

Docket No. TG-200083 - Vol. I

**In the Matter of Determining the Proper Carrier
Classification of: Ridwell, Inc.**

April 17, 2020



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining) DOCKET TG-200083
the Proper Carrier Classification)
of:)
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RIDWELL, INC.)
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TELEPHONIC PREHEARING CONFERENCE, VOLUME I
Pages 1-23
ADMINISTRATIVE LAW JUDGE GREGORY J. KOPTA

April 17, 2020
9:30 a.m.

Washington Utilities and Transportation Commission
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2 ADMINISTRATIVE LAW JUDGE:

3 GREGORY J. KOPTA

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1 LACEY, WASHINGTON; APRIL 17, 2020

2 9:30 A.M.

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4 P R O C E E D I N G S

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6 JUDGE KOPTA: Let's be on the record in
7 Docket -- what is the docket -- TG-200083, captioned In
8 the Matter of Determining the Proper Carrier
9 Classification of Ridwell, Inc.

10 I'm Gregory J. Kopta, the administrative law
11 judge who the Commission has assigned to preside in this
12 proceeding, and we're here today for a prehearing
13 conference.

14 We will begin by taking notices of
15 appearance. I notice that we have written notices of
16 appearances, so all we need is the short form of
17 appearance this morning, and we'll begin with the
18 Company.

19 MR. GOLTZ: Yes, Your Honor. This is
20 Jeffrey Goltz with Cascadia Law Group on behalf of
21 Ridwell.

22 JUDGE KOPTA: And on behalf of Commission
23 Staff?

24 MR. CALLAGHAN: This is Nash Callaghan, AAG,
25 on behalf of Commission Staff. I believe Mr. Perkinson

1 and Ms. McPherson are also on the line.

2 JUDGE KOPTA: All right. Anyone else want
3 to make an appearance? Hearing none, we will proceed
4 with our business for today.

5 First issue is intervention. Is there
6 anyone who wishes to intervene in this -- in this
7 proceeding? Hearing none, we will have just the parties
8 of the Company and Commission Staff.

9 The next issue is discovery. Do the parties
10 want to have the Commission's discovery rules available
11 in this proceeding?

12 MR. GOLTZ: Your Honor, this is Jeff Goltz
13 on behalf of the Company. When this was scheduled as a
14 brief adjudicatory proceeding, we -- I had discussions
15 with Mr. Callaghan and understood from that conversation
16 that in -- in the context of a BAP, the discovery rules
17 aren't available. I wasn't positive that was the case,
18 so I filed a -- a fin- -- very finite set of -- of data
19 requests, and I also basically just did those in the
20 form of a public records request, and Mr. Callaghan
21 suggested the latter course.

22 Originally, we were to receive a response of
23 public records request on -- a week ago today. Then a
24 week ago or so, we got an email from the records center,
25 Ms. Wyse, and understandably, it's very difficult to

1 process these things. And she said that she anticipates
2 now a response by April 24. That is fine with us.

3 I guess I would say that so long as we get
4 that public records request response by April 24th,
5 we're fine. On the other hand, if that's not possible,
6 then I guess I would like the data requests to be
7 resuscitated.

8 JUDGE KOPTA: Mr. Callaghan?

9 MR. CALLAGHAN: I -- that's right, Your
10 Honor. Staff is in favor of having the discovery rules
11 available. We would also ask given -- well, we have
12 proposed dates that I've discussed with Mr. Goltz that
13 work for both the Company and Staff. I don't know if
14 they will work for ALD. But given the short time
15 period, we would ask that the data requests response
16 time be included in the prehearing conference to seven
17 days if -- if that works for the parties. Our dates
18 that work for Staff and the Company were May 12th and
19 15th, but we would like the discovery rules available.

20 JUDGE KOPTA: All right. I will make the
21 discovery rules available. Obviously, I will expect the
22 parties to work out among themselves any issues in terms
23 of data requests. I can put in the prehearing
24 conference order a shortened time period for data
25 request responses if that's what both parties want.

1 Mr. Goltz, is that acceptable to you?

2 MR. GOLTZ: Well, it depends how short
3 obviously. Just as a little bit of -- stepping back a
4 bit, we were fine with this being a brief adjudicatory
5 proceeding. We didn't request that this be converted.
6 It was converted and that's okay too, but I -- I think
7 we're trying to make this look like a brief adjudicatory
8 proceeding in the sense that we don't think this is a
9 massive litigation effort on either side.

10 Staff has filed a complaint with the
11 investigation report, and I -- I take that -- I may be
12 mistaken, but I take that as effectively the -- the --
13 the case of the -- of the Commission Staff, and we would
14 like to then file our responsive case and then have a --
15 then have a one-day or half-day hearing on it.

16 But as I say, we did want to get some
17 information mainly about some other companies that are
18 either regulated by the Commission or confirmed they're
19 not regulated by the Commission to help us with our
20 case.

21 So if -- you know, I don't know. This is
22 the first I've heard that Commission Staff wants to get
23 more information from Ridwell. They've obviously gotten
24 a lot in the course of the investigation. So it's a --
25 I'm confident Mr. Callaghan and I can work out whatever

1 issues we have, and if for some reason we can't, we will
2 come back and knock on your door.

3 JUDGE KOPTA: Oh, I have no doubt. I --
4 I -- I guess the question that I have is whether I need
5 to include in the order the shortened time period for
6 data request responses or whether that's something that
7 you will -- the two of you will work out.

8 MR. GOLTZ: Well, a seven-day turnaround
9 time seems fine with me and -- and that would -- now,
10 obviously in part that assumes the rest of the schedule,
11 but I think we can go for that. We were talking about
12 mid May for the -- or the second -- towards the end of
13 the second week of May for a hearing. May 12 or May
14 15th were the dates that -- that Mr. Callaghan
15 suggested, and there were several dates, and those were
16 the two that work best for us.

17 JUDGE KOPTA: All right. Well, for now, I
18 will expect to include in the prehearing conference
19 order a seven-day response -- seven-business-day
20 response to data requests. And since we've been talking
21 about the schedule, let's -- let's talk about it.

22 MR. GOLTZ: Judge Kopta, one more thing on
23 data requests. We have filed data requests. I'm happy
24 to refile them, it just seems like they're already
25 there, and -- and if there's no objection from

1 Mr. Callaghan, can those just be deemed filed as of
2 today?

3 JUDGE KOPTA: I have no objection to that.
4 I'm not sure that I need to weigh in on that at this
5 point. It seems to me that that's something you can
6 work out with Mr. Callaghan.

7 MR. GOLTZ: Okay.

8 MR. CALLAGHAN: So, Mr. Goltz -- sorry.

9 JUDGE KOPTA: Go ahead, Mr. Callaghan.

10 MR. CALLAGHAN: So, Mr. Goltz, my
11 understanding was that if the -- that the data requests,
12 if you received the information through the public
13 records request, that -- that essentially you wouldn't
14 be asking for the same information through the data
15 requests. And so I think we can work this out offline,
16 but I --

17 MR. GOLTZ: It was actually the other way
18 around. If we received it from the data requests, we
19 don't need the public records requests, and because
20 there is a tiny bit of information, the substance of
21 which escapes me for the moment, that was in the data
22 request is not the public records request, because I
23 didn't think it -- it was appropriate for a public
24 records request. But it won't -- Your Honor, we will --
25 we'll email and talk offline.

1 JUDGE KOPTA: All right. That seems to be
2 the best approach is to let you all work that out, and
3 obviously if there are continuing disagreements, I am
4 available to consult.

5 Okay. So then let's go ahead and discuss
6 schedule. You talked about May 12th or 15th for a
7 hearing. You recognize, of course, that that would be a
8 virtual hearing if we have it on those dates, one of
9 those dates?

10 MR. GOLTZ: Your Honor, this is Jeff Goltz
11 again. Yes, we understand that. Well, 90 percent -- 95
12 percent positive that's true. I guess we would say that
13 in the chance that there is a -- that the governor's --
14 lifts some of the restrictions and it is possible to
15 have an in-person hearing, that it be an in-person
16 hearing.

17 In lieu of that, we would strongly prefer at
18 least a video hearing of some sort. I thought that when
19 I logged onto Skype this morning, I would see videos of
20 everybody. Apparently, it has that potential. If not,
21 there is other technologies that do, so we would prefer
22 a video proceeding.

23 JUDGE KOPTA: Yes. Well, this is -- as I
24 said before we were on the record, this is something the
25 Commission is working through, and I understand. I

1 mean, my preference as well would be to have this in
2 person. I think it unlikely that that would happen in
3 May, and certainly to the extent possible, I would
4 like -- I would also prefer to have video capability. I
5 believe we do have that, we would just need to work out
6 the logistics.

7 Fortunately, I think this is a small enough
8 group of people that we should be able to do that, but I
9 would need to check with our folks to see how that would
10 happen. I can certainly put in the prehearing
11 conference order a preference for an in-person hearing
12 and a preference for video, but, you know, as I say, it
13 will depend on our capabilities. There are bandwidth
14 concerns that we have considering how many people would
15 be involved, so these are all things that we would have
16 to work out.

17 MR. GOLTZ: Your Honor, this is Jeff Goltz
18 again. I'm sorry to -- to weigh in yet more on this
19 issue, but -- but I -- I do know, our firm does have a
20 Zoom account and has been doing Zoom meetings with a
21 number of people, up to 15 or 20, that I've been on. I
22 have also done personal Zoom meetings with -- with a
23 home account with way more than that and without any
24 noticeable glitches. So -- and I -- I've heard that
25 Zoom is not favored by the State of Washington for some

1 reason, but that is an -- if that's an option, we'd be
2 happy to -- to -- to provide the technology for that.

3 JUDGE KOPTA: Yes, thank you. I -- I
4 personally have had some experience with Zoom; although
5 as you suggest, I think the Commission's preference
6 would be to use the UTC Skype, and I believe we can work
7 things out. We appreciate the offer, but at this point,
8 I think if we were going to do it -- I mean, if we need
9 to do it virtually, then I think we want to use the
10 Skype account that we have for the Commission. And
11 we'll just confirm that we can do that, but I -- I'm
12 relatively confident that we can.

13 So if we have a hearing on the 12th or the
14 15th, what other deadlines do we need to have in the
15 schedule? I'm assuming testimony?

16 MR. CALLAGHAN: Yeah -- this is Nash
17 Callaghan, Your Honor. My experience is that usually a
18 week before the hearing is scheduled, the parties will
19 file a witness list, exhibits, and exhibit lists.
20 Mr. Goltz and I spoke previously, and we both agreed
21 that in addition to the exhibit list, that we would send
22 the actual exhibits at that time. I think that would
23 still be Staff's preference.

24 JUDGE KOPTA: All right. There was some
25 discussion, I thought, about prefiled testimony. Is

1 that no longer something that the parties are
2 requesting?

3 MR. GOLTZ: Your Honor, this is Jeff Goltz.
4 No, I -- I think what I -- what I would envision -- now,
5 it's a little bit based on trust here. I'm envisioning
6 that -- that the -- that -- in fact, we've already seen
7 the Staff case with the investigation report. If I'm
8 wrong on that and there's going to be a flood of -- of
9 additional evidence besides that, then -- then I think
10 we ought to see that ahead of time and then we can
11 respond to it.

12 And I -- my preference would be that -- that
13 we would file our response -- our -- our case a -- on a
14 week before the hearing, and if -- and if the Commission
15 Staff has more than what they've already put on the
16 table, if they would file that at least a week
17 beforehand and preferably before that so we can at least
18 respond to it. And then we make everybody available for
19 cross-examination, possibly redirect-examination on the
20 hearing date, and then of course examination from the
21 administrative law judge.

22 JUDGE KOPTA: And by your case, do you mean
23 prefiled testimony or simply exhibits and a witness list
24 with a brief summary of what each of your witnesses
25 intends to testify to?

1 MR. GOLTZ: Well, I -- I think I'm -- I'm
2 fine if -- if we have it both ways, that we would have
3 prefiled testimony and exhibits. So that would be
4 somewhat of a variant from the -- the brief adjudicatory
5 proceeding, but that's the way that we were headed even
6 if we had a brief adjudicatory proceeding.

7 JUDGE KOPTA: Okay. Well, I -- you know,
8 we're kind of thinking this up procedurally as we go,
9 which is fine, but I just want to know what to expect I
10 guess is my concern.

11 MR. CALLAGHAN: And this is Nash Callaghan.
12 I would -- I -- I agree with Mr. Goltz. Staff doesn't
13 have a current intention of submitting any prefiled
14 testimony. If that changes, it would certainly be
15 narrow and most likely based on any -- the responses we
16 received from data requests, but we don't have a current
17 intention of writing any prefiled testimony. The
18 investigation report and the complaint filed is mostly
19 what we would be relying on.

20 So I would be in agreement with -- with
21 having the prefiled testimony due a week before the
22 hearing.

23 MR. GOLTZ: And can -- this is Jeff Goltz
24 again. Is it possible to have -- if Staff does decide
25 to file more than that, have that at least a few days

1 before ours?

2 JUDGE KOPTA: Mr. Callaghan, is that
3 acceptable to you?

4 MR. CALLAGHAN: Yes, I would have no
5 objection to that.

6 JUDGE KOPTA: All right. Well, that sounds
7 like a rather simple schedule, then.

8 MR. GOLTZ: Judge Kopta, this is Jeff Goltz
9 again. One more thing that I would like to build in,
10 and I don't think this would be a burdensome thing, is
11 to have a time set for a settlement conference with the
12 parties. Obviously that would be telephonic or Skype,
13 and just to give the Staff one opportunity to perhaps --
14 that perhaps may result in either hearing the issues or,
15 you know, in the best of all possible worlds some sort
16 of agreement.

17 JUDGE KOPTA: And that's a good reminder,
18 Mr. Goltz. The Commission in these -- in any kind of
19 adjudication customarily, if not obligatorily, if that's
20 a word, includes a settlement conference date in the
21 schedule. Obviously we're dealing with a little bit
22 different kinds of circumstance here than we do in the
23 normal adjudication, but I think it makes sense to
24 include a settlement conference date so that the parties
25 have an opportunity to discuss whether it is possible to

1 settle this short of a hearing.

2 Do you have a proposed date for a
3 settlement?

4 MR. GOLTZ: I -- I -- this is Jeff Goltz
5 again. I -- I have a proposed -- there's one conflict.
6 April 30th is the one date we could not do it. I would
7 suggest it be working backwards prior to the filing
8 of -- of testimony, just in case we'd actually come to
9 an agreement, it's possible to adapt at that point. So
10 I -- so I think, you know, obviously we're in [sic] the
11 hearing date yet, so I would look back and have it, you
12 know, a week or so before the -- before the filing of
13 testimony. So if the testimony was going to be May 5 or
14 so, I would move it back to the last week in April.
15 Again, as I say, the -- but not April 30th. But that's
16 coming right up, but...

17 JUDGE KOPTA: Right, that is the concern. I
18 have no problem with saying, you know, a settlement
19 conference sometime during the week of April 27th, for
20 example, and allowing you all to -- to actually
21 determine what the -- what the date is. It would just
22 be a placeholder in the schedule to remind the parties
23 that there is that obligation. Would that be
24 acceptable?

25 MR. GOLTZ: That's fine with me. This is

1 Jeff Goltz.

2 MR. CALLAGHAN: I -- so, Your Honor, this is
3 Nash Callaghan. I had not anticipated a settlement
4 conference, and this actually brings up a good point
5 that I wanted to clarify, that this hearing is still
6 just as to the classification of Ridwell. And that we
7 had initially discussed with ALD and with the previous
8 attorney, Jay Derr, that the best way to proceed forward
9 with this case would be to have a classification hearing
10 and then deal with the applications for certificate and
11 the other requests for exemption that was in Ridwell's
12 petition after that hearing. Because depending on how
13 the classification hearing went, answering those
14 questions may not be necessary.

15 And because the hearing is with respect to
16 classification, assuming that that's still the case,
17 Staff -- I don't see a whole lot of room for -- for
18 reaching a settlement with respect to interpreting the
19 Commission's -- whether or not the Commission has
20 jurisdiction over the Company. Staff is certainly
21 willing to and wants to have a settlement conference
22 after the classification hearing to discuss issues
23 within the application and the exemption. We're
24 certainly willing to have a meeting to discuss those
25 issues with the Company, but I just don't see a lot of

1 room for potential settlement in terms of the
2 classification of the Company.

3 JUDGE KOPTA: Mr. Goltz?

4 MR. GOLTZ: Yeah, yeah, Your Honor, this is
5 Jeff Goltz. If that's true, it will be a very brief
6 settlement conference. So I don't think it's very
7 burdensome to have, but -- but I -- and Mr. Callaghan is
8 correct, that -- and I wanted to confirm this. The
9 Company -- although I was not involved in the filing of
10 them, the Company has filed alternate applications for a
11 common carrier permit, waste permit, and a petition for
12 the exemptions for various rules associated with those,
13 and a petition that was designed to -- to get at what is
14 the proper classification of that.

15 And -- and this -- I mean, this
16 classification proceeding that was commenced by
17 Commission Staff to basically be the first step -- one
18 step of that while the Company's pending applications
19 are on -- on hold. But they are there, and -- and --
20 and I would view that a -- it -- it is true that what's
21 before us right now is simply our -- is Ridwell -- does
22 it need to be regulated under RCW 81.77.

23 But it may be that the concerns of the
24 Commission Staff with regard to Ridwell's operations can
25 be accommodated under 81.80, thereby eliminating the

1 need for this. But that's just one possibility, and --
2 and obviously I don't know everything that the
3 Commission Staff -- I think I know everything Commission
4 Staff has in mind because it's in the -- the
5 investigation report. I'm not sure they know everything
6 that we have in mind. We can talk about some of that,
7 and maybe we'll come to some sort of an accommodation or
8 further stipulation of facts or something else. So I --
9 I think it's at least worth a conference call.

10 JUDGE KOPTA: I -- I agree, Mr. Goltz, and
11 the Commission strongly encourages the parties to have
12 discussions to see what can be resolved. It may be that
13 you can't resolve the whole case, but there are some
14 other issues or stipulations that the parties can agree
15 to that will shorten this or at least streamline the
16 hearing, particularly given that we are making this up
17 as we go.

18 So I will include in the prehearing
19 conference order a general date for settlement. It
20 would be during the week of April 27th, and I will leave
21 it to the parties to set whatever date and time makes
22 the most sense for them to have that conversation. My
23 preference would be to have the hearing on May 12th. So
24 if we had a hearing on May 12th, then exhibits and any
25 prefiled testimony from the Company would be due on May

1 5th, and if we're going to have any prefiled testimony
2 from Staff in advance of that, what date shall we say,
3 April 30th?

4 Mr. Callaghan --

5 MR. CALLAGHAN: Your Honor, I believe that
6 would -- that would work.

7 JUDGE KOPTA: Mr. Goltz?

8 MR. GOLTZ: That's fine with me. And I may
9 add to that, if -- if all that Commission Staff wants to
10 do is say we're resting on the investigation report and
11 the complaint, I -- I don't feel the need that they have
12 to kind of convert that into some sort of formal
13 testimony. Or if they wanted to just have the
14 investigation report and they want to add a couple of
15 documents as exhibits, I'm fine with that too.

16 As I say, you know, I wasn't -- we weren't
17 opposed to a brief adjudicatory proceeding and the
18 informality that it brings, but -- we're beyond that,
19 but we kind of want to make this look somewhat like that
20 providing various protections.

21 JUDGE KOPTA: All right. Well, I will put
22 something in the schedule that acknowledges that if
23 there's substantial prefiled testimony from Staff, that
24 it would need to be filed by April 30th, otherwise both
25 parties will file their respective documents on May 5th.

1 MR. CALLAGHAN: Thank you, Your Honor.

2 JUDGE KOPTA: All right. I think that takes
3 care of everything. Is there anything further that we
4 need to discuss at this point?

5 MR. GOLTZ: Your Honor, one -- one more
6 thing. I -- I guess maybe this is something that you
7 would normally -- we normally do at the hearing. I know
8 it is in a lot of past cases, but we would like the
9 opportunity -- and, again, in relatively short order
10 after the hearing to file a brief on this, and if -- if
11 so, on the week or two after the hearing to file
12 concurrent briefs.

13 JUDGE KOPTA: I would be fine with having
14 post-hearing briefs filed. We can schedule that now or
15 we can schedule them at the hearing. I don't have a
16 strong preference.

17 Mr. Callaghan, do -- do you have a druther?

18 MR. CALLAGHAN: So, Your Honor, I would
19 prefer that -- that ALD decide after the hearing
20 whether -- whether post-hearing briefs -- whether they
21 would like post-hearing briefs and schedule them at that
22 point.

23 JUDGE KOPTA: Is that fine with you,
24 Mr. Goltz?

25 MR. GOLTZ: Well, I -- I think it's fine to

1 schedule them at the hearing, but I think the variable
2 there is, you know, I like to think the vast vault of
3 the evidence will be in written form submitted prior to
4 the hearing, whether it be investigation report, whether
5 it be actual exhibits, whether it be our -- our prefiled
6 direct testimony with exhibits.

7 So writing a brief based on that would be
8 relative -- so we would not have to wait for a
9 transcript is what I'm saying. If, however, the hearing
10 is -- morphs into a long, you know, set of examination,
11 cross-examination so there is a substantial transcript,
12 then that would suggest a longer time in order to write
13 a brief. But I think the question of whether there
14 should be a brief or not I think is important to us
15 to -- to be able to make those arguments, because a lot
16 of them are going to be legal arguments and then some
17 discussion of how the facts fit into that.

18 And -- and frankly, I think it's -- would
19 help the Commission more to have those succinctly
20 written, in written form, rather than have to rely on a
21 bunch of just facts in the record.

22 JUDGE KOPTA: I take your point, and
23 ultimately I think what I'm looking for is whatever is
24 going to help me and the Commission make a determination
25 in this case. And that's something that I'm not going

1 to be able to know until we are at or just at the end of
2 the hearing. So I will reserve at this point
3 post-hearing briefing both whether and when for the
4 hearing, and I will also note in the prehearing
5 conference order.

6 Anything else? All right. Then hearing
7 nothing more, I believe that we have resolved all of the
8 issues, at least at this point, and we are adjourned.

9 (Adjourned at 10:04 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

Tayler Garlinghouse

Tayler Garlinghouse, CCR 3358



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