Exh. SJB-KR-1T

REDACTED

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DOCKET NO. UE-200900

DOCKET NO. UG-200901

DOCKET NO. UE-200894

JOINT TESTIMONY OF

SHAWN J. BONFIELD (AVISTA) AND KEVIN RASLER (INLAND EMPIRE PAPER)

IN SUPPORT OF A SPECIAL CONTRACT

I. INTRODUCTION

Q. Please state your names, titles, and the party you represent in this matter.

A. Shawn Bonfield, Senior Manager of Regulatory Policy and Strategy, representing Avista and Kevin Rasler, President and General Manager of the Inland Empire Paper Company ("IEP").

Q. Are you sponsoring Joint Testimony in support of the Special Contract between Avista and IEP as filed with the Commission on June 25, 2021?

A. Yes. This Joint Testimony on behalf of Avista and IEP recommends approval of the Special Contract entered into by Avista and IEP, which is being filed concurrently with this Joint Testimony. A term sheet reflecting all of the Special Contract's material conditions was supported by the Settling Parties and part of the Partial Multiparty Settlement Stipulation ("Partial Settlement") filed with this Commission on May 27, 2021.[1]

Q. What is the scope of your testimony?

A. This Joint Testimony will provide a brief overview of the background that led to the Special Contract between Avista and IEP, the rationale for the Special Contract, the terms of the Special Contract, and what we are asking the Commission to do as a result of the Partial Settlement as it pertains to the Special Contract. Capitalized terms in this Joint Testimony that are not otherwise defined are defined in the Special Contract.

[1] The Settling Parties consist of Avista, IEP, Commission Staff, the Alliance of Western Energy Consumers (AWEC), The Energy Project, and the Sierra Club. The Settling Parties have been informed by Public Counsel that it may join the settlement but does not yet have approval to do so.

Q. What is the proposed effective date of the Special Contract?

A. If approved by the Commission, the Special Contract would take effect at the same time new rates from these proceedings go into effect, which must be no later than October 1, 2021.

II. <u>QUALIFCATIONS OF WITNESSES</u>

Q. Mr. Bonfield, please state your name, address and provide information pertaining to your educational background and professional experience.

A. My name is Shawn J. Bonfield and my business address is 1411 East Mission Avenue, Spokane, 99202, Washington. I am employed by Avista as the Senior Manager of Regulatory Policy and Strategy. I filed rebuttal testimony in this proceeding on behalf of Avista on May 28, 2021, and my educational background and professional experience are described in my testimony, marked as Exh. SJB-1T.

Q. Mr. Rasler, please state your name, address and provide information pertaining to your educational background and professional experience.

A. My name is Kevin Rasler and my business address is 3320 North Argonne Rd., Millwood, Washington, 99212. I am the President and General Manager of IEP. I filed response testimony in this proceeding on behalf of IEP on April 21, 2021, and my educational background and professional experience are described in my testimony, marked as Exh. KR-1T.

III. <u>IEP SPECIAL CONTRACT</u>

Q. Why did Avista and IEP begin negotiating terms for a Special Contract?

A. In Avista's 2019 general rate case, Commission Staff identified the substantial difference in load characteristics between IEP and all other customers on Schedule 25, under which IEP currently takes service. Specifically, Staff witness Jason Ball noted in his testimony in that case that IEP "has an average demand that is over ten times higher than the class average;" that IEP "uses almost half (45 percent) of all kWh's" and that IEP "is responsible for over 80 percent of the primary voltage discount the schedule receives."[2] Mr. Ball expressed concern that, due to these characteristics, Schedule 25 did not serve a homogenous group of customers, which raised rate discrimination and undue preference concerns.[3] To remedy this potential legal problem, Mr. Ball made several recommendations, one of which was to develop a Special Contract for IEP so that it took service apart from Schedule 25.

During settlement discussions in the 2019 rate case, the parties agreed that IEP and Avista would negotiate the terms of a Special Contract. Accordingly, the Settlement Stipulation the Commission approved to resolve most issues in the 2019 rate case included the following provision, excerpted in part: "Avista and IEP, with Commission Staff participation, will negotiate in good faith and using best efforts, to reach agreement on a special contract …. The effective date of an approved Special Contract will coincide with the rate-effective date of Avista's next electric general rate case, to avoid potential lost margin."

Q. Are there any other reasons Avista and IEP discussed a Special Contract?

A. Yes. IEP performed an economic analysis of pursuing on-site cogeneration to serve nearly all of its load and found that cogeneration would be cost-effective over the life of the project. If IEP pursued cogeneration, this would be akin to an economic bypass opportunity because it would nearly eliminate IEP's contribution to Avista's fixed costs, requiring other customers to assume those costs.

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[2] Docket Nos. UE-190334/UG-190335/UE-190222, Exh. JLB-1T at 24:4-8.
[3] Id. at 24:11-24.

Q. IEP witness Mr. Rasler provided an overview of the Special Contract negotiations that have taken place between Avista and IEP beginning in June 2020.[4] Please provide an update on the status of negotiations that led to the final resolution and filing of the Special Contract.

A. Negotiations between Avista and IEP, with the involvement of Commission Staff, continued through mid-April 2021, with the parties not reaching agreement on terms for the Special Contract prior to the filing of response testimony in this case on April 21, 2021. Mr. Rasler's testimony described the outstanding issues and IEP's position on each. Mr. Bonfield's rebuttal testimony, filed on May 28, 2021, provided Avista's position on each outstanding issue. During the discussions among the Settling Parties to the Partial Settlement, the Special Contract was included as an item for consideration as part of a settlement package. During the settlement negotiations, Avista and IEP were able to resolve all outstanding issues to both parties' satisfaction, with the Settling Parties offering their support of all terms to be included within the Special Contract.

Q. Prior to reaching the Partial Settlement, what were the last remaining issues to be worked out by the Parties?

A. First, the level of the revenue adjustment for IEP needed to be finalized. There was no disagreement that IEP's total revenue should be reduced under the Special Contract, nor that IEP needed to cover a meaningful level of fixed costs through its total rate under the Special Contract (the "Economic Bypass Revenue Requirement"). The specific Economic Bypass Revenue Requirement, however, had yet to be determined. Next, the amount and

[4] Exhibit KR-1CT at page 5.

value of the Demand Response being made available by IEP needed to be resolved. Also, the "noticing" provisions by which Avista could call upon IEP for a Demand Response Event were crucial and needed to work for both parties. Finally, both parties needed to be assured that any Lost Margin would be covered by other customers. This was made possible by the Partial Settlement reached by the Settling Parties that address these remaining issues (assuming, of course, that it is approved by this Commission).

Q. Were Avista and IEP able to resolve these remaining issues and enter into a contractual arrangement, which by its terms is subject to Commission approval?

A. As mentioned above, yes, and as further detailed below. The Special Contract was executed on June 24, 2021 and will only become effective on the rate effective date in these proceedings, if the Commission approves of its terms, including the recovery of any Lost Margin from other customers. A copy of the Special Contract appears in confidential Exhibit SJB-KR-2C.

Q. Mr. Bonfield, what does the Partial Settlement provide to Avista regarding the Special Contract?

A. For Avista, the Partial Settlement provides support from the Settling Parties for the Company to enter into the Special Contract and to ensure that the Special Contract does not result in Lost Margin or a loss of funding for its energy conservation programs and Low-Income Rate Assistance Program, as well as providing the Company with Demand Response that it can count on in future years. Finally, IEP is Avista's largest customer, and as such, covers a significant amount of costs that, if they were to leave our electric system through construction of a cogeneration system, would cause a substantial cost shift to all other customers; the Special Contract prevents this possibility.

Q. Mr. Rasler, what does the Partial Settlement provide to IEP regarding the Special Contract?

For IEP, the Partial Settlement provides support for IEP to receive an economic bypass rate, as well as value for its contribution of Demand Response, as discussed below.

Q. Why is the Special Contract in the Public Interest?

A. The Special Contract results in lower rates for Avista's remaining customers over the term of the contract than would have been the case if IEP had left Avista's system. If IEP bypasses Avista's system, through construction of a cogeneration system, the share of fixed costs paid by IEP would otherwise be paid by Avista's remaining customers. The Special Contract also gives Avista access to a valuable Demand Response resource. Demand Response resources will play a key role in Avista meeting its carbon free energy goals in the future. Finally, the Special Contract ensures that IEP will not develop the aforementioned new natural gas fired cogeneration resource in Washington during the term of the Special Contract.

<u>**Economic Bypass Revenue Requirement**</u>

Q. Mr. Rasler, is self-generation technically feasible for IEP?

A Yes. IEP has both the physical space and infrastructure necessary to support a cogeneration system that could meet nearly all of IEP's electrical load. Specifically, two locations adjacent to IEP's mill have been identified as suitable for locating a cogeneration facility. Additionally, IEP is supplied natural gas through a high pressure, four-inch diameter pipe connected to the Northwest Pipeline. (IEP previously bypassed Avista's natural gas delivery system to make this direct connection with Northwest Pipeline.)

Q. Mr. Rasler, can you please summarize IEP's interest in pursuing a cogeneration system to meet nearly all of IEP's electrical load?

A. Yes. IEP has evaluated the economic viability of constructing a cogeneration system and concluded that such a system could meet 97% of the mill's electricity needs and it would be cost-effective over the 30-year life of the project. IEP witness Dr. Lance Kaufman expands on the economic viability of the cogeneration system in Exhibit LDK-1T. He has sponsored: (1) a cogeneration study (confidential Exhibit No. LDK-3C); (2) a generation model (confidential Exhibit No. LDK-4C); and (3) a marginal cost study (confidential Exhibit No. LDK-5C).

Q. Mr. Rasler, is it in IEP's economic interest to self-generate?

A. Yes, IEP can substantially reduce long-term energy costs by constructing a cogeneration facility. It, however, would prefer to remain a customer of Avista, recognizing the value of such a relationship. The two companies have worked well together for many years in addressing IEP's service needs.

Q. Mr. Rasler, if cogeneration is economic for IEP, why did IEP instead pursue a Special Contract with Avista?

A. There are several reasons, some of which I already mentioned. First, the rate provided by a Special Contract would provide a portion of the savings projected from cogeneration. Second, a Special Contract avoids the need to make a high capital cost investment at the mill in the near term when the COVID-19 pandemic has created greater market uncertainty for IEP. Third, the Special Contract would avoid the construction of a new gas-fired generation unit and the associated carbon emissions, while simultaneously providing both IEP and Avista's other customers with incremental benefits through a substantial Demand Response program, which is discussed further below. Fourth, as mentioned, IEP values its relationship with Avista and hopes to continue its collaborative relationship with the utility through this contract.

Q. Mr. Bonfield, has Avista reviewed the cogeneration feasibility study (Exhibit LDK-3C) provided by IEP and concluded that IEP can, in fact, pursue a cogeneration system to meet nearly all of its electrical load?

A. Yes. Avista agrees with IEP's analysis that it can, in fact, pursue a cogeneration system to meet nearly all of its electrical load. While Avista did have some initial concern regarding IEP's ability to pursue the cogeneration system (i.e., permitting), it ultimately concluded that IEP could navigate its way through any challenges it may face in constructing the system.

Q. When IEP's response testimony was filed in this proceeding, the Washington Legislature had not yet passed SB 5126, the Climate Commitment Act, which Governor Inslee has now signed into law. Does passage of this law impact the economics or feasibility of the cogeneration system?

A. No. The Climate Commitment Act, which establishes a cap-and-trade program in Washington, does not prevent the construction of new natural gas-fired resources in Washington. In fact, some provisions of the Act could be read as supporting the development of new resources. Section 10(9)(b), for instance, directs state permitting authorities to pursue the State's greenhouse gas limits "in a manner that recognizes that the siting and placement of new or expanded best-in-class facilities with lower carbon emitting processes is in the economic and environmental interests of the state of Washington." Additionally, IEP's economic analysis assumed a cost for allowances associated with the cogeneration system's emissions, in anticipation of the possibility that Washington would enact a cap-and-trade program. It also assumed a cost to purchase offsets that could be required as a condition of securing the necessary permits to construct the cogeneration facility.

Q. Mr. Rasler, what was IEP's position on the economic bypass rate in its response testimony?

A. In my response testimony, I described that IEP proposed a rate that reduces IEP's current contribution to fixed costs by $[redacted] and that once the rate is set, it would be updated in subsequent rate proceedings as a percentage of Schedule 25, ensuring that the Special Contract rate continues to contribute to Avista's fixed costs.

Q. Mr. Rasler, how is the cost to serve IEP relevant to the Special Contract?

A. To account for the fact that IEP has the option to self-generate, which it would give up during the term of the Special Contract, it is appropriate that the Special Contract use an economic bypass rate. An economic bypass rate is a rate that recovers all of the variable costs to serve Avista and contributes to a portion of its fixed costs. This is consistent with the Commission's rules governing special contracts, which require, "at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the … electric … company's fixed costs."[5] Our testimony addresses the rules applicable to special contracts in more detail in Section IV, below.

Q. Mr. Rasler, how did IEP arrive at its proposed economic bypass rate?

A. IEP witness Dr. Kaufman completed a long run marginal cost study that established a baseline for measuring how IEP's rates contribute to Avista's fixed costs. Dr. Kaufman's study showed IEP could receive an Economic Bypass Revenue Requirement as

[5] WAC 480-80-143(5)(c)

low as $[redacted], which would contribute $[redacted] to Avista's fixed costs in the short run and would exceed the long run costs of serving IEP. IEP proposed a higher Economic Bypass Revenue Requirement to ensure "that other customers will not face a higher than intended rate impact should the Commission approve Avista's full requested rate increase" and to ensure "that the special contract rate exceeds the floor … established by [IEP's] marginal cost study even in the scenario where the Commission awards no rate increase to Avista."[6]

Q. Mr. Bonfield, did Avista review Dr. Kaufman's marginal cost study, and if so, what did it conclude about that study?

A. Yes. Avista witness Ms. Knox, in Exhibit TLK-4T, reviewed the marginal cost study and provides rebuttal testimony as to the reasonableness of the study. She concludes that Dr. Kaufman's long-run marginal cost study is reasonable.

Q. Mr. Bonfield, how did Avista arrive at its proposed economic bypass rate?

A. Using Avista's 2021 Electric Integrated Resource Plan ("IRP") Portfolio model (PRiSM), the Company estimated the change in total power cost without IEP's load for 2024 to 2031. Then the Company compared the power cost savings to the IEP revenue forecast for the same time period. The result of this analysis estimates the incremental margin IEP contributes towards lowering all other customer rates. Between 2024 and 2031, retaining IEP's full load benefits other customers by an average of approximately $[redacted] per year.

[6] Exhibit LDK-1CT at page 24.

Q. Could any modifications reasonably be made to Avista's study?

A. Yes. Avista's study looked at the impact of IEP on its system overall. If the study were limited to evaluate the impact of IEP's load on Washington customer rates (the rates over which the Commission has jurisdiction), the benefit of maintaining IEP's load increases to over $[redacted] annually. This version of Avista's study is included as Exhibit SJB-KR-3C to this Joint Testimony. Dr. Kaufman's contribution to the joint testimony in support of the Partial Settlement identifies other potential adjustments IEP identified that could be made to the study, which would further increase IEP's annual benefit to the system to $[redacted].

Q. Did Avista conclude that the agreed upon economic bypass rate would generally fall within reasonable limits?

A. Yes, the rate agreed upon with IEP falls within the zone of reasonableness, after taking all factors into account. In the final analysis it makes sense to secure some meaningful contribution toward fixed costs and avoid the needless construction of a new generation facility.

Q. How did the parties arrive at the final Economic Bypass Revenue Requirement?

A. Avista, IEP, and Commission Staff presented analyses during the negotiations of the Special Contract that showed a range of possible outcomes. As with any negotiation, the outcome represents a compromise of differing points of view. The Economic Bypass Revenue Requirement was included within the context of a Special Contract that was being negotiated as a "complete package". From each party's perspective the goal was to reach an agreeable Economic Bypass Revenue Requirement that benefited IEP while not greatly impacting all other customers and ensured a meaningful contribution to fixed costs.

Importantly, the rate agreed to is also supported by all parties joining the Partial Settlement. This "package" also included provision for Demand Response that was important to Avista and will benefit its customers.

Q. Is the ultimate Economic Bypass Revenue Requirement dependent on the rates approved in this proceeding?

A. Yes. To ensure that IEP contributes to Avista's fixed costs, the Economic Bypass Revenue Requirement will start with a $[redacted] reduction to IEP's 2019 revenue, or $[redacted]. That amount will then be added to the product of the total revenue requirement change approved in this case and [redacted], which represents IEP's share of the total Washington revenue requirement. Consequently, if the Commission approved Avista's full rate increase, as modified in its rebuttal testimony, of $40.155 million on the electric side, the Economic Bypass Revenue requirement would be $[redacted] ($40,155,000 x [redacted] + [redacted]).

Q. Will the Economic Bypass Revenue Requirement be updated in future years?

A. Yes. To further ensure that IEP continues to contribute to Avista's fixed costs over the term of the Special Contract, the Economic Bypass Revenue Requirement will be tied to rate changes to Schedule 25. Specifically, a "rate factor" will be developed in this proceeding based on the total cost to serve Schedule 25 (without IEP) on a $/MWh basis using rates approved in this proceeding and the total cost to serve IEP under the Special Contract, also on a $/MWh basis using rates approved in this proceeding. The Economic Bypass Revenue Requirement will then increase or decrease by the rate factor. Rate design for the Special Contract will also mirror Schedule 25.

Q. Can you provide an example to illustrate how the Economic Bypass Revenue Requirement will change?

A. Yes. Assume that the rates approved in this case result in a total revenue requirement for Schedule 25 without IEP of $40 million. Assume also that the total MWh for Schedule 25 without IEP are 600,000 MWh. This means the total $/MWh rate for Schedule 25 would be $66.67/MWh ($40 million / 600,000 MWh). Next, assume that the Special Contract rate is set at $10 million and includes a load of 200,000 MWh. This means the total $/MWh rate for the Special Contract would be $50/MWh ($10 million / 200,000 MWh). Under this example, the "rate factor" developed in this proceeding, then, would be 0.75 ($50/MWh / $66.67/MWh). That rate factor would then be applied to all future Schedule 25 rate changes to determine the Special Contract rate change. This same example is also included in the Special Contract to ensure clarity for future proceedings.

Q. How will the adjustment to IEP's total revenue be recovered from all other customers?

A. The Special Contract "revenue adjustment" will be recovered from all other electric customers in the same manner as the spread of the Allowance for Funds Used During Construction ("AFUDC") deferral balance discussed in ¶ 12 of the Partial Settlement. That is, the adjustment will be spread to each class based on allocated rate base, unless the Commission selects a different method for return of the AFUDC deferral.

<u>Demand Response</u>

Q. Mr. Bonfield, why is Avista interested in a Demand Response program with IEP?

A. Demand Response can be a cost-effective method to meet customer resource adequacy requirements. Avista's 2021 Electric IRP identified several price and direct load control programs to assist in meeting the Company's peak load requirements in the future. IEP is the only Avista customer in Washington large enough to provide more than 10 MW of Demand Response. A Demand Response program with IEP is a unique opportunity for Avista to have a single point of contact for a large and reliable curtailment.

Q. Please provide an overview of the Demand Response program contained within the Special Contract.

A. The Demand Response program consists of a Pre-Commitment Period (October 1, 2021 through October 31, 2026) and a Post-Commitment Period (November 1, 2026 through October 31, 2031). During the Pre-Commitment Period, the Demand Response is an economic product called on only where market and IEP's operational conditions allow it. As such, during the Pre-Commitment Period Avista cannot rely on the Demand Response for resource planning purposes.

During the Post-Commitment Period, Avista will provide IEP an upfront payment for IEP's commitment to provide [redacted] MW of Demand Response for 25 events per year. The [redacted] MW of Demand Response is measured from IEP's non-coincident peak demand and is referred to in the Special Contract as the "Curtailed Demand Limit." During the Post-Commitment Period, IEP must achieve the Curtailed Demand Limit whenever Avista calls a Demand Response Event or pay a penalty for the amount of load that exceeds the Curtailed Demand Limit (referred to in the Special Contract as the "Curtailment Shortfall"). Due to the firm commitment during the Post-Commitment Period, Avista can rely on the Demand

Response as a resource within its resource planning, which alleviates the need for Avista to acquire additional resources.

Q. Please clarify the difference in pricing during the Pre-Commitment and Post-Commitment Period.

A. During the Pre-Commitment Period, IEP does not receive a capacity payment for curtailments. This is because Avista does not have a capacity shortfall and any Demand Response does not clearly defer or avoid capacity costs. During this period, IEP is paid only for the avoided energy costs of each curtailment, measured as the difference between the market price of curtailed energy and the Special Contract rate for curtailed energy. During the Post-Commitment Period, IEP begins to receive capacity payments associated with avoided costs. These payments are received as a monthly bill credit regardless of whether Avista makes curtailment calls. This is because Avista avoids the need to procure incremental capacity in the amount of the Demand Response IEP has committed to provide, even if no curtailment calls are made.

Q. Mr. Rasler, how will IEP reduce its load in response to a Demand Response event requested by Avista?

A. IEP's primary energy consumption comes from operating a Thermo-Mechanical Pulp ("TMP") system. IEP plans to maintain sufficient inventory that it can turn off the TMP machinery for an agreed period of time to fulfill a Demand Response Event. The pulping machine consumes a fixed amount of energy when operating at maximum capacity. IEP typically operates the pulping machine at or near maximum capacity 24 hours a day.

Q. Mr. Rasler, what was the value of Demand Response proposed by IEP and how did it arrive at the proposed value?

A. IEP proposed that the Demand Response during the Post-Commitment Period be valued at $50 per kW-year, noting that this is the value Avista assigned to IEP's Demand Response in its recently filed IRP.

Q. Mr. Bonfield, what value did Avista propose for Demand Response in its Rebuttal Testimony?

A. While Avista acknowledged that it did, in fact, assign a value of $50 per kW-year to 25 MW of Demand Response provided by IEP within our IRP filed on April 1, 2021, we performed an alternative study that assigned a value of $[redacted]/kW-year to IEP's Demand Response. Nevertheless, Avista agreed that the value of IEP's Demand Response assigned by Avista in the IRP was an estimated, yet reasonable, value included to capture the Demand Response from IEP. In the Joint Testimony in support of the Partial Settlement, Dr. Kaufman provides IEP's perspective on Avista's alternative study.

Q. What value for the Demand Response did Avista and IEP ultimately agree to?

A. Avista and IEP agreed to value the Demand Response at $[redacted]/kW-year. This value is also supported by all parties to the Partial Settlement.

Q. What happens if IEP does not respond to an Avista Demand Response call in the Post-Commitment Period?

A. IEP will need to pay the difference between its Special Contract rate and the prevailing market price at the time. This essentially shifts market risk during the Demand Response period from Avista and its other customers to IEP. Additionally, during either the Pre-Commitment Period or the Post-Commitment Period, if IEP agrees to an Avista call to provide Demand Response, but then does not follow through, IEP will be subject to an incremental 25% penalty; that is, IEP will pay at least the difference between the applicable market rate and the IEP tariff rate, multiplied by 125%.[7]

Q. How should Demand Response program costs be distributed between Avista's customer jurisdictions?

A. The Settling Parties agreed that all costs and benefits of the IEP Demand Response program should be borne or received by Washington customers.

Q. Have all other outstanding issues surrounding the Demand Response program now been resolved (i.e., how to measure Demand Response and noticing provisions)?

A. Yes. During the final negotiations of the Special Contract, Avista and IEP were able to resolve all outstanding issues pertaining to the Demand Response program. Regarding how to measure the Demand Response provided by IEP, the Curtailed Demand Limit will be [redacted] MWs below IEP's non-coincident peak demand from the most recent 6-month calendar year period (i.e., January-June baseline for July-December operations and July-December baseline for January-June operations). Regarding the noticing provisions for Demand Response Events, in both the Pre-Commitment Period and the Post-Commitment Period, Avista will request reduction of IEP load a minimum of one day (24 hours) prior to the intent to interrupt their service and for the agreed upon duration of that reduction. Avista will provide notice to IEP for when it must receive a commitment as early as reasonably possible, but no later than sixty minutes prior to when IEP must commit to or decline an Avista call, which

[7] The Special Contract states that IEP will pay the higher of: (1) the Special Contract rate; (2) the prevailing market rate minus the special contract rate; or (3) the EIM imbalance charges, if applicable. Under most circumstances, Avista and IEP expect that the difference between the market rate and the Special Contract rate will apply as the penalty. Once Avista joins the EIM, the EIM imbalance charges may supersede the market rate.

IEP must respond to no later than 6:30 a.m. The noticing requirements may be subject to mutually agreeable revision prior to 2026, based on experience between Avista and IEP. Further, IEP acknowledges Avista's system grid emergencies may require IEP to shed load at a shorter notice than above.

Q. Does the Special Contract include input from other parties to this proceeding?

A. Yes. As noted above, Commission Staff was a party to the Special Contract negotiations from the beginning and provided substantive input on its provisions throughout the process. Additionally, during negotiations over the Partial Settlement, Avista and IEP agreed to include additional language from several other parties. For instance, The Energy Project requested additional language to ensure that IEP would continue to pay the same amount for Avista's low-income and energy efficiency programs that it would otherwise have paid if it remained on Schedule 25. This language is included in the Partial Settlement at Paragraph 11.d, and in the Special Contract in Section 3.3.

Further, Public Counsel requested several additional provisions, primarily focused on ensuring the benefits of the Demand Response program for other customers. These additions included a requirement in Section 4.4 that any penalty IEP is subject to for failing to meet a Demand Response call would be the *higher of* IEP's Special Contract rate or the difference between the market rate and the Special Contract rate. This provision ensures IEP cannot economically benefit from failing to respond to a Demand Response Event. Additionally, Public Counsel requested that Avista and IEP perform a full operational review of the Demand Response program prior to the first renewal term to ensure that the program has provided benefits to customers. This language has been incorporated into Section 4.5(C).

Essential Provisions of the Special Contract

Q. Other than the Economic Bypass Revenue Requirement and the Demand Response program, would you please generally describe the essential provisions of the Special Contract, identified as Exh. No. SJB-KR-2C?

A. Yes, the following provides an overview of the essential provisions of the Special Contract, other than the Economic Bypass Revenue Requirement and the Demand Response program, which are both discussed in detail above:

1. Contract term – the Special Contract, if approved, will take effect on the rate effective date of this rate case (anticipated to be October 1, 2021), and remain in effect through October 31, 2031. See Section 2.1

2. Renewal terms – the Special Contract will automatically renew for four-year terms unless either party provides notice of its intent to terminate the contract at least one year prior to the end of the then current term. See Section 2.2

3. Tariff Riders, Including Demand Side Management and Low-Income – IEP will continue to pay its fully allocated costs for Avista's Demand Side Management (Schedule 91) and Low-Income Rate Assistance Program (Schedule 92). In addition, IEP will be subject to the rates, terms, and conditions for all other current tariff riders (Schedules 93 and 98) and will be subject to any new tariff riders that are applicable to Schedule 25 and in the amount assigned to Schedule 25, which are introduced and approved by the Commission. See Section 3.3

4. Held Harmless – the Special Contract is contingent upon Commission approval and will not become effective until the Commission has approved the manner in which any Lost Margin resulting from the Economic Bypass Revenue Requirement will be recovered from other customers and not borne by Avista. Avista and IEP will have no further obligations under the Special Contract should the Commission not approve it. See Section 2.4

5. Termination - At any time, IEP may terminate the Special Contract without cause with one year's notice and return to Schedule 25. If Avista can demonstrate that it has incurred additional costs as a consequence of IEP's early termination, IEP shall pay an early termination fee equal to the increased costs. IEP has the right to review and challenge Avista's calculation of the early termination fee at the WUTC. Avista may only terminate the Special Contract during the stated term, if it can demonstrate to the WUTC that doing so is in the public interest. See Section 2.3

6. Rate Design - Rate design for IEP will remain consistent with Schedule 25. The initial rate design for the first year of the Special Contract is included as Exhibit B to the Special Contract. When calculating IEP's monthly peak demand, Avista will exclude any 24-hour period immediately following a Demand Response Event. For the avoidance of doubt, IEP will continue to pay both demand and energy charges. See Section 3.4

7. Service Requirements – All of Avista's currently effective Rules and Regulations, as they may be modified from time to time, continue to apply to IEP's service under the Special Contract, except to the extent they are in direct conflict with the terms of the Special Contract. Additionally, IEP acknowledges that system emergencies may require curtailment of IEP load at shorter notice than required under the Demand Response program. See Sections 4.3 and 5.12.

8. Prohibition on Cogeneration – IEP may not pursue development of a cogeneration resource to serve its load while the Special Contract is in effect. See Section 5.1.

IV. COMPLIANCE WITH COMMISSION REGULATIONS

Q. What are the Commission's requirements for special contracts?

A. The Commission's requirements for special contracts are contained in WAC § 480-80-143. In summary, and as applicable here, these rules require the following:

- Any contract that provides for the retail sale of regulated utility services that includes charges that do not conform to the utility's filed tariffs must be filed with the Commission (WAC 480-80-143(1)(a)).
- The essential terms and conditions of the special contract are considered part of the utility's filed tariffs and subject to enforcement, supervision, regulation, control, and public inspection (WAC 480-80-143(3)).
- The effective date for the special contract is the later of the effective date provided in the contract, or 30 days after the filing date (WAC 480-80-143(4)).
- Each application for approval of a contract must: (a) include a complete copy of the proposed contract; (b) show that the contract does not result in

unreasonable preference or rate discrimination, in violation of RCW 80.28.090 and 80.28.100; (c) demonstrate, at a minimum, that the contract charges recover all costs resulting from providing the service during its term, and, in addition, provide a contribution to the utility's fixed costs; (d) summarize the basis of the charges proposed in the contract and explain the derivation of the proposed charges including all cost computations involved; and (e) indicate the basis for using a contract rather than a filed tariff for the specific service involved (WAC 480-80-143(5)).

- All contracts must be for a stated time period (WAC 480-80-143(6)).
- Filings may be submitted with portions designated as "confidential," but any filing that designates the essential terms and conditions of the contract as "confidential" shall be rejected by the Commission as not in compliance with the public inspection requirement of RCW 80.28.050. Essential terms and conditions are: (a) identity of the customer; (b) nature and characteristics of the service provided, including interruptible, firm, or peak delivery; (c) duration of the contract, including any options to renew; (d) charge(s) for service, including minimum charge provisions; (e) geographic location where service will be provided; and (f) additional obligations specified in the contract, if any (WAC 480-80-143(7)).

Q. Does the Special Contract between IEP and Avista meet all of these requirements?

A. Yes. A complete copy of the Special Contract is being filed in connection with this Joint Testimony, and the Special Contract explicitly states that it is part of Avista's filed tariffs and is subject to enforcement, supervision, regulation, control, and public inspection as such (see Section 5.11). Additionally, Avista and IEP have requested an effective date for the Special Contract that coincides with the rate effective date of this proceeding, which is beyond the 30-day minimum period.

Q. Does the Special Contract result in an undue preference or rate discrimination?

A. No. As Commission Staff has previously testified, IEP, as Avista's largest Washington customer, is unique both in terms of its size and its load profile. Indeed, Staff was concerned that by remaining on Schedule 25, this itself raised rate discrimination and undue preference concerns.[8] IEP is also differently situated from other customers by virtue of its ability to pursue cogeneration to serve its load. Consequently, the Special Contract does not treat IEP differently from similarly situated customers because there are no similarly situated customers in Washington.

Q. Does the Special Contract recover all costs of providing service to IEP during its term and contribute to Avista's fixed costs?

A. Yes. As described above, the Economic Bypass Revenue Requirement, coupled with its connection to Schedule 25 for purposes of rate updates, ensures that the Special Contract will recover all costs of serving IEP and provide a substantial contribution to fixed costs. Dr. Kaufman's Response Testimony for IEP provides further evidence that the Special Contract meets these criteria.[9]

Q. How else does the Special Contract meet the Commission's requirements?

[8] Docket Nos. UE-190334/UG-190335/UE-190222, Exh. JLB-1T at 24:11-24.
[9] Exh. LDK-1CT at 11-25.

A. As noted above, the Special Contract's rate design will be tied to Schedule 25. Thus, Schedule 25, a long-standing tariff, provides the basis for the charges proposed in the Special Contract and how they were derived. Because, as already discussed, the Economic Bypass Revenue Requirement is dependent on the final rates approved in this proceeding, the specific charges are not yet known; however, this does not impact the reasonableness of these charges. They will contain all of the same components of Schedule 25, including demand, energy, basic, and primary facility charges. The Special Contract rate design is included as Exhibit B to the Special Contract. Further, because the starting point is IEP's actual 2019 revenue, it is assured that the final Special Contract rates will contribute to Avista's fixed costs.

Additionally, the Special Contract is for a stated time period, ending on October 31, 2031, with subsequent optional four-year renewal terms (Sections 2.1 & 2.2). The parties have used a contract as opposed to a tariff both because of the unique position IEP is in and because a contract is a better vehicle for defining the requirements of the Demand Response program than a tariff.

Q. Is any portion of the Special Contract designated confidential under RCW 80.04.095 and Chapter 42.56 RCW?

A. Yes; however, none of the confidential terms are "essential" to the contract. The only confidential components of the Special Contract are: (1) IEP's 2019 cost of service; (2) the capacity payment for the Demand Response provided during the Post-Commitment Period, as well as the amount of Demand Response provided; and (3) cell phone numbers of IEP employees who will be responsible for administering the Demand Response program.

Under RCW 80.04.095, records containing valuable commercial information, including confidential marketing, cost, or financial information, or customer-specific usage information are not subject to inspection under the State's public records law. IEP operates in a highly competitive market in which electricity costs are one of the, if not the most, significant costs. Public disclosure of its total cost for electricity could put IEP at a competitive disadvantage because it would give IEP's competitors a material component of its cost of production, thereby potentially allowing them to undercut IEP's prices to its customers. The same rationale applies to the capacity credit IEP receives for Demand Response.

Finally, under RCW 42.56.330(2) telephone numbers of customers held in public utility records are not subject to disclosure under the State's public records law. Accordingly, it is proper to redact the cell phone numbers of IEP employees, which constitutes personal private information. IEP's main business number has not been redacted because it is public information.

Q. Will all "charges for service" under the Special Contract be publicly disclosed?

A. Yes. Each component of IEP's rate, as shown in Exhibit B to the Special Contract, will be publicly disclosed; only its total cost of service will be confidential.

Q. Has the Commission previously approved special contracts with confidential components?

A. Yes. For example, Puget Sound Energy has a natural gas special contract with Boeing in which the volumes procured under the contract are redacted.[10]

Q. Have other utility commissions approved special contracts with similar demand response programs that redact the demand response payments?

A. Yes. PacifiCorp has a special contract with Monsanto Company that has been approved by the Idaho Public Utilities Commission. That contract provides Monsanto with a capacity credit when it interrupts its operations, but the amount of the credit is redacted in the public version of the contract available on the Idaho Commission's website.[11]

V. <u>CONCLUSION</u>

Q. What are Avista and IEP asking the Commission to do with respect to the Special Contract?

A. Avista and IEP are asking the Commission to approve the terms set forth in the Special Contract (Exh. SJB-KR-2C), and to allow for the spread of the Special Contract "revenue adjustment" (i.e., Lost Margin) to all other customers. To reiterate, the Special Contract will provide significant benefits to IEP, Avista, and Avista's other customers. This includes: (1) ensuring IEP remains on Avista's system and contributes to Avista's fixed costs; (2) preventing the development of a new natural gas-fired generation resource in Washington during the term of the Special Contract; (3) providing Avista with Demand Response, which will help meet Avista's peak capacity needs cost effectively and with zero emissions; and (4) ensuring IEP continues to pay its fully allocated costs for all applicable tariff riders, including energy efficiency and low-income assistance.

[10] Docket UG-950392, Ltr from K. Johnson to S. King re Amendment to Exhibit A (July 8, 2016).
[11] Idaho Pub. Utils. Comm'n Case No. PAC-E-06-09, Redacted Monsanto Agreement ¶ 4.1.2 (July 12, 2006).

Q. Does this conclude your testimony?

A. Yes.