Service Date: July 23, 2021

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of CITY OF SPOKANE, for an Order Declaratory 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 ORDER 01 DECLARATORY ORDER

BACKGROUND

1 On April 15, 2021, the City of Spokane (City) filed with the Washington Utilities and Transportation Commission (Commission) a Petition for Declaratory Order (Petition) requesting the Commission issue an order declaring that the Spokane Waste to Energy (WTE) facility is not "baseload electric generation," arguing that without such a determination, Avista Corporation d/b/a Avista Utilities (Avista or Company) would be precluded from entering a 15-year contract for power from the WTE facility.[1]

2 In its Petition, the City explains that it designed and operates the WTE facility to meet its obligations to responsibly manage solid waste generated within the city, not for the purpose of generating power. The City further states that it is negotiating a new power purchase agreement (PPA) with Avista for the electrical output of the WTE facility. The current PPA has a five-year term. The City argues that a 15-year term would not alter the "status quo," but would significantly benefit City residents, many of whom are Avista ratepayers, by $7.5 to $10 million over the life of the contract.

3 The City requests that the Commission enter a declaratory order because the City faces uncertainty about whether the five-year term limit for contracts with "baseload generation" under RCW 80.80 applies to the WTE facility. The City contends that no measurable adverse effects to others or the public will arise from a Commission ruling that the WTE facility is not baseload electric generation under RCW80.80, in part because the WTE facility is the only facility of its type in Washington.

[1] The City argues that the WTE facility does not meet the definition of "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(1), nor Chapter 480-100, specifically WAC 480-100-405(1).

4 On April 20, 2021, the Commission issued a Notice of Opportunity to Respond to the Petition. The Notice required all interested persons to file a response no later than May 10, 2021.

5 On May 7, 2021, Avista filed a response to the Petition. Avista takes no position on whether the WTE facility is or is not baseload generation. If the Commission decides to rule on the issue and find in favor of the City, Avista says, it would engage in negotiations for a long-term PPA with the City.

6 On May 10, 2021, Commission staff (Staff) filed its response. Staff recommends the Commission decline to enter a declaratory order because the City failed to show that it is entitled to one under the state Administrative Procedure Act (APA), specifically RCW 34.05.240, and that the WTE facility provides baseload electric generation as that term is used in RCW 80.80.

7 Specifically, Staff argues that any adverse effects suffered by the City do not outweigh the adverse effects suffered by others, which among the elements a petitioner must prove under RCW 34.05.240 to obtain a declaratory ruling. According to Staff, the City's projected savings of $7.5-10 million will come at Avista's, and ultimately, its ratepayers', expense. Staff contends that any gain the City realizes from the declaratory order it seeks would be equaled by the increased rates Avista's ratepayers would pay.

8 Staff further argues that the City fails to show that the WTE facility does not provide baseload electric generation. Relying on the Commission's decision in *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy, Inc*., Dockets UE-090704 & UG-090705 (*Mint Farm Order*), Staff argues that the design of a plant is the primary consideration in determining whether a plant is a baseload unit, unless operations are constrained by other factors, such as air permits. Staff argues that the City does not show that the WTE facility was designed to operate at an annual capacity factor of less than 60 percent because its Petition lacked any engineering or manufacturer specifications explaining how the plant was designed to operate. Staff explains that information obtained through informal discovery does not provide the manufacturer's specifications for the plant's annual capacity factor. Absent that information, Staff contends the Commission cannot determine whether the WTE facility provides baseload electric generation.

9 Staff next argues that the City failed to 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. This lack of evidence, coupled with the City's claim that it would benefit from higher prices from a longer contract (which are most likely capacity payments), indicates that the WTE facility provides baseload generation. Citing the *Mint*

Farm Order, Staff argues that the City's actual annual capacity factor is not relevant to determining whether it provides baseload electric generation.

10 Finally, Staff argues that 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 obligations under the Clean Energy Transformation Act (CETA),[2] assuming the facility meets other CETA requirements.

11 On May 10, 2021, Northwest Energy Coalition (NWEC) also filed a response to the Petition. NWEC limits its comments to the Petition's interaction with CETA, the Commission's rules governing contracts under the Public Utilities Regulatory Policy Act (PURPA), and rules developed by the Department of Ecology related to the definition of "baseload electricity generation."

12 First, NWEC argues that the Commission cannot determine whether power purchased from the WTE facility is eligible as an alternative compliance option under CETA until the Departments of Commerce and Ecology have made a determination under RCW 19.405.040(1)(b)(iv), which provides that those agencies have the authority to determine whether the WTE facility is an eligible alternative compliance option, and that such a determination 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. NWEC argues that Commerce and Ecology must make this determination before the Commission may weigh in.

13 Next, NWEC argues that, 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, which clearly establishes that the Commission intended existing QFs to have shorter contract terms than new QF facilities. Because the WTE facility went online 30 years ago, NWEC argues that offering the facility a more favorable contract would be inconsistent with Commission rules and policy intent.

14 Finally, NWEC argues that the City 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, noting that the most recently available information shows that the WTE facility would not meet the emissions performance standard of 925 pounds of CO2 per megawatt hour required for baseload electricity generation. NWEC acknowledges that, although 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

[2] RCW 19.405.040.

concern of RCW 80.80.010, which is focused on the operational characteristics of the power plant itself. NWEC cites Ecology rules that define "design" as "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."[3]

15 In sum, NWEC argues that the Commission should consider the WTE facility's design and permits, technical capability limitations, and legal operating restrictions, if any, when makings its determination. NWEC believes that the information submitted by the City is insufficient for the Commission to determine that the WTE facility does not meet the definition of "baseload electric generation."

16 On May 14, 2021, the City filed a response to Staff's and NWEC's comments with a series of arguments, as follows:

- Staff fails to appreciate the considerable information the City submitted about the WTE facility's design and overlooks the importance of intent and actual operations in the "baseload electric generation" determination. The City reiterates its argument that the WTE facility is a solid waste facility, not a power plant.

- Avista provided the City with information that its ratepayers would not suffer adverse effects. So long as the terms of the contract are competitive with market conditions relative to other resources and Avista's avoided cost filings, Avista's customers are not negatively impacted by entering a long-term contract.

- Staff has ignored the extensive documentation about the facility's original design and intent, elevating design above all other considerations. This unfairly prejudices the City because the manufacturer did not specify a plant capacity factor and the facility operates at a plant capacity factor of less than 60 percent. The City argues that prior Commission orders have held that the statute requires consideration of both design and intended use because neither factor by itself is sufficient.

- The WTE facility was neither designed nor intended to provide electricity at any particular plant capacity factor, and the facility has operated at a plant capacity of less than 60 percent for the past 12 years.

- Facility operations are relevant to determining plant capacity factor and thus

[3] WAC 173-407-110.

whether a plant produces baseload electric generation. The City cites the *Mint Farm* case, in which Staff acknowledged that "operating characteristics" were a consideration in the baseload analysis. Presently, the WTE facility is constrained by the amount of waste it receives, it has no backup fuel, and it has operated with a plant capacity of less than 60 percent for the past 12 years. The City claims Staff has not refuted these facts.

- The Commission's *Mint Farm* decision is distinguishable because the City has actual operational data rather than projections, Public Counsel's arguments in that case focused primarily on models and not actual operations, PSE had sufficient firm gas supply and gas transportation agreements to operate Mint Farm at or above 60 percent capacity, PSE owned the plant, and Ecology concluded the plant was baseload.

- The City disagrees with NWEC's assertion that Ecology must play a role in determining whether the WTE facility is baseload electric generation, asserting that an Ecology letter is not determinative and the law gives the Commission the authority to decide whether a plant should be classified as baseload. It is not necessary to get input from Ecology before making a baseload electric generation determination.

- PURPA standard contract rules do not apply to the WTE facility because it has a capacity of greater than five megawatts (MW).

17 On May 21, 2021, the Commission issued a Notice of Date for Entry of Declaratory Order and Notice of Opportunity to Respond to the City of Spokane's Reply. The Notice required all interested persons (excluding the City) to file a response no later than June 4, 2021. Only Commission Staff filed a response.

18 In its June 4, 2021, response, Staff maintains its position and recommends the Commission decline to enter a declaratory order because (1) the City failed to show that it is entitled to one under the APA, and (2) the WTE facility provides baseload electric generation within the meaning of RCW 80.80.

19 Specifically, Staff argues that the City's reply comments support Staff's conclusion that the WTE facility provides baseload electric generation because: (1) the WTE facility's incinerators were designed to operate continuously, (2) the WTE facility's generating plant was designed to operate continuously, and (3) the relevant permits do not restrict the facility's ability to operate continuously.

20 Finally, Staff argues that the Commission should not enter a declaratory order because the City has not established that any adverse effects suffered by the City do not outweigh the adverse effects suffered by others. According to Staff, the City's projected savings of $7.5-10 million will come at Avista's, and ultimately, its ratepayers', expense. Staff contends that any gain the City realizes from the declaratory order it seeks would be equaled by the increased rates paid by Avista's ratepayers and thus any uncertainty suffered by the City does not outweigh the adverse effect on Avista's ratepayers.

DISCUSSION

21 Under the APA, "[a]ny person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency."[4] As relevant here, the petition must demonstrate (1) that uncertainty necessitating resolution exists; (2) that there is an actual controversy arising from the uncertainty; (3) that the uncertainty adversely affects the petitioner; and (4) that the adverse effect of the uncertainty on the petitioner outweighs any adverse effect on others.

22 We find that the Petition satisfies the statutory requirements for a declaratory order. The City seeks a finding from the Commission that its WTE facility is not baseload electric generation. Without such a finding, Avista would be precluded from entering a 15-year contract with the City for power from the WTE facility. The City estimates the cost difference between a five -year and 15-year contract is approximately $7 million dollars. The City has legitimate concerns about whether its WTE facility meets the definition of baseload electric generation, giving rise to an actual controversy that adversely affects the City to a greater degree than any adverse effect on others.

23 We begin our analysis of the merits of the Petition by discussing the meaning of "baseload electric generation," and potential harm to ratepayers, below.

Baseload Electric Generation

24 The City is seeking a 15-year contract with Avista for the output from the WTE facility. A 15-year contract for baseload generation is a "long-term financial commitment" under

[4] RCW 34.05.240; *accord* WAC 480-07-930(1).

RCW 80.80.010(16).[5] However, RCW 80.80.060(1) states that no electric utility may enter a long-term financial commitment unless the baseload electric generation complies with the greenhouse gas performance standard in RCW 80.80.040.

25 The restrictions in RCW 80.80.060 pertain only to "baseload" generation. If the output from the WTE facility is not baseload generation, then RCW 80.80.060 does not apply and Avista and the City are not prevented from entering into a contract longer than five years. That is, whether Avista is prevented from entering into a long-term contract for the output from the WTE facility hinges on whether or not the output from the WTE facility meets the definition of baseload generation.

26 RCW 80.80.010(4) 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 60 percent. This definition identifies that both design and intended operation are relevant considerations. To be considered baseload, the following criteria must be met: (1) the plant must be designed to provide electricity at an annualized plant capacity factor of at least 60 percent, and (2) the plant must be intended to provide electricity at an annualized plant capacity factor of at least 60 percent.

27 Addressing the "design" element of the definition requires first considering the use of the term "power plant" in RCW 80.80.010(4). While the City argues that the WTE facility was designed as a waste disposal facility and therefore does not meet the design criterion of the definition, this argument requires that the term "power plant" refer to the entire WTE facility. However, where a facility was built with the primary purpose of waste disposal, it is not clear that the term "power plant" should refer to the entire facility. The term "power plant" reasonably could refer to the portion of the WTE facility dedicated to power generation. We are not persuaded by the City's argument.

28 While the Commission is not persuaded by the City's argument regarding the design criterion, we find merit in the City's argument with respect to the "intent" criterion. The Commission views the plant's actual operation in recent years as a meaningful indicator of the plant's intended use. The City demonstrated that for the last 12 years the WTE facility's net capacity factor has been 56.8 percent,[6] indicating that the facility does not operate as a baseload power plant under RCW 80.80.060.

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[5] RCW 80.80.010(16) defines a long-term financial commitment as an interest in a baseload electric generator or a contract for baseload generation that is five years or longer.
[6] City of Spokane Petition for Declaratory Order, page 8, paragraph 25. April 15, 2021.

29 To be considered baseload generation under RCW 80.80.010(4), a plant must meet both the design criterion and the intent criterion. Thus, a finding that the WTE facility does not meet the statute's "intent" criterion is sufficient for making a determination that power from the WTE plant is not "baseload electric generation." We decline to make a finding with respect to whether WTE meets the statute's "design" criterion.

30 Turning to NWEC's comments, the Commission need not wait for Ecology and Commerce to determine if the WTE facility meets CETA requirements as an alternative compliance option to answer the "baseload" question posed by this Petition. The two issues are unrelated, and NWEC's argument is not relevant to the issue before the Commission.

Potential for Ratepayer Harm

31 While we are frustrated that the City did not provide any information in the form of workpapers or otherwise to explain how it calculated its estimated project savings of $7.5 to $10 million, the Commission disagrees with Staff's claim that the benefit to the City would harm ratepayers. Presumably, the City is seeking a contract that is subject to PURPA and the Commission's rules WAC 480-106. Federal law and Commission rules require Avista to pay the City at the utility's avoided cost, which represents the amount that would make ratepayers indifferent to the cost of power from the WTE facility or some other facility. Thus, whether the City benefits from a 15-year contract does not mean that ratepayers would be harmed by the arrangement. In Avista's next power cost filing or GRC, Staff will have an opportunity to review Avista's contract with the City to determine whether the contract rate is prudent.

32 Finally, we disagree with NWEC's assessment that the City should not receive a 15-year contract. Under the facts of this proceeding, the WTE facility has a nameplate capacity of 30 MW, which means the City does not have the option to choose the standard PURPA contract detailed in WAC 480-106-050(4). QFs that have a nameplate capacity greater than five MW are not eligible for the standard contract and are free to negotiate contracts of any length of time.

33 We conclude that the City's WTE facility does not meet the standards for "baseload electric generation" set out in RCW 80.80.010(4).

ORDER

THE COMMISSION ORDERS:

34 (1) The Commission grants the City of Spokane's Petition for a Declaratory Order that the City's Waste to Energy facility is not "baseload electric generation" under RCW 80.80.010(4) and WAC 480-100-405(2)(a).

35 (2) Avista Corporation, d/b/a Avista Utilities is not precluded under RCW 80.80.060 from entering a 15-year contract for power from the Waste to Electricity facility.

DATED at Lacey, Washington, and effective July 23, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner