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VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

**Re: UM 1182 – In the Matter of PUBLIC UTILITY COMMISSION OF OREGON,
Investigation Regarding Competitive Bidding.**

Enclosed for filing in Docket UM 1182 are an original and five copies of Idaho Power Company's Reply Brief.

A copy of this filing has been served on all parties to this proceeding as indicated on the enclosed certificate of service.

Very truly yours,

Wendy McIndoo
Office Manager

Enclosures
cc: Service List

1 2011 All Source Request for Proposals.¹ NIPPC argues that the facts in this docket
2 demonstrate that IEs “have had difficulty implementing Guideline 10(d)” and that the IE
3 “stated that the problem with a benchmark bid ‘is that it is offered on a cost-plus basis
4 while third-party bidders are required to guarantee their price and performance
5 parameters.’”² However, NIPPC’s interpretation of the facts in UM 1540 is at odds with the
6 findings of the IE, as well as the Staff Report. Specifically, both the IE and Staff concluded
7 that PacifiCorp’s costs were “transparently presented in the final draft RFP.”³ Moreover,
8 Staff’s report observed: the “IE states that, overall, the final draft RFP does an excellent
9 job of addressing risk . . .”⁴ and that the “IE reviewed the RFP process and did not find
10 process elements that it believes are unfair or biased. In addition, the IE has monitored
11 every aspect of the RFP process to date and has not noted conduct that is unfair or
12 biased.”⁵

13 The IE’s report in UM 1540 provides additional support for the conclusion reached by
14 Staff in this case—NIPPC has failed to “demonstrate that the existing RFP-related bid
15 evaluation methods used by any of the three jurisdictional electric utilities are biased
16 against bids from IPPs.”⁶ Because there is insufficient evidence to conclude that the
17 resource procurement process is biased in favor of utility-owned generation (“UOG”), the
18 Commission should reject NIPPC’s proposed bid adders and artificial adjustments.

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21 ¹ NIPPC Pre-Hearing Legal Brief at 7.

22 ² NIPPC Pre-Hearing Legal Brief at 7.

23 ³ *Re PacifiCorp Request for Approval of Final Draft 2011 All Source Request for Proposals*, Docket
UM 1540, Order No. 12-111, Appendix A at 7 (Mar. 27, 2012).

24 ⁴ Order No. 12-111, Appendix A at 3.

25 ⁵ Order No. 12-111, Appendix A at 10.

26 ⁶ Staff/200, Proctor/4, ll. 10-12; *see also*, Idaho Power/200, Stokes/2, ll. 7-16.

1 **B. NIPPC’s Proposed Bid Adder for Cost Over-Runs should be Rejected.**

2 **1. NIPPC’s Proposal Ignores Actual Idaho Power Practices.**

3 Both NIPPC and CUB argue that “[i]t is standard industry practice to include a
4 construction cost contingency in any cost projection for a major generation resource.”⁷
5 However, they assert that “only PacifiCorp has claimed to use such an adder in bid
6 evaluation, and no utility in this proceeding has committed to do so in the future.”⁸ This
7 argument simply ignores Idaho Power’s testimony, which stated unequivocally that the
8 Company includes cost contingencies in its self-build bids. In particular, the testimony of
9 Mark Stokes of Idaho Power included the following statement:

10 UOG bids . . . generally include contingency amounts to
11 address unforeseen problems. The contingency amounts are
12 specifically identified in the utility commitment estimates.
Adding another seven percent to utility bids as suggested by
Mr. Monson would needlessly add a second contingency.⁹

13 NIPPC’s ignorance of the record in this case further undermines its proposal and confirms
14 that NIPPC’s approach to cost over- and under-runs was developed with minimal
15 consideration of Idaho Power’s actual practices and should therefore be rejected.¹⁰

16 **2. NIPPC’s Reliance on California Data is Misplaced.**

17 NIPPC’s cost over-run bid adder was developed using data taken from eight projects
18 developed by California utilities.¹¹ NIPPC’s analysis is flawed because NIPPC relied on a
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21 ⁷ NIPPC Pre-Hearing Legal Brief at 8; Prehearing Brief of the Citizens’ Utility Board of Oregon at 9-
22 10.

23 ⁸ NIPPC Pre-Hearing Legal Brief at 9; Prehearing Brief of the Citizens’ Utility Board of Oregon at 9-
24 10.

24 ⁹ Idaho Power/200, Stokes/6, ll. 11-15.

25 ¹⁰ Idaho Power/200, Stokes/2, ll. 10-11.

26 ¹¹ NIPPC/100, Monsen/12.

1 sample that is too small to produce a statistically meaningful result¹² and the sample
2 consists of atypical projects that are not representative of a normal self-build project that
3 would be included in a competitive bidding process.¹³ In addition, Idaho Power has
4 demonstrated conclusively that for its three most recent self-build projects, the successful
5 bid price (*i.e.*, the commitment estimate from the Certificate of Public Convenience and
6 Necessity (“CPCN”) process) was in every case greater than both the actual costs and the
7 costs included in rates.¹⁴

8 NIPPC defends its use of data from California utilities because NIPPC alleges that
9 the utilities in this case provided “incomplete discovery responses”—implying that the
10 California data was the best available.¹⁵ This position is unsupportable. In response to
11 data requests, Idaho Power provided the commitment estimates included in the
12 Company’s CPCN applications for all gas-fired projects developed by Idaho Power since
13 2000.¹⁶ These commitment estimates are the same as the estimated costs included by
14 Idaho Power in its self-build bids included in the competitive bidding process.¹⁷ And these
15 commitment estimates were used by Idaho Power to demonstrate that Idaho Power does
16 not systematically underestimate capital costs.¹⁸ NIPPC does not dispute that it received

18 ¹² Idaho Power/200, Stokes/7, II. 16-24; Staff/100, Procter/11, I. 17; PAC/200, Kusters/22, II. 17-19.

19 ¹³ Idaho Power/200, Stokes/8, II. 1-3.

20 ¹⁴ Idaho Power/201. NIPPC may argue that the commitment estimates approved by the Idaho
21 Public Utilities Commission in its CPCN orders were less than the Company’s filed commitment
22 estimate. This argument misses the mark, however, because it is the Company’s commitment
23 estimate that was developed for purposes of the competitive bidding process and it is that bid price
24 that NIPPC claims is systematically overstated.

23 ¹⁵ NIPPC Pre-Hearing Legal Brief at 11.

24 ¹⁶ NIPPC/100, Monsen/14, II. 13-16.

25 ¹⁷ Idaho Power/100, Stokes/6, II. 11-13.

26 ¹⁸ Idaho Power/201.

1 these commitment estimates, but NIPPC claims that it was “not clear whether [the
2 commitment estimates were] the same value as was used in the bid . . .”¹⁹ The fact that
3 NIPPC did not understand that a “commitment estimate” is the bid price is not evidence of
4 an “incomplete discovery response;” but rather is evidence that NIPPC failed to
5 understand the information that was provided and failed to seek clarification.

6 NIPPC also claims that Idaho Power has been “unable to support [its claim that it has
7 experienced cost under-runs] with directly relevant material” because Idaho Power did not
8 have documents related to the bid scoring from the Bennett Mountain competitive bidding
9 process.²⁰ The Company’s testimony did, however, provide the estimated capital costs
10 used to develop the Bennett Mountain bid, the final capital costs for the project, and the
11 capital costs included in rates.²¹ The data provided demonstrated that the Company’s
12 actual capital costs were well below the capital costs included in the self-build bid.
13 Contrary to NIPPC’s claims, the fact that the Company no longer possesses the bid
14 scoring materials does not render the data provided “irrelevant.”

15 NIPPC is also critical of Idaho Power for “wait[ing] until *reply* testimony to even make
16 specific claims that [Idaho Power has] experienced no cost overruns.”²² However,
17 contrary to NIPPC’s assertion, Idaho Power’s direct testimony discussed the fact that the
18 Langley Gulch power plant experienced a cost under-run of approximately \$30.7 million.²³
19 Further, the Company’s reply testimony was provided in direct response to NIPPC’s

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21 ¹⁹ See NIPPC/100, Monsen/14, ll. 13-16 (“Idaho Power provided links to its [CPCN] application . . .
22 the application shows the company’s ‘commitment estimate’ for constructing the plant, *but it is not
clear whether this is the same value as was used in the bid for this plant.*”) (emphasis added).

23 ²⁰ NIPPC Pre-Hearing Legal Brief at 11-12.

24 ²¹ Idaho Power/201.

25 ²² NIPPC Pre-Hearing Legal Brief at 12 (emphasis in original).

26 ²³ Idaho Power/100, Stokes/8, ll. 2-5.

1 proposed bid adder and NIPPC’s reliance on data from a small sample of California
2 plants. NIPPC’s proposal was presented in the record for the first time in NIPPC’s direct
3 testimony and therefore there is nothing improper about the Company’s responding to
4 NIPPC’s testimony with Idaho Power-specific data.

5 In addition, it is no basis to ignore the facts simply because the facts were presented
6 in reply testimony. Indeed, the Commission has found that the opportunity to cross
7 examine witnesses and submit legal briefs is sufficient process even when proposals are
8 presented for the first time in reply testimony.²⁴ Here, NIPPC conducted discovery related
9 to the Company’s reply testimony and agreed to waive cross examination in exchange for
10 the admission into the record of the Company’s data responses related to the reply
11 testimony.²⁵ Thus, NIPPC’s claim that the facts have not been “subjected to full scrutiny”
12 is completely without merit.

13 Moreover, it is not only the utility-provided data that demonstrates that Oregon
14 utilities do not systematically under-estimate construction costs. Staff’s analysis, which
15 was based on reviewing IE reports, reached the same conclusion.²⁶

16 NIPPC also claims that Idaho Power has “cherry picked” data to support its claim
17 that Idaho Power has not systematically under-estimated construction costs.²⁷ To the
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21 ²⁴ *Re Investigation into Forecasting Forced Outage Rates for Electric Generating Units*, Docket UM
22 1355, Order No. 10-157 at 4 (Apr. 26, 2010) (“Although Pacific Power complains that ICNU’s
23 proposal came late in reply testimony, Pacific Power had the opportunity to cross-examine ICNU’s
sponsoring witness but declined to do so. Moreover, Pacific Power addressed both Staff’s and
ICNU’s proposals in opening and reply briefs.”).

24 ²⁵ See Northwest and Intermountain Power Producers Coalition’s Cross Examination Statement and
Motion to Admit Stipulated Exhibits.

25 ²⁶ Staff/200, Procter/5, I. 20 – 6, I. 3, 17, II. 10-13.

26 ²⁷ NIPPC Pre-Hearing Legal Brief at 12.

1 contrary, Idaho Power's data, presented in Idaho Power/201, includes the information for
2 the last three plants developed by Idaho Power and was not "cherry picked" at all.²⁸

3 **C. NIPPC's Proposed Adder for Capital Additions should be Rejected.**

4 Like NIPPC's cost over-run adder, NIPPC's capital additions adders is based on
5 flawed assumptions and a flawed methodology. NIPPC claims that utilities defer capital
6 expenditures "to evade the scrutiny of the Commission's examination of the plant's initial
7 installed costs at the time it first enters rate base."²⁹ This claim is completely unsupported
8 in the record and should be rejected out of hand. Further, contrary to NIPPC's implication
9 that Idaho Power's regulators simply rubber stamp utility investments, Idaho Power's
10 regulators thoroughly review all the Company's filings and regularly disallow investments
11 that regulators deem imprudent.³⁰

12 NIPPC's underlying rationale for its additional adder is also without support because
13 it assumes that utility self-build options do not take into account reasonably expected
14 future maintenance and capital costs. However, Idaho Power testified that when
15 developing its self-build bids, the Company includes in the bid price estimates for ongoing
16 operating and maintenance costs and future capital expenses.³¹

17 In addition, NIPPC's methodology fails to properly account for depreciations
18 expenses when calculating its proposed adder,³² uses an arbitrary and unsupported five-
19 year time period,³³ improperly assumes that all capital costs incurred during the first five

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21 ²⁸ Idaho Power/200, Stokes/5, 7-8.

22 ²⁹ NIPPC Pre-Hearing Legal Brief at 10.

23 ³⁰ See Idaho Power/201, Idaho Power/200, Stokes/6, I. 19 – 7, I. 3.

24 ³¹ Idaho Power/200, Stokes/3, II. 13-25.

25 ³² PGE/300, Jacobs/37, I. 4 – 39, I. 10.

26 ³³ PGE/300, Jacobs/36, II. 13-18.

1 years are deferred construction costs,³⁴ and relies on California plants that were
2 developed on an expedited basis and not through a normal competitive bidding process.³⁵

3 In addition, NIPPC has failed to provide any justification for the inclusion of this
4 additional adder in this phase of the docket when it is clearly outside the scope of the
5 issues list.³⁶ Thus, NIPPC's additional adder for capital costs incurred during the life of the
6 plant should be rejected.

7 **D. NIPPC's Proposed Heat Rate Adder should be Rejected.**

8 The methodology NIPPC used to develop its heat rate adder is flawed because: (1)
9 the data set includes plants that are not comparable to plants that would actually be
10 constructed today,³⁷ (2) the analysis incorrectly assumes³⁸ that the lowest recorded heat
11 rate is an appropriate proxy for the initial heat rate,³⁸ (3) the analysis incorrectly assumes
12 that all variations in heat rate are due to degradation and not due to other operational or
13 dispatch characteristics of the plant,³⁹ (4) the analysis includes artificial and arbitrary
14 adjustments to the data set that further undermine NIPPC's results,⁴⁰ and (5) the analysis
15 ignores the actual generation of the plants in the data set.⁴¹

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18 ³⁴ Idaho Power/200, Stokes/12, II. 1-18; PGE/300, Jacobs/35, II. 13-15; Staff/200, Procter/17, II. 14-21.

19 ³⁵ PGE/300, Jacobs/39, I. 114-15; Idaho Power/200, Stokes/8, I. 3 – 9, I. 4.

20 ³⁶ See Ruling at 2 (May 30, 2012); *Re Northwest and Intermountain Power Producers Coalition*
21 *Petition for an Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 12-324
(May 30, 2012).

22 ³⁷ PAC/200, Kusters/27, II. 13-15; PGE/300, Jacobs/10, II. 7-14, 14, II. 13-15.

23 ³⁸ PAC/200, Kusters/29, II. 10-19.

24 ³⁹ PAC/200, Kusters/27, I. 16 – 28, I. 2.

25 ⁴⁰ PAC/200, Kusters/28, II. 10-21.

26 ⁴¹ NIPPC/100, Monsen/25, I. 16 – 26, I. 2.

1 NIPPC argues that the “utilities have overcomplicated this issue, and have failed to
2 disprove the overwhelming evidence that heat rate degradation occurs.”⁴² On the
3 contrary, the utilities have never disputed that heat rate degradation occurs and, in fact, all
4 three utilities model heat rate degradation when developing UOG bids.⁴³ NIPPC’s
5 argument here betrays the fundamental flaw in its analysis—the issue is not whether heat
6 rate degradation occurs, the issue is whether the degradation is greater than expected.
7 NIPPC admits as much when NIPPC argues that its heat rate adder should apply
8 “whenever ratepayers would be responsible for fuel cost increases associated with a
9 *higher-than-anticipated* heat rate.”⁴⁴ NIPPC’s analysis simply demonstrates that heat
10 rate’s change over time. NIPPC’s analysis does not demonstrate that the degradation is
11 different than expected because NIPPC’s analysis fails to consider the anticipated
12 degradation.⁴⁵

13 **E. NIPPC’s Proposed Wind Capacity Factor Adder should be Rejected.**

14 The methodology NIPPC used to develop its wind capacity factor includes
15 substantial flaws and should therefore be rejected. NIPPC relies on historical data even
16 though current methodologies for forecasting wind plant capacity factors have improved
17 dramatically.⁴⁶ NIPPC also relied on a sample that is too small to produce statistically
18 meaningful results⁴⁷ NIPPC’s analysis did not account for seasonality⁴⁸ and NIPPC’s
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20 ⁴² NIPPC Pre-Hearing Legal Brief at 14.

21 ⁴³ Idaho Power/100, Stokes/12, ll. 9-16; PAC/100, Kusters/11, l. 21 – 12, l. 9; PGE/100, Outama-
22 Bettis-Mody-Hager/16, ll. 19-21.

23 ⁴⁴ NIPPC Pre-Hearing Legal Brief at 12 (emphasis added).

24 ⁴⁵ PGE/300, Jacobs/11, ll. 12-23.

25 ⁴⁶ PGE/100, Outama-Bettis-Mody-Hager/26, ll. 9-20; PGE/200, Outama-Bettis-Mody-Hager/7, ll. 6-
23.

26 ⁴⁷ PGE/200, Outama-Bettis-Mody-Hager/6, l. 21 – 7, l. 5.

1 analysis fails to account for the fact that the plants analyzed are located in three distinct
2 regions with distinct wind profiles.⁴⁹

3 **F. The Commission Should Affirm Idaho Power's Current Credit Risk**
4 **Methodology and Adopt Non-Bypassable Security Terms.**

5 Currently, Idaho Power accounts for counterparty risk primarily by conducting credit
6 assessments at the time that the final shortlist is prepared.⁵⁰ Assessing a counterparty's
7 credit prior to conducting final negotiations is consistent with industry practice and ensures
8 that Idaho Power only executes PPAs with counterparties that have the financial ability to
9 fulfill the terms of the agreement.⁵¹ NIPPC requests that the Commission prohibit utilities
10 from assessing a counterparty's credit risk until after the PPA is executed.⁵² This proposal
11 is completely without merit because it would require utilities to engage in potentially
12 lengthy negotiations with IPPs, execute a legally binding agreement, and only then assess
13 the credit risk associated with the IPP. By that point, it is too late for the utility to
14 adequately protect customers from the risk of default because the PPA has already been
15 executed.

16 Idaho Power continues to support the proposals of Portland General Electric
17 Company and PacifiCorp that would require PPAs to include non-bypassable terms
18 related to security to ensure that utility customers are protected in the event that an IPP is
19 unable or unwilling to fulfill the terms of the PPA.⁵³

21 ⁴⁸ PGE/200, Outama-Bettis-Mody-Hager/8, I. 15 – 9, I. 7.

22 ⁴⁹ PGE/200, Outama-Bettis-Mody-Hager/9, II. 10-15.

23 ⁵⁰ Idaho Power/100, Stokes/9, II. 5-21.

24 ⁵¹ PGE/200, Outama-Bettis-Mody-Hager/13, II. 18-21.

25 ⁵² NIPPC Pre-Hearing Legal Brief at 19.

26 ⁵³ See e.g. PGE/100, Outama-Bettis-Mody-Hager/33, II. 14-16; PAC/100, Kusters/30, II. 9-11.

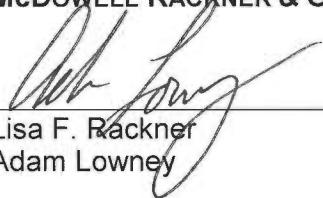
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II. CONCLUSION

The Commission should reject NIPPC's proposed bid adders. Each proposal utilizes a fundamentally flawed methodology and relies on clearly insufficient data. Introducing an artificial bias into the resource procurement process will result in utilities procuring costlier resources, which is precisely the harm that Idaho Power and the Commission are attempting to mitigate. The Commission should also reject NIPPC's proposal to forbid utilities from assessing an IPP's creditworthiness until after execution of the PPA. This proposal is inconsistent with industry standards, is unworkable, and exposes customers to unnecessary risks. Finally, the Commission should adopt the utilities' proposal for non-bypassable security terms as a means to mitigate counterparty risk.

DATED: March 11, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1182 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: March 11, 2013


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