

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKETS UE-200900,
TRANSPORTATION COMMISSION	)	UG-200901, and UE-200894
	)	<i>(Consolidated)</i>
Complainant,	)	
	)	
v.	)	
	)	
AVISTA CORPORATION d/b/a	)	
AVISTA UTILITIES	)	
	)	
Respondent.	)	

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**POST-HEARING BRIEF OF  
INLAND EMPIRE PAPER COMPANY**

**August 13, 2021**

**(REDACTED VERSION)**

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## I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission’s  
 (“Commission”) Order 03 in the above-referenced dockets, Inland Empire Paper Company  
 (“IEP”) files this Post-Hearing Brief. This brief only addresses the special contract (“Special  
 Contract”) that IEP has negotiated with Avista Corporation (“Avista” or “Company”).

2 The Special Contract ensures IEP continues to substantially contribute to Avista’s  
 fixed costs while simultaneously ensuring it does not pursue a natural gas-fired cogeneration  
 system to serve the electrical load at its pulp and paper mill in Millwood, Washington. Further,  
 the Special Contract ensures Avista’s access to a major demand response (“DR”) resource, which  
 has already helped Avista meet peak demand during the unprecedented heat wave the Pacific  
 Northwest experienced in late June of this year. For these reasons, and as more particularly  
 discussed below, IEP recommends that the Commission approve the Special Contract as in the  
 public interest. No party to this case opposes approval of the Special Contract.

## II. BACKGROUND

3 Avista and IEP began negotiating the Special Contract over a year ago. These  
 negotiations were driven by two primary factors. The first was the Partial Multiparty Settlement  
 Agreement that resolved most issues in Avista’s 2019 rate case, Dockets UE-190334, UG-  
 190335, and UE-190222. Section 14(i) of that settlement directed Avista and IEP, with  
 Commission Staff participation, to negotiate a special contract in good faith and using best  
 efforts. A special contract was one remedy Commission Staff proposed for IEP’s substantial  
 deviation in load characteristics from all other customers taking service under Schedule 25,  
 which Staff testified raised rate discrimination concerns.<sup>1/</sup> The second was IEP’s demonstrated  
 ability to pursue a natural gas-fired cogeneration system to meet up to 97% of its electrical load.

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<sup>1/</sup> UE-190334/UG-190335/UE-190222, Exh. JLB-1T at 23:25-28:9.

IEP commissioned a study that showed cogeneration was both technically and economically feasible across a wide range of future scenarios.<sup>2/</sup> If IEP pursued cogeneration to serve its own load, it would nearly eliminate the \$ [REDACTED] IEP currently contributes to Avista’s fixed costs,<sup>3/</sup> resulting in a 2% rate increase for all other customers.<sup>4/</sup> IEP has already begun the permitting process for this cogeneration unit.<sup>5/</sup>

4           During negotiations regarding the Special Contract, Avista expressed interest in securing DR from IEP. IEP is uniquely positioned to provide DR to Avista – it “is the only Avista customer in Washington large enough to provide more than 10 MW of demand response.”<sup>6/</sup> IEP is Avista’s largest Washington customer, and IEP’s operational characteristics also allow it to curtail a substantial portion of its load. IEP operates both a recycling plant and a Thermo-Mechanical Pulping (“TMP”) system, the latter of which consumes most of IEP’s electrical requirements and can be turned off on short notice.<sup>7/</sup> During peak load hours, IEP can shut down the TMP system and provide Avista with up to [REDACTED] MW of capacity.<sup>8/</sup>

5           IEP and Avista met multiple times over the past year; and Commission Staff was involved in all negotiations.<sup>9/</sup> Additionally, during settlement negotiations in this rate case, IEP and Avista incorporated recommendations from other parties, including The Energy Project and Public Counsel.<sup>10/</sup> As a consequence, IEP and Avista were eventually able to agree on all terms, and a recommendation to approve the Special Contract was included in the Partial Multiparty Settlement Stipulation filed on May 27, 2021 in these dockets (“Stipulation”). Further, while Public Counsel has not joined the Stipulation, it nevertheless does not oppose the Special

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<sup>2/</sup> Exh. LDK-3C; see also, Exh. GS-1T at 4:10-5:9.

<sup>3/</sup> Exh. LDK-1CT at 11:20.

<sup>4/</sup> Id. at 3:5.

<sup>5/</sup> Exh. KR-1CT at 17:14-15.

<sup>6/</sup> Exh. SJB-KR-1CT at 14:4-5.

<sup>7/</sup> Exh. KR-1CT at 13:6-19.

<sup>8/</sup> Id. at 19:21-20:3.

<sup>9/</sup> Id. at 5:3-9.

<sup>10/</sup> Exh. SJB-KR-1CT at 18:7-23.

Contract and, indeed, its testimony specifically identifies as reasonable the economic bypass rate that will prevent IEP from pursuing cogeneration, and the DR provisions.<sup>11/</sup>

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The major provisions of the Special Contract are summarized below. Further discussion of these and other provisions is included in the Joint Testimony of Shawn Bonfield and Kevin Rasler filed in support of the Special Contract, Exh. SJB-KR-1CT:

- The term of the Special Contract will be from the rate effective date of this proceeding until October 31, 2031. The Special Contract will automatically renew for successive four-year periods. However, prior to the first renewal term, IEP must demonstrate the continued feasibility of pursuing cogeneration, and the parties must perform a comprehensive review of the DR program, including the value ascribed to it. While IEP has the option to terminate the Special Contract early, it must pay an early termination fee to cover increased costs to Avista, if any, as a consequence of termination.<sup>12/</sup>
- IEP will pay an Economic Bypass Revenue Requirement equal to \$ [REDACTED] below its 2019 cost of service. IEP's future rates will also reflect rate changes to Schedule 25. In exchange, IEP agrees not to construct generation to serve its load during the term of the Special Contract.<sup>13/</sup>
- IEP will pay the same amount for all tariff riders that it would have paid if it remained on Schedule 25, thus ensuring no reduction to IEP's contribution to these programs. This includes Avista's demand-side management and low-income programs.<sup>14/</sup> It also would include any tariff rider developed in the future to recover decommissioning and remediation costs from the Colstrip Generating Station ("Colstrip").<sup>15/</sup>
- IEP will provide Avista with 30 MW of DR in four-hour blocks at least 25 times per year. Prior to November 1, 2026 (the "Pre-Commitment Period"), when Avista is resource sufficient, the DR program is voluntary, and IEP will be paid for 90% of the energy value for each event in which it actually curtails load. Between November 1, 2026 and October 31, 2031 (the "Post-Commitment Period"), when Avista is resource deficient, IEP will receive a fixed capacity payment of \$ [REDACTED]/kW. During the Post-Commitment Period, IEP must curtail load when called on by Avista or pay a penalty based on the market price during the DR event.<sup>16/</sup>

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<sup>11/</sup> Exh. CJD-1T at 11:14-12:1.

<sup>12/</sup> Special Contract §§ 2.1-2.3.

<sup>13/</sup> *Id.* §§ 3.1, 3.2 & 5.1.

<sup>14/</sup> *Id.* § 3.3.

<sup>15/</sup> Tr. at 86:8-87:11.

<sup>16/</sup> Special Contract §§ 4.1, 4.4, 4.5.

### III. ARGUMENT

7           The Special Contract meets all requirements of WAC 480-80-143 and is in the public interest. While Mr. Bonfield’s and Mr. Rasler’s joint testimony discusses in detail how the Special Contract meets each requirement of WAC 480-80-143,<sup>17/</sup> fundamentally, a special contract must: (1) not result in undue prejudice or rate discrimination; and (2) recover all costs resulting from providing the service during its term and, in addition, provide a contribution to the electric company’s fixed costs.<sup>18/</sup>

8           “A mere difference in rates does not, of itself, constitute an unlawful discrimination.”<sup>19/</sup> Rather, there must also be a demonstration that “the service to the other consumers was given ‘under the same or substantially similar circumstances and conditions ...’”<sup>20/</sup> Here, as Commission Staff has previously testified, IEP is substantially different from all other Schedule 25 customers in terms of its load and usage characteristics.<sup>21/</sup> Further, no other customer in Avista’s Washington service territory has the ability to provide the level of DR IEP promises in the Special Contract.<sup>22/</sup> Finally, no other customer has demonstrated an ability to pursue cogeneration. As a result, IEP is unlike any other Avista customer, and the Special Contract does not result in undue prejudice or rate discrimination.

9           In determining whether a special contract recovers all costs of providing service, “[g]enerally, long run incremental costs (LRIC), plus a contribution to the system, will be considered ...”<sup>23/</sup> Dr. Kaufman’s testimony demonstrates that the Economic Bypass Revenue

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<sup>17/</sup> Exh. SJB-KR-1CT at 20:19-25:8.

<sup>18/</sup> WAC 480-80-143(5)(b)-(c).

<sup>19/</sup> State ex rel. Model Water & Light Co. v. Dept. of Pub. Serv., 199 Wash. 24, 36 (1939).

<sup>20/</sup> Re Application of PacifiCorp and Scottish Power PLC, Docket No. UE-981627, 5<sup>th</sup> Supp. Order at 12 (Oct. 14, 1999) (quoting State ex rel. Model Water & Light Co., 199 Wash. at 34).

<sup>21/</sup> Supra, n. 1.

<sup>22/</sup> Supra, n. 6.

<sup>23/</sup> WUTC v. Puget Sound Power & Light Co., Docket No. UE-960299, 6<sup>th</sup> Supp. Order, 172 P.U.R.4<sup>th</sup> 304 at \*4 (Aug. 1, 1996).

Requirement provided in the Special Contract will exceed Avista's LRIC under all reasonably potential revenue requirement scenarios.<sup>24/</sup>

10 In addition, the rationale for using a special contract rather than a filed tariff must be provided.<sup>25/</sup> "Generally, a company may elect to enter into special contracts ... with customers who demonstrate capacity for fuel switching, intent to bypass, or bypass capability."<sup>26/</sup> In this case, IEP's demonstrated ability to pursue cogeneration to meet up to 97% of its electrical load is a type of fuel switching – IEP would switch from Avista's resources to its own cogeneration resource. It is also akin to bypassing Avista. In both a traditional bypass scenario and IEP's pursuit of cogeneration, "core customers may be in very real danger of bearing the burden of large sunk costs for bypassed facilities, or of paying more than an appropriate share of overhead and general costs."<sup>27/</sup> As Dr. Kaufman shows, Avista's other customers would realize a rate increase of approximately 2% if IEP pursues cogeneration, as compared with only a 0.35% rate increase from the Economic Bypass Revenue Requirement included in the Special Contract. The Special Contract is also a better vehicle for defining the DR program's requirements, as these are specific to IEP's operations and capabilities, rather than generally applicable.

11 The Special Contract also contains other provisions that will provide benefits to other customers and further the public interest. Most significantly, it provides Avista with the largest DR resource on its system. As dispatchable capacity is replaced by intermittent resources, IEP's DR will become increasingly important in helping Avista meet peak loads cost-effectively, as was already demonstrated in the June heatwave.<sup>28/</sup> Further, the Special Contract includes provisions to ensure other customers receive benefits from the DR program. This

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<sup>24/</sup> Exh. LDK-1CT at 14:11-15:2. Dr. Kaufman's testimony uses "long-run marginal costs", which are synonymous with LRIC.

<sup>25/</sup> WAC 480-80-143(5)(e).

<sup>26/</sup> WUTC v. Puget Sound Power & Light Co., Docket No. UE-960299, 6<sup>th</sup> Supp. Order, 172 P.U.R.4<sup>th</sup> 304 at \*12-\*13 (Aug. 1, 1996).

<sup>27/</sup> WUTC v. Cascade Natural Gas Corp., Docket No. UG-930511, 4<sup>th</sup> Supp. Order at 4 (Apr. 29, 1994).

<sup>28/</sup> Tr. at 93:25-95:8.

includes a full evaluation of this program, including a revision of the pricing at the end of the first term, five years after IEP begins receiving capacity payments for the DR.<sup>29/</sup> Locking the payment level in on the front end for this first term not only ensures IEP’s ability to provide DR by giving it price certainty for its commitment to curtail or pay penalties, but also provides price certainty for customers, which allows Avista to rely on it from a capacity planning perspective.<sup>30/</sup> In this sense, it is little different from a power purchase agreement (“PPA”) or a hedge, where Avista agrees to a fixed price for future years. Unlike a long-term PPA, however, Avista will have the option to reprice IEP’s DR based on market conditions in 2031. Prior to 2026, during the Pre-Commitment Period, Avista’s customers will also benefit from receiving 10% of the energy value of any curtailments implemented by IEP.<sup>31/</sup> This amount will ensure that any costs associated with the DR program will not be borne by other customers; and, to the extent costs are less than the allocated 10%, customers will receive a net benefit.<sup>32/</sup>

12                   The Special Contract also ensures IEP’s continued full contribution to all applicable Avista tariff riders, both those existing today and any created in the future.<sup>33/</sup> Thus, IEP’s contribution to Avista’s low-income and energy efficiency programs will be unaffected. Additionally, any Colstrip decommissioning and remediation costs that Avista recovers through a future tariff rider will also be allocated to IEP as if it were a Schedule 25 customer.<sup>34/</sup>

#### IV. CONCLUSION

13                   For the foregoing reasons, and as further described in the Response Testimony of Kevin Rasler (Exh. KR-1CT), Lance Kaufman (Exh. LDK-1CT), Greg Summers (Exh. GS-1T), and the Joint Testimony of Mr. Rasler and Shawn Bonfield (Exh. SJB-KR-1CT), IEP

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<sup>29/</sup> Special Contract § 4.5(C).

<sup>30/</sup> Tr. at 82:23-84:12.

<sup>31/</sup> Tr. at 92:15-95:8.

<sup>32/</sup> Exh. KR-1TC at 19:6-11.

<sup>33/</sup> Special Contract § 3.3.

<sup>34/</sup> Tr. at 86:6-87:9.



respectfully requests that the Commission approve the Special Contract between IEP and Avista as part of the Stipulation filed in this case.

Dated this 13th day of August, 2021.

Respectfully submitted,

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