

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Carrier Classification of:

DOCKET TG-200083

RIDWELL, INC.

**PETITION FOR ADMINISTRATIVE REVIEW
ON BEHALF OF COMMISSION STAFF**

August 31, 2020

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1 Pursuant to WAC 480-07-825 and RCW 34.05.464, Staff of the Washington Utilities
and Transportation Commission (“Staff”) petitions for administrative review of the Initial
Order entered in this docket on August 10, 2020.

I. INTRODUCTION

2 Staff requests the Washington Utilities and Transportation Commission
 (“Commission”) conduct administrative review of Order 04 (“Initial Order”) in Docket TG-
200083. Staff requests the Commission review and amend the conclusions of law, findings
of fact, and portions of the discussion section in Order 04. Specifically, Staff requests review
of conclusions of law (2) through (5), findings of fact (2), (3), (5) and (6), and paragraphs
25, 30, 31, and 32 of the discussion and decision section of the Initial Order, as outlined
below.

3 Staff respectfully disagrees with these portions of the Initial Order, and requests that
the Commission overturn or modify them on administrative review. The Initial Order’s
interpretation of the private carrier classification will have a significant impact on regulation
under Chapter 81.77 RCW if it is followed in future cases. Both regulated entities and Staff
will benefit from the additional clarity provided by administrative review.

II. APPLICABLE RULES

4 Under WAC 480-07-825, a party who wishes to challenge an Initial Order may file a
petition for administrative review. Petitions for administrative review must be clear and
specific. Petitions must clearly identify the specific basis of any challenge, showing the legal
or factual justification for that challenge.¹ Petitions for administrative review must also cite

¹ WAC 480-07-825 (2)(b)(i).

the pertinent page numbers or part of the record being challenged and the correlated findings of fact or conclusions of law included in an Initial Order.²

II. FACTS and PROCEDURAL HISTORY

5 On April 23, 2019, 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 Commission.³ 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, 2019.⁴ Throughout the course of the investigation, Staff engaged in a dialogue with the Company, informing Ridwell that it needed to apply for a solid waste certificate, providing technical assistance, and urging the Company to file an application voluntarily. The discussions between Staff and the Company ultimately led to Ridwell filing a petition and applications for authority.

6 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 exemptions requests that the Commission find that Ridwell’s operations do not require a solid waste certificate under Chapter 81.77 RCW.⁵ In the alternative, it requests exemptions from specific rules pertaining to solid waste carriers. In

² WAC 480-07-825 (2)(b)(ii)-(iii).

³ *In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Order 01, 2 ¶ 9 – 4 ¶ 21 (March 5, 2020) (Order 01).

⁴ McPherson, Exh. KM-19a at 71 (Attachment P).

⁵ *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).

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.”⁶ The petition alleges that “Ridwell most often transports the material it collects from residential generators to partnering non-profit organizations...”⁷ It therefore requested 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.⁸

7 On March 5, 2020, the Commission filed Order 01 in this Docket, which set a brief adjudicative proceeding (“BAP”) to determine the proper classification of Ridwell and whether to assess the recommended \$5,000 in suspended penalties.⁹ The evidentiary hearing was converted to a full adjudication and set for May 12, 2020, with no change to the scope of the hearing.¹⁰

8 On August 10, 2020, the Commission issued Order 04 (“Initial Order”), which found that Ridwell was not a solid waste collection company because Ridwell’s services fell under the definition of a private carrier.¹¹ Order 04 dismissed the complaint.¹²

Ridwell’s Services and Operations

9 Ridwell describes its’ services as picking up various categories of items from residential customers, including the four main categories the Company picks up on a regular

⁶ *Id.* at 4:13-14.

⁷ *Id.* at 9:17-10:1.

⁸ *Id.* at 1:11-13.

⁹ Order 01 at 9 ¶ 43-45.

¹⁰ *See generally, In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Order 02 (April 17, 2020).

¹¹ *In re Determining the Proper Carrier Classification of Ridwell Inc.*, Docket TG-200083, Order 04, 14 ¶ 43 (Aug. 10, 2020) (Order 04).

¹² *Id.* at 15 ¶ 46.

basis.¹³ At the time of the evidentiary hearing, Ridwell operated mostly in King and Snohomish County.¹⁴ Ridwell advertises that the Company picks up plastic film, batteries, “threads,” and light bulbs once every two weeks, and also picks up a rotating special category such as kitchenware, Halloween candy, or electronics.¹⁵ The prefiled testimony from Ridwell states: “We pick up four categories of items on an ongoing basis: clothing/shoes, batteries, light bulbs, and plastic film. The fifth category rotates.”¹⁶ While the exact amount from most categories collected by Ridwell is unknown, recyclable materials are a significant portion of what the company collects from its customers. Highly Confidential Exhibit KM-15 contains the estimates for each category provided by the Company, along with the actual amounts for the categories that the Company had exact figures. The Initial Order finds that by weight, “roughly half” of what Ridwell collects is recyclable material.¹⁷ The Company does not engage in any cleanup or other services at the customer’s residence.¹⁸ Customers pay a subscription fee¹⁹ for Ridwell to pick up the items from outside the customer’s residence during collection in bags provided by Ridwell.²⁰ With the exception of one cargo van, Ridwell does not own the vehicles used to transport and collect the recyclable materials, the vehicles are owned by the employees conducting the collection.²¹ Once collected, the Company then transports these materials to its facility.

¹³ Metzger, Exh. RM-1T at 12:3-4.

¹⁴ *Id.* at 5:17-6:2.

¹⁵ McPherson, Exh. KM-19a at 19-21; 71.

¹⁶ Metzger, Exh. RM-1T at 12:2-6.

¹⁷ Order 04 at 10 ¶ 26; *but see Id.* at 9 ¶ 23 (Stating “The Company collects and transports a variety of items, less than 20 percent of which are recyclable materials...” Although the order does not provide a citation to the record for this figure, the source may be from McPherson, TR 61:19 – 62:25. However, this testimony discusses recyclable commodities, not recyclable materials in general).

¹⁸ McPherson, TR 46:19-47:2, *see also* Metzger, Exh. RM-1T at 3:20-4:2.

¹⁹ Ridwell Petition at 3:3-5.

²⁰ Metzger, TR 153:22-154:12.

²¹ Metzger, Exh. RM-1T at 39:22-26, *see also*, Ridwell Petition at 15:8-24 (Ridwell requests partial exemption from vehicle rules and only mentions the cargo van as a vehicle not requiring exemption because it is owned by Ridwell).

10

Ridwell has a material recovery facility (MRF) located in Seattle.²² The Company's operations at the facility are "conditionally exempted solid waste activity at the time of this letter for the facility is the mobile collection of moderate risk waste consisting of batteries, lightbulbs and electronics in addition to the material recovery of clothing/shoes, plastic film (LPDE plastics), and styrofoam."²³ King County granted a permit exemption for the Company's first facility on February 20, 2020, and granted the same exemption to the Company's new facility on April 15, 2020.²⁴ Ridwell's prefiled testimony describes the operations at the facility:

In either case, this is where drivers drop off bagged materials that they have picked up from customers' Ridwell bins. All bags are labeled, so when a driver arrives, he or she unloads their vehicle and places sets of bags together with others from that category. Next, a member of the Ridwell operations team empties bags of like categories together into larger storage materials (such as a large garbage bag full of clothing and shoes destined for Goodwill). Larger storage bags are then stored on shelves in our facility until they are provided to a partner.²⁵

11

The businesses and organizations that Ridwell ultimately sends the collected recyclable materials to are listed in Highly Confidential Exhibit KM-16. In short, Ridwell collects recyclable materials,²⁶ from residential customers,²⁷ for compensation.²⁸ Ridwell also advertises that it collects these recyclable materials from residential customers.²⁹

²² McPherson, Exh. KM 19a at 31 (Staff Investigation Report, Attachment G).

²³ McPherson, Exh. KM-5 at 1.

²⁴ Metzger, Exh. RM-14; Exh. RM-15.

²⁵ Metzger, Exh. RM-1T at 26:5-15; *see also* Metzger, TR at 154:17-25.

²⁶ Metzger, TR 160:19-161:3.

²⁷ McPherson, TR 2 56:15-18.

²⁸ Metzger, TR 159:8-11.

²⁹ McPherson, Exh. KM-19a at 16, 35-6, 71 (Attachments D, H, and P).

III. DISCUSSION

A. CONCLUSIONS OF LAW³⁰

12 Staff disagrees with conclusion of law (2), which classifies Ridwell as a private
carrier.³¹ The definition of private carrier under RCW 81.77.010(5) requires that the
“person” transporting solid waste as an incidental adjunct to another business perform that
service “in his or her own vehicle.”³² With the exception of one vehicle, Ridwell does not
own the vehicles used to transport and collect the recyclable materials; the vehicles are
owned by the employees performing the collection.³³

13 Staff disagrees that the collection of recyclable materials is an incidental adjunct to
the Company’s collection of items that are not designated as recyclable, or that it is an
incidental adjunct to the distribution of these materials to their ultimate destination. The four
categories that Ridwell regularly collects are all designated as recyclable materials under the
local solid waste management plans where Ridwell primarily operates.³⁴ Under statute, the
collection of items designated as recyclable under local plans is solid waste collection.³⁵ The
collection of these materials is Ridwell’s primary business, not an incidental adjunct of
another business or service.

14 Another reason Ridwell does not meet the definition of “private carrier” is because it
uses these vehicles primarily for the transportation of solid waste as defined in statute,

³⁰ Normally Staff would organize the discussion section by placing the challenges to the findings of fact first. However, Staff has found that the issues presented by this case are best understood by addressing the legal issues first, then addressing the challenges to the findings of fact.

³¹ Order 04 at 14 ¶ 43.

³² RCW 81.77.010(5).

³³ Metzger, Exh. RM-1T at 39:22-26; *see also* Ridwell Petition at 12:12-6; 15:6-14; Ridwell Application for a Solid Waste Certificate at 7 (filed Feb. 6, 2020) (Listing ownership of one vehicle in application).

³⁴ McPherson, Exh. KM-1 at 98 (batteries and fluorescent light bulbs are under “moderate risk waste” category, plastic film is under plastic, and clothing/shoes are under textiles); Exh. KM-3 (Kirkland adopts King County’s solid waste management plan).

³⁵ *See* RCW 81.77.010 (9); RCW 70.95.030 (17) & (22).

although the meaning of the phrase “in a vehicle designed or used primarily for the transport of solid waste” is subject to different interpretations.³⁶

15 Conclusions of law (3) and (4) are necessary consequences of conclusion of law (2), and Staff disagrees with these conclusions for the same reasons outlined above. Ridwell should be classified as a solid waste collection company, and therefore it was in violation for operating and advertising without first obtaining a certificate.

16 Finally, Staff disagrees with conclusion of law (5), even if the challenges to conclusions of law (2)-(4) are rejected on administrative review. While this was not a prominent topic at the evidentiary hearing, the complaint and hearing were set as to whether Ridwell should be classified as either a solid waste collection company *or* a common carrier.³⁷ The Initial Order does not address the issue of common carrier classification.³⁸ Ridwell has all but admitted that it should be classified as a common carrier.³⁹ If the Commission agrees with the Initial Order that Ridwell is not a solid waste collection company, it should determine whether Ridwell falls under the statutory definition of common carrier, as that was also at issue in the hearing.⁴⁰

³⁶ One could interpret this phrase to mean that the “person” mentioned in the definition uses the vehicle primarily for the collection of solid waste, or to mean that this *type* of vehicle in general is used primarily for the collection of solid waste. However, since Initial Order clearly does not adopt this interpretation of RCW 81.77.010(5)’s second sentence, Staff will not address it further.

³⁷ Order 01 at 9 ¶ 43.

³⁸ See Order 04 at 14 ¶ 42 – 15 ¶ 46.

³⁹ See Ridwell Petition at 11:11-14 (requesting that the Commission find that Ridwell is a common carrier); see also Post-hearing Brief of Ridwell, 24 ¶ 56 (filed June 12, 2020) (Arguing the Commission could find that Ridwell is a common carrier).

⁴⁰ Staff considered a motion for clarification on this issue, but because Staff would have challenged the finding that Ridwell is not a solid waste collection company regardless of the outcome of such a motion, determined it was best to address these issues in a petition for administrative review.

1. Conclusion of Law (2) Should be Overturned Because Ridwell does not meet the Statutory Definition of a Private Carrier.

17 The order determines that Ridwell is acting as a private carrier rather than a solid waste collection company based primarily on two conclusions. First, it concludes that Ridwell’s collection of recyclable materials from residents is an incidental adjunct to its business of picking up items for donation as a “private delivery service.”⁴¹ Second, it concludes that the vehicles Ridwell’s employees use to transport the materials are not primarily used for the collection of solid waste.⁴² Staff respectfully disagrees with these conclusions, for the reasons outlined below. But the Initial Order also overlooks an important requirement within the statutory definition of “private carrier,” which is that the “person” operating as a private carrier must do so “in his or her own vehicle.”

Ridwell does not Collect the Recyclable Materials in its own Vehicles

18 The definition of private carrier under RCW 81.77.010(5) requires that the “person” transporting solid waste as an incidental adjunct to another business perform that service “in his or her own vehicle.”⁴³ With the exception of one vehicle, Ridwell does not own the vehicles used to transport and collect the recyclable materials, the vehicles are owned by the employees conducting the collection.⁴⁴ The Initial Order acknowledges that the vehicles are owned by the drivers in finding of fact (3),⁴⁵ but does not explain how this finding is compatible with the conclusion that Ridwell is a private carrier. Ridwell simply does not meet the statutory definition of a private carrier.

⁴¹ Order 04 at 7 ¶ 18 - 8 ¶ 19.

⁴² See *Id.* at 14 ¶ 36.

⁴³ RCW 81.77.010(5).

⁴⁴ Metzger, Exh. RM-1T at 39:22-26, *see also*, Ridwell Petition at 15:8-24 (Ridwell requests partial exemption from vehicle rules and only mentions the cargo van as a vehicle not requiring exemption because it is owned by Ridwell); Ridwell Application for a Solid Waste Certificate at 7 (filed Feb. 6, 2020) (Listing ownership of one vehicle in application).

⁴⁵ Order 04 at 14 ¶ 36.

Ridwell is not Collecting Recyclable Materials Purely as an Incidental Adjunct

19 Staff does not believe that Ridwell is transporting solid waste purely as an incidental adjunct to some other established private business. There appear to be two aspects of Ridwell's operations that the initial order relies upon to reach this conclusion. First, the fact that Ridwell collects both recyclable materials and materials not designated as recyclable from residential customers. Second, the fact that Ridwell delivers the recyclable materials first to the Company's MRF in Seattle, then to the specialized recyclers and charities. Staff will address these aspects of the business in turn.

20 Under RCW 81.77.010(5), a private carrier is defined as:

a person who, in his or her own vehicle, *transports solid waste purely as an incidental adjunct to some other established private business owned or operated by the person in good faith*. A person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste is not a private carrier. (Emphasis added)

At the evidentiary hearing, Ridwell described its service as picking up various categories of items from residential customers, including the four main categories (light bulbs, batteries, plastic film, and clothes) that the Company picks up on a regular basis.⁴⁶ All four of these categories are designated as recyclable under the King County and Kirkland comprehensive solid waste management plan.⁴⁷ By statute, items designated as recyclable under a local solid waste management plan fall under the definition of solid waste.⁴⁸ RCW 70.95.030(17) defines recyclable materials as "those solid wastes that are separated for recycling *or reuse* ... that are identified as recyclable material pursuant to a local comprehensive solid waste plan." (Emphasis added). This definition of recyclable materials is incorporated into the

⁴⁶ Metzger, Exh. RM-1T at 12:3-4.

⁴⁷ Metzger, TR 162:10-163:15; McPherson, Exh. KM-3.

⁴⁸ See RCW 81.77.010 (9); RCW 70.95.030 (17) & (22).

definition of solid waste under RCW 70.95.030(22), and therefore into the Commission’s statutory definition of solid waste under RCW 81.77.010(9).

21 The Initial Order states that, by weight, “roughly half” of what Ridwell collects are recyclable materials.⁴⁹ First, Staff disagrees that roughly half of all materials collected and transported by the Company can be characterized as “purely as an incidental adjunct” of Ridwell’s business. But even the “roughly half” approximation is an undercount because, as the Initial Order makes clear, it does not consider the textiles collected by the Company for reuse to be recyclable materials.⁵⁰ Highly Confidential Exhibit KM-15 demonstrates that, when textiles are properly considered recyclable material, a significant majority of the items Ridwell collects are, by statute, considered solid waste.

22 The Initial Order provides definitions of both “incidental” and “adjunct” from the Collins dictionary:⁵¹

The word “incidental” generally means “happening as a result of or in connection with something more important.” “Something that is an adjunct to something larger or more important is connected with it or helps to perform the same task.”⁵²

23 These definitions do not describe the relationship between Ridwell’s collection of recyclable materials and its collection of other items. The collection of recyclable materials does not help to collect the other materials, and the collection of the recyclable materials is not happening as a result of the collection of the other items. The fact that Ridwell collects non-recyclable materials does not make the collection of recyclable materials incidental.⁵³ If anything, the collection of the other materials is incidental to the collection of items

⁴⁹ Order 04 at 10 ¶ 26.

⁵⁰ Order 04 at 9-10 ¶ 25.

⁵¹ *Id.* at 7 ¶ 18.

⁵² *Id.*

⁵³ See WAC 480-70-011(2)(a)(i)-(ii) (providing examples of operations not regulated by the Commission as solid waste).

designated as recyclable, since the recyclable materials represent a majority of what Ridwell collects. Therefore, Ridwell’s collection of recyclable materials is not an incidental adjunct to the collection of materials that are not designated as recyclable.

24 The Initial Order states that: “whether a person’s transportation of solid waste is an incidental adjunct to another private business does not depend on the amount of those materials. The quantity of solid waste collected is one factor in determining the person’s regulatory status, but it is not the only consideration.”⁵⁴ This is true. A private carrier such as a junk hauler⁵⁵ can transport 100 percent solid waste without a solid waste certificate, if that service is incidental to another service it provides. However, unlike junk haulers that perform clean up services at a residence and then haul solid waste away, Ridwell does not perform other services at the residence beyond collection.⁵⁶ It is unclear what else would justify describing Ridwell’s collection of recyclable materials from residential customers as “purely as an incidental adjunct” to another business the company performs.

25 One possibility is that the Initial Order views the collection from customers as a separate, distinct business from the distribution of those same materials to Ridwell’s various partners. The Initial Order states:

The Company uses its drivers’ private passenger vehicles to transport various materials, including but not limited to recyclable materials, to these third party “partners.” *Ridwell essentially provides a private delivery service, pursuant to which it picks up unwanted items from residential customers and delivers those items on behalf of its customers to organizations or businesses that can reuse or recycle them.* Ridwell thus is acting as a private carrier, not a solid waste collection company.⁵⁷ (Emphasis added)

...

Here, roughly half of the items Ridwell collects are recyclable materials when measured by volume or weight, but as discussed above, that collection

⁵⁴ Order 04 at 10 ¶ 26.

⁵⁵ The term “junk hauler” is not a statutory term. It is a term that Staff and others use to describe companies or individuals that provide certain services for residential customers. *See Metzger, Exh. RM-6* for a description.

⁵⁶ *See Metzger, Exh. RM-1T* at 3:20-4:16.

⁵⁷ Order 04 at 7-8 ¶ 19.

nevertheless is an incidental adjunct of *the Company's pickup and delivery business*. The majority of packages sent through the U.S. Mail may contain merchandise, but that does not make the postal service a retailer.⁵⁸ (Emphasis added)

26 First, all solid waste collection companies are providing a delivery service by picking up unwanted items from residential customers and delivering them to proper disposal or recycling sites. Second, if the conclusion is based on the initial destination of the items collected from residential customers, that rationale does not appear to be consistent with RCW 81.77.010(7). The statute does not define a solid waste collection company based on the destination of the solid waste. Rather, transporting solid waste “for collection, or disposal, or both” over any public highway, for compensation, meets the statutory definition.⁵⁹ For that same reason, the transportation of the recyclable materials from Ridwell’s MRF to its final destination is still within the Commission’s jurisdiction under Chapter 81.77 RCW. The transportation from Ridwell’s facility to specialized recyclers or to charities for reuse is a “disposal” activity that falls under RCW 81.77.010(7); it is the completion of the solid waste collection service Ridwell promised to the residential customer, not a distinct private delivery service or some other established private business. Therefore, Ridwell’s initial collection of recyclable materials from customers cannot be considered purely as an incidental adjunct to the eventual distribution of those materials to its partners.

The Vehicles Collecting the Recyclable Materials are used by Ridwell Primarily for that Purpose.

27 The second sentence of the private carrier definition under RCW 81.77.010(5) states:
“A person who transports solid waste from residential sources in a vehicle designed or used

⁵⁸ *Id.* at 10 ¶ 26.

⁵⁹ RCW 81.77.010(7).

primarily for the transport of solid waste is not a private carrier.” The Initial Order incorrectly concludes that Ridwell is a private carrier because the passenger vehicles used to transport the recyclable materials are not designed or used primarily for the transportation of solid waste.⁶⁰ While Staff agrees that these vehicles are not designed specifically for the transportation of solid waste, Staff disagrees that these vehicles are not used by Ridwell primarily for the transportation of recyclable materials (and therefore solid waste). Although not explicitly stated, the ALJ appears to reach this conclusion by considering it likely that the employees drive their cars for personal use outside of their work for Ridwell, and therefore the vehicles are not primarily used for collection.⁶¹

28 The “person”⁶² being referred to in the definition of private carrier is Ridwell. As demonstrated above, the Company certainly is using these vehicles primarily for the collection of solid waste. Whatever the employees might do with the vehicles outside of their work for Ridwell is irrelevant, since the definition focuses on the specific “person” using the vehicle to transport solid waste.

29 If the “person” being referred to were the employee, then the transportation and collection is not “an incidental adjunct to some other established private business owned or operated by the person in good faith,” because the employee performing the collection is not an owner or manager of Ridwell’s business. Further, even if the employee does use the vehicle outside of work, the amount of time spent on collection likely does exceed any use through the employee’s work for Ridwell.

⁶⁰ Order 04 at 9 ¶ 23; 14 ¶ 43.

⁶¹ *Id.* at 14 ¶ 36 (“The passenger vehicles...are owned by the drivers, ... and are also used for purposes other than Ridwell’s operations).

⁶² Chapter 81.77 RCW does not have a chapter specific definition of person. Therefore, the definition found in RCW 81.04.010(6) applies: "Person" includes an individual, a firm, or co-partnership.

30 In conclusion, Ridwell does not meet the statutory definition of a private carrier. It does not own the vehicles used as the definition requires,⁶³ it is not transporting solid waste “purely” as an incidental adjunct to another business, and it uses the vehicles primarily for the transportation of solid waste, as defined by statute.

2. Conclusions of Law (3) and (4) Should be Overturned Because Ridwell is Properly Classified as a Solid Waste Collection Company and was Therefore Operating Without Proper Authority from the Commission.

31 Ridwell should be classified as a solid waste collection company, and therefore was in violation of Commission statutes and rules by operating and advertising without first obtaining a certificate. In order to understand the bounds of Commission jurisdiction over the collection of recyclable materials, it is important to review the definitions in RCW 81.77.010 and RCW 70.95.030. In short, the chain of statutory references leads to materials designated as recyclable under a local solid waste management plan falling under the definition of recyclable materials, and therefore under the definition of solid waste.⁶⁴ The collection of these designated recyclable materials from residential customers is, by statute, the collection of solid waste.⁶⁵ These are jurisdictional definitions; the Commission does not have the authority to define the bounds of its own jurisdiction.⁶⁶

32 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 with solid waste collection services. The collection of recyclable materials from residents is

⁶³ As previously noted, the one exception is that Ridwell does own a cargo van that it uses for collection.

⁶⁴ See RCW 81.77.010(9); RCW 70.95.030 (17) & (22).

⁶⁵ See *Id.*

⁶⁶ See *Ass'n of Wash. Bus. v. Dep't of Ecology*, 195 Wn.2d 1, 9-10 (2020) (And while “we generally accord substantial deference to agency decisions, we do not defer to an agency the power to determine the scope of its own authority.”) citing *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 409, 377 P.3d 199 (2016); see also *Elec. Lightwave v. Utils. & Transp. Comm'n*, 123 Wn.2d 530, 536; 869 P.2d 1045 (1994) (“an agency possesses only those powers granted by statute”).

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.⁶⁷ The Company does not meet the criteria for exemption under either WAC 480-70-011 or WAC 480-70-016. As established at the evidentiary hearing, Ridwell is not a junk hauler, and the fact that Ridwell picks up some items that are not recyclable materials is an insufficient basis on which to grant an exemption.

33 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. For the purposes of Title 81 RCW, every common carrier is a public service company, and therefore subject to Commission regulation. 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.’”⁶⁸

34 “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

⁶⁷ See *Ass’n of Wash. Bus. v. Dep’t of Ecology*, 195 Wn.2d 1, 9-10 (2020).

⁶⁸ RCW 81.77.010(7).

residences[.]” Under RCW 70.95.030(22), solid waste is defined as “all putrescible and 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.”⁶⁹

35 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. “Operating for the hauling of solid waste for compensation includes advertising, soliciting, offering, or entering into an agreement to provide” such services.⁷⁰

36 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.⁷¹ All four of these categories are designated as recyclable under the King County and Kirkland comprehensive solid waste

⁶⁹ WAC 480-70-041.

⁷⁰ RCW 81.77.040.

⁷¹ Metzger, Exh. RM-1T at 12:3-4.

management plans.⁷² To determine whether Ridwell’s services meet the statutory definition, the Commission needs to answer five questions regarding the facts presented in the record.

37

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.⁷³ King County and Kirkland designate a majority of what Ridwell collects as recyclable under their plan.⁷⁴ Although Ridwell considers textiles to be reusable rather than recyclable, the King County and Kirkland comprehensive solid waste management plans designate textiles as recyclables.⁷⁵ The second question is: 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.⁷⁶ 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 primarily offers service.⁷⁷ And even if the collection of recyclable materials were not the Company’s primary business, WAC 480-70-016(1) states:

⁷² Metzger, TR 162:10-163:15; McPherson, Exh. KM-3.

⁷³ See RCW 81.77.010 (9); RCW 70.95.030 (17) & (22).

⁷⁴ McPherson, Exh. KM-1 at 98; Exh. KM-3.

⁷⁵ *Id.*

⁷⁶ See WAC 480-70-011(2)(a)(i)-(ii) (examples of operations not regulated by the Commission as solid waste).

⁷⁷ See McPherson, Exh. KM-1 at 98; Exh. KM-3; Exh. KM-15(HC).

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.

38 The important facts in this case are not disputed by the parties. Ridwell collects recyclable materials,⁷⁸ from residential customers,⁷⁹ for compensation.⁸⁰ The Company does not engage in any cleanup activities at the residence,⁸¹ 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 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.⁸²

39 Ridwell's advertisements indicate that the Company picks up items such as plastic film, batteries, clothes, and light bulbs on a regular schedule, while other items are picked up intermittently.⁸³ Although Ridwell may not consider the clothes it collects recyclables, the relevant question is whether the local solid waste management plan designates the material as recyclable, not whether the company does.⁸⁴ The Commission should amend Conclusions of Law (3) and (4) to classify Ridwell as a solid waste collection company and find it in violation of operating without a certificate.

⁷⁸ Metzger, TR 160:19-161:3.

⁷⁹ McPherson, TR 2 56:15-18.

⁸⁰ Metzger, TR 159:8-11.

⁸¹ McPherson, TR 46:19-47:2.

⁸² However, for an analysis of Ridwell's operations under Commission rules, see Brief on Behalf of Commission Staff, 18 ¶ 32 – 23 ¶ 43 (filed June 12, 2020)(Staff Post-hearing Brief).

⁸³ McPherson, Exh. KM-19a at 71 (Staff Investigation Report, Attachment P).

⁸⁴ RCW 70.95.030(17).

3. Conclusion of Law (5) Should be Overturned for the Reasons Outlined Above, but also Because the Initial Order did not Address the Classification of Ridwell as a Common Carrier.

40 While not a prominent topic at the evidentiary hearing, the complaint and hearing were set to determine whether Ridwell should be classified as either a solid waste collection company *or* a common carrier.⁸⁵ The Initial Order does not address the issue of common carrier classification.⁸⁶ The Commission must address all material issues raised in a proceeding.⁸⁷ Ridwell has all but admitted that it should be classified as a common carrier under Chapter 81.80 RCW.⁸⁸ If the Commission agrees with the Initial Order that Ridwell is not a solid waste collection company, it should determine whether Ridwell falls within the statutory definition of common carrier, as that was also at issue in the hearing.⁸⁹ The term “common carrier” is defined in RCW 81.80.010(1) as “any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies. ”Common carrier” does not include a personal delivery device or a personal delivery device operator as those terms are defined in RCW 46.75.010.” Ridwell meets this definition.

B. FINDINGS OF FACT

41 Staff challenges findings of fact (2), (3), (5), and (6). The record demonstrates that finding of fact (2) is inaccurate because there are service overlaps between Ridwell and at

⁸⁵ Order 01 at 9 ¶ 43.

⁸⁶ See Order 04 at 14 ¶ 42 – 15 ¶ 46.

⁸⁷ RCW 34.05.461(3).

⁸⁸ Ridwell Petition at 24 ¶ 56.

⁸⁹ Staff considered filing a motion for clarification on this issue, but because Staff would have challenged the finding that Ridwell is not a solid waste collection company regardless of the outcome of such a motion, Staff determined it was best to address these issues in a petition for administrative review.

least one certificated solid waste carrier. Finding of fact (3) should be amended because the nature of Ridwell’s use of the vehicles, not the employees’ use of their own vehicles when not working for Ridwell, is the relevant fact when determining whether the operation falls within the definition of private carrier in RCW 81.77.010(5). Findings of fact (5) and (6) should be amended because Ridwell collects items that are always sent to specialized recyclers; the Company does not only collect items intended for donation or reuse, and then recycle them if those items turn out not to be reusable.

1. Finding of Fact (2) Should be Overturned Because the Record does not Support a Finding that Ridwell Collects Recyclable Materials not Collected by Certificated Solid Waste Collection Companies.

42 Staff disagrees with the Initial Order’s finding of fact (2), which states:

(2) Ridwell uses passenger vehicles and a cargo van to pick up used clothing, shoes, and other reusable items from residential customers, as well as recyclable materials that certificated carriers do not collect, specifically plastic wrap, batteries, and light bulbs.⁹⁰

43 The record does not support finding of fact (2). First, Ridwell admitted picking up items from residential customers that are also picked up through a certificated solid waste collection company.⁹¹ The Seattle Public Utilities (SPU) pick up batteries and lightbulbs curbside from residential customers in King County.⁹² Therefore, it is not accurate to say that Ridwell collects “recyclable materials that certificated carriers do not collect.” Second, as noted above, the King County and Kirkland local solid waste management plans designate textiles as recyclable materials.⁹³ The definition of recyclable materials under RCW 70.95.030(17) includes recycling *and* reuse. As discussed in Section III.A.2, the

⁹⁰ Order 04 at 13 ¶ 35.

⁹¹ Metzger, Exh. RM-1T at 16:1-16.

⁹² McPherson, Exh. KM-11. SPU contracts with Recology and Waste Management.

⁹³ McPherson, Exh. KM-1 at 98 (batteries and fluorescent light bulbs are under “moderate risk waste” category, plastic film is under plastic, and clothing/shoes are under textiles); Exh. KM-3.

statute does not draw a distinction between the “reusable” textiles and the “recyclable” batteries and light bulbs. The finding of fact should be clear that, for the purposes of a classification hearing, the clothing collected by Ridwell is considered recyclable material.

2. Finding of Fact (3), Should be Amended Because Ridwell’s use of the Vehicles is the Relevant Issue, not the Employee’s use of their Vehicle Outside of their Work for Ridwell.

44 The Commission should amend finding of fact (3), which states:

(3) The passenger vehicles and cargo van Ridwell uses are owned by the drivers, are not designed to transport solid waste, and are also used for purposes other than Ridwell’s operations.⁹⁴

45 In a literal sense, finding of fact (3) is mostly accurate. However, as discussed in Section III.A.1 above, while the passenger vehicles are owned by the employees, and are not designed for the transportation of solid waste, *Ridwell* uses these vehicles primarily for that purpose.⁹⁵ As noted above, Ridwell does in fact own the cargo van. More importantly, this finding of fact should be amended to provide clarity that the relevant “person” referenced in the private carrier definition in RCW 81.77.010(5) is the individual or company that is the subject of the classification hearing. It should further clarify that Ridwell does primarily use these vehicles to collect solid waste, because recyclable materials fall under the statutory definition of solid waste, and the four main categories of items Ridwell collect regularly are all designated as recyclable materials under local solid waste management plans.

3. Finding of Fact (5) and (6), Should be Amended Because Ridwell does not only Collect Items that Could be Reused, it Advertises and Collects Items Explicitly for Recycling.

46 Staff disagrees that the record supports findings of fact (5) and (6), which state:

(5) Whenever possible, Ridwell delivers the items it collects to local non-profit organizations that can reuse the items;

⁹⁴ Order 04 at 14 ¶ 36.

⁹⁵ Metzger, Exh. RM-1T at 3:20-4:2.

(6) When an item cannot be reused, Ridwell delivers it to a local specialized recycler to which people could deliver the item themselves.⁹⁶

47 Ridwell always sends recyclable materials such as light bulbs, batteries, plastic wrap, etc., to specialized recyclers, they are not reused or attempted to be reused.⁹⁷ These items could not be reused by the charities that Ridwell partners with, and Ridwell does not collect these items with the intention of donating them to charities.⁹⁸ The Company is not collecting items that it believes could be donated to local nonprofits for reuse, then sending those items to specialized recycling facilities if they are unfit for reuse. These findings give the impression that Ridwell only collects items for donation that might be reusable, and when some of those items cannot be reused, those materials go to specialized recycling. That is not the case. Once these items are sorted in Ridwell’s recycling facility in Seattle,⁹⁹ the Company always sends light bulbs, styrofoam, plastic film, batteries, etc., to specialized recyclers once they are collected from residential customers.¹⁰⁰

C. DISCUSSION AND DECISION SECTION

48 Finally, Staff disagrees with portions of the Initial Order’s discussion and decision section, which should be amended even if the Commission upholds the challenged findings of fact and conclusions of law. Specifically, Staff challenges paragraphs 25, 30, 31, and 32. Paragraph 25 concludes that although textiles are designated as recyclable under local solid waste management plans, they are “not solid waste as we interpret that term for regulatory

⁹⁶ Order 04 at 14 ¶ 38-39.

⁹⁷ See Metzger, Exh. RM-1T at 14:8-15:21.

⁹⁸ *Id.*

⁹⁹ Metzger, Exh. RM-1T at 26; see also Exhs. RM-14 and RM-15.

¹⁰⁰ See Metzger, Exh. RM-13(HC).

purposes.”¹⁰¹ This is contrary to the definition of recyclable materials in RCW 70.95.030(17), as discussed in Section III.A.1. Paragraphs 30 and 31 discuss matters that are irrelevant to a classification hearing. Classification and the decision to grant a certificate are separate and distinct questions,¹⁰² and the evidentiary hearing was set only as to classification.¹⁰³ Paragraph 32 should be amended because it states that Ridwell’s classification as a private carrier could change if certificated solid waste collection companies begin collecting plastic wrap, batteries, or light bulbs directly from residential customers in the future. Classification is based on whether the services provided by a company fall under the statutory definition of a service regulated by the Commission. Ridwell’s *classification* cannot change based on whether other companies begin to provide the same services.

1. Paragraph 25 of the Initial Order Should be Modified Because the Materials Designated as Recyclable under a Local Solid Waste Management Plan must be Considered Recyclable Material under Statute.

49 Paragraph 25 of the Initial Order states:

As an initial matter, we do not construe the inclusion of “textiles” in county solid waste plans to mean that clothing, shoes, and similar items are considered solid waste if they are intended to be reused. Certainly such items can be thrown in the trash, but the same is true of anything that can fit within a garbage container. Nor are we willing to find that charitable organizations that pick up used clothing donations for resale are transporting solid waste. The donated clothing, shoes, and other items Ridwell collects to deliver to organizations that will reuse them are not solid waste as we interpret that term for regulatory purposes.

¹⁰¹ Order 04 at 10 ¶ 25.

¹⁰² See WAC 480-70-011(classification); WAC 480-70-016 (classification); RCW 81.77.040 (application for authority).

¹⁰³ Order 01 at 9 ¶ 43-45.

50

Perhaps this a wise policy decision, but for the purposes of classification, it is not one the Commission has the authority to make.¹⁰⁴ As noted above, 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...*” (Emphasis added). This definition is incorporated into commission statute through RCW 70.95.030(22) and RCW 81.77.010(9). First, note that the definition includes materials separated “for recycling *or* reuse.” The textiles collected by Ridwell from residential customers meet this definition; they are separated for reuse. Second, charitable organizations picking up used clothing would not meet the statutory definition of a solid waste collection company because they do not perform these services for compensation; Ridwell, however, does.¹⁰⁵ A local solid waste management plan designating textiles as recyclable materials would not result in these charitable organizations falling under Commission jurisdiction.

2. Paragraphs 30 and 31 Should be Deleted Because Classification Determines Whether the Commission has Jurisdiction Over the Services Provided by the Company, all Other Considerations are Irrelevant.

51

Order 01 of this Docket set a BAP to determine the proper classification of Ridwell and whether to assess the recommended \$5,000 in suspended penalties.¹⁰⁶ The Commission converted the BAP classification hearing to a full adjudication and set it for May 12, 2020, with no change to the scope of the hearing.¹⁰⁷

¹⁰⁴ See *Ass'n of Wash. Bus. v. Dep't of Ecology*, 195 Wn.2d 1, 9-10 (2020) (“And while “we generally accord substantial deference to agency decisions, we do not defer to an agency the power to determine the scope of its own authority.”) citing *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 409, 377 P.3d 199 (2016); see also, *Elec. Lightwave v. Utils. & Transp. Comm'n*, 123 Wn.2d 530, 536; 869 P.2d 1045 (1994) (“an agency possesses only those powers granted by statute”).

¹⁰⁵ Metzger, TR 158:15-23.

¹⁰⁶ Order 01 at 9 ¶ 43-45.

¹⁰⁷ See Order 02.

52 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,¹⁰⁸ and not the Company's requests for exemption from specific solid waste rules, or issues related to the Company's applications for authority. At a classification hearing, the Company had the burden of proof.

53 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 Commission held the evidentiary hearing pursuant to RCW 81.04.510.¹⁰⁹

54 It was not Commission Staff's burden at the classification hearing to prove that Ridwell would be able to operate under a solid waste certificate with little or no difficulty. The facts and the law are clear: Ridwell is providing solid waste 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. It is for the legislature, not the Commission, to decide if Chapter 81.77 RCW is in need of amendment.

¹⁰⁸ See Order 01 at 10 ¶ 50 (citing RCW 81.04.510 as the authority under which the Commission would conduct the hearing).

¹⁰⁹ See *Id.*

55

That said, Staff believes that Ridwell *can* operate as a solid waste carrier, and Staff is willing to consider certain of the Company's requests for exemption from specific Commission solid waste rules. Although during the evidentiary hearing Ridwell suggested that a solid waste carrier classification would essentially prevent it from operating, the Company presented very little, if any, evidence that actually substantiated that claim. In Staff's post-hearing brief, Staff describes alternative options available to Ridwell that would allow it to continue operating as a solid waste carrier.¹¹⁰ If the Commission is concerned with the practical implications of classifying Ridwell as solid waste carrier, it should bear in mind that many current solid waste carriers having much smaller operations than Ridwell are able to comply with Chapter 81.77 RCW.¹¹¹

3. Paragraph 32 Should be Modified Because Whether Another Company Engages in the Same Services does not Change the Proper Classification of a Company.

56

Paragraph 32 of the discussion and decision section states:

We emphasize that our decision is based on Ridwell's current business as described in the record. Significant changes to the Company's operations could affect our analysis. We might need to reevaluate Ridwell's status if, for example, the Company began to collect recyclable materials that certificated solid waste collection companies collect curbside from residential customers. Similarly, the Company would need a certificate for, or to curtail, collection of plastic wrap, batteries, or light bulbs if the certificated carrier begins to include those items in its curbside collection.¹¹²

57

This statement cannot be accurate. The evidentiary hearing was set as to *classification only*.¹¹³ Classification is a question of whether the services provided by a Company are under the Commission's jurisdiction. The Commission's jurisdiction over a

¹¹⁰ Staff Post-hearing Brief at 4 ¶ 6 -11 ¶ 19.

¹¹¹ *Id.* at 9 ¶ 17 - 11 ¶ 18.

¹¹² Order 04 at 13 ¶ 32.

¹¹³ Order 01 at 9 ¶ 43-45; *see also* Order 02 (no change made to the scope of the hearing).

Company does not change based on what services other companies offer or provide.¹¹⁴ The order concludes that Ridwell is currently operating as a private carrier, and thus the Commission does not have jurisdiction over Ridwell.¹¹⁵ How could another company's collection of these same materials change the Commission's *jurisdiction* over Ridwell? Second, as noted above, Ridwell does collect recyclable materials that certificated solid waste collection companies collect.¹¹⁶ Ridwell admitted that King County does have competing pick-up services for certain items.¹¹⁷

IV. REQUESTED CHANGES TO THE INITIAL ORDER

58 Pursuant to WAC 480-07-825(2)(b), below are recommended conclusions of law and findings of fact.

Conclusions of Law

59 (2) Ridwell transports recyclable materials from residential customers, for compensation, which is not an incidental adjunct to some other established private business. Accordingly, Ridwell is a solid waste collection company as defined in RCW 81.77.010(7);

60 (3) Ridwell violated the provisions of Title 81 RCW that forbid operating for the purpose of hauling of solid waste for compensation without first obtaining a certificate of public convenience and necessity from the Commission. The Commission therefore assesses a suspended penalty as requested by Staff in the complaint;

61 (4) The Commission classifies Ridwell as a solid waste collection company;

¹¹⁴ Although services can become competitively classified, a company's classification would not change.

¹¹⁵ Order 04 at 7 ¶ 17.

¹¹⁶ Metzger, Exh. RM-1T at 16:1-16, *see also* McPherson, Exh. KM-11.

¹¹⁷ Metzger, TR 146:18-147:7.

62 (5) The Commission shall set a prehearing conference on Ridwell’s solid waste
collection certificate application and portions of the Company’s petition for exemptions
from specific solid waste carrier rules.

Findings of Fact

63 (2) Ridwell uses passenger vehicles and a cargo van to pick up used clothing, shoes,
and other reusable items from residential customers for donation, as well as recyclable
materials, such as plastic film, batteries, and light bulbs.¹¹⁸

64 (3) The passenger vehicles Ridwell uses are owned by the drivers of those vehicles.
These vehicles are not designed to transport solid waste, but are used by Ridwell primarily
for the collection of solid waste, as that term is defined in statute. Ridwell owns a cargo van
that it also uses to transport solid waste.

65 (5) Ridwell delivers materials such as batteries, light bulbs, plastic film, and
styrofoam to specialized recyclers. Reusable items, such as clothing are collected and
delivered to local non-profit organizations.

66 (6) Ridwell collects four primary categories: batteries, light bulbs, plastic film, and
clothes. These are all designated as recyclable by the local solid waste management plans in
King County and Kirkland, the areas where Ridwell primarily operates.

Discussion and Decision Section

67 Paragraphs 25, 30, 31, and 32 of the Initial Order’s discussion and decision section
should be deleted from the Initial Order.

V. CONCLUSION

68 The plain language of the statutory definition of private carrier does not apply to
Ridwell because Ridwell does not own the vehicles used to transport the recyclable

¹¹⁸ Finding of Fact (7) specifies that this service is performed for compensation. Order 04 at 14 ¶ 40.

materials, and Ridwell uses the vehicles primarily for the collection of recyclable materials from residential customers, which falls under the statutory definition of solid waste collection. The collection of those materials is not an incidental adjunct to another business or service the Company provides. Ridwell is a solid waste collection company because it collects recyclable materials, from residential customers, for compensation. Ridwell does not recycle these items only after attempting to donate them for reuse. Items such as light bulbs, plastic film, and batteries, are always sent to specialized recyclers. Although the record clearly demonstrates an overlap between the services Ridwell provides and the services offered by Seattle Public Utilities, whether a certificated solid waste collection company offers the same service or not is irrelevant to a classification hearing. At a classification hearing, the Commission determines only whether the services provided by a company fall within the agency's jurisdiction.

69 Staff agrees with the ALJ that this proceeding presents a novel issue for Commission determination. That is why, in part, Staff finds it crucial to receive specific direction from the Commissioners on the issues presented by this case. If the Commission concurs with the Initial Order's interpretation of the "private carrier" definition in RCW 81.77.010(5), that will have significant implications for currently regulated companies, and Staff will need to adjust its enforcement practices in light of this interpretation. Clarification and guidance are especially needed regarding whether the law requires that the "person" operating as a private carrier own the vehicle they use, as well as the activities that the Commission considers "purely as an incidental adjunct" to another business. Adopting an expansive interpretation of the "incidental adjunct" language may require an evaluation of whether companies currently holding solid waste collection certificates are in fact providing that service as an incidental adjunct.

Respectfully submitted,

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