BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of City of Spokane for an Order Declaring That the City of Spokane Waste-to-Energy Facility Is Not "Baseload Electric Generation" under RCW 80.80.010(4) and WAC 480-100-405(2)(a)	DOCKET UE-210247 STAFF'S RESPONSE TO THE CITY OF SPOKANE'S PETITION

I. INTRODUCTION

1 In April 2021, the city of Spokane (Spokane) petitioned the Commission seeking the entry of a declaratory order. Specifically, Spokane sought declarations that (1) its waste-to-energy facility (WTE Facility) is not "baseload electric generation" as that term is used in chapters 80.80 RCW and 480-100 WAC, and (2) therefore neither RCW 80.80.060(1) nor WAC 480-100-405(1) prevent Spokane and the Avista Corporation (Avista) from entering into a 15-year power purchase agreement for the output of the WTE Facility.

2 Staff has reviewed Spokane's petition and advises the Commission to decline to enter a declaratory order because Spokane fails to show that: (1) it is entitled to one under the APA and (2) the WTE Facility does not provide baseload electric generation within the meaning of chapter 80.80 RCW.

II. DISCUSSION

3 To obtain the order it requests, Spokane must make two showings. First, it must show the propriety of a declaratory order under the Administrative Procedure Act. That requires Spokane to show, among other things, that the lack of a declaratory order prejudices it more than the issuance of a declaratory order would prejudice others. Second, Spokane must show that the

WTE Facility does not provide baseload electric generation. As discussed below, it has not made either showing.

A. The Commission Should Decline to Enter a Declaratory Order Because Any Adverse Effects Suffered By Spokane Do Not Outweigh the Adverse Effects Suffered by Others

4 Washington's Administrative Procedure Act authorizes agencies to enter a declaratory order "with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency."[1] A petitioner seeking such a declaration must show that (1) "uncertainty necessitating resolution exists;" (2) "there is an actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;" (3) "the uncertainty adversely affects the petitioner," (4) "the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested," and (5) "the petition complies with any additional requirements established by the agency" governing the form and procedures governing such petitions.[2]

5 Spokane fails to make the fourth of those showings. It contends that the failure to obtain a declaratory order will result in it receiving seven-and-a-half to ten million dollars less over the course of a 15-year period because Avista will refuse to enter a long-term contract with it.[3] But those extra revenues would come at the expense of Avista, and because Avista is regulated under a cost-of-service framework, ultimately its ratepayers, who would pay rates based on a revenue requirement inflated by the payments to Spokane. Put otherwise, any gain Spokane realizes from the declaratory order it seeks would be equaled by the increased rates paid by Avista's ratepayers. Any adverse effect from the uncertain status of the WTE Facility matches, and

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[1] RCW 34.05.240(1).
[2] RCW 34.05.240(1)(a)-(e).
[3] *In re City of Spokane*, Docket UE-210247, City of Spokane's Petition for Declaratory Order, 2 ¶ 4 (Apr. 15, 2021) (hereinafter "Petition").

therefore cannot outweigh, the adverse effects suffered by others, specifically Avista and its ratepayers. The Commission should not enter a declaratory order under those facts.[4]

B. The Commission Should Decline to Enter a Declaratory Order Because Spokane Fails to Show that the WTE Facility Does Not Provide Baseload Electric Generation

6 RCW 80.80.060(1) provides that "[n]o electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gas emissions performance standard established in RCW 80.80.040."[5] Relevant here, a "long-term financial commitment" includes a "new or renewed contract for baseload electric generation with a term of more than five years for the provision of retail power or wholesale power to end-use customers."[6] The legislature defined "baseload electric generation" to mean "electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent."[7] The term "'plant capacity factor' means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt hours."[8]

7 The Commission administers the provisions of chapter 80.80 RCW applicable to electrical companies.[9] To enable it to do so, the legislature delegated to the Commission the power to determine whether electrical plant provides baseload electric generation.[10] When making such a determination, the Commission must "consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the

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[4] RCW 34.05.240(1)(d).
[5] *Accord* WAC 480-100-405(1). No one disputes that Avista is an electric company within the meaning of RCW 80.80.010(13).
[6] RCW 80.80.010(16); *accord* WAC 480-100-405(2)(d).
[7] RCW 80.80.010(4); *accord* WAC 480-100-405(2)(a).
[8] RCW 80.80.010(18); *accord* WAC 480-100-405(2)(f).
[9] RCW 80.80.060(2), (8).
[10] RCW 80.80.060(3).

operation of the power plant, and any other matter the [C]omission determines is relevant under the circumstances."[11] The Commission has recognized that "the design of a plant is the primary consideration, unless operations are specifically constrained by other factors, such as air permits."[12] The Commission provides guidance in WAC 480-100-415 on the details that should be included when requesting a finding regarding baseload electric generation. While Spokane is not an electric utility, its request for a declaratory order should have included the same information described in rule.

8 Spokane does not show that the WTE Facility's electrical plant was designed to operate at an annual capacity factor of less than 60 percent. It filed with its petition no engineering or manufacturer's specifications explaining how the plant was designed to operate, and the information that Staff obtained through informal discovery[13] does not provide the manufacturer's specifications for the plant's annual capacity factor.[14] Without that evidence, which concerns what the Commission has deemed the "primary consideration" in answering the question posed by Spokane's petition,[15] the Commission cannot say whether or not the WTE Facility provides baseload electric generation.

9 Nor does Spokane show that the air quality permits under which the WTE Facility operates constrain its operations, limiting it to an annual capacity factor of less than 60 percent. While the Air Operating Permit submitted by Spokane does contain a condition that appears to

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[11] *Id.*
[12] *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc*., Dockets UE-090704 & UG-090705, Order 11, 126 ¶ 359 (Apr. 2, 2010) (hereinafter "PSE Order")/
[13] Spokane was very cooperative and provided to Staff what it had of the plant's technical specifications despite the fact that the Commission's discovery rules do not apply to this proceeding, which is not an adjudication.
[14] See, e.g., PSE Order at 123-24 ¶ 350 (summarizing testimony concerning an electrical plant's manufacturer's specifications that the plant had "the capability to routinely meet and exceed a 60 percent annualized capacity factor").
[15] *Id.*

limit the facility's incinerators to operations during daylight hours,[16] Staff concludes that any such limit is illusory. The WTE Facilities incinerators are rated to operate 24 hours per day, and the condition allows the Control Office to authorize non-daylight operations.[17] Spokane could thus operate during non-daylight hours at any time with permission from the Control Office. And Spokane did not submit a letter from either the Department of Ecology or the Spokane Clean Air Agency providing a determination that the plant did not provide baseload generation.

10 Spokane's claim that it would benefit from higher contract prices also suggests to Staff that Avista would be paying Spokane for baseload electric generation. Avista would be paying higher prices for a longer contract. In Staff's experience, the only reason for it to do so would be if Avista were paying for capacity. And to Staff, that capacity payment indicates that the WTE Facility provides baseload generation.

11 Spokane offers three pieces of evidence to attempt to show that it did not intend to operate the WTE Facility at an annual capacity factor of greater than 60 percent. Staff does not find any persuasive enough to warrant issuing a declaratory order here.

12 First, Spokane argues that it intended the WTE Facility as a solution to various municipal solid waste problems confronting the city in the 1980s. [18] But the question before the Commission concerns the facility's *power plant*,[19] and the reasons for which Spokane built the WTE Facility allow no rational inferences as to whether or not the city designed and intended that plant to operate at an annual capacity factor of greater than 60 percent.

13 Second, Spokane claims that the WTE Facility is fuel constrained such that the

[16] Feist, Exh. I at 45 (condition 135).
[17] *Id.*
[18] Petition at 6-8 ¶¶ 14-22, 11 ¶ 33.
[19] RCW 80.80.060(3).

Commission should not consider it baseload electric generation.[20] Spokane does not provide evidence as to how often the WTE Facility idles because of fuel shortages, and its own data shows that it operates at a significant capacity factor, which tends to undermine its claim that the facility is fuel insecure.

14 Third, Spokane presents evidence about the plant's actual annual capacity factor. It notes that over a twelve-year period, the WTE Facility operated at an annual plant capacity factor of 56.8 percent.[21] Although not explicitly stated, Spokane appears to ask the Commission to conclude that the plant is not designed for baseload operations because it is not, based on Spokane's sample of operations, operated at a 60 percent annual capacity factor. The Commission has already rejected the argument that actual operations are relevant to determining whether a power plant provides baseload electric generation,[22] and Spokane provides no argument or justification for revisiting that determination here.[23]

C. Spokane's CETA Arguments Provide No Support For Its Request for Relief

15 Spokane contends that the Clean Energy Transformation Act (CETA), chapter 19.405 RCW, supports a declaration that the WTE Facility does not provide baseload electric generation. Specifically, Spokane notes that RCW 19.405.040(1)(b)(iv) allows utilities to use energy from certain WTE Facilities as an alternative means of complying with CETA's requirement that utilities provide greenhouse-gas neutral electrical generation between 2030 and 2045. Spokane contends that the Commission's refusal to conclude that the WTE Facility

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[20] Petition at 11 ¶ 33.
[21] Petition at 8-9 ¶ 25. The WTE Facility opened for operations in 1991. Feist, Exh. F at 8 § 8.1.3.1. Staff does not know how or why Spokane picked the 12-year period it used to calculate the WTE Facility's capacity factor from the 30-years of data it should possess.
[22] PSE Order at 126 ¶ 359 (noting that making the baseload electric generation determination based on actual operations would allow for the evasion of the emissions performance standard).
[23] *Stericycle of Wash., Inc. v. Wash. Utils. & Transp. Comm'n*, 190 Wn. App. 74, 93, 359 P.3d 894 (2015) (noting that agencies should treat similarly situated persons similarly).

provides baseload electric generation would "prohibit[] a contract with a term of 15 years" and thus "frustrate CETA's intent that the WTE be eligible as an alternative compliance option for the entire period."

16 Spokane's petition refutes its CETA argument. As Spokane itself recognizes, "[a] 15-year PPA would not alter the status quo—other than changing the parties' contractual relationship from a series of five-year contracts to a single 15-year contract."[24] A Commission determination that the WTE Facility does not provide baseload electric generation would not preclude Avista from using energy from the WTE Facility to satisfy its CETA obligations, assuming that the facility meets the other conditions found in RCW 19.405.040(1)(b).[25]

IV. CONCLUSION

17 Staff recommends the Commission decline to enter the declaratory order requested by Spokane.

DATED this ___ day of May 2021.

Respectfully submitted,

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_____/s/_____
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[24] Petition at 2 ¶ 4.
[25] A utility may only use energy from a WTE Facility as an alternative means of compliance with the greenhouse gas neutrality requirements in RCW 19.405.040 after the Departments of Commerce and Ecology conclude that energy production at the facility provides a net reduction in greenhouse gas emissions compared to other waste management practices. RCW 19.405.040(1)(b)(iv).