BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter 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 City of Spokane's Reply to Staff's and NWEC's Response Comments

I. INTRODUCTION

1. The City of Spokane ("City") submits this reply to Staff's Response to the City of Spokane's Petition ("Staff Response") and the NW Energy Coalition's ("NWEC") Comments on UE-210247 Notice of Opportunity to Respond to Petition ("NWEC Response"). The City has shown that the Spokane Waste to Energy ("WTE") facility is not "baseload electric generation" because (i) it has a plant capacity factor of less than 60 percent and (ii) it was designed and intended as a waste disposal facility, not a baseload power plant, and thus was not designed or intended to operate at any particular plant capacity factor. Neither Staff's nor NWEC's response undermine these determinative facts and conclusions.

2. While Staff is correct that design is a component of the Commission's "baseload electric generation" analysis under Chapter 80.80 RCW, Staff fails to appreciate the considerable information the City submitted about the purpose of the facility's design and overlooks the importance of intent and actual operations to the "baseload electric generation" determination. The design, intent, and actual operations of the WTE facility show that it is a waste disposal plant that relies on garbage to generate electricity as a byproduct of the waste disposal process; it

is not a power plant that uses trash to supply baseload electric power. The title of the Spokane Regional Health District's permit for the facility confirms this reality: "Solid Waste Handling Permit."[1]

3. Staff also concludes that Avista ratepayers would suffer adverse effects from a declaratory order authorizing a 15-year Power Purchase Agreement ("PPA") between the City and Avista. Staff Response at ¶ 5. Avista has, however, provided additional information to the City confirming that it and its ratepayers would not suffer adverse effects. Declaration of Chris Averyt in Support of the City of Spokane's Reply to Staff's and NWEC's Response Comments ("C. Averyt Decl.") at ¶ 19 (Exhibit M). This is because "Avista continues to identify needs for incremental capacity and energy in the future." *Id.* As Avista noted in its comments, "the Waste to Energy Facility has been an important resource for serving [its] customers, and if the WUTC ruled in favor of the City of Spokane, [Avista] would engage with the City in negotiations on a long-term PPA." *Id.* Since Avista has "a need for additional capacity and energy, as long as the terms of the contract with the City are competitive with market conditions related to other resources and [Avista's] avoided cost filings, [Avista] customers are not negatively impacted by entering into that longer-term contract." *Id.* As such, "Avista and its customers would not suffer adverse effects from a declaratory order." *Id.*

4. The City requests the Commission exercise its authority under WAC 480-07-930(5) to take additional time as necessary to consider this reply, up to and including 90 days from the date of the City's Petition for Declaratory Order ("Petition") pursuant to WAC 480-07-930(5)(c), and then enter a declaratory order that (i) the WTE facility is not "baseload electric

[1] *See* Exhibit H of the Declaration of Marlene Feist in Support of City of Spokane's Petition for Declaratory Order ("M. Feist Decl.").

generation" under RCW 80.80.010(4) and WAC 480-100-405(2) and (ii) neither Chapter 80.80 RCW, specifically RCW 80.80.060(1), nor Chapter 480-100 WAC, specifically WAC 480-100-405(1), precludes Avista from entering into a contract with a term of 15 years for the WTE facility.

II. REPLY TO STAFF RESPONSE

A. Facility Design is Not the Sole, or Necessarily Even the Primary, Consideration for "Baseload Electric Generation" Determinations.

5. Staff contends (i) that the City did not submit design documents pursuant to a Commission rule that technically applies only to electric utilities, Staff Response at ¶ 7,[2] and (ii) that without "engineering or manufacturer's specifications explaining how the plant was designed to operate," in particular "the manufacturer's specifications for the plant's annual capacity factor," "the Commission cannot say whether or not the WTE Facility provides baseload electric generation," *id.* at ¶ 8. In addition to ignoring extensive documentation regarding the WTE facility's original design and intent, *see id.* at ¶ 12, Staff has improperly elevated design above all other considerations, including the facility's intent and actual operations, to the City's detriment. This is contrary to the statute's plain language and Commission precedent. It also unfairly prejudices the City under these circumstances because the manufacturer did not specify a plant capacity factor[3] and the facility in fact operates at a plant

[2] Staff references WAC 480-100-415, which is applicable to "Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gas emissions performance standard."

[3] C. Averyt Decl. at ¶ 6. The City provided a number of planning documents that discuss the design and intent of the WTE facility with the Petition. *See* M. Feist Decl. at ¶¶ 11–23 and accompanying exhibits. As Staff points out, the City also provided Staff with design documents specific to the generator through informal discovery. Staff Response at ¶ 8 n.13. The City is also providing design documents for the turbine generator with this reply. C. Averyt Decl. at ¶¶ 6–18 (Exhibits A-L).

capacity factor of less than 60 percent.[4]

6. Staff would effectively box the City into the position of having to prove a negative in design documents that were made 30-plus years ago—20 years before the GHG emissions performance standard was adopted. This is contrary to the plain language of the statute, which 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),[5] and requires the Commission to "consider the design of the power plant and its intended use based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances." RCW 80.80.060(3). It is also contrary to Commission precedent. As the Commission has previously noted, "the statute requires consideration of ***both design and intended use because neither factor by itself is sufficient***." *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc*., Dockets UE-090704 & UG-090705, Order 11 ("Mint Farm Order") at ¶ 358 (Apr. 2, 2010) (emphasis added). The statute and the Commission therefore require a holistic consideration of various factors that are relevant in each circumstance, including among others, facility design and intended use, not solely or even preeminently design.

7. Here, the evidence shows that the WTE facility was neither designed nor intended to provide electricity at any particular plant capacity factor, let alone one of 60 percent or greater. Further, the WTE facility has operated at a plant capacity of less than 60 percent for the past 12 years. Under these circumstances, the WTE facility does not meet the definition of "baseload

[4] Petition at ¶¶ 25–26.

[5] *See also* WAC 480-100-405(2)(a).

electric generation."

B. Facility Operations are Relevant to Determining the Plant Capacity Factor, and thus Whether a Plant is "Baseload Electric Generation."

8. Staff proposes to largely disregard the WTE facility's actual operations, *see* Staff Response at ¶¶ 11–14, stating incorrectly that the "Commission has already rejected the argument that actual operations are relevant to determining whether a power plant provides baseload electric generation," *id.* at ¶ 14. Contrary to Staff's argument, however, the Commission did not reject considering actual operations in the baseload determination. Rather, in Mint Farm, the Commission refused to make the baseload determination "simply based on the strength of forecasts and uncertain conditions relating to economic dispatch." Mint Farm Order at ¶ 359. The Commission concluded that "[t]he more reasonable interpretation is that the design of a plant is the primary consideration, ***unless operations are specifically constrained by other factors***, such as air permits." *Id.* (emphasis added). In short, the Commission did not reject actual data collected over more than a decade of operations, like the information the City has here.

9. Indeed, as Staff points out, "'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." Staff Response at ¶ 6 (citing RCW 80.80.010(18); WAC 480-100-405(2)(f)). Since "capacity factor" is defined based on "rated capacity," actual plant operations must be considered against that figure. Otherwise a facility could never be anything other than baseload if actual output is not considered in the analysis.

10. In the Mint Farm case, Staff itself noted that "operating characteristics" were a consideration in the baseload analysis. Mint Farm Order at ¶ 349. In some circumstances, that could be limits in a permit. *Id.* at ¶ 359. In the present circumstance, the operating characteristics

are that the WTE facility (i) is constrained by the amount of waste it receives (as it was designed as a waste disposal facility), (ii) has no backup fuel, and (iii) has operated with a plant capacity factor of less than 60 percent for the past 12 years. Petition at ¶¶ 25–26. While Staff seems to question some of these facts, *see* Staff Response at ¶¶ 13–14,[6] it has not refuted them. Nor could it.

C. The Facility's Planning Documents Show that it was Designed and Intended to be a Waste Treatment Facility, Not a "Baseload Electric Generation" Plant.

11. Staff attempts to dismiss the WTE facility planning documents in their entirety. Staff Response at ¶ 12. These documents are, however, directly relevant to the baseload determination. The primary purpose of the WTE facility shows how the City planned to use the generator as part of the waste disposal and incineration process, and not as a baseload generator. In short, the WTE facility is a waste disposal plant that generates power as byproduct of the waste disposal process; it is not a power plant that uses trash to provide baseload electric power.

12. In addition, Staff's narrow focus on the turbine generator is curious,[7] as the WTE facility's emissions come from the incineration of wastes, and not the generator. C. Averyt Decl. at ¶ 4. Further, if the turbine generator goes offline, e.g., for maintenance, the WTE facility continues to burn trash for waste disposal purposes. *Id.* at ¶ 5. In other words, the facility consumes this "fuel" regardless of whether it is generating power because the purpose of the

[6] Staff also makes assumptions about capacity payments that are both incorrect and unrelated to the statutory definition of "baseload electric generation." *See, e.g.*, Staff Response at ¶ 10. The assumptions are incorrect because Avista makes capacity payments to non-baseload facilities such as intermittent generators under Schedule 62. *See* Avista, Schedule 62, Qualifying Facilities Washington, Sections I(1) and II(1), *available at* https://www.myavista.com/about-us/our-rates-and-tariffs/washington-electric. These assumptions are also irrelevant to the "baseload electric generation" determination. The design, intent, and actual operations of the WTE facility are the decisive factors. *See* RCW 80.80.010(4); RCW 80.80.060(3); Mint Farm Order at ¶¶ 358–359.

[7] *See, e.g.*, Staff Response at ¶ 12 ("the question before the Commission concerns the facility's *power plant*") (emphasis in original).

facility is to manage solid waste, not to generate power. *Id.*

D. The Commission's Mint Farm Decision is Distinguishable from the City's Petition and WTE Facility Operations.

13. Staff relies in significant part on the Commission's Mint Farm decision. In addition to the fact that Staff has misconstrued that decision, as discussed above, that decision is distinguishable from the City's Petition and the WTE facility in several material ways:

i. In Mint Farm, the utility, Puget Sound Energy ("PSE"), testified that the 311 MW natural-gas fired, combined cycle turbine generation facility, known as Mint Farm, was "baseload electric generation" and intended to operate it as a baseload plant[8] (here, the City has actual operations data showing that the facility is not a baseload plant; these are not just mere projections);

ii. Public Counsel's arguments that the Mint Farm plant was not "baseload electric generation" in that case focused primarily on models, not actual operations, as PSE had only owned the plant for a short period of time and its use of Mint Farm was based largely on projections[9] (the WTE facility's plant capacity factor, on the other hand, is based on actual operations, not speculative forecasts and uncertain conditions);

iii. PSE had sufficient firm gas supply and gas transportation agreements to operate Mint Farm at or above a 60 percent capacity factor[10] (WTE has no backup fuel);

iv. PSE owned the plant[11] (Avista does not own the WTE facility); and

[8] Mint Farm Order at ¶¶ 347, 356.
[9] *Id.* at ¶¶ 233, 352, 359.
[10] *Id.* at ¶350.
[11] *Id.* at ¶ 233.

v. Ecology had concluded the plant was baseload[12] (there is no such determination here).

14. As discussed, the statute requires the Commission to make the baseload determination on a case-by-case basis considering factors that are "relevant under the circumstances." RCW 80.80.060(3). The relevant circumstances here are that (i) the WTE facility's actual plant capacity factor is less than 60 percent, (ii) the facility relies on waste to generate electricity, (iii) the facility does not have backup fuel, (iv) the facility was designed and intended for waste disposal (not to generate baseload electric power), and (v) the design documents do not specify an annual plant capacity factor (because no specific plant capacity factor was part of the facility design or intent).

15. In short, the Commission's decision in Mint Farm does not dictate that the WTE facility is "baseload electric generation." The WTE facility was not designed or intended to operate at any particular plant capacity factor and it actually operates at a capacity factor less than 60 percent. It is not "baseload electric generation" under Chapter 80.80 RCW.

E. The Commission has the Authority to Decide Whether the WTE Facility is "Baseload Electric Generation."

16. While Staff and NWEC suggest that Ecology must play a role in determining whether the WTE facility is "baseload electric generation," Staff Response at ¶ 9 and NWEC Response at 3–4, the plain language of the statute and the Commission's own precedent refute that suggestion. As the Commission noted in Mint Farm, an Ecology letter "is not determinative, because the law gives the authority to the Commission to make this judgment . . ." Mint Farm Order at ¶ 357. Further, the authority to make a "baseload electric generation" determination

[12] *Id.* at ¶¶ 347, 357.

rests with the Commission under RCW 34.05.240(1), RCW 80.80.060(3), and WAC 480-07-930(1). Simply put, a letter from Ecology is not a requirement and such a letter does not exist.

F. Avista and its Ratepayers Will Not Suffer Adverse Effects from a Declaratory Order.

17. As discussed, Avista has clarified that because it has "a need for additional capacity and energy, as long as the terms of the contract with the City are competitive with market conditions related to other resources and [Avista's] avoided cost filings, [Avista's] customers are not negatively impacted by entering into that longer-term contract. With those caveats, Avista and its customers would not suffer adverse effects from a declaratory order." C. Averyt Decl. at ¶ 19 (Exhibit M).

III. REPLY TO NWEC RESPONSE

A. The City has Not Requested and is Not Seeking an Alternative Compliance Determination under the Clean Energy Transformation Act ("CETA").

18. As NWEC notes, the City did not ask the Commission to make a determination that the WTE facility is an eligible alternative compliance option. NWEC Response at 2. The City simply noted that the 15-year period for WTE as an alternative compliance option is consistent with a 15-year term for a PPA between the City and Avista. The City will work with Avista to address and seek compliance if and when Avista proposes to use the WTE facility for CETA compliance. That issue is, however, not in front of the Commission at this time.

B. The PURPA Rules NWEC Discusses Apply to Facilities of 5 MW or Less and Thus, by Their Express Terms, Do Not Apply to the WTE Facility.

19. In its response, NWEC discusses PURPA rules that by their terms apply to facilities with capacities of 5 MW or less. *See* WAC 480-106-050(4) ("Standard rates for

purchases from qualifying facilities with capacities of five megawatts or less"). The WUTC has a capacity of greater than 5 MW. These rules therefore do not apply to the WTE facility.

C. Ecology Rules Support Considering the City's Intent for the WTE Facility.

20. As discussed in section II(E) above, it is not necessary for the Commission to get input from Ecology before making a "baseload electric generation" determination. Nonetheless, as NWEC points out, under Ecology rules, the "intent of the owner or operator of the power plant at the time of original permitting" is relevant to that determination. *See* NWEC Response at 3 (citing WAC 173-407-110). This is consistent with the City's approach to relying on the original intent of the WTE facility as a waste disposal plant, not baseload power generation, with no designed or intended plant capacity factor. The original intent for the facility supports a conclusion that it is not "baseload electric generation."

IV. CONCLUSION

21. The WTE facility is not "baseload electric generation" because (i) it has a plant capacity factor of less than 60 percent and (ii) it was designed and intended as a waste disposal facility, not a baseload power plant, and thus was not designed or intended to operate at any particular plant capacity factor. Staff and NWEC have not shown these determinative facts to be in dispute.

22. In addition, Avista ratepayers will benefit from a 15-year PPA between the City and Avista because Avista has a need for energy and capacity and the power is projected to have the same cost regardless of whether Avista sources the power from the City or another supplier. At least if the power is sourced from the City, the many Avista ratepayers who reside in Spokane will enjoy some indirect benefits from the financial benefit to the City.

23. A declaratory order is therefore appropriate.

24. The City requests that the Commission enter an order now, or after exercising its authority to take up to an additional 90 days to consider this reply, declaring that:

i. The WTE facility is not "baseload electric generation" under RCW 80.80.010(4) and WAC 480-100-405(2); and

ii. Neither Chapter 80.80 RCW, specifically RCW 80.80.060(3), nor Chapter 480-100 WAC, specifically WAC 480-100-405(1), precludes Avista from entering into a contract with a term of 15 years for the WTE facility.

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