

**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 REPLY COMMENTS

I. INTRODUCTION

1 In April 2021, the city of Spokane (City) petitioned for an order declaring that its
Waste-to-Energy Facility (WTE Facility) does not provide baseload electric generation
within the meaning of RCW 80.80.060 and WAC 480-100-405 so that the City and Avista
Utilities could enter into a long-term power-purchase agreement for the facility’s output.

2 Staff filed comments opposing the entry of a declaratory order for two reasons: (1)
the City failed to show the propriety of a declaratory order under RCW 34.05.240, and (2)
the City failed to show that the WTE facility does not provide baseload electric generation.
Staff stands by those comments. These surreply comments address new evidence and
argument offered by the City in reply to Staff’s comments, none of which should persuade
the Commission that it should issue the requested declaratory order.

II. DISCUSSION

3 Staff provides these comments to address two limited matters: (1) the substantive
issue of whether the WTE Facility provides baseload electric generation given its design,
and (2) the procedural issue of whether the Commission should enter a declaratory order
under the APA.

4 Turning first to the substantive issue, whether the WTE Facility provides “baseload electric generation” turns on “the design of the power plant and its intended use, based upon the electricity purchasing contract, if any, permits necessary for the operation of the power plant, and any other matter the [C]ommission determines is relevant under the circumstances.”¹

5 When Staff submitted its response comments, it lacked data about the designed for capacity factor of the WTE Facility’s generating plant. The City’s reply comments provided that evidence, and that evidence bolsters Staff’s conclusion that the WTE Facility provides baseload electric generation. The Engineering Report submitted by the City in reply provides that “[t]he turbine generator and auxiliaries will be designed for continuous operation, 24 hours a day, 365 days a year.”² The WTE Facility’s electrical plant, in other words, was designed for operation at a 100 percent capacity factor.

6 The evidence before the Commission thus establishes that (1) the WTE Facility’s incinerators were designed to operate continuously,³ (2) the WTE Facility’s generating plant was designed to operate continuously,⁴ and (3) the relevant permits do not restrict the facility’s ability to operate continuously.⁵ Given that evidence, the Commission should determine that the City has failed to establish that the WTE Facility does not provide baseload electric generation under RCW 80.80.060(3).

¹ RCW 80.80.060(3) (emphasis added).

² Decl. of Chris Ayert in Support of City of Spokane’s Reply to Staff’s & NWECC’s Comments, Exh. L at § 3.9.1.

³ *In re 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, 4-5 ¶ 9 (May 10, 2021) (Staff’s Comments).

⁴ Decl. of Chris Ayert in Support of City of Spokane’s Reply to Staff’s & NWECC’s Comments, Exh. L at § 3.9.1.

⁵ Staff’s Comments at 4-5 ¶ 9.

7 Turning next to the procedural issue, whether the Commission should enter a declaratory order turns in part on whether uncertainty about the status of the WTE Facility “adversely affects the petitioner”⁶ and whether this adverse effect “outweighs any adverse effects on others or on the general public that may likely arise from the order requested.”⁷

8 As discussed in Staff’s response comments, entering the declaratory order requested by the City will allow the City to enter into a longer-term contract and take in up to 10 million extra dollars over the life of that longer contract than it would take in over the series of shorter contracts it would otherwise enter into. That money must come from somewhere; as explained by Staff’s response comments,⁸ that somewhere is from Avista’s ratepayers.

9 The City responds by citing an email from an Avista official claiming that ratepayers would not be harmed.⁹ That opinion is caveated,¹⁰ and it cannot overcome the plain facts before the Commission: if the Commission enters the requested order, Avista’s ratepayers will pay the City an extra 7 to 10 million dollars over a fifteen year period. Any uncertainty suffered by the City does not outweigh that adverse effect on Avista’s ratepayers.

DATED this 4th day of June 2021.

Respectfully submitted,

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⁶ RCW 34.05.240(1)(c).

⁷ RCW 34.05.240(1)(d).

⁸ Staff’s Comments at 2 ¶ 5.

⁹ Decl. of Chris Ayert in Support of City of Spokane’s Reply to Staff’s & NWECC’s Comments, Exh. M.

¹⁰ *Id.*