NW Energy Coalition
for a clean and affordable energy future

May 10, 2021

Mark Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
6221 Woodland Square Loop SE
Lacey, WA 98503

Re: Comments on UE-210247 Notice of Opportunity to Respond to Petition

The NW Energy Coalition ("NWEC" or "Coalition") appreciates the opportunity to respond to the Petition for Declaratory Order ("Petition") submitted by the City of Spokane ("Spokane") on April 15, 2021, as provided by the Notice of Opportunity to Respond to the Petition dated April 20, 2021.

The Coalition is an alliance of more than 100 organizations united around energy efficiency, renewable energy, fish and wildlife preservation and restoration in the Columbia basin, low- income and consumer protections, and informed public involvement in building a clean and affordable energy future.

Our comments on this issue are limited to the Petition's interaction with the Clean Energy Transformation Act (CETA), UTC rules concerning the Public Utility Regulatory Policies Act (PURPA), and rules developed by the Department of Ecology related to the definition of "baseload electricity generation."

1. **The Commission cannot determine whether power purchased from the WTE facility is eligible as an alternative compliance option under RCW 19.405.040(1)(b) until the Department of Commerce and Department of Ecology have made a determination under RCW 19.405.040(1)(b)(iv).**

In its Petition, Spokane argues that the Legislature intended for WTE to be part of a near-term solution for addressing climate change, and that the Clean Energy Transformation Act ("CETA") recognizes the WTE facility as carbon-neutral. While the Petition does not ask the Commission to make a determination at this time whether the WTE facility would be an eligible alternative compliance option for Avista under CETA, we feel compelled to clarify the record by stating our understanding of the intent and effect of the language addressing WTE in CETA. RCW 19.405.040(1)(b)(iv) allows the following as an eligible alternative compliance option for the 2030 CETA standard (emphasis added):

> *(iv) Using electricity from an energy recovery facility using municipal solid waste as the principal fuel source, where the facility was constructed prior to 1992, and the*

facility is operated in compliance with federal laws and regulations and meets state air quality standards. ***An electric utility may only use electricity from such an energy recovery facility if the department and the department of ecology determine that electricity generation at the facility provides a net reduction in greenhouse gas emissions compared to any other available waste management best practice. The determination must be based on a life-cycle analysis comparing the energy recovery facility to other technologies available in the jurisdiction in which the facility is located for the waste management best practices of waste reduction, recycling, composting, and minimizing the use of a landfill.***

The law requires that the Department of Commerce and Department of Ecology have the authority to determine whether the WTE facility is an eligible alternative compliance option, and that such a determine must be made based on a life-cycle analysis demonstrating that the facility provides a net reduction in greenhouse gases compared to other available waste management best practices. While the Petition does not ask the Commission to make this determination, we note that the Commission may not do so until the Department of Commerce and Department of Ecology have fulfilled their obligations under this section.

2. As a PURPA Qualifying Facility ("QF"), the WTE facility should not be given more favorable contract terms than a CETA-eligible QF under WAC 480-106.

In the Petition, Spokane states its intent to seek a 15-year power purchase agreement with Avista. In 2019, the Commission adopted new rules in WAC 480-106 to address contract terms for QFs. The Commission adopted the follow rule, which distinguishes between new and existing PURPA QFs:

(4) ***Standard rates for purchases from qualifying facilities with capacities five megawatts or less:*** *A utility shall establish standard rates for its purchases from qualifying facilities with capacities of five megawatts or less as follows:*

(a) A utility must file the schedule of estimated avoided costs containing standard rates for purchases pursuant to WAC 480-106-040 Schedules of estimated avoided costs as a revision to its tariff required in WAC 480-106-030 Tariff for purchases from qualifying facilities.

(i) The utility's standard rates for purchases must offer fixed rates to a new qualifying facility for a term of fifteen years beginning on the date of contract execution or a legally enforceable obligation, but not less than twelve years from the commercial operation date of the qualifying facility.

(ii) The utility's standard rates for purchases must offer fixed rates to an existing qualifying facility entering into a new agreement with the utility for a term of ten years.

(iii) Qualifying facilities that do not meet the greenhouse gas emissions performance standard established under RCW 80.80.040 are limited to contract terms of less than five years.

WAC 480-106(4)(a)(i) requires utilities to offer contract terms of not less than 12 years from the commercial operation date of the facility for **new** QFs. WAC 480-106(4)(a)(ii) requires utilities to offer contract terms of a minimum of 10 years for **existing** QFs entering into a new

agreement with a utility. In adopting its new PURPA rules, the Commission specifically declined to adopt equal contract terms for new and existing QFs, stating that, *"our determination is based on the real world considerations in Washington that obtaining financing and interconnection takes less time for a QF that is already in operation than for a new project being built from scratch."*[1] The Commission clearly intended for existing QF facilities to have a shorter contract term than new QF facilities. Spokane WTE facility went online in 1991, making it 30 years old. It would therefore not be consistent with Commission rules or policy intent for a utility to offer this facility a more favorable contract length (15 years) than a new renewable QF (12 years), which is a qualifying renewable resource under CETA.

3. **Spokane has not demonstrated that the design of the power plant itself does not meet the definition of "baseload electric generation" under RCW 80.80.010 and relevant agency rules.**

Since the most recently available public information about the facility's operations indicates that it would not meet the emissions performance standard of 925 lbs. CO2/MWh required for baseload electricity generation, we recommend that the Commission take a close look at the question raised in the Petition – whether the facility meets the definition of "baseload electric generation" under RCW 80.80.010.

The statute defines "baseload electric generation" as, "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." (RCW 80.80.010(4)). Spokane argues that the plant does not meet this definition because it was designed and intended to manage solid waste. While the intent of the WTE facility to help manage solid waste is relevant to its actual operations as a waste-to-energy power plant, it is not the primary concern of this statute, which is focused on the operational characteristics of the power plant itself. Department of Ecology rules clarify what "designed" and "intended" mean in the definition of the term "baseload electric generation" under this statute:

> *"Baseload electric generation" means 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. For purposes of Part II and Part III of this rule, "designed" means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and "intended" means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant at the time of original permitting.* (WAC 173-407-110)

In making a determination, the Commission should consider the WTE facility's design and permits, technical capability limitations, and legal operating restrictions, if any. We do not believe that the information Spokane has submitted so far regarding the design of the

[1] U-161024 Adoption Order, paragraph 17 (June 12, 2019)

generating units, the permit conditions, and the capability of the equipment, are sufficient for the Commission to determine that the plant does *not* meet the definition of "baseload electric generation" under RCW 80.80.010. We would advise the Commission to seek advice from the Department of Ecology regarding its interpretation of "designed" and "intended", as they pertain to the Spokane WTE facility under the statute.

Thank you for considering our comments,

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