, "it's my belief that Ridwell strengthens rather than interferes with traditional garbage haulers."<sup>25</sup>

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<sup>20</sup> Metzger, TR. 156:2-5; Exh. RM-1T, at 25:16-26. If the certificated carriers do pick up what Ridwell does, it is because the customers have placed the materials into the refuse container. Metzger, Exh. RM-1T at 16:20-26. A small exception to this developed when Seattle announced a "special collection" service. However, for batteries and light bulbs, Seattle picks fewer types of such items and has accepted, indeed welcomed, Ridwell's service within Seattle. Metzger, Exh. RM-1T at 16:1-24; McPherson, Exh. KM-19 at 6 (Seattle Public Utilities "did not plan to address the issue" of crossover of some recycling pickups with Ridwell. The City of Mercer Island likewise welcomes Ridwell's service. Metzger, Exh. RM-19 at 2.

<sup>21</sup> Exh. RM-16, at 2 ("This is the only way I know to recycle materials not accepted by the city"; "It is such a relief to be able to recycle items that are not otherwise recyclable."); Exh. RM-1T at 33:1 to 34:13.

<sup>22</sup> This issue arose on questioning of Staff witness McPherson about factors contained in the Commission's enforcement policy to be considered in setting penalties, specifically the degree of harm to the public. The Staff Investigation Report, McPherson, Exh. RM-19 at 11, stated: "[C]ompanies that transport solid waste illegally negatively impact revenues collected by companies with solid waste certificates." She noted that "[m]ore than 95 percent of clothes are going to the landfill process," and if those are taken out of the waste stream, then the certificated carriers would not have as much refuse to take to the dump, with an impact on the company's revenues. McPherson, TR. at 65:25 to 70:10.

<sup>23</sup> RCW 70.95.010(8)(a).

<sup>24</sup> Metzger, Exh. RM-1T at 32:6-16.

<sup>25</sup> Metzger, Exh. RM-19 at 2.

#### IV. ARGUMENT

11 The Commission should not treat Ridwell as a traditional solid waste company subject to regulation under RCW 81.77. This is in part a factual question, discussed in part IV.A., in part a legal question, discussed in part IV.B., and should be guided by several canons of statutory construction discussed in part IV.C. Finally, in part IV.D. we address the ALJ's question about the extent to which the Commission has discretion in classifying Ridwell and, once classified, in applying various regulatory requirements.

##### A. **Ridwell Is Not a Solid Waste Company Because It Does Not Primarily Pick up and Transport Solid Waste**

12 RCW 81.77.040 states that a "solid waste company" shall not operate "for the hauling of solid waste for compensation without" a certificate. A "solid waste collection company" means a "person . . . controlling or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation . . . as a 'common carrier' or as a 'contract carrier' . . .,"<sup>26</sup> and then only if such transport and collection is its "primary business."<sup>27</sup> "Solid waste" "means 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."<sup>28</sup>

13 Ridwell is not a garbage company. The only material within the meaning of solid waste being collected and transported by Ridwell is "recyclable material," defined as "those solid

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<sup>26</sup> RCW 81.77.010(7).

<sup>27</sup> WAC 480-70-016(1); see 1961 AGO, discussed in Part II.

<sup>28</sup> RCW 70.95.030(22). RCW 81.77.010(9) adopts the definition of "solid waste" from the Department of Ecology laws

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.”<sup>29</sup>

14           The King County Solid Waste Management Plan defines recyclables and states which must be picked up by the carriers, including “[n]ewspaper, cardboard, mixed paper and polycoated paper”; [p]lastic bottles, jugs, and tubs”; “[t]in and aluminum cans”; “[g]lass bottles and jars”; “[a]sptic packaging”; and “[s]mall scrap metal.”<sup>30</sup> Ridwell collects none of these. There are other recyclables that King County does not require to be picked up, including carpet remnants, clean wood, construction and demolition debris, certain electronics, furniture, some metals, textiles, “moderate risk waste” such as used oil and household batteries, and some other materials. Residents must find another way to get rid of these or, and perhaps this happens all too often, the customer places these items into garbage can. Ridwell offers another option for getting rid of household batteries, plastic film, and old clothing and shoes, considered “textiles.”

15           Over 80% of the categories of materials that Ridwell collected between November 4, 2019 and April 1, 2020, contained some portion that was reused.<sup>31</sup> Though Ridwell picks up some of the Plan’s designated recyclables, filling a void left by the certificated carriers, that fact does not mean that Ridwell is a solid waste company. This is for two reasons.

16           First, if that were true, then other companies transporting waste, such as junk haulers, would be so classified. They pick up waste and transport it to a landfill. Indeed, it is hard factually or legally to distinguish between a regulated “transporter” of “solid waste” and an unregulated “hauler” of “junk.” But Staff has done that by determining that because a junk hauler

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<sup>29</sup> RCW 70.95.030(17).

<sup>30</sup> McPherson, Exh. KM-1 at 14 (Table 4-5).

<sup>31</sup> Metzger, TR. 155:17-21.

enters a customer's house or yard and picks up "junk" pointed to by the customer, and hauls it away, the junk "hauler" is really a cleanup service and the hauling incidental to that service,<sup>32</sup> even though the "clean up" can simply be picking up the "junk." So, just because a company picks and transports solid waste does not mean that it is regulated under RCW 81.77.<sup>33</sup>

17           Second, some materials that Ridwell picks up, though designated as recyclables, such as clothing, are no longer "solid waste" pursuant to Ecology regulations. WAC 173-350-021 (2) lists criteria for determining whether a material is solid waste, such as whether the material has "been discarded, abandoned, or disposed of," and whether it has "been collected through residential or commercial solid waste or recyclable material collection."<sup>34</sup> Much of what Ridwell collects has not been "discarded, abandoned, or disposed of," as Ridwell's customers intend that the materials be put to a higher use. They are no more discarded than are gifts to a charity. Further, when Ridwell picks up materials, it is not acting as part of "residential or commercial solid waste or recyclable material collection" as contemplated by the regulation. Though some things, like lightbulbs and used batteries are recyclable, Ridwell's operations are broader in scope and purpose, "helping residents of Washington live more sustainably by helping them re-distribute items of value that they are not using to others in the community."<sup>35</sup>

18           Further, even if material left by Ridwell's customers for pick up is "solid waste," Ecology regulations indicate that material once considered solid waste as "discarded or abandoned" is no

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<sup>32</sup> McPherson, TR. 90:5 to 91:17. For a video of the 1-800-GOT-JUNK™ system where by the customer just points and the company makes the junk disappear, see [https://www.youtube.com/watch?v=9o\\_8OI0smK4](https://www.youtube.com/watch?v=9o_8OI0smK4). This is so, even though junk haulers pay solid waste tax. See Metzger, Exh. RM-09 at 2-3.

<sup>33</sup> Indeed, Ms. McPherson admitted that someone who picked transported old clothes to Goodwill would not be a solid waste hauler, even though clothes are designated as recyclables under the King County Plan. McPherson, TR. 61:12-21.

<sup>34</sup> WAC 173-350-021(2)(a), (c). These are the only two criteria relevant to this discussion.

<sup>35</sup> Metzger, Exh. RM-1T at 7:13-15; see also *id.* at 3:4-19 (Ridwell's "Vision" and "Mission").

longer abandoned and is now separated from solid wastes, has been recycled or ready for use, has value, and presents little threat to the environment, it is no longer “solid waste.”<sup>36</sup> Examples include used clothes, Halloween candy, old jewelry and other items that avoid the trash in favor of Ridwell’s bags. By working with charitable organizations, Ridwell ensures that these items are removed from the waste stream, do not end up in a landfill, and serve a positive purpose in the community and are handled safely.<sup>37</sup> (For example, Halloween candy is no longer abandoned when it finds its way to a birthday party of a child in a family facing homelessness.) Accordingly, even though some materials Ridwell picks up transports fall within the definition of “solid waste” and are designated as recyclables under the local Solid Waste Management Plan, because those materials are no longer abandoned, they are no longer considered solid waste.<sup>38</sup>

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<sup>36</sup> The full list of criteria is contained in WAC 173-350-021(3), which states:

(3) A material that met any of the criteria in subsection (2) of this section is no longer a solid waste if it meets all of the criteria in (a) through (f) of this subsection:

- (a) The material is no longer discarded or abandoned;
- (b) The material has been separated from solid wastes;
- (c) The material has been recycled, or is ready for reuse, as defined in WAC 173-350-100;
- (d) The material has positive market value, as indicated by established markets for the material. Paying a person to remove or process the material for recycling, disposal, or incineration is not positive market value, nor is paying a discounted amount for removal or processing;
- (e) The material is stored and managed to preserve its value, and is stored in a manner that presents little or no risk to human health and the environment; and
- (f) The material does not contain harmful chemical, physical, biological, or radiological substances that will pose a threat to human health or the environment for its intended or likely manner of use.

<sup>37</sup> Ridwell handles the materials it collects in compliance with local health requirements. Metzger, Exh. RM-1T at 15:7-21.

<sup>38</sup> In Order 01 initiating this proceeding, ¶39, the Commission Staff asserts that though RCW 81.77.010(9) defines “solid waste” by referencing the definition in the Department of Ecology statutes, RCW 70.95.030, that incorporation “does not indicate that the Commission’s jurisdiction is further defined by rules adopted by the Department.” But all WAC 173-350-100(3) does is recognize the commonsense notion that some materials when not discarded, or no longer discarded, are not solid waste. That regulation interprets the underlying statutory definition and therefore is indeed descriptive of the statute’s meaning. And even it were not technically binding on the Commission (or, at this stage of the proceeding, on the Commission Staff), its underlying commonsense policy should be effected by the Commission in its effort to sort through these statutes.

**B. The Legislature in Enacting RCW 81.77 Did Not Intend that Chapter to Apply to Companies Like Ridwell**

19 As articulated in Part II, the contemporaneous interpretation of RCW 81.77 by the Attorney General and subsequent rules adopted by the Commission make clear that the RCW 81.77 was only intended to apply to traditional solid waste collection companies, those “who are in the business of hauling for regular customers in a specified area . . . .”<sup>39</sup> Further, the entire regulatory structure of WAC 480-70 evinces an understanding that the scope of RCW 81.77 is limited to monopoly providers of collection service and to those companies that seek to intrude upon their territories. The solid waste regulations require carriers to file maps showing “certificate boundaries”;<sup>40</sup> adhere to accounting and reporting requirements;<sup>41</sup> and provide notice of any transfer of the company.<sup>42</sup> That regulatory structure shows a contemporaneous understanding by the Commission in 1961 of the statute’s intent to comprehensively regulate monopoly providers in designated service areas.

20 Current Commission interpretive regulations adhere to that initial understanding. WAC 480-70-016(1) states that “Chapter 81.77 is intended to cover operations of carriers whose primary business is transporting solid waste for collection and/or disposal.”<sup>43</sup> Subsection (4) sets forth a non-exclusive list of factors to guide the decision. These include “but are not limited to”:

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<sup>39</sup> 1961 AGO at 4 (emphasis added); *see* 1966 AGO, at 3 (quoting initial regulations adopted to implement RCW 81.77); *see also* Seventh Report of the Washington Utilities & Transportation Comm’n 12 (July 1, 1960, through June 30, 1962) (“Garbage and Refuse Collection Companies” “were required to secure a Certificate of Convenience and Necessity which authorized exclusive territories or routes.”).

<sup>40</sup> WAC 480-70-056((1)(b). Indeed, the Commission has compiled these into a “Statewide Solid Waste Service Area Map.” *See* [https://www.utc.wa.gov/regulatingIndustries/transportation/TransportationDocuments/SWCertificates\\_02252019%20-%20updated%2010312019%20with%20new%20UTC%20logo.pdf](https://www.utc.wa.gov/regulatingIndustries/transportation/TransportationDocuments/SWCertificates_02252019%20-%20updated%2010312019%20with%20new%20UTC%20logo.pdf)

<sup>41</sup> WAC 480-70-066, -071.

<sup>42</sup> WAC 480-70-096, -116.

<sup>43</sup> This is also stated in WAC 480-70-011(2)(a), which states in part:



- (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.

Application of those factors supports conclusion that RCW 81.77 was not intended for operations like Ridwell.<sup>44</sup>

21            *Intent of the shipper and intended destination of the shipment.* The customers intend that as much of the materials they leave out for pick up by Ridwell are put to their best use, knowing that if Ridwell cannot find a partner for that purpose, it recycles those materials.<sup>45</sup> The Commission has succinctly summarized this “intent” factor, stating:

The operative distinction is the purpose of the transportation. If the transportation is for disposal, the material is garbage. If the transportation is to move an item to a location for a higher use, the transportation is motor carriage.<sup>46</sup>

22            *Actual destination of the shipment.* The destination is wherever Ridwell can put the materials to their best use. If not, they seek out recycling partners.

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(2) The following collection and hauling operations are not regulated by the commission as solid waste:

- (a) 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.

<sup>44</sup> The Investigation Report did not analyze these factors, even though that document was intended to “show the work” of the Staff. *See* McPherson, TR. 56:7-9, 77:17 to 79:4.

<sup>45</sup> Metzger, Exh. RM-1T at 3:4-19; 7:13-18. It appears that the first time the Staff attempted to go through these factors was at the hearing. However, that was confusing, with the Staff witness suggesting that the “intent of the shipper” was Ridwell’s intent, when the shipper is actually the customer.

<sup>46</sup> *In re Application E-19104 of Sunshine Disposal*, Order M.V. No. 133753, at 9-10, 1986 Wash. UTC LEXIS 45 (April 24, 1986).

23           *Special handling.* There is some special handling of some of the materials, and that is done in accordance to with local health department requirements.<sup>47</sup>

24           *Value of the commodity.* Unlike refuse and recyclables picked up by the certificated haulers, almost all of the materials picked up by Ridwell have value as reflected by the fact that the customers, instead of simply disposing of them, pay to have them removed and put to a higher use. Context matters. Material with no value in one situation can have value in another.<sup>48</sup>

25           *Whether the carrier is primarily engaged in the business of providing solid waste collection.* This criterion is a compilation of the others. As described above and Mr. Metzger’s testimony, Ridwell is simply not “in the business of providing solid waste collection.”<sup>49</sup>

26           *Whether the carrier holds itself out to the public as a transporter of solid waste.* Ridwell does not hold itself out as a transporter of solid waste but rather as a company that helps its customers get the best use from materials they are willing to, or wish to, get rid of. Extra cleaning supplies and food can have a higher value elsewhere, clothes certainly can, and even old light bulbs have a better use at a recycling center than in the dump.<sup>50</sup>

27           We can debate the application of these factors. However, the Commission should not overly parse their language. Determining which chapter, RCW 81.77 or RCW 81.80, governs a particular carrier is “more qualitative than quantitative.”<sup>51</sup> The regulations are intended to

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<sup>47</sup> Metzger, Exh. RM-1T at 15:7-21.

<sup>48</sup> See also *In re the Matter of Determining the Proper Carrier Classification of Glacier Recycle, LLC et al.*, WUTC Dkt. No. TG-072226, Order 06, at 11 (June 13, 2008) (“[I]n some circumstances, a material could be classified as solid waste because it had no commercial value while in other circumstances the same material could become a marketable commodity and exempted from solid waste regulation.”).

<sup>49</sup> Metzger, Exh. RM-1T at 7:1-25.

<sup>50</sup> Metzger, Exh. RM-1T at 3:3-18, 7:1-25.

<sup>51</sup> In the 1966 AGO, at 10, the Attorney General used this terminology in answering an analogous, but relevant, question of whether a carrier regulated under RCW 81.80 at the time of enactment of RCW 81.77, but later engaged in a more elaborate solid waste transportation business, would have to obtain a certificate under RCW 81.77. The Attorney General looked to federal case law interpreting a grandfather provision in the Interstate Commerce Act.

implement the Attorney General’s directive that RCW 81.77 is designed to “apply only to those carriers who are in the business of hauling for regular customers in a specified area” and to assist the Commission in that interpretive effort, as RCW 81.77 “was not a masterpiece of clarity.”<sup>52</sup> These factors should not be applied mechanically, but rather flexibly to guide the Commission, and the public, in what is essentially a question of statutory interpretation.<sup>53</sup>

28           One way to look at this is to assume that Ridwell started operating in the late 1950s, picking up materials from its customers and keeping them out of the waste stream. In 1961, would the Commission have considered Ridwell an RCW 81.77 company? Or would it have given certificates to carriers engaged in comprehensive solid waste collection and left Ridwell to the lighter touch of RCW 81.80? The latter interpretation would have been the better one in 1961 and certainly is the better one today, given the State’s policies on reuse and recycling.<sup>54</sup>

**C.     The Commission, in Interpreting and Applying RCW 81.77, Should Resort to Several Commonly Applicable Canons of Statutory Interpretation**

1.     The Commission Should Interpret and Apply RCW 81.77 Consistent with Its Historical Purpose and Intent

29           The Commission should apply RCW 81.77 to effect its purpose,<sup>55</sup> which, as stated by the Attorney General, was to regulate those solid waste carriers operating in defined service areas. The Commission should adhere to that conclusion. The oft-stated maxim that courts should give deference to formal opinions of the Attorney General<sup>56</sup> should apply with greater force to an

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<sup>52</sup> 1961 AGO at 4; 1966 AGO at 4.

<sup>53</sup> The flexibility in the application of this rule, as most Commission rules, is evidenced by the regulatory provisions that allows for waiver of such rules. WAC 480-70-110(1). To the extent that the Commission deems it necessary to waive or modify any part of WAC 480-70-016, it should consider this brief a request for that result.

<sup>54</sup> See Part IV.C.2 below.

<sup>55</sup> See *State ex rel. Royal v. Board of Yakima County Commissioners*, 123 Wn.2d 451, 462, 869 P.2d 56 (1994).

<sup>56</sup> *E.g.*, *Seattle Building & Construction Trades Council v. Apprenticeship & Training Council*, 129 Wn.2d 787, 803, 920 P.2d 581 (1996) (Attorney General opinions are entitled to “great weight”).

agency administering the statute that is the subject of such a formal opinion and that is issued contemporaneously with the statute's enactment.<sup>57</sup> And that purpose should prevail over any inept wording that could indicate the contrary.<sup>58</sup>

30           The purpose of regulation is to protect consumers from monopoly power than is the result of the allocation of the state into exclusive territories. Ridwell exercises no monopoly power. As admitted by Staff, while the service provided by certificated carriers is "essential,"<sup>59</sup> the service provided by Ridwell is not.<sup>60</sup> Consumers are required to take service from the local certificated company; they have no options. However, consumers have options to Ridwell's service: they can take their used clothes to Goodwill; they can take food to the foodbank; they can take used plastic film to a recycling operation (or simply put it out in the garbage container).

31           When asked about the reasons to regulate Ridwell, Commission Staff only expressed concern about consumer protection, that Ridwell may give discounts to its customers who take 12-month, instead of month-to-month, service.<sup>61</sup> That is a tenuous justification for imposing RCW 81.77 regulation, particularly when, given fixed start-up costs, the economics of serving a customer for one month is different from one for 12 months.<sup>62</sup> And imposing full RCW 81.77 regulation on Ridwell would exempt it from the application of Washington's Consumer

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<sup>57</sup> See RCW 43.10.030(5) (Attorney General has duty to "advise . . . state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers . . ."); RCW 43.10.040; *City of Seattle v. Sate*, 136 Wn.2d 693, 703, 965 P.2d 619 (1998) (an Attorney General's Opinion "constitutes notice to the Legislature of the Department's interpretation of the law," citing *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52, 63-64, 847 P.2d 440 (1993)).

<sup>58</sup> See *State ex rel. Royal v. Board of Yakima County Commissioners*, 123 Wn.2d 451, 462, 869 P.2d 56 (1994); *State v. Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992).

<sup>59</sup> Perkinson, TR. 118:4-6, 124:15-18.

<sup>60</sup> Perkinson, TR. 124:19-20.

<sup>61</sup> Perkinson, TR. 119:21 to 120:12.

<sup>62</sup> Commission Staff acknowledged this economic reality Perkinson, TR. 120:10-18.

Protection Act.<sup>63</sup> That seems like a lot of consumer protection for the Commission to sacrifice in favor of unnecessary oversight over Ridwell’s billing periods. In sum, the purposes underlying regulation would not be served by subjecting Ridwell to chapter 81.77 regulation.

2. The Commission Should Interpret and Apply RCW 81.77 and Its Implementing Regulations to Give Effect to State Policies Regarding Solid Waste and Sustainability

32 In making the determination whether Ridwell should be regulated under RCW 81.77 or RCW 81.80, the Commission should also consider state policies regarding reuse and recycling of materials as part of its obligation to “perform all duties prescribed by . . . Title 81 RCW, or any other law” and to regulate “in the public interest.”<sup>64</sup> There are “other laws” that define the public interest and the obligations of agencies, including the Commission.

33 The Legislature has recognized the importance of new methods of addressing the solid waste problem, finding that “[w]aste reduction must become a fundamental strategy of solid waste management,”<sup>65</sup> and setting “priorities for the collection, handling, and management of solid waste” with waste reduction as the highest priority and recycling the second highest.<sup>66</sup> Further, the State Environmental Policy Act directs “all state agencies” to use “all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may: . . . may approach the maximum attainable recycling of depletable resources.”<sup>67</sup> These state policies suggest that

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<sup>63</sup> RCW 19.86. RCW 19.86.170 exempts “actions or transactions otherwise permitted, prohibited or regulated under laws administered by . . . the Washington utilities and transportation commission . . . .”

<sup>64</sup> RCW 80.01.040(1), (2).

<sup>65</sup> RCW 70.95.010(4), (6)(b).

<sup>66</sup> RCW 70.95.010(8).

<sup>67</sup> RCW 43.21C.020(2)(g).

companies like Ridwell should be encouraged and barriers to their operations minimized.

Subjecting Ridwell to regulation under RCW 81.77 would have the opposite effect.

3. The Commission Should Interpret and Apply RCW 81.77 and Its Implementing Regulations to Avoid Absurd Results and Administrative Complexity

34 The Commission should interpretation a statute to avoid “unlikely, absurd, or strained consequences.”<sup>68</sup> Adopting the Staff’s argument and subjecting Ridwell to the regulatory mandates of RCW 81.77 would lead to absurd and administratively complex consequences.

35 *Rate-setting.* Pursuant to RCW 81.77.030, the Commission must “fix” and “alter” Ridwell’s “rates, charges, classifications, rules and regulations.”<sup>69</sup> Setting rates would be problematic, given that Ridwell’s monthly charge includes pick up of some recyclables along with more items that are reused and are clearly not recyclable. When asked how that would work, Staff said it “would have work with [the Commission’s] regulatory service program.”<sup>70</sup> It also suggested the possibility of an exemption, though that could be problematic as well given the statutory requirement that the Commission “fix” rates.<sup>71</sup> So, how Ridwell would justify its rates to the Commission, how it would account for regulated versus unregulated services, and how, if applicable, it would apply the Lurito-Gallagher methodology,<sup>72</sup> would be up-in-the-air. Commission Staff had no answer, even though it has consulted with the regulatory services Staff “within the last few months.”<sup>73</sup> And there would be practical problems. Ridwell responds to the

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<sup>68</sup> *State v. Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992).

<sup>69</sup> This function is implemented by complicated tariff requirements. WAC 480-70-231 to -339.

<sup>70</sup> Perkinson, TR. 130:11-18.

<sup>71</sup> Perkinson, TR. 130:15-18. Commission regulations permit exemptions from rules but only where “consistent . . . with applicable statutes.” WAC 480-07-110(1); *see also* WAC 480-70-006(3).

<sup>72</sup> Perkinson, TR. 130:24 to 131:5.

<sup>73</sup> Perkinson, TR. 136:19-23.

needs of the communities it serves. If it had to file tariffs before offering a new pick-up service, it would have to delay that service and add staff just to deal with the paperwork.<sup>74</sup>

36            *Mapping requirements.* Though Ridwell has no service area,<sup>75</sup> it would have to file a map “that clearly identifies the company’s entire certificated authority area.”<sup>76</sup> And Commission Staff is uncertain whether defining such a service area would require Ridwell to serve all those within it.<sup>77</sup> If Ridwell were to start doing business in other counties, Staff contends that it would have to make a new filing,<sup>78</sup> taking up staff resources<sup>79</sup> and for an uncertain purpose.

37            *Regulatory fees.* If regulated under RCW 81.77, Ridwell would be obligated to pay regulatory fees to offset costs of regulation at the rate of one percent of “gross intrastate operating revenue.”<sup>80</sup> However, Staff did not know how the fee would be calculated given that Ridwell’s customers pay one flat charge,<sup>81</sup> saying that it was a subject of discussion with “reg services.”<sup>82</sup> If the Commission were to require some a cost allocation among the types of materials Ridwell collects, Ridwell would have to expend more resources to do that.<sup>83</sup>

38            *Pricing options.* Commission regulations prescribe the availability of one-month pricing,<sup>84</sup> despite the fact that there are fixed start-up costs that would make serving such customers uneconomical. If Ridwell had captive customers, that may not be an issue, as any lost

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<sup>74</sup> Metzger, Exh. RM-1T at 37:7 to 38:2.

<sup>75</sup> Metzger, Exh. RM-1T at 5:17-22.

<sup>76</sup> WAC 480-70-301.

<sup>77</sup> Perkinson, TR. 133:8-10.

<sup>78</sup> Perkinson, TR. 133:11-14.

<sup>79</sup> Metzger, Exh. RM-1T at 39:5-20.

<sup>80</sup> WAC 480-70-076.

<sup>81</sup> *E.g.*, McPherson, Exh. KM-19a at 17.

<sup>82</sup> Perkinson, TR. 134:14 to 136:14

<sup>83</sup> Metzger, Exh RM-1T at 36:5-11.

<sup>84</sup> WAC 480-70-396; Metzger, Exh. RM-1T at 38:13 to 39:2.

revenue would be made up from other customers as part of the rate setting process. However, Ridwell's service is optional, so shifting of costs could result in lost customers.

39           *Vehicles.* The Commission imposes requirements on carriers relating to their equipment and vehicles, including requirements for markings on those vehicles.<sup>85</sup> But Ridwell does not use large trucks; it uses a van and relies on private vehicles that are used only a portion of the time for Ridwell work. Requiring markings would make use of such vehicles problematic or would force Ridwell to develop a dedicated fleet of vehicles with accompanying financial burdens.<sup>86</sup>

40           *Demonstrating that the certificated carriers are not “serving to the satisfaction of the commission.”* Commission Staff argued that this classification proceeding should be evaluated without regard to consideration of a permit process.<sup>87</sup> However, if RCW 81.77 applies, Ridwell would face substantial hurdles to obtaining a permit. RCW 81.77.040 would allow Ridwell a 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 the solid waste collection company does not object.” There are a number of solid waste companies doing business where Ridwell does, including Recology which has no certificate because it operates under contract with Seattle.<sup>88</sup> Putting aside the issue of how the Commission could find the incumbent carriers lacking in their service when they may be doing everything expected of them under existing laws, how could the Commission join a non-jurisdictional company in a proceeding to determine whether it is serving “to the Commission’s satisfaction”? Staff said “I don’t believe it

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<sup>85</sup> WAC 480-70-191 to -206; WAC 480-70-206.

<sup>86</sup> Metzger, Exh. RM-1T at 39:22 to 40:4.

<sup>87</sup> *E.g.*, TR. 137:17 to 138:10.

<sup>88</sup> Perkinson, TR. 142:11-15.



would.”<sup>89</sup> So, even before facing regulatory challenges of tariffs, maps, and fees, Ridwell would have to run the gauntlet of multiple proceedings in which the Commission would evaluate the service of several incumbent carriers, with one not subject to Commission jurisdiction.<sup>90</sup>

41           *Challenges to possible competitors of Ridwell.* Perhaps the most absurd consequence would occur if Ridwell were to receive a certificate, and then a competitor to Ridwell were to seek to enter the market. Such a competitor could not get a permit unless it convinced the Commission that all the traditional carriers, as well as Ridwell, were not serving to the satisfaction of the Commission. The result would be to favor Ridwell with monopoly status over its business that involved pick up and transport of recyclables not transported by the traditional carriers. But Washington’s constitution “manifest[s] the state’s abhorrence of monopolies,”<sup>91</sup> and by forcing a competitive company into the monopoly structure of RCW 81.77, the Commission could be acting counter to that constitutional “abhorrence.”

42           It may be that these hurdles can be overcome, and it appears that Staff may be willing to work to overcome them through a combination of rule exemptions and perhaps creative statutory interpretations. But that would not eliminate the hurdles, or the specter of them. The Commission should consider these consequences when determining how to classify Ridwell.

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<sup>89</sup> Perkinson, TR. 142:19-24.

<sup>90</sup> It is theoretically possible that all the certificated carriers, and Recology if it decides to subject itself to Commission jurisdiction, could consent to Ridwell’s operations. But Ridwell could not take that optimism to the bank. And, it seems that incumbent carriers are very protective of their monopoly status. See *Green Solutions Recycling, LLC v. Reno Disposal Co., Inc.*, 359 F.Supp.3d 960 (D. Nev. 2019), *aff’d*, 2020 U.S. App. LEXIS 15802 (9<sup>th</sup> Cir., May 18, 2020). Another possible route around much of this, that perhaps Staff will suggest, would be for Ridwell to contract with cities so as to avoid Commission regulation in those cities. But that would ignore the logistics and costs of contracting with multiple jurisdictions, in some of which Ridwell may only have a handful of customers, and it would overlook the fact that Ridwell also operates in areas solely regulated by the Commission.

<sup>91</sup> *Electric Lightwave v. Washington Utilities & Transportation Comm’n*, 123 Wn.2d 530, 538, 869 P.2d 1045 (1994) (interpreting Washington Constitution, article 12, §§19, 22 in the context of telecommunications regulation).

4. The Commission Should Interpret and Apply RCW 81.77 to Ridwell Consistent with the Commission's Treatment of Other Businesses

43 At the hearing, there was discussion about how the Commission regulates (or declines to regulate) “junk haulers,” with focus on 1-800-GOT-JUNK™.<sup>92</sup> Though junk haulers deprive the certificated carriers of revenue,<sup>93</sup> Staff treats them not as a transportation business, but as a “clean out” business, deeming them “private carriers.” That rubric is one of Staff’s, not one adopted by the Commission,<sup>94</sup> and is inconsistent with how the Staff seeks to treat Ridwell. Like junk haulers, Ridwell’s business focus is not as a solid waste carrier. Ridwell’s carriage of recyclables is only a portion of what it carries, whereas the junk haulers carry nothing but “junk.” And there are more policy reasons why the Commission would regulate the junk haulers than for regulation of Ridwell. Junk haulers use large trucks; Ridwell uses passenger cars and small vans. Junk haulers compete with the certificated carriers for refuse and garbage, depriving those carriers of revenue; Ridwell does not so compete or deprive the certificated carriers of revenue.

44 This is not to say that junk haulers should be regulated under RCW 81.77. They don’t seem to fit the type of company contemplated by that 1961 statute. However, it would be unfair and discriminatory to convey special privileges to the junk haulers, immunizing them from regulation, when regulation of Ridwell would be required.<sup>95</sup>

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<sup>92</sup> This has been a topic of debate among Commission Staff and the hauling industry. *See* Metzger, Exh. RM-09.

<sup>93</sup> Metzger, Exh. RM-02.

<sup>94</sup> *See* Metzger, Exhs. RM-02, RM-06; Perkinson, TR. 108:10-21 (documents describing Commission Staff treatment of junk haulers have not been adopted as a Commission rule, policy statement, or interpretive statement).

<sup>95</sup> *See* Washington Const., Art. I, §12 (prohibiting special privileges). One way to make this discriminatory treatment fair, and an alternative argument the Commission should consider, would be to deem Ridwell as a private carrier as part of the operation “upcycling” business. Metzger, Exh. RM-1T at 3:18.

5. The Commission Should Apply Its Statutes and Regulations to Avoid Conflict with Local Government Authority Over Solid Waste

45 RCW 81.77 contemplates a dual regulatory system for solid waste carriers. Local governments have authority with the adoption of their Solid Waste Management Plans, and cities may provide or contract to provide their own service. Ridwell operates in a number of cities, which are generally supportive or, or acquiesce in, Ridwell's operations.<sup>96</sup> The Commission should defer to those governments and decline to assert full RCW 81.77 jurisdiction over Ridwell when Ridwell is helping those governments meet their solid waste management goals.

**D. The Commission Has Flexibility to Determine Whether a Carrier Should Be Regulated Under RCW 81.77 or Under RCW 81.80 but Limited Flexibility to Reduce Regulatory Burdens for Carriers Regulated Under RCW 81.77**

46 At the close of the hearing, the ALJ asked the parties to include in their post-hearing briefs a discussion on the extent to which the Commission has "flexibility" in both determining whether Ridwell should be regulated under RCW 81.77 and in defining the scope of that regulation once the classification decision has been made.

1. The Commission Has Discretion in Determining Whether Ridwell Should Be Regulated as a Solid Waste Carrier or a Common Carrier

47 As articulated above, the regulatory structure of RCW 81.77 and its implementing regulations in WAC 480-70, as confirmed by the 1961 AGO, is intended to apply only to carriers who pick up and transport solid waste in a franchised area. Therefore, Ridwell should not be regulated under RCW 81.77. But to the extent that the Commission is uncertain about how to apply the law to Ridwell, it has flexibility to make that determination. This is for four reasons.

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<sup>96</sup> See McPherson, Exh. KM-19 at 6 (Seattle Public Utilities "did not plan to address the issue" of crossover of some recycling pickups with Ridwell). The City of Mercer Island likewise welcomes Ridwell's service. Metzger, Exh. RM-19 at 2.

48 First, as noted in the 1966 Attorney General’s Opinion, RCW 81.77 is not “a model of clarity.” In such a case, the Commission has flexibility in applying the statute so long as its interpretation is a reasonable one.<sup>97</sup>

49 Second, the Commission’s underlying statutory authority is replete with terms that connote discretion. It is to exercise its authority “in the public interest”<sup>98</sup> and adopt rules and regulations for common carriers that are “just and reasonable.”<sup>99</sup> When the Legislature uses such terms broad terms, it intends to leave discretion to the agency to which it delegates authority.<sup>100</sup>

50 Third, the Commission may grant exemptions or modifications to various rules if doing so would be “in the public interest.”<sup>101</sup> Therefore, to the extent that the Commission may feel constrained to parse a rule conservatively, such as WAC 480-70-016 relating to determination of how a carrier should be regulated, it may exercise its discretion to implement the underlying statutory intent by exempting or modifying such rule in this particular case.

51 Finally, as articulated above, the Commission should, indeed must, construe its statutes to make sense consistent with broader public policies. In other words, the Commission need not interpret its regulatory statutes to obstruct innovation as was feared by Commissioner Kahn in the opening quotation in this brief. Certainly, if the Commission Staff can be so flexible as to

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<sup>97</sup> See, e.g., *Weyerhaeuser Co. v. Department of Ecology*, 86 Wn.2d 310, 315, 545 P.2d 5 (1976).

<sup>98</sup> RCW 80.01.040(2). Relevant to the issue of “public interest” are the strong endorsements of Ridwell by its customers, partners, state legislators, and local governments. See Metzger, Exhs. RM-16 through -19.

<sup>99</sup> RCW 81.28.010.

<sup>100</sup> See *Springfield Education Ass’n v. Springfield School Dist. No. 19*, 290 Or. 217, 228, 621 P.2d 547 (1980) (“The legislature may use general delegative terms because it cannot foresee all the situations to which the legislation is to be applied and deems it operationally preferable to give to an agency the authority, responsibility and discretion for refining and executing generally expressed legislative policy.”).

<sup>101</sup> WAC 480-07-110(1).

treat “haulers” of “junk” differently than “transporters” of “solid waste” under the relevant statutes, the Commission can be flexible in its treatment of Ridwell.

52           And in exercising that discretion, the Commission can draw an objective line, finding that Ridwell (1) serves a broader and more specialized purpose than simple collection and transportation of solid waste, (2) is not holding itself out as a comprehensive solid waste company, and (3) does not interfere with or adversely affect the operations of such companies.<sup>102</sup>

2.       The Commission Has Limited Discretion to Exempt Ridwell from Regulatory Requirements Under RCW 81.77

53           Should the Commission determine that Ridwell should be classified as solid waste company under RCW 81.77, it would have some discretion in determining the scope of applicable regulatory requirements,<sup>103</sup> with two possible significant limitations.

54           First, many of the regulatory requirements are statutory and not waivable by the Commission. RCW 81.77.030 requires the Commission to “fix” rates, regulate accounts, require annual reports, regulate “in all matters affecting relationship” with the public, require compliance with the local solid waste management plans, and require “rate structures and billing systems, consistent with “minimal levels of . . . services pursuant to local comprehensive solid waste management plans.” So, if classified under RCW 81.77, Ridwell could still be subject to the Commission rate-setting process, be subject to audits on its accounts and records, and could have to comply with the local solid waste management plan, which includes “minimum collection standards” for service to single-family residences. These include statements on frequency of

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<sup>102</sup> Of course, the Commission is free articulate this policy through this adjudication. *See, e.g., SEC v. Chenery Corp.*, 332 U.S. 194, 202-03, 67 S.Ct. 1575, 91 L.Ed. 1995 (1947) (agency may set policy by either general rule or on a case-by-case basis); *Budget Rent-a-Car v. Department of Licensing*, 144 Wn.2d 889, 898, 31 P.3d 1174 (2001).

<sup>103</sup> WAC 480-07-110(1); 480-70-006(3).

collection, container size, and requirements of what recyclables must be picked up.<sup>104</sup> Of course, Ridwell picks up what the existing carriers do not pick up, so requiring Ridwell to comply with this provision of the local plan would effectively gut Ridwell's business model, or at the least place the Commission and Ridwell into an uncertain legal morass.

55           Second, if the Commission were to grant wholesale modifications or exemptions to its rules to attempt to accommodate Ridwell's business model, it would run counter to the legislative intent in enacting RCW 81.77. The provisions on exemptions and modifications to rules were intended to allow Commission to shape its regulatory requirements, not erase them.

3.       The Commission May Impose Reasonable Conditions on Permits Issued Under RCW 81.80

56           Regulation under RCW 81.80 is less intense. That makes sense given what Ridwell does. Indeed, regulation under RCW 81.80 is more thorough than what the Commission requires for junk haulers that in most cases get a pass on all regulation.<sup>105</sup> Staff nevertheless has concerns that if Ridwell is classified as a common carrier and King County changes its Solid Waste Plan to require pick-up of some things that now only Ridwell picks up, there could be overlap between the services Ridwell provides and what the certificate carrier, or a city's contract carrier, provides. Besides the utter remoteness of this possibility and Ridwell's statement that it would modify its operations to avoid such a conflict,<sup>106</sup> there are two reasons why the Commission should dismiss Staff's concerns. First, because the Commission has the power to approve a permit under RCW 81.80, it has the authority to impose reasonable conditions on that

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<sup>104</sup> McPherson, Exh. KM-1 at 114 (Table 4-5).

<sup>105</sup> Perkinson, TR. 123:14-19.

<sup>106</sup> Metzger, TR. 161:4-9.

approval.<sup>107</sup> Second, the Commission always has authority, consistent with limitations contained in the Administrative Procedures Act, to revisit and amend its prior orders if facts change.<sup>108</sup>

## V. CONCLUSION AND REQUEST FOR RELIEF

57 We opened this brief with a quote from the treatise on regulation written by former New York Public Service Commissioner Alfred Kahn, who posits a grim view of the consequences of regulation, stifling both competition and innovation. With its innovative business model, Ridwell is entering a competitive market with benefits to its customers, benefits to the environment, and no harm to certificated carriers. Perhaps the Commission could apply its laws and regulations in a manner that would confirm Commissioner Kahn's fears; Staff appears to advocate for such a result. But that would be wrong on the law and on policy. It is far preferable, and legally correct, for the Commission to interpret and apply its laws and regulations in a manner that would, for this case at least, prove Mr. Kahn wrong. The Commission should give innovation a chance and determine that Ridwell should not be regulated under RCW 81.77.

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Respectfully submitted,

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<sup>107</sup> See *State v. Crown Zellerbach Corp.*, 92 Wn.2d 894, 899, 602 P.2d 1172 (1979).

<sup>108</sup> RCW 81.04.210; see *Public Counsel v. Utilities & Transportation Comm'n*, 128 Wn.App. 8, 9-20, 116 P.3d 1064 (2005) (applying similar provisions in Title 80).