

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF DETERMINING THE
PROPERTY CARRIER CLASSIFICATION
OF:

RIDWELL, INC.

No. TG-200083

BRIEF OF RIDWELL, INC., IN RESPONSE
TO STAFF'S PETITION FOR
ADMINISTRATIVE REVIEW

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I. INTRODUCTION

1 As described by Ridwell CEO Ryan Metzger:

Essentially [Ridwell] provides its customers with the opportunity to find new uses for materials in their homes that they want to get rid of. It provides an alternative to the customers making trips to various donation centers or recycling operations.¹

Put another way, Ridwell facilitates “upcycling” for its customers.²

2 Commission Staff admits that what Ridwell does is “good for the environment” and is “innovative.”³ Ridwell does not compete with certificated local solid waste carriers and, in fact, is beneficial to their operations by keeping troublesome, but recyclable, plastic film out of the waste stream.⁴ Despite this, and despite the fact that Ridwell seeks out reusable options whenever possible and has found them for over 80 percent of the categories that it collects,⁵ Staff argues that Ridwell should be treated as a solid waste company because some of the materials that Ridwell collects are “recyclable” under the relevant local solid waste management plans, even though the certificated carriers are not required to pick up those types of specialty recyclables.

3 In determining that Ridwell is a “private carrier,” the Initial Order of Judge Kopta would have resolved this. Ridwell could have gone about serving its approximately 11,000 customers,⁶ and the certificated carriers could have gone about serving theirs. Customers would be served; the certificated carriers would not have been harmed; and the environment

¹ Metzger, Exh. RM-1T at 3:4-8.

² *Id.* at 3:18.

³ Perkinson, TR. 127:6-14; 145: 11-15.

⁴ Metzger, Exh. RM-1T at 32:13-15.

⁵ Metzger, TR. 155:19-21.

⁶ As of May 1, 2020, Ridwell had 7000 active customers. Metzger, Exh. RM-1T at 5:6. However, Ridwell’s business continues to grow, and, as of September 1, 2020, it had over 11,000 active customers.

would benefit.

4 However, Commission Staff, for unclear reasons, deemed it important to ask the Commission to review the Initial Order. Staff described its reasoning:

The Initial Order’s interpretation of the private carrier classification will have a significant impact on regulation under Chapter 81.77 if it is followed in future cases. Both regulated entities and Staff will benefit from the additional clarity provided by administrative review.⁷

5 Staff is concerned about the precedential effect of the Initial Order and seems to be channeling concerns from regulated companies. However, an initial order that simply takes effect by operation of law, which could have been the case if Staff had not filed its Petition, “has no precedential value.”⁸ So, ironically, the stated concern that Staff gives for filing its Petition can only come to pass because Staff filed the Petition.

6 If there are some potential consequences to regulated carriers should Ridwell be considered a private carrier, Staff is not sharing them, at least not with Ridwell and not on the record. That raises a number of fairness concerns. First, it is unfair to the Commission to say there are concerns but not articulate them. How can the Commission be careful with any final order without knowing what those concerns are? Second, it is unfair to Ridwell in that we cannot respond to such a camouflaged set of concerns. Perhaps they are apparent to Staff, and perhaps they have been made apparent to the Commissioners in some other context, but Staff should not hide the ball from the main party in interest that is trying to navigate this regulatory process. In this responsive brief, it would behoove us to address those concerns,

⁷ Petition for Administrative Review on Behalf of Commission Staff (Staff Petition) ¶3 (Aug. 31, 2020). In its conclusion, the Petition argues that “Staff will need to adjust its enforcement practices in light of this interpretation,” but without saying how. And perhaps that would not be a bad thing. Staff Petition ¶69.

⁸ WAC 480-07-825(1)(c) (“An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders, if cited, must be identified as initial orders.”).

but that is difficult without more details. Finally, and perhaps most significant, it is unfair to use this straightforward adjudication to try to sort out all the issues solid waste companies may face from potential competitors, particularly since Ridwell is not a competitor at all. If that is what Staff seeks by its Petition, better that it suggest a rulemaking or some other generic type of proceeding where all the issues can be set out and responded to. Individual companies trying out innovative ideas should not have to bear the burden of Staff's regulatory concerns in other contexts. If Commission Staff is concerned about the impact of this proceeding on other companies, Staff should consider the impact on companies yet to be created, companies that may have innovative ideas to better serve the public and the environment. If the price of innovation is a regulatory morass, then innovation will not happen, and former Chairman Alfred E. Kahn's statement about regulation will be confirmed.⁹ The Commission should consider Ridwell's carrier status in this proceeding and leave the big picture for another day and another process.

7 Having said that, in the sections below, we will respond to the Petition with three alternative arguments and with a request. First, we support the ALJ's decision that Ridwell be considered a "private carrier" and therefore exempt from regulation. Second, as an alternative, at most Ridwell should be considered a "common carrier" regulated under RCW 81.80, not a solid waste carrier under RCW 81.77. Third, given Staff's concern about the precedential effect of the Initial Order, the Commission could simply request Staff to

⁹ In our post-hearing brief, we quoted former New York Public Service Commission and Civil Aeronautics Board Chairman Alfred E. Kahn: "[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." A. Kahn, *The Economics of Regulation* 247 (1988 ed.). See Post-Hearing Brief of Ridwell, Inc. (Ridwell Post-Hearing Br.) ¶1.

withdraw its Petition and let the Initial Order take effect by operation of law, thereby negating any precedential effect that Order would have on persons other than Ridwell.

8 Finally, should the Commission deem it appropriate to consider the merits of whether Ridwell is a private, common, or solid waste carrier, it should convene a public comment hearing pursuant to WAC 480-07-498(2). That would enable the Commission to better gauge the “public interest” involved with Ridwell’s operations and the consequences of the various options of classification on members of the public and other interested persons.

II. **FACTUAL BACKGROUND**

9 Ridwell CEO Ryan Metzger described Ridwell’s operations thoroughly in his pre-filed written testimony,¹⁰ and we summarized them in our post-hearing brief.¹¹ Here, we reiterate some important aspects of Ridwell’s operations in part to correct some misleading representations in Staff’s Petition.

10 Ridwell got its start as a family operation, finding places to donate or recycle “old stuff” that they no longer wanted. It expanded to a neighborhood operation and then to a business.¹² Here are Ridwell’s Vision, Mission, and Values:

Vision

Empowering communities to build a less wasteful future

Mission

1. Make it simple to get rid of stuff responsibly
2. Discover and enable new options for old or unused things
3. Support responsible consumption

Values

Empathy, Integrity, Trust, Resourcefulness, Accountability, Aspirational¹³

¹⁰ Metzger, Exh. RM-1T at 3:1-27:2.

¹¹ Ridwell Post-Hearing Br. ¶¶8-10.

¹² Metzger, Exh. RM-1T at 1:16-2:24.

¹³ *Id.* at 3:9-18.

11 Ridwell picks up materials not picked up by the local certificated solid waste haulers, offering four “regular” pick-up categories (light bulbs, batteries, plastic film, and clothing and shoes) and one rotating specialty pick-up. These specialty categories have included: school supplies (including backpacks and calculators); non-perishable food; eyeglasses; books; hats, scarfs, and gloves; Halloween candy; children’s pajamas; women’s dress clothes; toiletries; stuffed animals and toys; eating utensils; jewelry; bedding and linen; diapers; kitchenware; bottle caps; pet supplies; brassieres; planter pots; wine corks; small electronics and cords; maternity clothes; fabric scraps; and toys.¹⁴ These are taken to, or picked up by, any number of charitable organization “partners.”¹⁵

12 The “regular” categories, after sorting at Ridwell’s warehouse, wherever possible are taken to or picked up by partners for reuse, such as Goodwill in the case of clothes and shoes.¹⁶ Where that is not possible, they are taken to recycling centers.

13 Contrary to the assertions of Staff,¹⁷ Ridwell does not operate a materials recovery facility (MRF). It does not do its own recycling nor engage in separating various materials from one another and from refuse, as is done in a MRF. The materials are all separated at the source by the customers; there is virtually no residual refuse that must be transported to a landfill or transfer station.¹⁸ Ridwell’s facility is simply a warehouse-type building in which

¹⁴ Metzger, Exh. RM-1T at 17:23-23:11.

¹⁵ McPherson, Exh. KM-16 (HC). Ridwell designated this information as highly confidential because finding and cultivating partners resulted in important commercial information.

¹⁶ Mr. Metzger explained: “[T]he focus of our business is 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. Wherever possible, this takes the form of local reuse as we spend considerable time locating local non-profits who have specific needs that could be served by what may be setting idle in people’s homes.” Metzger, Exh. RM-1T at 7:13-18.

¹⁷ Staff Petition ¶10; *see* Order 04 ¶¶7, 24 (describing Staff’s assertion).

¹⁸ Metzger, Exh. RM-1T at 17:5-17.

the bags of similar items are consolidated for delivery to, or, more commonly, pickup by, Ridwell's various partners.¹⁹

14 Staff also suggests that there is an overlap between Ridwell's operations and those of local solid waste carriers. That is only true in a minor technical sense. The certificated carriers do pick up some of the materials that Ridwell picks up, but they are not taken for reuse or recycling. If, for example, customers put their old clothes in the garbage can, the solid waste carrier takes them to the transfer station or to the landfill. So, Ridwell keeps those useful articles out of the waste stream. At the outset of Ridwell's operations, this was the only overlap between Ridwell's operations and those of the certificated carriers. Now, there is one further minor overlap. Starting in April 2019, for a special fee, Seattle Public Utilities (SPU) now offers to pick up a few of the battery types Ridwell accepts and also has special pickups for CFL bulbs and Styrofoam blocks.²⁰ However, SPU seems content with Ridwell's operations in this regard,²¹ and apparently the Commission Staff opted not to second-guess the City.²²

15 Ridwell owns one cargo van (less than 10,000 pounds) and uses passenger vehicles owned by its drivers, who use these same vehicles for other purposes when not in service of Ridwell.²³

¹⁹ At the hearing, Staff seemed to concede that Ridwell's facility is not a MRF. *See* Perkinson, TR. 99:22-100:21.

²⁰ Metzger, Exh. RM-1T at 16:3-16.

²¹ *Id.* at 16:18-25.

²² *See* McPherson, Exh. KM-19 at 7 (Staff Investigation Report) ("On July 16, 2019, Staff informed Ridwell by email that Staff had closed the compliance investigation of the Company because Seattle asserted jurisdiction over Ridwell's transportation of residential recycling.").

²³ Metzger, Exh. RM-1T at 11:16-24, 39:22-23.

Despite Staff's protests to the contrary, Ridwell does not negatively impact the certificated carriers. It is true that by removing textiles and other materials from the waste stream, it is possible that some Ridwell customers could decrease the size of their solid waste bins, thereby reducing their bills to the certificated carriers. Whatever impact that has on carrier revenues is for a good cause and it should be offset by the fact that Ridwell by keeping plastic film out of the waste stream allows MRFs to operate more efficiently.²⁴ However, Staff seems concerned about the impact of that waste reduction on the revenues of certificated carriers. The issue arose when Staff witness McPherson was questioned about the assertion in the Staff recommendation on penalties that the revenues of the companies were negatively impacted by Ridwell's activities, and that was a factor in setting the proposed amount of the penalties.²⁵ Noting that "[m]ore than 95 percent of clothes are going to the landfill process,"²⁶ Ms. McPherson indicated that this diversion of clothes from the waste stream would financially impact the carriers.²⁷ Although technically possibly true, chapter 81.77 RCW should not be interpreted to protect the carrier revenues resulting from wasteful disposal practices.

III. ARGUMENT

A. The Commission Should Affirm the Initial Order's Conclusion that Ridwell Meets the Private Carrier Exemption.

At the hearing, and in our post-hearing brief, we paid significant attention to the Staff position regarding "junk haulers": they are not regulated by the Commission because, as Staff

²⁴ *Id.* at 32:13-15.

²⁵ McPherson, Exh. KM-19 at 11.

²⁶ McPherson, TR. 65:25-66:1.

²⁷ McPherson, TR. 70:5-10 (Q: "And – I think I heard you say that – [what] Ridwell does by taking things out of the waste stream, it impacts certificated carriers because they won't have as much refuse to dispose of in the dump. Is that basically what you said?" A: "Basically.").

has concluded, despite collecting, hauling, and disposing of significant quantities of solid waste they are “private carriers” in that such collection, hauling, and disposal is incidental to their main “clean up” business. Therefore, they are not regulated under RCW 81.77.010(5), which states:

“Private carrier” means 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;

18 In the case of the “junk haulers,” the junk hauling is an “incidental adjunct” to the “clean up.” Therefore, the “junk haulers” are not regulated.

19 In our post-hearing brief, we argued that one way for the Commission to resolve the case would be to deem Ridwell such a private carrier.²⁸ Indeed, that is how the Initial Order resolved this case. Judge Kopta, quoting the testimony of Ridwell CEO Ryan Metzger, concluded:

Ridwell’s private business “provides an alternative to customers making trips to various donation centers or recycling operations.” 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 as a solid waste collection company.²⁹

20 This conclusion is fact-laden, and Judge Kopta considered substantial testimony from both parties about the nature of Ridwell’s business.³⁰ Therefore, the description of Ridwell’s

²⁸ Ridwell Post-Hearing Br. ¶44, n.95.

²⁹ Initial Order Dismissing Complaint (Order 04) ¶19.

³⁰ Metzger, Exh. RM-1T at 3:1-27:2; Metzger, TR. 152:18-165:23; McPherson TR. 46:7-47:2, 57:12-65:16.

business, and the conclusion that flows from that, is entitled to deference by the Commission on review.³¹

21 Staff challenges the Initial Order’s determination that Ridwell is a private carrier on three bases. First, Staff argues that Ridwell does not meet definition of “private carrier” because it does not collect recyclable materials in its “own vehicles.” Second, it argues that Ridwell does not collect recyclable materials as an “incidental adjunct” to its main business.” Finally, Staff argues that the vehicles are used primarily for the purpose of collecting solid waste.

22 Staff misinterprets the statutory definition of “private carrier” and misapplies the facts as determined by the ALJ.

1. Staff Erroneously Interprets the Meaning of “In His or Her Own Vehicle.”

23 Staff contends that Ridwell cannot be a “private carrier” because Ridwell’s drivers, not the company, “own” most of the vehicles being used for collection and transportation.³² Staff’s argument essentially is that “in his or her own vehicle” is synonymous with “in a vehicle that he or she owns.” Staff confuses the meaning of “own” when used as a verb with its meaning as an adjective, which is how it is used in the statutory definition.

24 Dictionaries make just this distinction based on parts of speech. As a verb, “own” means “to have or hold as one’s own; possess.” As an adjective, however, “own” means “of, relating to, or belonging to oneself or itself (usually used after a possessive to emphasize the idea of ownership, interest, or relation conveyed by the possessive: *He spent only his own*

³¹ RCW 34.05.464(4) (“In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer’s opportunity to observe the witnesses.”).

³² Staff Petition ¶¶ 12, 18.

money.”³³ As an adjective “own” is used to indicate that someone does something without any help from other people.”³⁴ That is the case here. The Legislature did not want a private carrier to use some other carrier to transport materials to a solid waste site.

25 This also is how the phrase is used in day-to-day speech. “In your own home” does not mean in the home that you own but in the home you occupy. “My own apartment” does not connote ownership, only occupancy. And a vehicle that a company leases is nonetheless “its own vehicle.” The vehicles in which Ridwell drivers transport materials are, based on their use in Ridwell’s business, Ridwell’s “own vehicles.”

26 Thus interpreted, the statute would continue to limit the category of “private carrier” consistent with the purposes of the statute. What the statutory definition tries to exclude from the definition of private carrier is a person who instead of hauling something him or herself hires another carrier to do so. So, for example, assume Company X is a building contractor and creates waste at a job site. It then hires Company Y to haul the waste away. In that case, Company X would not be a private carrier, even though transporting the solid waste is adjunct to its construction business and Company X could be construed to be “transporting” the waste by causing it to be hauled away. On the other hand, if the owner of Company X hauled the waste in his or her private vehicle, not one in the company’s name, that would be fine, as the vehicle would be in the control of the business operation, even if title were not in the company. The same would be true if the waste was hauled in a vehicle leased by the company or in the private vehicles of the employees. The hauling would still be in the control of the business.

³³ See <https://www.dictionary.com/browse/own?s=t>.

³⁴ See <https://www.collinsdictionary.com/dictionary/english/own>.

27

To the extent that the statutory provision is ambiguous, common canons of statutory construction support this conclusion. First, “[s]tatutory construction cannot be used to read additional words into the statute.”³⁵ Staff seeks insert new words into the statute by converting the words “in his or her own vehicle” to “in a vehicle that he or she owns.” Second, the statute should not be read to lead absurd consequences.³⁶ That would be the case under Staff’s interpretation because it would mean that Staff would have to police the ownership status of vehicles used by contractors and other persons operating as private carriers. The contractor in the above example could be a private carrier on the days a company vehicle is used, but a solid waste company on days when employees haul the debris in their vehicles. That seems unduly complicated. The Commission should reject the Staff’s proposed interpretation.

2. The Initial Order Correctly Determined that Ridwell Picks Up and Transports Recyclables Not Collected by the Certificated Carriers as an “Incidental Adjunct to Some Other Private Business.”

28

Staff argues first that the Initial Order did not describe the relationship between Ridwell’s collection of recyclable materials and its collection of other items.³⁷ But the comparison is not between one aspect of a business operation and another aspect. If that were the case then Commission Staff would be comparing the junk haulers’ hauling of junk with the sweeping up of the debris left behind as part of its cleanup operation. Rather, the comparison is between the incidental aspect of the business and the entirety of the business. So, the roofer who hauls old shingles to the dump is a private carrier because the hauling is

³⁵ *Densley v. Dep’t of Ret. Sys.*, 162 Wn.2d 210, 219, 173 P.3d 885 (2007).

³⁶ *State v. Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992).

³⁷ Staff Petition ¶23.

incidental to the overall roofing operation. Likewise, as Judge Kopta determined, the overall service that Ridwell performs is one of providing a private delivery service that takes unwanted items from its customers and delivers them to a place that where they can be put to a better use. As we argued in our Post-Hearing Brief, Ridwell is in the “upcycling” business.³⁸ An incidental part of that is taking materials to a recycler where there is no option to reuse the materials. As Judge Kopta found, and as supported by testimony of Ridwell CEO Metzger, “[w]herever possible, Ridwell delivers the items it collects to local non-profit organizations that can reuse the items.”³⁹ It is that broader business purpose that any that transport to recyclers is incidental to. The Initial Order was correct to cite the dictionary definition of “incidental” as “[s]omething that is an adjunct to something larger or more important is connected with it or helps to perform the same task.”⁴⁰

29

In support of its argument, Staff also focusses on the quantities of recyclable materials collected vis-à-vis non-recyclables (remembering of course that the recyclables collected are not collected by the certificated solid waste haulers).⁴¹ As part of argument, Staff asserts (and frequently reasserts⁴²) that old clothes, like those Ridwell collects and transports to Goodwill for reuse, are “textiles” and therefore must fall in the recycling category. Judge Kopta wisely pointed out:

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

³⁸ Ridwell Post-Hearing Br. ¶44, n.95.

³⁹ Order 04 ¶38 (Finding of Fact 5); *see* Metzger TR. 151:23-152:2; Metzger, Exh. RM-1T at 7:15-19

⁴⁰ Order 04 ¶18.

⁴¹ There is one minor exemption to this otherwise complete lack of overlap between what Ridwell picks up and what the certificated carriers pick up that is discussed in section II above.

⁴² Staff points out at least seven times that “textiles” are listed as recyclables in the solid waste plans. Staff Petition ¶¶13 n.34, 37, 43,48, 49, 50.

thrown in the trash, but the same is true of anything that can fit within a garbage container.⁴³

This is consistent with how the Department of Ecology has interpreted the definition of solid waste in its statutes and which definition is incorporated into the public service laws.⁴⁴ The Ecology regulations indicate that material once considered solid waste because it was “discarded or abandoned” that is no longer abandoned and is now separated from solid wastes, has value, and presents little threat to the environment, is no longer “solid waste.”⁴⁵ That applies to used clothes, Halloween candy, old jewelry and other items that avoid the trash can in favor of Ridwell’s bags. So, Judge Kopta is correct: used clothes, shoes, and related items should not be considered solid waste.

30 While over 80% of the categories of materials that Ridwell collects contain some portion that was reused,⁴⁶ Judge Kopta correctly stated 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.”⁴⁷ It is the broader purpose that one must look to. As Judge Kopta noted, “[t]he majority of the packages sent through the U.S. Mail may contain merchandise, but that does not make the postal service a retailer.”⁴⁸ Further, as this analysis is fact laden, though the Commission has ultimate fact-finding authority,⁴⁹ Judge Kopta’s

⁴³ Order 04 ¶25.

⁴⁴ RCW 81.77.010(9) adopts the definition of “solid waste” from the Department of Ecology laws.

⁴⁵ WAC 173-350-021(3).

⁴⁶ Metzger TR. 155:17-21

⁴⁷ Order 04 ¶26.

⁴⁸ *Id.* Although the Commission may get weary of our repeated references to the junk hauling industry, a reference is apt here as well. One hundred percent of the material that the junk haulers pick up and transport is solid waste, but under the Staff’s view, that does not make them a solid waste hauler.

⁴⁹ See *Tapper v. Employment Security Dept.*, 122 Wn.2d 397, 405-06, 858 P.2d 494 (1993).

decision deserves some deference.⁵⁰

3. The Commission Should Reject Staff's Argument that Ridwell's Vehicles Are Primarily Used to Transport Solid Waste.

31 Staff cites the second sentence in the definition of “private carrier” in RCW 81.77.010(5) which states: “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.” Staff agrees that though Ridwell’s vehicles are not “designed” to transport solid waste, they say that they are used for such transport.

32 This is essentially the same issue as whether Ridwell’s hauling of recyclables is incidental to its larger business purpose. It is true that the cars and the van used by Ridwell carry some lightbulbs, batteries, and plastic film. But they also pick up and carry food to the foodbank, clothes to Goodwill, and Halloween candy, books, toys, used eyeglasses, school supplies, jewelry, stuffed animals, small electronics, and diapers to any number of local charity “partners.”⁵¹ Ridwell does not use one type of vehicle for recyclables and another for everything else. Everything is together. Because Ridwell is not a “solid waste business,” its vehicles cannot be used primarily for that purpose. See also argument in section III.B. below.

33 Compare Ridwell’s van and passenger cars with the vehicles used by other “private carriers,” namely junk haulers. Those vehicles look like, sound like, and act like garbage trucks.⁵² Nevertheless such haulers are treated as private carriers. Though Staff seems to argue that it is not appropriate to look at how other companies are regulated,⁵³ that is not correct.

⁵⁰ RCW 34.05.464(4) states: “In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer’s opportunity to observe the witnesses.”

⁵¹ Metzger, Exh. RM-01T at 17:20 – 23:18.

⁵² For example, see the pictures on the 1-800-GOT-JUNK website. https://www.1800gotjunk.com/us_en.

⁵³ Staff Petition ¶57.

When an agency applies the laws to facts, it should do so consistently.

4. Classifying Ridwell as a Private Carrier Is Consistent with Regulatory Policies.

34

Judge Kopta noted that classifying Ridwell as a private carrier is consistent with the statute as a whole.⁵⁴ Looking to the statute as a whole, and to its underlying policies, is a standard aid in construing and applying a statute.⁵⁵ The intent of RCW 81.77 was to regulate the natural monopoly of solid waste companies picking up refuse (and later recyclables) on a regular route in a franchised service territory. As stated by the Attorney General in a formal opinion issued to the Commission shortly after the enactment of RCW 81.77 in Chapter 295, Laws of 1961. The Attorney General stated:

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.⁵⁶

35

Regulation substitutes for competitive market forces by setting rates for the certificated companies, ensuring public safety, and protecting their consumers from monopolistic behavior. As Judge Kopta noted, Ridwell exercises no monopolistic power, as its services are optional. It does not use large garbage-style trucks, so safety considerations are minimal (and likely less than if all the customers were themselves on the road taking their clothes and plastics to various drop-off points). And “if a customer does not like the

⁵⁴ Order 04 ¶¶ 20-23.

⁵⁵ *E.g.*, *State ex rel. Royal v. Board of Yakima County Commissioners*, 123 Wn.2d 451, 462, 869 P.2d 56 (1944).

⁵⁶ AGO 61-62, No. 67, at 10 (Oct. 2, 1961) (1961 AGO), available at <https://www.atg.wa.gov/ago-opinions/offices-and-officers-state-public-service-commission-interpretation-carriers-used>. We explained the background and meaning of this AGO, and a subsequent one, in our Post-Hearing Brief. Ridwell Post-Hearing Br. ¶¶4-8.

Company's rates, terms or conditions, the customer can either throw their unwanted items in the trash or take the items themselves to the same donation locations or recycling centers to which Ridwell delivers them."⁵⁷ Commission regulation of Ridwell is simply "unwarranted."⁵⁸

5. Classifying Ridwell as a Private Carrier Should Not Impact Other Regulatory Issues.

36 Staff expresses a concern that leaving the Initial Order's decision in place would have adverse impacts on other aspects of the regulatory lives of Commission Staff and regulated entities. In this context, as part of applying the applicable statutes and regulations, Staff apparently would like the Commission the consequences of its actions. In our Post-Hearing Brief, we also pointed out practical consequences of classifying Ridwell as a solid waste collection company. Staff's response was that, in that context, our arguments should be ignored and that decision on classification should be made "regardless of the consequences."⁵⁹ Though we are tempted to quote back to Staff its carefree disregard of consequences of any given legal argument, that would be wrong. In interpreting and applying a statute, it is appropriate to consider the consequences.⁶⁰

37 The trouble is, of course, that Staff only alleges that there will be adverse consequences; it does not state what those consequences are. However, even without being

⁵⁷ Order 04 ¶23.

⁵⁸ *Id.*

⁵⁹ Staff Petition ¶54. Staff continued: "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." With all due respect, we suggest that the Commission should adopt a more benign approach to innovation, particularly when it will lead to the furtherance of state environmental policies.

⁶⁰ See *State v. Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992) (statutes should be interpreted to avoid "unlikely, absurd, or strained consequences"). In our Post-Hearing Brief, we articulated a number of the absurd consequences that could occur if Ridwell were to be classified as a solid waste collection company. Ridwell Post-Hearing Br. ¶¶34-44.

privity to the concerns conveyed to Staff, it is fair to say that the Initial Order can be affirmed without dramatic impact on others. This is for three reasons.

38 First, as the Initial Order points out, the issues in this case are “novel,”⁶¹ and the case is fact specific. Judge Kopta clearly stated that if facts change so could the result.⁶²

39 Second, if there is concern about the precedent, perhaps the concern should be focused on junk haulers. While Ridwell does not deprive certificated carriers of any business, junk haulers clearly do. Commission Staff has permitted junk haulers to be unregulated for years, over the objection of the certificated carriers.⁶³ Granted, there is no Commission decision endorsing the Staff adherence to the private carrier concept for junk haulers, that legal and policy position has been established. If Commission Staff now has concerns, or, more appropriately, if the certificated carriers have concerns, then they should commence a complaint proceeding against one or more junk haulers or other entities whose actions actually impact the certificated carriers.

40 Finally, the issues that Staff alludes to in its Petition are big picture issues and, if important, should be addressed in a broader proceeding, likely a rulemaking proceeding. If the Commission were to reverse course on the private carrier concept by rule, such a rule would apply to Ridwell.⁶⁴

41 In sum, the Commission should not embrace the vague regulatory concerns of the certificated carriers, as channeled by Staff, as a reason to reject the Initial Order.

⁶¹ Order 04 ¶33.

⁶² *Id.* ¶32.

⁶³ *See* Metzger, Exh. RM-09.

⁶⁴ Of course, applying any rule prospectively to existing business operations could implicate due process issues, but those can be handled in the rulemaking process.

B. The Commission Should Reject the Argument that Ridwell Should Be Classified as a Solid Waste Company.

42 If the Commission does reject the Initial Order’s holding that Ridwell is a private carrier, it will need to address the issue of how Ridwell should be classified. In its Petition, Staff reiterates the argument made in its post-hearing brief that Ridwell is a solid waste company that should be regulated under RCW 81.77.⁶⁵ Again, Staff applies a relatively mechanical approach to determining whether RCW 81.77 is implicated. They essentially argue that because Ridwell collects some materials that under local solid waste management plans are classified as “recyclable” (whether or not such plan requires carriers to collect them), Ridwell collects “solid waste” and therefore the panoply of RCW 81.77 requirements apply. While Commission Staff may have an appropriate role in protecting the franchised operations of certificated carriers from destructive competition, it need not impose regulation for regulation sake on innovators who find ways to fill the void left by the certificated carriers.

43 At the hearing, we raised a hypothetical to highlight the approach Staff is taking to application of RCW 81.77: a hypothetical teenage entrepreneur who wants to help his neighbors recycle glass, a commodity no longer picked up by the carriers, at least in some areas, such as Olympia and Tacoma. With curbside pick-up no longer an option, the neighbors who would want to recycle their glass (as is the case in Olympia and Tacoma) would have to load the boxes of glass into the car and take them to a drop-off point. When asked whether a teenager who would do that for a group of neighbors, perhaps at \$1 or \$2 per pick up, would

⁶⁵ Ridwell Petition ¶¶ 31-39; Brief on Behalf of Commission Staff (Staff Post-Hearing Br.) ¶¶ 24-43 (June 12, 2020).

run afoul of the Commission's rules, the Staff witness stated: "Yes, And he would receive a letter from me stating that he had violated RCW 81.77.040. He's required to have a certificate."⁶⁶ So, in order for a teenager to take some glass to a recycling center for neighbors, he would need to file an application for a \$200 fee, get insurance, file maps, and endure an administrative process that requires the Commission to find that the certificated carrier, that no longer picks up glass, is not serving to the satisfaction of the commission? That seems a bit much. And that hypothetical is a realistic one. There have been news reports of such teenage entrepreneurs being celebrated in other states.⁶⁷

44 Of course, Ridwell is not a teenager helping neighbors; it is a growing business serving thousands of customers. So, the analogy only serves to highlight the Staff approach; the argument that RCW 81.77 does not apply needs supportive legal argument. And because we provided that in some detail in our post-hearing brief, so we will only summarize here.

45 Even with this new briefing opportunity, Staff has not responded to an important part of our argument to the ALJ: contemporaneous interpretation of chapter 81.77 RCW demonstrates that the statute was intended to apply to solid waste companies that ran regular routes in a franchised service territory, not companies like Ridwell that performed more specialized services.⁶⁸ Chapter 81.77 RCW was enacted in 1961 as chapter 295, Laws of 1961. Shortly after its enactment, the Commission sought a formal opinion of the Attorney General, asking:

⁶⁶ McPherson TR. at 60:1-10.

⁶⁷ See https://www.bgdailynews.com/opinion/our_opinion/teens-recycling-efforts-worth-emulating/article_e64cf11b-f5e5-556c-b786-ff137603ceb5.html; <https://www.arlnow.com/2020/06/04/college-students-launch-glass-recycling-service-in-arlington/>

⁶⁸ See Ridwell Post-Heating Br. ¶¶4-7, 19-28.

Do the provisions [of the Act] 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?”⁶⁹

46 After reviewing the history of how the Commission regulated carriers of garbage and refuse, the Attorney General concluded:

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.⁷⁰

47 In other words, the Commission needs to look at the totality of the business to see if a carrier is a solid waste company within the meaning of RCW 81.77.

48 The Attorney General recognized the ambiguity in drawing the line between a carrier of solid waste that needed to be regulated under RCW 81.77 and a carrier of solid waste that could be regulated only under RCW 81.80,⁷¹ and recommended that the Commission adopt rules, which it did.⁷² In their current form, the regulations state the general principle that “[c]hapter 81.77 is intended to cover operations of carriers whose primary business is transporting solid waste for collection and/or disposal.”⁷³ The regulation then sets forth a non-exclusive list of “factors” for the Commission to consider when making the

⁶⁹ 1961 AGO at 1.

⁷⁰ *Id.* at 3.

⁷¹ Indeed, in a later formal opinion, the Attorney General stated that the 1961 solid waste statute “was not a masterpiece of clarity” 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>.

⁷² See 1966 AGO at 3 (quoting a “note” to the initial set of rules that explained that “Chapter 295, Laws of 1961, was not intended to cover operations of carriers whose business is other than the primary business of transporting garbage and refuse for collection and/or disposal. Permit holders under the provisions of chapter 81.80 RCW, whose primary business is not the collection of garbage and refuse, need not secure a certificate under the provisions of chapter 295, Laws of 1961.”).

⁷³ WAC 480-70-016(1).

determination whether a carrier should be regulated as a solid waste company.⁷⁴ In our post-hearing brief, we discussed each of these factors and why their application supports a decision that Ridwell should not be regulated under RCW 81.77.⁷⁵ Judge Kopta also evaluated these factors and concluded that “the factors do not support classifying the Company as a solid waste collection company.”⁷⁶ Application of these factors is substantially factual (“qualitative,” not “quantitative,” as the Attorney General put in 1966⁷⁷), and the Judge Kopta’s evaluation of factual evidence, particularly that presented by live testimony, must be given “due regard.”⁷⁸

49 That is the way the Commission implemented RCW 81.77. It required the filing of maps of service territories and required that solid waste hauling is the “primary purpose” of the company before it is regulated as a solid waste company. In other words, the Commission at the outset recognized the intended scope of the new law.

50 Ridwell simply does not fit within the intended scope of RCW 81.77. As articulated above, the “primary purpose” of Ridwell’s operations is not the collection and transportation of solid waste. Ridwell does not operate in a set service territory over a regular route,⁷⁹ and it does not compete with the certificated carriers.⁸⁰ And, as detailed in our post-hearing brief, interpreting the solid waste transportation statutes to apply to Ridwell would be inconsistent with a number of canons of statutory construction. The solid waste statutes should be

⁷⁴ WAC 480-70-016(4).

⁷⁵ Ridwell Post-Hearing Br. ¶¶ 20-27.

⁷⁶ Order 04 ¶28. Judge Kopta noted that given his decision that Ridwell is a private carrier, application of these factors is of “limited applicability,” but he nevertheless applied each of them.

⁷⁷ 1966 AGO, at 10; *see* Ridwell Post-Hearing Br. ¶27, n.51.

⁷⁸ RCW 34.05.464(4).

⁷⁹ Metzger, Exh. RM-1T at 4:5-8, 5:17-23.

⁸⁰ *Id.* at 9:22, 31:22-32:1.

interpreted and applied to further the solid and environmental policies of the State of Washington;⁸¹ to be consistent with the statute’s historic purpose;⁸² and to result in similar treatment with other businesses.⁸³ Perhaps most telling: the statute should be interpreted and applied to avoid absurd results and undue administrative complexity.⁸⁴

51 If Ridwell were to be classified as a solid waste company, it would be subject to the requirements for setting of rates,⁸⁵ paying regulatory fees,⁸⁶ limits on its pricing options,⁸⁷ and requirements on markings of vehicles.⁸⁸ Further, in order for the Commission to allow Ridwell to operate as a solid waste company, it would have to find that either that the existing solid waste carriers do not object to Ridwell’s operations or that the existing carriers “will not provide service to the satisfaction of the commission.⁸⁹ Given that Staff has suggested that existing carriers have concerns, it not a sure thing that the those carriers will not object. And if the carriers are operating in accordance with Commission rules, how could the Commission find that it is not “satisfied”?

52 The Initial Order cites to many of these administrative complexities as reasons for its holding.⁹⁰ But Staff suggests that these complexities and consequences are irrelevant, stating that if the Commission finds that Ridwell is collecting solid waste, then the decision on

⁸¹ Ridwell Post-Hearing Br. ¶¶32-33

⁸² *Id.* ¶¶29-31.

⁸³ *Id.* ¶¶43-44.

⁸⁴ *Id.* ¶¶34-42.

⁸⁵ RCW 81.77.030.

⁸⁶ WAC 480-70-076.

⁸⁷ WAC 480-70-396.

⁸⁸ WAC 480-70-101 to -206.

⁸⁹ RCW 81.77.040.

⁹⁰ Order 04 ¶¶ 30-31

whether Ridwell should be classified as a solid waste company should be made “regardless of the consequences of that conclusion.”⁹¹

53 But evaluation of practical consequences of a given interpretation is integral to that interpretation. That is how Washington courts approach statutory interpretation,⁹² and it is how the United States Supreme Court does as well. For example, in *King v. Burwell*,⁹³ challengers to the Affordable Care Act (ACA) argued that the certain tax credits were available only in relation to “an exchange established by the state” That interpretation would have precluded the credits in states where the federal government had established the exchanges. Despite the dissent’s focus on the plain language of the ACA, Chief Justice Roberts, for the majority, held that accepting the challengers’ argument “would destabilize the individual insurance market” in states with a federal exchange, and likely lead to “death spirals” that the ACA sought to avoid.⁹⁴ This real-world specter was at the forefront of the Court’s analysis. Likewise, the Commission should consider the real-world consequences of a holding that Ridwell is be subject to RCW 81.77 requirements.

54 Accordingly, should the Commission determine that Ridwell is not a private carrier as argued in Part III.B. above, it should reject Staff’s argument and determine that at most Ridwell need be regulated only as a common carrier under RCW 81.80 RCW.

C. The Commission Should Request that Staff Withdraw the Petition and Let the Initial Order Take Effect by Operation of Law.

55 As stated at the outset, if Staff had wanted to avoid the precedential impact of the

⁹¹ Staff Petition ¶ 54.

⁹² *State v Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992).

⁹³ 576 U.S. 473 (2015)

⁹⁴ *Id.* at 492.

Initial Order, it should have done nothing. But Staff filed the Petition.

56 While, as argued above, the Commission should have no qualms about affirming the Initial Order, if the Commission would rather avoid setting a precedent, leaving the issues to another day and another context, one option may be to convene a conference and request that Staff withdraw the Petition. Upon such withdrawal the Initial Order would take effect by operation of law, and the Initial Order, while binding between the Commission and Ridwell, would have no precedential effect.⁹⁵

IV. REQUEST FOR PUBLIC COMMENT HEARING

57 In WAC 480-07-498 the Commission reserved to itself the option of convening one or more public comment hearings to hear from those not parties in the proceeding.⁹⁶ Such hearings are a good means by which the Commission can assess the “public interest,”⁹⁷ which is by statute an essential component of all the Commission’s regulatory activity.⁹⁸

⁹⁵ WAC 480-07-825(1)(c).

⁹⁶ WAC 480-07-498 states:

(1) **General.** The commission will receive as a bench exhibit any public comment submitted by nonparties in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may receive into evidence documents a member of the public presents that are exceptional in their probative value after the commission provides the parties an opportunity to respond to those documents.

(2) **Public comment hearing.** The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, a presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public who indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement. Typically, public witnesses may expect to have three to five minutes to make an oral statement. A public witness may supplement his or her oral statements with written comments signed by the witness.

⁹⁷ See, e.g., *US West Communications, Inc. v. Utilities & Transportation Comm’n*, 134 Wn.2d 74, 113-15, 949 P.2d 1337 (1997) (comments telecommunications company customers at public hearings in seven cities led in part to Commission’s conclusion that company had provided inadequate customer service which resulted in a reduction in the allowed rate of return for that company).

⁹⁸ See RCW 80.01.040(2).

58

At the hearing, Ridwell submitted, and the ALJ admitted over Staff's objections, comments of selected customers of Ridwell as well as letters of support from 24 legislators, local governments, and Ridwell's partners.⁹⁹ While these are supportive of the public interest in Ridwell's operations, a formal public comment hearing would allow for an opportunity for the Commission to assess for itself these public interest concerns. Given that Commission Staff apparently has advocated that the interests of the certificated carriers be considered,¹⁰⁰ it seems fair to likewise hear directly from members of the public about their interests.

V. CONCLUSION

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By offering customers an opportunity to repurpose their unused belongings, through either reuse or recycling, Ridwell is filling a void in the current solid waste management system. Ridwell keeps materials out of the waste stream and directs them to a better use. To that end, the Commission should be eager to facilitate Ridwell's operations. Those operations do not run afoul of any Commission statute; they are consistent with and further State solid waste and environmental policies; and they serve charities and the needy. Ridwell truly furthers the "public interest." The Commission should do likewise¹⁰¹ and uphold the Initial Order of Judge Kopta.

⁹⁹ See Metzger, Exhs. RM-16 through -19.

¹⁰⁰ Staff Petition ¶¶ 3, 69.

¹⁰¹ See RCW 80.01.040(2).

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Respectfully submitted,

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