

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper  
Carrier Classification of:

RIDWELL, INC.

DOCKET TG-200083

ORDER 05

FINAL ORDER DENYING IN  
PART AND GRANTING IN PART  
PETITION FOR  
ADMINISTRATIVE REVIEW

**BACKGROUND**

- 1 On March 5, 2020, the Washington Utilities and Transportation Commission (Commission) entered Order 01, Order Instituting Special Proceeding; Complaint Seeking Classification; and Notice of Brief Adjudicative Proceeding (Complaint) for Ridwell, Inc. (Ridwell or Company). The Complaint alleged that Ridwell violated provisions in Title 81 RCW by hauling solid waste for compensation without first obtaining the required certificate of public convenience and necessity from the Commission. The Complaint requests that the Commission order Ridwell to cease and desist its solid waste operations unless and until the Company obtains the required certificate and recommends that the Commission impose a suspended penalty of \$5,000 for the Company's past violations.
- 2 On May 12, 2020, the Commission conducted a virtual evidentiary hearing before Judge Gregory J. Kopta. The parties filed post-hearing briefs on June 12, 2020.
- 3 On August 10, 2020, Judge Kopta entered Order 04, Initial Order Dismissing Complaint (Order 04). Order 04 found that (1) Ridwell uses passenger vehicles and a cargo van to pick up reusable items from residential customers, as well as recyclable materials that certificated carriers do not collect; (2) whenever possible, Ridwell delivers the household items it collects to local non-profit organizations for reuse; (3) when an item cannot be reused, Ridwell delivers it to a specialized recycler that accepts materials from the general public; and (4) 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. Order 04 concluded that (1) Ridwell is a private carrier as defined in RCW 81.77.010(5); (2) Ridwell transports solid waste in its drivers' vehicles,

which are not designed or used primarily for the transport of solid waste, purely as an incidental adjunct to the Company's established private pickup and delivery business owned and operated by Ridwell in good faith; (3) Ridwell does not meet the statutory definition of "solid waste collection company," and (4) the Complaint against Ridwell should be dismissed.

- 4 On August 31, 2020, Staff filed with the Commission a Petition for Administrative Review of Order 04 (Petition). In its Petition, Staff argues that Ridwell should not be classified as a private carrier because (1) collecting recyclable material is Ridwell's primary business, and is not an incidental adjunct to another business; (2) Ridwell does not collect recyclable materials in its own vehicles; and (3) the vehicles used to collect recyclable materials are used by Ridwell primarily for that purpose. Staff further argues that Ridwell does not meet the criteria for an exemption from Commission rules governing the operations of solid waste collection carriers, and that Ridwell should, at a minimum, be classified as a common carrier.
- 5 Staff also argues that the Commission does not have the authority to define which materials are designated as recyclable because those definitions are set forth in statute. Finally, Staff argues that paragraphs 30 and 31 should be deleted from Order 04 because that portion of the order considers factors beyond the scope of a classification proceeding, such as whether Ridwell would be able to operate as a solid waste collection carrier under the Commission's existing rules governing those operations.
- 6 On September 10, 2020, Ridwell filed with the Commission a response to Staff's Petition (Response). In its Response, Ridwell takes issue with Staff's assertion that 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" because Staff fails to articulate its specific concerns. Ridwell argues that the Commission should consider only the Company's classification as a regulated carrier and should address broader regulatory issues in another forum. Ridwell supports the Initial Order's conclusion that the Company is a private carrier exempt from Commission regulation. Alternatively, Ridwell argues that, at most, it should be classified as a common carrier.
- 7 Ridwell further suggests that the Commission could request Staff withdraw its Petition and let the Initial Order take effect by operation of law, which would ensure that it carried no precedent. Ridwell also requests that, if the Commission deems it appropriate to consider the merits of whether Ridwell is a private, common, or solid waste collection carrier, the Commission convene a public comment hearing to assess the public interest

in Ridwell's operations. Finally, Ridwell asserts that, contrary to Staff's belief, it does not operate a materials recovery center (MRF). Rather, Ridwell claims its facility is a warehouse in which bags of similar items are consolidated for delivery or pick-up, and that Ridwell does not do its own recycling or separate materials from one another and from refuse.

### DISCUSSION AND DECISION

8 We deny Staff's Petition, in part. For the reasons explained herein, the Commission sustains the Initial Order in terms of its results related to Ridwell's classification as a solid waste collection company but reaches those results on a different basis.<sup>1</sup> We also clarify the Initial Order in certain respects. Finally, we grant Staff's Petition, in part, and classify Ridwell as a common carrier.<sup>2</sup> We address Staff's arguments in turn.

#### *Classification as a Solid Waste Collection Company*

9 Staff argues that Ridwell's collection of certain recyclable materials is, by statute, solid waste collection because Ridwell collects materials identified in King County's Comprehensive Solid Waste Plan as "recyclable." To support its position, Staff points to RCW 70A.205.015,<sup>3</sup> which defines "solid waste" to include recyclable materials, and further defines "recyclable materials" to mean "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."

10 Although Staff correctly observes in its Petition that the definitions of "solid waste" contained in RCW 81.77.010 and RCW 70A.205.015 should be read together, we disagree with Staff's conclusion that "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."<sup>4</sup>

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<sup>1</sup> Commissioner Balasbas dissents from the majority decision and writes a separate opinion.

<sup>2</sup> In its Response, Ridwell requests the Commission convene a public comment hearing to assess the public interest in Ridwell's operations. Because we determine that Ridwell's operations do not require a solid waste collection carrier certificate, there is no need to gauge public interest in the Company's unregulated activity.

<sup>3</sup> Staff cites RCW 70.95.030 in error.

<sup>4</sup> Staff Petition ¶31.

- 11 Staff’s interpretation fails to acknowledge that RCW 81.77.010, which adopts the definition of solid waste set out in RCW 70A.205.015, includes the following caveat: “for the purposes of this chapter solid waste *does not include recyclable materials except for source separated recyclable materials collected from residences.*”<sup>5</sup> Accordingly, RCW 81.77.010 intentionally narrows the definition of “recyclable materials” set forth in RCW 70A.205.015. Staff construes this language to limit the Commission’s jurisdiction to the collection of *any* recyclable materials from residential customers, including materials that are not collected by certificated carriers. We reach a different conclusion for the reasons discussed below.
- 12 RCW 81.77.015(7) adopts the definition of “solid waste” set out in RCW 70A.205.015, which defines “recyclable materials” as solid waste “identified as recyclable material pursuant to a local comprehensive solid waste plan.” In turn, comprehensive solid waste plans identify separately recyclable materials generally and recyclable materials collected from residences pursuant to a curbside collection program.<sup>6</sup> Because the definition of “solid waste” adopted by RCW 81.77.010(7) derives from local comprehensive solid waste plans, it follows that the definition of “recyclable materials collected from residences” derives from that same source.
- 13 Staff’s interpretation ignores these separate categories of recyclable materials and is incompatible with the broader changes the Legislature made to statutory provisions governing solid waste management and collection in 1989.<sup>7</sup> Contemporaneous with adopting new definitions for “recyclable materials,”<sup>8</sup> the Legislature adopted the

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<sup>5</sup> Emphasis added.

<sup>6</sup> RCW 70A.205.045 requires that county and city comprehensive solid waste management plans contain “Recycling strategies, including ... a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection.” Accordingly, solid waste management plans discuss and describe all available recycling programs, including programs for curbside collection from residential customers, drop-off boxes and/or buy-back centers, and collection from nonresidential sites. Each program description includes a list of materials designated for collection pursuant to that program.

<sup>7</sup> Washington Laws 1989, Chapter 431 (Substitute House Bill No. 1671) Solid Waste Management.

<sup>8</sup> The definition of “recyclable materials” was originally codified at RCW 70.95.030(14), and is now codified at RCW 70A.205.015(17).

following language requiring the implementation of curbside recycling programs in comprehensive solid waste plans:

- (7) The waste reduction and recycling element [of a comprehensive solid waste plan] shall include the following:

...

- (b) Source separation strategies, including:

(i) Programs for the *collection of source separated materials from residences* in urban and rural areas.<sup>9</sup> In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple-family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines ... In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county ...<sup>10</sup>

14 The phrase “source separated materials collected from residences” thus refers to materials collected pursuant to curbside collection programs, which are a distinct subset of the “recyclable materials” identified in local comprehensive solid waste plans. Because RCW 81.77.010(7) limits the definition of “recyclable materials” to items collected from residential customers, we interpret the definition of “recyclable materials” in RCW 81.77.010(7) to include only those recyclable materials identified in a local comprehensive solid waste plan as “curbside” materials collected from residential customers. As such, the relevant inquiry for our purposes is whether Ridwell collects materials identified in the applicable local comprehensive solid waste plan as materials collected from residences via curbside pickup.

15 As applicable here, King County’s comprehensive solid waste plan defines recyclable materials generally and further identifies which of those recyclable materials are “curbside” materials – *i.e.*, recyclable materials that solid waste companies collect from

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The definition of “solid waste” was originally codified at RCW 81.77.010(9), and is now codified at RCW 81.77.010(7).

<sup>9</sup> Emphasis added.

<sup>10</sup> RCW 70A.205.045(7)(b)(i). Emphasis added.

residential customers. Under King County’s comprehensive solid waste plan, the materials designated for curbside residential pickup are newspaper, mixed paper, cardboard, tin and aluminum cans, plastic bottles, glass bottles and jars, yard waste, food scraps and food soiled paper, aerosol cans, small scrap metal, plastic jugs and tubs, plastic plant pots, plastic trays and clamshells, drink/coffee cups, and aseptic cartons/containers.<sup>11</sup> King County’s comprehensive solid waste plan also identifies recyclable materials that are *not* collected curbside, including plastic bags, plastic wrap, electronics, fluorescent bulbs and tubes, and Styrofoam.<sup>12</sup> Because Ridwell collects none of the materials designated by the local comprehensive solid waste plan for curbside pickup, we find that Ridwell does not collect “solid waste” as that term is defined in RCW 81.77.010(7).

- 16 Order 04 appropriately recognizes, however, that the statutory definition of “recyclable materials” is subject to change as comprehensive solid waste plans evolve over time:

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.<sup>13</sup>

- 17 Staff challenges this paragraph and poses the following question: “How could another company’s collection of these same materials [that Ridwell collects] change the Commission’s *jurisdiction* over Ridwell?” As discussed above, the definition of “solid waste” contained in both RCW 70A.205.015 and RCW 81.77.010 is informed by local comprehensive solid waste plans, which are updated approximately every five years. If the definitions of “recyclable materials” and those designated for curbside pickup contained in local comprehensive solid waste plans change, so too does the Commission’s jurisdictional purview.

- 18 The Commission is otherwise indifferent to the collection of recyclable materials that regulated companies *do not* collect from residential customers because, much like “junk

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<sup>11</sup> Exh. KM-1, Attachment A, p. 106.

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

<sup>13</sup> Order 04 ¶32.

hauling,” carriers who collect those materials neither impact the provision of essential solid waste collection services nor competitively disadvantage regulated companies.<sup>14</sup>

- 19 We agree with the administrative law judge that Commission Staff appropriately brought the parties’ jurisdictional dispute to the Commission for determination. Resolving the question of whether a carrier who collects recyclable materials is collecting “solid waste” is a fact-specific inquiry that must be made on a case-by-case basis.
- 20 Even if Ridwell collected solid waste, however, we would agree with Order 04’s conclusion that Ridwell’s operations are not subject to Commission jurisdiction.<sup>15</sup> Ridwell transports recyclable materials that solid waste carriers do not collect as an incidental adjunct to its upcycling business in vehicles that are not designed or used primarily for the transport of solid waste. Such a company is not a solid waste collection company as defined in applicable law.
- 21 Order 04 correctly notes that the Commission has not previously addressed circumstances under which it will determine whether a company is a private carrier as defined in the statute. We therefore will take this opportunity to address Staff’s arguments related to Order 04’s finding that Ridwell is a private carrier for the purpose of providing guidance in making such determinations.

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<sup>14</sup> Staff argues that Ridwell’s service overlaps with regulated solid waste collection carrier service because Seattle Public Utilities (SPU) collects light bulbs as part of its curbside collection program. RCW 81.77.130, however, does not apply to the collection or transportation of source separated recyclable materials from residences under a contract with any county, city, or town, nor to any city or town which itself undertakes the collection and transportation of source separated recyclable materials from residences. Accordingly, SPU is not a regulated solid waste collection carrier.

<sup>15</sup> We adopt Order 04 in its entirety except for the last sentence in paragraph 19; paragraph 43; and paragraph 46. We add new paragraph 42 and replace paragraph 46 as described in paragraph 38, *infra*, and replace paragraph 43, as follows:

- (2) ~~Ridwell transports solid waste in its drivers’ vehicles, which are not designed or used primarily for the transport of solid waste, purely as an incidental adjunct to the Company’s established private pickup and delivery business owned or operated by Ridwell in good faith. Accordingly, Ridwell is a private carrier as defined in RCW 81.77.010(5). Because Ridwell collects none of the materials designated by the local comprehensive solid waste plan for curbside pickup, Ridwell does not collect “solid waste” as that term is defined in RCW 81.77.010(7).~~

*Statutory Definition of Private Carrier*

- 22 RCW 81.77.010(5) defines a private carrier 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.”
- 23 Staff claims that the Company does not meet the statutory definition of “private carrier” for several reasons. First, Staff argues that Ridwell does not collect recyclable materials incidental to performing another service because it does not do so in its own vehicles, as required by RCW 81.77.010(5). Staff’s assertion is based on the uncontested fact that Ridwell uses vehicles owned by its employees rather than vehicles owned by the Company.
- 24 Ridwell argues that Staff misinterprets “in his or her own vehicle” to mean “in a vehicle that he or she owns.” The word “own,” Ridwell contends, is used in statute as an adjective rather than a verb and is intended to ensure a private carrier transports solid waste using its own means rather than enlisting another carrier to perform that function. To illustrate its point, Ridwell argues that describing one’s residence as “your own home” denotes occupancy rather than ownership. Similarly, Ridwell argues, a leased vehicle is still a company’s “own vehicle.” Ridwell thus contends that the vehicles in which Ridwell’s drivers transport materials are the Company’s “own vehicles” based on how they are used to conduct Ridwell’s business. We agree.
- 25 Neither applicable statutes nor Commission rules require that regulated carriers own the vehicles they use to provide service, and it is not reasonable to interpret RCW 81.77.010(5) to exempt only those vehicles that are operated by the person who holds legal title. WAC 480-70-211 expressly permits certificated solid waste collection companies to lease vehicles so long as the carrier is responsible for maintaining possession, control, and use of the vehicles during the period of the lease. Considering this regulatory framework, we agree with Ridwell that the phrase “own vehicle” requires use and control of the vehicle, rather than legal ownership, to qualify as a private carrier. We agree with Ridwell’s interpretation that the statutory definition of “private carrier” is intended to exclude “a person who instead of hauling something him or herself hires



another carrier to do so.”<sup>16</sup> Ridwell would meet this requirement because its drivers use their own vehicles and maintain control of those vehicles for the purpose of conducting Ridwell’s business operations for the duration of their shifts.

26 Second, Staff argues that Ridwell is not collecting recyclable materials as an incidental adjunct to another service it provides because collecting recyclable materials from its customers does not aid in Ridwell’s collection of items for reuse or donation, and because Ridwell performs no services at a customer’s residence other than collecting their unwanted items. Staff contends that recyclable materials represent a majority of the items that Ridwell collects and that, if anything, the collection of reusable materials is incidental to the collection of recyclable materials, particularly if “textiles” are properly categorized as solid waste.<sup>17</sup>

27 Ridwell counters that “the overall service Ridwell performs is one of providing a private delivery service that takes unwanted items from its customers and delivers them to a place where they can be put to better use.”<sup>18</sup> Ridwell argues that its primary business is “upcycling,” an incidental aspect of which is taking materials to a recycler when there is no option to reuse the discarded materials. We agree.<sup>19</sup>

28 Even if we were to determine that Ridwell transports solid waste, which we do not, we nevertheless uphold Order 04’s conclusion that “Ridwell is primarily engaged in the business of providing pickup and delivery service”<sup>20</sup> that “provides an alternative to customers making trips to various donation centers or recycling operations.”<sup>21</sup>

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<sup>16</sup> Ridwell Response ¶26.

<sup>17</sup> Staff further argues, at some length, that Ridwell’s initial collection of recyclable materials from its customers cannot be considered purely an incidental adjunct to the eventual distribution of those materials to Ridwell’s “partners” because transporting those materials to its partners meets the statutory definition “disposal.” This argument is based on Staff’s speculation that the administrative law judge’s decision viewed Ridwell’s interactions with its customers and partners as separate operations.

<sup>18</sup> Ridwell Response ¶ 28.

<sup>19</sup> If we were to adopt Staff’s position, we would need to consider whether the Commission must assert jurisdiction over nonprofit entities that accept donations of clothing and other household items, such as Goodwill and St. Vincent de Paul, all of which we assume discard or recycle a portion of the unwanted materials they collect and haul from the public for resale.

<sup>20</sup> Order 04 ¶28.

<sup>21</sup> Order 04 ¶19 (citing Metzger, Exh. RM-1T at 3:5-6).

- 29 Staff attempts to distinguish Ridwell’s operations from the unregulated activities of junk haulers, describing those carriers as performing “clean up” services at residences and then hauling solid waste away. This is a distinction without a difference. A well-known junk-hauling company that operates in Washington as a common carrier holds itself out as providing “decluttering service” and “full-service junk removal,” which it describes as hauling junk away “right from where it’s located.” The company also advertises that “we’ll even sweep up the area when we’re done.”<sup>22</sup> Junk haulers do not provide “clean up services” as Staff contends. Rather, they physically remove junk, which consumers would otherwise have to self-haul, and dispose of it. The hauling and disposal are considered incidental to the convenience service the company offers.
- 30 Like consumers who use junk haulers, Ridwell’s customers prefer to pay someone else to pick up items they would otherwise have to self-transport to multiple locations. Both services are, as Order 04 observes, subject to market discipline, and neither is provided by regulated solid waste companies. Accordingly, we agree with Order 04’s conclusion that Ridwell collects recyclable materials that solid waste collection companies do not collect as an incidental adjunct to its specialized upcycling service.
- 31 Finally, Staff argues that Ridwell is not a private carrier because Ridwell’s vehicles are used primarily to transport solid waste. Although Staff agrees that the vehicles Ridwell uses are not designed specifically for the transportation of solid waste, Staff argues that those vehicles are used primarily for that purpose.
- 32 In its Response, Ridwell acknowledges that the cars and van its uses carry lightbulbs, batteries, and plastic film, but notes that they also carry and deliver food to the foodbank, clothes to Goodwill, and numerous other household items to local charities.
- 33 We agree with Order 04’s conclusion that Ridwell’s vehicles are not used primarily to transport solid waste. Rather, Ridwell’s vehicles are used to pick up and deliver materials for reuse or specialized recycling. Unlike junk haulers, Ridwell does not transport “solid waste” as that term is used in RCW 81.77.010. Also, unlike junk haulers that typically haul junk in large box trucks, Ridwell uses standard sized passenger vehicles and a cargo van.

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<sup>22</sup> The Commission takes official notice of 1-800-GOT-JUNK?’s website, [https://www.1800gotjunk.com/us\\_en/what-we-do/residential-clean-outs-household-decluttering](https://www.1800gotjunk.com/us_en/what-we-do/residential-clean-outs-household-decluttering).

34 Staff argues that the decision in Order 04 “will have significant implications for currently regulated companies, and Staff will need to adjust its enforcement practices in light of this interpretation” of private carrier.<sup>23</sup> The inverse is true. Adopting Staff’s position would have significant implications for *non-regulated* carriers, particularly junk haulers, whose operations involve the hauling of solid waste in vehicles that much more closely resemble vehicles designed to haul solid waste. Our finding that Ridwell’s transportation of recyclable materials that solid waste collection carriers do not collect, as an incidental adjunct to its upcycling business, is consistent with our long-standing policy that junk haulers are private carriers that collect solid waste as an incidental adjunct to its junk removal business.

*Classification as a Common Carrier*

35 In its Petition, Staff argues that Order 04 does not address the issue of common carrier classification, and that the Commission must address all material issues raised in a proceeding. We agree. Because Staff requested the Commission classify Ridwell as a solid waste carrier or common carrier, we must make findings with respect to both issues.

36 RCW 81.80.010 defines “common carrier” as:

[A]ny 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.

37 The record evidence clearly establishes, and Ridwell does not dispute, that the Company transports property for the general public in motor vehicles. Accordingly, Ridwell is properly classified as a common carrier. Ridwell concedes as much in its Response.<sup>24</sup>

38 We grant Staff’s Petition as it relates to this issue and amend Order 04 as follows:

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<sup>23</sup> Staff Petition ¶69.

<sup>24</sup> Ridwell Response ¶7.

- Add new paragraph 42: (9) Ridwell transports property for the general public by motor vehicle for compensation.
- Amend original paragraph 46 as follows: (5) ~~The Commission should dismiss the complaint seeking classification of Ridwell.~~ The Commission should classify Ridwell as a common carrier.

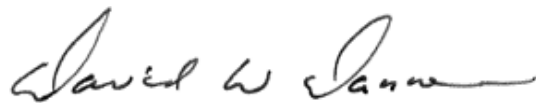
**ORDER**

THE COMMISSION ORDERS THAT:

- 39 (1) Commission Staff's Petition for Administrative Review is DENIED, in part, and  
GRANTED, in part.
- 40 (2) The Commission adopts the provisions of Order 04 as described in this Order.
- 41 (3) Ridwell, Inc., is classified as a common carrier. Staff is directed to process the  
common carrier application filed in this Docket on February 6, 2020.
- 42 (4) The Commission retains jurisdiction over the subject matter and parties to this  
proceeding to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective October 15, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



ANN E. RENDAHL, Commissioner

**NOTICE TO PARTIES: This is a Commission final order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 81.04.200 and WAC 480-07-870.**

### **Dissenting Opinion of Commissioner Balasbas**

- 1 I respectfully disagree with my colleague’s decision to uphold the Initial Order and only classify Ridwell as a common carrier. Today’s Order erroneously concludes that Ridwell is not a solid waste collection company or a private carrier through strained logic on what constitutes recyclable materials. The majority Order also demonstrates the Commission’s inconsistent view of the reach of our regulation on new or emerging digital application-based business models. The correct course of action today would have been to overturn the Initial Order, classify Ridwell as a solid waste collection company, and then apply the appropriate Commission regulations to Ridwell’s business model through the certificate of public convenience and necessity application process.
- 2 Throughout this proceeding, Staff has correctly argued that the definition of “solid waste” contained in RCW 81.77.010(7) requires Commission oversight and regulation of the collection of *all* recyclable materials from residential customers. I do not believe that the phrase “source separated materials collected from residences” was meant to limit the regulation of the collection of certain materials or only to curbside materials. Even accepting the majority’s conclusion that source separated materials collected from residences is so limited, Ridwell would still qualify as a solid waste collection company. Indeed, a plain, non-legal, and common sense reading of RCW 81.77.010(9) that defines “solid waste collection company” would lead one to conclude that Ridwell fits that definition.
- 3 Commission rules provide important consumer protections for residential customers – including safety requirements for vehicles, fair billing practices, and Commission oversight of rates – that today’s decision will deny to Ridwell’s customers. If we had evaluated the Company’s application through our normal process, we would accomplish two things. First, other regulated companies operating in the same service territories and other interested persons would have the opportunity to bring forward any objections or concerns about Ridwell’s services. Second, the Commission would have the opportunity to apply only those regulations on solid waste collection companies that apply to Ridwell’s business model. This course of action best protects the public interest.
- 4 I further disagree with both the Initial Order’s and today’s Order’s discussion related to private carrier exemptions. Staff correctly observes that Ridwell’s recycling collection is not an incidental adjunct to the Company’s collection of household items for donation.

Ridwell could perform those services without collecting recyclable materials and no other aspect of its business would be impacted. Ridwell also advertises as collecting recyclable materials, which precludes its consideration as a private carrier. My colleagues' concern that by adopting Staff's arguments, the Commission would then need to start regulating businesses not under our jurisdiction is misplaced. Under the junk hauler example discussed in the majority Order, the removal of solid waste or recyclable materials is clearly incidental to the primary purpose of the business of cleanup, contrary to my colleagues' analysis. Our regulatory authority would never reach those businesses with a primary purpose other than hauling of solid waste or recyclable materials.

5 Finally, today's Order demonstrates inconsistent treatment of new and emerging digital application-based business models. In 2017, the Commission had no problem applying its regulations to another innovative and digitally based transportation service company and indeed went to great lengths to order that company to "cease and desist" operations unless and until it obtained the proper operating permits from the Commission.<sup>25</sup> I supported the conclusion of that proceeding because it was a proper reading of the Commission's statutory authority. Over the past few years, including after a legislatively mandated Commission report of digital application-based micro movers,<sup>26</sup> the Commission found a way to appropriately tailor its regulations to that company's business model and recently granted a common carrier permit with reasonable exemptions.<sup>27</sup> By correctly applying our statutory authority and processes, consumers now have the appropriate protections afforded by Commission rules.

6 A proper reading of the Commission's statutory authority on solid waste collection companies in this proceeding would lead to the conclusion that Ridwell is subject to solid waste regulation. Once properly classified, the Commission could have taken appropriate

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<sup>25</sup> See *In the Matter of Determining the Proper Carrier Classification of, and Complaint for Penalties Against Dolly, Inc.*, Docket TV-171212, Order 02 (March 29, 2018).

<sup>26</sup> I note that today's Order runs contrary to the information provided to the legislature in the Commission's 2018 report to the legislature on digital app-based micro movers. In that report, the Commission heard from the Washington Refuse and Recycling Association that the process for obtaining a solid waste certificate is not complicated or cost prohibitive and it was not clear the Commission could reasonably ensure consumer protection or safety of digital application-based companies particularly in the collection of solid waste. See page 4 of the *Report on the Digital Application Based Micro-Mover Task Force* (December 15, 2018).

<sup>27</sup> See Docket TV-200758, Order 01 (September 25, 2020).

steps through our normal process to tailor solid waste regulations to Ridwell's business model and protect consumers.

- 7 Ridwell's operations can be compatible with Commission regulation, as Staff suggests. Indeed, Ridwell filed a petition for exemption from multiple solid waste carrier regulations anticipating that the Commission could classify it as a solid waste collection company. Those exemptions should have been carefully considered and applied to ensure appropriate oversight without stifling Ridwell's ability to offer its services. I share Staff's concerns that by upholding the conclusions of the Initial Order, we have significantly impacted our regulatory authority under chapter 81.77 RCW to the detriment of consumers and a regulatory system that has worked well for decades.



JAY M. BALASBAS, Commissioner