BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of IDAHO POWER COMPANY Application for Approval of 2026 All-Source Request for Proposals to Meet 2026 Capacity Resource Need.	))))))))	UM 2255 NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION'S REPLY COMMENTS ON THE STAFF REPORT

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I. INTRODUCTION AND SUMMARY

The Northwest & Intermountain Power Producers Coalition ("NIPPC") respectfully submits to the Oregon Public Utility Commission (the "OPUC" or "Commission") reply comments in response to the Staff Report on Idaho Power Company's ("Idaho Power") Draft Request for Proposals ("Draft RFP").

NIPPC previously provided oral comments on a prior draft of Idaho Power's RFP at the workshop held on February 21, 2023, and NIPPC filed written comments on a subsequent version of the Draft RFP on March 17, 2023. NIPPC appreciates Idaho Power's willingness to incorporate some of NIPPC's recommendations in the most recent version of the Draft RFP, and NIPPC appreciates Staff's recommendation that the Commission adopt NIPPC's recommendation on several additional issues. Additionally, NIPPC also supports the two conditions recommended by Staff that were not previously included in NIPPC's comments, which Staff labeled RFP Condition 1 (modeling inputs and assumptions) and RFP Condition 2 (bid due date extension to June 13, 2023).[1]

While several of NIPPC's concerns with the Draft RFP have been resolved by Idaho Power, several issues remain unresolved from NIPPC's perspective even if all of Staff's conditions are imposed on the Draft RFP. NIPPC stands by all of its prior recommendations. Rather than restate NIPPC's position on all issues, NIPPC has provided a detailed table of issues for which NIPPC recommended a change to the Draft RFP and whether the issue was resolved by Idaho Power and/or recommended for adoption as a condition of RFP approval by Staff's Report. NIPPC's issues table also identifies the issues that remain unresolved, or otherwise

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[1] Staff Report, pp. 1-2, 11-13.

disputed, and cites relevant pages of NIPPC's prior written comments for the Commission's reference. NIPPC urges the Commission to seriously consider all of NIPPC's issues that have not been fully resolved.

In these comments in response to the Staff Report, NIPPC provides further comment on a select set of issues that remain unresolved, or otherwise disputed, and for which reference to NIPPC's prior comments alone is insufficient. Additionally, because the Draft RFP may still be subject to further revision by Idaho Power and the Independent Evaluator's ("IE") final report is not yet available, NIPPC reserves the right to address any additional changes proposed before or at the public meeting.

II. REPLY COMMENTS

A. Scoring Issues

1. Price/Non-Price Points Allocation: NIPPC Recommends an 80%/20% Allocation of Price/Non-Price Points; Alternatively, Any Deleted Non-Price Scoring Elements' Points Should be Reallocated as Price Score Points to Increase the Price/Non-Price Weighting.

The Draft RFP continues to allocate 75 points to the price score and 25 points to the non-price score.[2] NIPPC continues to recommend adjusting the price/non-price allocation to 80%/20% for the reasons stated in NIPPC's opening comments.[3] If NIPPC's lead proposal is not adopted, however, NIPPC provides an alternative proposal here based on one of Staff's related recommendations.

Specifically, Staff's Scoring and Modeling Methodology ("SMM") Condition 2 could be

[2] Draft RFP, p. 24 (April 5, 2023). These comments cite to the latest version of Idaho Power's Draft RFP, which is dated April 5, 2023. This version of the Draft RFP was not filed in the OPUC's docket, but it is available on Idaho Power's website at: https://www.idahopower.com/about-us/doing-business-with-us/request-for-resources/.

[3] NIPPC's Comments, pp. 4-5 (March 17, 2023).

implemented to reduce the points allocation to non-price factors. SMM Condition 2 would require Idaho Power to "amend[] its Non-Price Scoring Matrix to remove any scoring penalties applied to bidders that provide redlines to form contracts or other elements of the RFP and its exhibits."[4] Staff makes that recommendation because the non-price scoring elements that rely on conformance to the form contracts require an "inherently subjective evaluation" of "whether the redlines [bidders] have provided would reduce the likelihood of successfully contracting with Idaho Power."[5]

If Staff's recommendation is adopted and these subjective non-price scoring elements are removed, the question remains as to how those non-price points should be reallocated. It is not entirely clear to NIPPC how many non-price points would be deleted and in need of reallocation under Staff's proposal, but NIPPC understands there could be as many as five non-price points out of 100 overall points deleted under Staff's proposal.[6] Staff does not specifically recommend whether to reallocate those non-price scoring points to other non-price scoring factors or to the price score weighting. However, there is recent precedent on this subject. In Portland General Electric Company's ("PGE") 2021 RFP, the Commission reduced PGE's proposed weighting for commercial performance risk by 10 points and reallocated those 10 points to the price score points, resulting in a final weighting of 81.5% price/18.5% non-price.[7]

NIPPC recommends that the Commission follow the precedent from PGE's 2021 RFP here by requiring that any non-price elements removed due to subjectivity and/or bias be

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4 Staff Report, p. 1.

5 Staff Report, p. 8.

6 Draft RFP, p. 25 (April 5, 2023) (stating "Contracting Progress and Viability" is allocated five points and "Project Readiness and Deliverability" is allocated 20 points).

7 *In the Matter of Portland Gen. Elec. Co.'s Application for Approval of 2021 All-Source Request for Proposals*, Docket No. UM 2166, Order No. 21-460, pp. 4-6 (Dec. 10, 2021).

reallocated to the price score. That would bring the overall price/non-price weighting closer to the 80%/20% weighting that NIPPC initially recommended.

2. Price Scoring Issues.

a. Imputed Debt: NIPPC Agrees with Staff that the Proposed Imputed Debt Adder Should be Deleted.

NIPPC continues to strongly recommend deleting the Draft RFP's price adder for imputed debt. As NIPPC's opening comments demonstrated, this Commission has consistently disallowed the use of imputed debt bid adders in approved RFPs and instead maintained a policy that the complicated subject of utility credit ratings, and the evaluation of a procurement's potential impacts on the utility's cost of capital, should be addressed wholistically in a general rate case.[8] The Commission's policy of addressing such issues in a rate case recognizes that this is a complex issue with many factors and a significant amount of data to be considered and debated. Indeed, the ratings agencies themselves do not even agree on how power purchase agreements should be treated.

The Staff Report agrees with NIPPC's position. As Staff explains, Idaho Power's proposal "would put third-party bids using [power purchase agreement ('PPA') or battery storage agreement ('BSA')] structures at a marked disadvantage to utility-owned resources."[9] Staff correctly explains that "without a comprehensive picture of the IPC's balance sheet and credit position, it is not possible for Staff to evaluate whether the imputed debt adder proposed by the Company fairly and accurately reflects the increased debt costs attributable to any individual PPA or BSA[,]" and "there are still too many unknown variables for Staff to assess the imputed

8 NIPPC's Comments, pp. 6-8 (March 17, 2023).
9 Staff Report, p. 10.

debt adder the Company is seeking to impose."[10] Given the expedited nature of this proceeding without full contested case rights, Staff and other stakeholders are unable to adequately investigate and respond to Idaho Power's position. As Staff explains, "[e]valuating the accuracy of the debt attribution would require information and a level of analysis that are outside of what is feasible within the context of this procurement."[11] Therefore, Staff "recommends that any issues related to IPC's credit profile and credit risks be addressed in a rate proceeding" and "any imputed debt adder be removed from the price scoring in IPC's 2026 AS RFP."[12]

The procedural problems with addressing this issue in an RFP are compounded in this particular case because Idaho Power did not provide substantive argument or explanation supporting its novel request for use of imputed debt adders until it filed its reply comments. Thus, in response to Idaho Power and as further support of Staff's recommendation, NIPPC is supplying a responsive report by a qualified expert, Michael P. Gorman of Brubaker and Associates, Inc. Gorman's report is attached hereto for the Commission's consideration. As Gorman's report demonstrates, the Staff and IE position, as well as this Commission's own existing policy, is well founded. Any procurement of a large-scale generation resource, *including a utility-owned resource*, is likely to have some impact on the utility's debt and potentially its credit in the eyes of a ratings agency. Gorman concludes that added financial costs for PPAs and utility-owned resources, if accurately measured for all resource options, would be offsetting. In other words, Idaho Power's proposal is biased and one-sided. Therefore, it is fair and accurate to simply not reflect these external unknown financial costs in

10 Staff Report, p. 10.
11 Staff Report, pp. 10-11.
12 Staff Report, p. 11.

the comparison of resource options, especially in an expedited RFP proceeding such as this case.

In sum, therefore, the Commission should proscribe any use of imputed debt in this RFP and reaffirm in its order that imputed debt is not a permissible basis for development of price adders in Oregon RFPs.

b. Utility Ownership Price Scores: NIPPC Continues to Recommend Inclusion of Reasonable Contingency Price Adders for Utility Ownership Price Scores; Idaho Power's Reply and the Staff Report Have Not Resolved this Issue.

NIPPC continues to recommend that the Draft RFP should contain additional clarity regarding the treatment of utility-owned bids to ensure fair treatment in this RFP where cost-based utility-owned bids will be compared to contract-based bids under PPA, BSA, and other hybrid PPA-plus-tolling proposals.[13] Specifically, NIPPC's opening comments recommended that the Commission should "require development of reasonable contingency cost adders for utility-ownership bids (i.e., the benchmarks and BTA bids) whenever those bids do not provide contractual guarantees and damages provisions with protections analogous to the requirements of PPA and tolling agreement bids—meaning the RFP should contain strict [long-term service agreement ('LTSA') and warranty requirements for the utility ownership structures and develop reasonable contingency price adders for those bids that do not provide such contractual protections."[14] Idaho Power's reply comments suggested that it had cured this issue, and Staff's Report does not specifically address it. But NIPPC disagrees that this issue has been resolved by Idaho Power's reply comments.

Idaho Power's reply comments on this point do not demonstrate this issue is adequately

13 NIPPC's Comments, pp. 11-13 (March 17, 2023).
14 NIPPC's Comments, p. 12 (March 17, 2023).

resolved. Idaho Power asserts that the bid entry form requires a bidder to supply costs for operations and maintenance, such as those under an LTSA,[15] and thus it appears from Idaho Power's reply that it plans to use this bidder-supplied cost to evaluate the utility-ownership bids. That response fails to address NIPPC's concerns. As previously explained, the Draft RFP lacks minimum terms and conditions for a permissible LTSAs or operation and maintenance ("O&M") agreements supporting the utility-ownership bids (e.g., minimum roundtrip efficiency for a battery equivalent to that required of BSA bidders), or even any explanation of how bids without an LTSA for the life of project will be treated. Idaho Power makes no commitment to use reasonable contingency price adders for utility-owned resources. Without such adders, the RFP is biased against PPA and BSA bids that must build such contingency costs into their own bids because, if successful, they would only be paid per delivered energy or available capacity and must further conform to the performance guarantees in the winning PPA or BSA. Idaho Power's response does not cure the issue because it relies solely on the utility-ownership bidders' and benchmark team's own forecasts of their bids' O&M costs to achieve specified performance levels without any independent scrutiny.

Given that it is likely too late to develop minimum performance and damage guarantees for LTSAs and O&M agreements supporting utility-ownership bids, NIPPC recommends that the Commission direct the IE to develop reasonable contingency price adders for utility-ownership bids that are not supported by such guarantees for the life of the project to ensure equivalent treatment to the protections of a PPA or BSA.

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15 Idaho Power Reply Comments, p. 22 (March 24, 2023).

B. Minimum Bid Criteria: NIPPC Recommends that Additional Clarity Be Provided on Minimum Bid Criteria, and NIPPC Has Concerns with Staff's Proposed Language for the RFP's Minimum Readiness Criteria.

Among other concerns with minimum bid criteria, NIPPC's opening comments pointed out that the Draft RFP contained a vague minimum bidding requirement for project readiness.[16] Specifically, the Draft RFP's Exhibit C continues to state that a bidder must submit documentation that "indicates viability of proposed commercial operation date . . . on or before June 1, 2027 AND matches the COD submitted."[17] NIPPC's opening comments identified this requirement as vague and in need of revision. As explained, a typical minimum bidding requirement on this subject would simply require that the bid propose an operation date of no later than June 1, 2027, and if more were required to demonstrate readiness (e.g., a specific permit or interconnection status), the minimum requirement would need to specifically identify the requirements. Relatedly, NIPPC pointed out that the Draft RFP contains contradictory statements regarding the status of interconnection required.[18] It contains statements in the Eligible Products tables suggesting the need for "late stage development with pending or executed LGIA/SGIA,"[19] but also contains a contrary statement in the Interconnection Studies and Cost Estimating section that the bidder need only have an interconnection request *pending* and may use generic costs if no studies exist yet,[20] which suggests the bidder need not have advanced to the stage of obtaining an interconnection study to bid. As NIPPC's opening

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16 NIPPC's Comments, p. 18 (March 17, 2023).

17 Draft RFP, Ex. C, Item 6 (April 5, 2023). The version of the Draft RFP addressed in NIPPC's opening comments had the same requirement in the table as Item 2, but the requirement's substance has not changed in the latest draft of the RFP.

18 NIPPC's Comments, p. 20 (March 17, 2023).

19 Draft RFP, pp. 9-10 (April 5, 2023).

20 Draft RFP, pp. 13-14 (April 5, 2023).

comments stated, NIPPC supports the latter requirement of having at least filed an interconnection request and removal of the "late stage" language from the RFP. NIPPC reserved the right to further comment once Idaho Power's criteria are spelled out more clearly, but Idaho Power did not address the issue.

Staff partially addressed these concerns and proposed specific language upon which it requested further comment. Staff agrees with NIPPC's point that the RFP contains ambiguity on this issue, and likewise asserts that "[i]f the Company wishes to require documentation of to demonstrate the viability of a project's COD as one of its basic screening criteria, then it should be clear what documentation it will accept for that purpose."[21] But Staff's recommendation corrects that ambiguity by proposing readiness criteria with which NIPPC has concerns.

Specifically, Staff's proposed RFP Condition 4 is to impose the following minimum bid criteria on project readiness:

> "[E]vidence that necessary permits have been or are being acquired, proof of equipment procurement and delivery on site, and interconnection studies and agreements that support the commercial operation date."[22]

Staff states it developed these criteria from PacifiCorp's 2022 RFP's non-price scorecard. However, appropriate minimum bid criteria to participate are not necessarily analogous to the criteria on a non-price scoring card.   Indeed, one might expect the non-price scorecard to go beyond the minimum bid criteria, to differentiate the scores for the conforming bids. For example, PacifiCorp's 2022 RFP limited the minimum bid element related to equipment procurement to demonstration of "*a process to adequately acquire or purchase* major equipment (i.e., wind turbines, solar photovoltaic panels, inverters, tracking system, generator step-up

[21] Staff Report, p. 14.
[22] Staff Report, p. 14.

transformers, batteries) and other critical long-lead time equipment," but as Staff notes the same RFP's non-price scorecard may have assigned more points to bids that had equipment procurement underway.[23] NIPPC's concern is that Staff's proposed requirement that bidders demonstrate "equipment procurement and delivery on site" puts the cart before the horse because a bidder cannot be expected to have procured the equipment prior to being selected to build the prevailing resource in the solicitation. Such advanced actions may justify a higher non-price score, but would certainly be an anomalous minimum bidding criterion. Additionally, Staff's language does not identify the minimum level of permissible interconnection study (e.g., informational study, cluster system impact study, serial queue feasibility study), and any requirement for an interconnection study contradicts other language in the Draft RFP stating that the bidder need only have submitted an interconnection request.[24]

Thus, NIPPC proposes that Staff's proposed language be revised as follows:

> "[E]vidence that necessary permits have been or are being acquired, <u>demonstration of a process to adequately acquire or purchase major equipment (i.e., wind turbines, solar photovoltaic panels, inverters, tracking system, generator step-up transformers, batteries) and other critical long-lead time equipment,</u> ~~proof of equipment procurement and delivery on site,~~ and <u>demonstration that the bidder has submitted a Generator Interconnection Request and is meeting the requirements of the interconnection request process.</u> ~~interconnection studies and agreements that support the commercial operation date~~."

NIPPC's edit with respect to the interconnection requirement mirrors the language in the Draft RFP itself on this point,[25] and NIPPC's edit with respect to equipment procurement corresponds

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23 PacifiCorp's 2022 All-Source RFP, pp. 23-24 (March 14, 2023 Revision) (emphasis added), available at: https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/suppliers/rfps/pacificorps-2022-all-source-request-for-proposals/PacifiCorp_2022AS_RFP_Main_Document.pdf.

24 Draft RFP, pp. 13-14 (April 5, 2023).

25 Draft RFP, pp. 13-14 (April 5, 2023).

with the minimum bidding requirement related to equipment procurement in PacifiCorp's 2022 RFP to which Staff referred, as quoted above.

C. Miscellaneous Issues

1. Benchmark Bids: NIPPC Continues to Recommend Complete Disclosure of the Details of the Benchmark Bids and Complete Explanation Why Project Components Will Not Be Available for Use by Bidders.

As NIPPC noted in opening comments, the Draft RFP states that Idaho Power plans to submit benchmark bids, but it contains no details about those benchmarks, as is typically included and is also required by the Commission rules and policy.[26] Although the IE agreed with NIPPC's recommendation for detailed disclosure regarding the benchmarks,[27] Staff has not directly addressed this issue, perhaps because Idaho Power's reply comments suggested that it had addressed the problem. But NIPPC does not agree that Idaho Power's reply comments have adequately resolved this important issue.

Idaho Power's reply comments assert that the RFP evaluation team "does not have transparency into potential benchmark bids" but then contradict that assertion by disclosing that the benchmark team advises that it will submit two battery energy storage bids, located at existing Idaho Power substations.[28] Idaho Power goes on to state that there may be even more benchmark bids and asserts all such bids will be treated "as if they were affiliate bids."[29] No further information is supplied regarding the location of the substations, whether the benchmarks are greenfield development or build upon existing generation infrastructure and/or legacy

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26 NIPPC's Comments, pp. 21-23 (March 17, 2023).
27 London Economics International's Independent Evaluator Report, Docket No. UM 2255, pp. 9-10 (March 1, 2023).
28 Idaho Power Reply Comments, pp. 2-3 (March 24, 2023).
29 Idaho Power Reply Comments, pp. 2-3 (March 24, 2023); *see also id.* at pp. 23-24.

interconnection rights, or any other important details necessary to evaluate Idaho Power's decision not make benchmark assets available to bidders. The Commission should not allow Idaho Power to withhold such information by asserting that the RFP evaluation team has no access to details regarding the benchmark team's bids. If allowed, that reasoning would defeat the requirement to disclose the details regarding the benchmarks in all cases and render the Commission's rules a dead letter on this subject. As the IE's initial report noted, PacifiCorp was able to provide very detailed information on its benchmarks at the time it filed its last draft RFP,[30] and Idaho Power makes no case here for being held to a lower standard.

Idaho Power also again claims that it has agreed to make its network transmission rights available to bidders by identifying points of delivery on its system where bidders can deliver in Exhibit E,[31] but as previously explained identification of points of delivery for bidders is not equivalent to sharing benchmark assets. Exhibit E only pertains to Idaho Power's capability to accept a bidder's energy at certain points of delivery and then use network transmission across Idaho Power's own transmission system to Idaho Power loads without incurring network upgrade costs. The fact that Idaho Power must offer to accept deliveries somewhere on its system is a given in an RFP. To do otherwise would make the RFP pointless. Therefore, Exhibit E—while helpful to certain off-system bidders—is irrelevant to the question of benchmark assets.

NIPPC reiterates that this issue has become increasingly relevant since at least one other Oregon utility has already taken public steps to secure for itself the exclusive use of scarce

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30 London Economics International's Independent Evaluator Report, Docket No. UM 2255, p. 10 (March 1, 2023).
31 Idaho Power Reply Comments, pp. 22-23 (March 24, 2023)

interconnection and transmission capacity to be released by its retiring fossil generation fleet.[32] This potential new benchmark strategy revealed by PacifiCorp's replacement generator tariff, recently approved by the Federal Energy Regulatory Commission ("FERC") over the dissent of Commissioner Allison Clements, enables the utility to maintain preferential interconnection rights under the FERC tariff even after it retires legacy fossil generation and, if this Commission would allow it, then use that preferential interconnection position to advantage its own benchmark bids in a state-jurisdictional RFP.[33] This new preferential interconnection right—funded by ratepayers but held solely by the utility—will require extra careful attention by this Commission in RFPs. If the utility can monopolize use of preferential interconnection rights at its ratepayer-backed generation facilities and this Commission does not require that site and those preferential interconnection rights to be timely made available more generally to any qualified bidders, the utility benchmark would gain a significant advantage in the RFP due to the otherwise clogged interconnection queues the other bidders must rely upon.

While NIPPC does not understand Idaho Power's OATT to contain a similar replacement generator provision, Idaho Power's statement that the benchmark's will be located at existing Idaho Power substations now invites the question of whether the benchmarks are located at a retiring facility or otherwise using ratepayer-funded resources, such as legacy interconnection rights, not made equally and timely available to other bidders. And this type of arrangement

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32 *See PacifiCorp*, 182 FERC ¶ 61,003, PP 5-11, 13-26, 38-42, 55-75 (Jan. 9, 2023) (approving PacifiCorp's generator replacement interconnection tariff over the objection of NIPPC and others).

33 *See PacifiCorp*, 182 FERC ¶ 61,003, P 1 (Jan. 9, 2023) (C. Clements, dissenting) (finding that protesters, including NIPPC, "make compelling arguments, not present in those previous generator replacement rights proceedings, highlighting the potential for anti-competitive outcomes under PacifiCorp's proposal").

with preferential interconnection rights at legacy facilities is just one of many potential ways a benchmark can be advantaged by the utility's incumbent, ratepayer-backed position.

In sum, without clarity in the RFP as to the location and details of the benchmarks, it is not possible to evaluate this important subject. The Commission should require complete disclosure of the benchmark resources and Idaho Power's decision not to share assets supporting such bids. NIPPC reserves the right to comment further on Idaho Power's decision to make benchmark assets available to competitive bids once that information is made public.

2. Firmness of Bids: NIPPC Continues to Recommend that the RFP Clarify that Bids May be Updated at the Shortlist Stage; Idaho Power Did Not Fully Remove the RFP's Ambiguity on this Point.

NIPPC's opening comments recommended clarification of the Draft RFP's confusing statement that Idaho Power will provide the "potential opportunity" for a repricing at the shortlist stage "if necessary."[34] Given that ongoing supply chain issues and risk of imposition of tariffs should be expected to potentially affect price and availability of key equipment supporting a bid during the course of the RFP, NIPPC recommended that the RFP document should provide more clarity on this point and should expressly state Idaho Power *will* allow for repricing at the shortlist stage to ensure predictability and fair treatment.[35] Idaho Power's reply comments state that it clarified whether updates will be allowed, but the revised Draft RFP still contains the confusing statement that "the bid evaluation process does have potential opportunity for updated pricing if necessary."[36] NIPPC continues to recommend deletion of the "potential opportunity" and "if necessary" phrasing and clarification that price updates will be allowed at the shortlist

34 NIPPC's Comments, pp. 23-24 (March 17, 2023) (quoting Draft RFP).
35 NIPPC's Comments, p. 24 (March 17, 2023).
36 Idaho Power Reply Comments, p. 24; Draft RFP, p. 21 (April 5, 2023).

phase, which appears to be Idaho Power's intent.[37]

3. Exclusivity at Shortlist Stage: NIPPC Continues to Recommend Deletion, or at Least Limitation, of Idaho Power's Proposed Exclusivity Rights to Projects During the Shortlist Stage.

NIPPC's opening comments recommended that the Draft RFP's proposed exclusivity rights to the projects during the entire shortlist phase be deleted or modified,[38] but Idaho Power has not agreed to modify this provision and Staff has not addressed it.

As NIPPC explained, final shortlist negotiations could last for many months, potentially with a diminishing opportunity to close on a deal for at least some of the shortlist bidders as Idaho Power works to finalize its transaction with its top choices. NIPPC opposes the precedent that would be set by approval of Idaho Power's proposed open-ended exclusivity rights and is concerned this type of arrangement could deter participation in certain RFPs at a time with many RFPs occurring in the region. Therefore, NIPPC recommended that Idaho Power should be required to pay shortlist bidders for such exclusivity right or, at a minimum, any exclusivity rights should be limited in time to no longer than 60 days to limit its potential adverse impact.

Idaho Power's reply comments state that "[i]t is important for the Company to have a degree of certainty that the shortlist bids are truly available to be selected prior to entering into contract negotiations."[39] But that assertion does not respond to NIPPC's points. NIPPC agrees that the Draft RFP should require bidders to promptly withdraw their proposal if the underlying project becomes unavailable during the RFP, and NIPPC also proposed to simply limit the exclusivity right to the first 60 days of the shortlist. However, it is problematic to create a

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37 *See, e.g.,* Draft RFP, p. 7 (April 5, 2023) (listing the following RFP milestone on August 1, 2023: "Bidders Provide Initial Shortlist Price/Production Update").

38 NIPPC's Comments, pp. 24-25 (March 17, 2023).

39 Idaho Power's Reply Comments, p. 24 (March 24, 2023).

situation where Idaho Power can tie up the project for many months as an exclusive option for Idaho Power while Idaho Power potentially focuses all of its efforts on another bidder's project or its own benchmark.

D. Contract Forms: The Contract Forms Are Still In Need of Significant Revision.

NIPPC's opening comments recommended many revisions to the Draft RFP's contract forms.[40] In reply, Idaho Power provided no substantive response justifying any of the unreasonable or confusing provisions NIPPC highlighted, and it did not offer to provide commercial term sheets as a substitute for the contract forms not included for major bid structures to be expected, such as hybrid solar-plus-battery energy storage PPAs. Staff recommends only one partial correction out of the 18 individual problems identified by NIPPC with the Draft RFP's various forms. Specifically, Staff recommends deletion of the most egregious aspect of the PPA and BSA forms' right of first refusal ("ROFO") provision, which would have required the Seller to immediately begin negotiating to sell the facility to Idaho Power upon execution of the PPA or BSA.[41] While NIPPC appreciates Staff's adoption of one aspect of one of its proposals, NIPPC's remaining 17 issues have not been addressed, and NIPPC stands by all of its prior recommendations with respect to the forms.

These unresolved issues surrounding the RFP's commercial terms remain very important. NIPPC acknowledges that Staff's proposal to remove the non-price scoring penalty for revisions to the contract forms mitigates NIPPC's concern to a certain extent. But NIPPC still urges the Commission to consider further revisions to the forms, which will place any PPA or BSA bidder in a disadvantageous position of attempting to negotiate away these unreasonable provisions

40 NIPPC's Comments, pp. 25-35 (March 17, 2023).
41 Staff Report, pp. 17-19.

while simultaneously convincing Idaho Power to select it as the winning counter party. The utility-ownership bids will not be placed in that unfair position because their contract forms contain no ongoing requirements after commercial operation whatsoever. Further, in the Commission's process, the Commission does not typically have the opportunity to review or correct any overreaching that occurs during contract negotiations, which would occur only after acknowledgement of the final shortlist. Stakeholders will have no visibility into such conduct at all after acknowledgement of the final shortlist and may be shut out altogether from another opportunity to comment.

At a minimum, therefore, if the Commission and the IE decide not undertake revision of the forms at this time, the Commission should direct the IE to closely monitor any pushback against reasonable revisions to the contract forms during the negotiation phases and to make the Commission and stakeholders aware of those issues.

III. CONCLUSION

For the reasons set forth above, NIPPC recommends that the Commission condition approval of Idaho Power's RFP on the requirement that Idaho Power incorporate NIPPC's recommended revisions to the Draft RFP.

Dated: May 9, 2023

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Attachment No. 1

Expert Report on Imputed Debt of Michael P. Gorman

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of	**UM 2255**
IDAHO POWER COMPANY	
Application for Approval of 2026 All-Source Request for Proposals to Meet 2026 Capacity Resource Need.	

Expert Report

on PPA Imputed Debt

of

Michael P. Gorman, CFA

May 9, 2023

BRUBAKER & ASSOCIATES, INC.

Project 11472

My qualifications and experience to offer this expert report are summarized in the attached BAI corporate qualifications profile. This report responds to Idaho Power Company's ("the Company" or "Idaho Power") proposal to make an imputed debt adjustment to the cost of purchased power agreements and battery storage agreements (collectively referred to as PPAs) in the 2026 request for proposals ("RFP") bid evaluation process. This response was prepared on behalf of the Northwest & Intermountain Power Producers Coalition ("NIPPC"), and my conclusions support London Economics International's ("LEI") and the Oregon Public Utility Commission Staff's recommendation to reject Idaho Power's proposal to include an imputed debt adjustment to costs of non-utility resource bids (PPAs) for bid evaluation purposes.

An imputed debt adjustment to the cost of a PPA (generally an imputed debt cost adder) should be excluded from the RFP because such an imputed debt cost adder would create an economic bias against selecting PPAs as the most economic resource option. As outlined below, PPAs do have contractual financial obligations and do impose financial costs on utilities, including Idaho Power, to balance the leverage risk of resource options including PPAs. But importantly, non-PPA resources also cause financial costs related to the development, operating uncertainty, and financial risk associated with utility-owned resource options. Idaho Power has not proposed to reflect the added financial costs for the utility-owned resource options in its resource economic evaluation. Idaho Power's proposal is inconsistent and imbalanced. These added financial costs, if accurately measured for all resource options, would largely be offsetting between PPAs and utility-owned resources. Therefore, it is fair and accurate to simply not reflect these external, unknown financial costs in the comparison of resource options.

Additionally, as further detailed in this report, Idaho Power has exaggerated the debt equivalent and has overstated a debt imputation cost for PPAs, if one would be appropriate in isolation of other types of resources, which it is not.

Idaho Power's evidence does not support its proposal to include an imputed debt adder to the cost of a PPA in comparing the cost of various resource options in this RFP. However, if the Commission is interested in further examining PPA debt equivalence and capital structure management issues, Idaho Power could address the issue in Idaho Power's next rate case along with other aspects of its cost of capital and/or cost of service.

UTILITY RESOURCES ADDED COSTS

Idaho Power's Position on Debt Imputation and PPAs

Idaho Power outlines how a credit rating agency would assess its leverage risk in a utility credit rating assessment. It states that a PPA creates leverage which Idaho Power must manage by changing its capital structure's mix of debt and equity in funding utility-owned infrastructure investments in order to avoid a credit downgrade. Idaho Power suggests that it may need to increase its use of equity capital on utility rate base investments (reduced leverage risk) to balance the imputed debt equivalence of a PPA (increased leverage risk). Idaho Power asserts that this possible change to the ratemaking capital structure's equity component would increase Idaho Power's cost of service. Idaho Power maintains that the PPA imputed debt cost adder reflects the added cost to the utility's cost of service caused by the PPA. Further, Idaho Power contends that under new accounting standards, a PPA may, under certain circumstances, be regarded as an operating lease which would need to be recorded on its balance sheet as a regulatory liability.[1] Idaho Power claims that the increase

[1] Idaho Power's Reply Comments, p. 11 (March 24, 2023).

in this liability would also increase its leverage risk which would need to be considered in managing a balanced ratemaking capital structure.

Ultimately, Idaho Power asserts that the PPA would increase Idaho Power's leverage risk which would need to be balanced by increasing the percentage weight of common equity capital in the utility's ratemaking capital structure (an offset to the PPA leverage) to maintain a balanced amount of utility leverage which in turn will support its credit rating and access to capital.

Idaho Power cites credit rating methodologies used by Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's") to support its claims.

Response

I do not dispute that credit rating agencies will consider a contractual obligation of the utility in an assessment of the overall leverage or financial risk of the utility and that may result in added costs to a utility's cost of service for added leverage risk. However, these added costs do not result only from PPAs but also result from added financial cost for utility-owned and utility-developed generating resource options. Idaho Power has ignored or has understated these financial costs for non-PPAs. A balanced review of these added leverage risk adjustments shows that the added financial costs for a PPA are similar to the added financial costs for utility-owned facilities. Hence, it is not fair, balanced, or accurate to consider only an imputed debt adjustment cost for a PPA resource option without any consideration of the added financial costs for a utility-owned resource option. Idaho Power's comparison creates a clear bias against the cost of PPA resource options and favoritism for utility-owned resources. It is more conservative and more accurate to set the added financial cost issue aside in a resource cost comparison such as RFP scoring, with the understanding that the utility will need to balance its financial obligations in order to maintain strong credit standing while selecting resource options which reflect the best and most economic resource options available to the utility.

Again, I agree with Idaho Power's findings that credit rating agencies consider leverage risk for PPAs, but I do not agree with certain assertions Idaho Power makes concerning the magnitude of those PPA leverage risks. Specifically, I believe Idaho Power exaggerates the debt equivalents for a PPA in several aspects in its application for its approval of the 2026 RFP. In its reply comments, the Company states that Idaho Power currently has contractual obligations for cogeneration and power production contracts of more than $4 billion.[2] At pages 12 and 13 of the reply comments, it states that, as the Company transforms from a resource surplus position to a resource deficient position, the risk factor used by credit agencies in determining the debt-like equivalent of its PPAs will likely increase from a 25% factor up to a 50% factor. It states this will happen simply by consequence of moving from being capacity surplus to being capacity deficient. Further, at pages 11 and 13 of the reply comments, Idaho Power asserts that under new accounting standards, Idaho Power may need to record any PPA with dispatch rights as an operating lease and record the PPA on its balance sheet as a regulatory liability. Under this accounting, Idaho Power reports that the PPA would be given 100% imputed debt treatment by the credit rating agency.

Neither of these assertions hold up in a review of Idaho Power's credit rating metrics published by S&P. Specifically, Table 1 below contains S&P's published analysis of Idaho Power's leverage metrics and risk assessment, including the "off-balance sheet" debt equivalence S&P has attributed to Idaho Power's existing PPA obligations. As shown below in Table 1, the $4 billion in cogeneration and power production contracts noted by Idaho Power do not translate into a similar amount of off-balance sheet debt considered by S&P for Idaho Power's leverage risk assessment. Instead, the $4 billion of cogeneration and power

[2] *Id*., p. 7 (March 24, 2023).

production facilities referenced by Idaho Power's reply comments has resulted in an imputed debt equivalent from S&P of only $271 million in 2017-2019. For additional context, that $271 million of debt equivalent related to existing PPAs is relatively minor in relationship to the more than $2.0 billion of on-balance sheet debt. This shows that a PPA's debt equivalence is manageable for Idaho Power.

TABLE 1

Idaho Power Company

S&P Credit Rating Leverage Metrics
(Millions)

Description	3 yr avg	2017	2018	2019	2020	2021	2022
Balance Sheet Debt	$2,065	$1,746	$1,835	$1,837	$2,000	$2,001	$2,194
OLA Debt	0	35	0	0	0	0	0
Accessible cash and liquid investments	(112)	(45)	(165)	(99)	(166)	(60)	(109)
Purchase Power Debt Equivalent	0	271	271	271	0	0	0
ARO Debt Adjustment	27	21	21	22	22	29	30
Pension & Other Debt/Deferred Comp.	372	351	345	415	506	417	193
Total OBS	287	632	471	609	362	386	114
Total Debt: Balance Sheet Plus OBS	2,352	2,378	2,306	2,446	2,362	2,386	2,308

Source:
S&P Credit Stats, Idaho Power Company

Also of significance in S&P's leverage risk assessment is the off-balance sheet debt associated with asset retirement obligations ("ARO"), and the pension and other debt-deferred compensation issues. AROs can include the cost of decommissioning utility-owned resources and can include such items as coal ash pond remediation and other environmental cleanup costs. Pension off-balance sheet obligations include the utility's obligation to fully fund its pension trust fund to meet the retirement obligations of its employees. Credit rating agencies track these obligations because the costs can be material and reflect liabilities to the utility, much the same way PPAs can be contractual liabilities to the utility. As shown in Table 1 above, off-balance sheet debt obligations for AROs and pension obligations exceed the off-balance sheet debt obligations of PPAs.

Idaho Power Exaggerates PPA Debt Equivalency Impacts

Further, Idaho Power's argument that the risk factor for converting PPA capacity payments to debt equivalents will increase materially as it transitions from being a capacity surplus utility to a capacity deficient utility is also not consistent with S&P's reports regarding its risk assessment method for calculating a PPA's debt equivalent.[3] NIPPC asked Idaho Power to provide copies of its communications with credit rating agencies to confirm its representations of the PPA debt equivalence assertions. In response, Idaho Power stated that its communications with credit agencies were oral, and it did not have written material from the credit agencies.[4]

Idaho Power's characterization of the oral communications with credit agencies concerning PPA debt equivalency risk factor adjustments do not align with S&P's published reports that explain its PPA debt equivalence methodology used in the utility credit rating process. Once again, S&P uses a risk factor in its debt imputation for PPAs by considering the utility's expected capacity payments under the PPA, and converts that into a debt equivalent using a risk factor. In S&P's published report that describes its debt imputation for PPAs used in utility credit rating leverage assessments, S&P describes the risk factor adjustment to PPA capacity payments as follows:

> Risk Factors
>
> The NPVs that Standard & Poor's calculates to adjust reported financial metrics to capture PPA capacity payments are multiplied by risk factors. These risk factors typically range between 0% to 50%, but can be as high as 100%. <u>Risk factors are inversely related to the strength and availability of regulatory or legislative vehicles for the recovery of the capacity costs associated with power supply arrangements</u>. The strongest recovery mechanisms translate into the smallest risk factors. A 100% risk factor would signify that all risk related to contractual obligations rests on the company with no mitigating regulatory or legislative support.[5]

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[3] Idaho Power's Reply Comments, pp. 12-13 (March 24, 2023).
[4] Idaho Power's Response to NIPPC's Information Request No. 3.
[5] *Standard & Poor's Ratings*: "Standard & Poor's Methodology For Imputing Debt For U.S. Utilities' Power Purchase Agreements," at 2 (May 7, 2007) (emphasis added).

At page 5 of this same report, S&P describes its debt equivalency adjustment if a PPA is treated as an operating lease. S&P will still apply the risk factor adjustment in determining the PPA's debt equivalent. Idaho Power claims that if the PPA is recorded as a lease liability, the PPA would be treated as the equivalent of long-term debt.[6] However, that assertion is not consistent with S&P's published methodology, which states S&P would still use its risk factor adjustment for a PPA recorded as a lease liability to gauge its debt equivalence. S&P stated as follows:

> Several utilities have reported that their accountants dictate that certain PPAs need to be treated as leases for accounting purposes due to the tenor of the PPA or the residual value of the asset upon the PPA's expiration. We have consistently taken the position that companies should identify those capacity charges that are subject to operating lease treatment in the financial statements so that we can accord PPA treatment to those obligations, in lieu of lease treatment. That is, PPAs that receive operating lease treatment for accounting purposes won't be subject to a 100% risk factor for analytical purposes as though they were leases. Rather, the NPV of the stream of capacity payments associated with these PPAs will be reduced by the risk factor that is applied to the utility's other PPA commitments. PPAs that are treated as capital leases for accounting purposes will not receive PPA treatment because capital lease treatment indicates that the plant under contract economically "belongs" to the utility.[7]

While debt equivalence of a PPA in an assessment of a utility's credit risk is not in dispute, Idaho Power's claimed magnitude of the debt equivalence is exaggerated. Specifically, Idaho Power has claimed that its risk factor would increase from 25% to 50% due to change of its resource position from surplus to deficient. This assumption is not supported by S&P's methodology for assigning a risk factor for purposes of an imputed debt calculation. By making this assumption, Idaho Power has increased by double the amount of debt equivalency of expected PPAs. This overstates the cost of a PPA debt equivalency adjustment and is not consistent with a reasonable estimate of the financial leverage impact on Idaho Power's cost of service.

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[6] Idaho Power's Reply Comments, p. 11 (March 24, 2023).
[7] *Id*. at 5 (emphasis added).

<u>Idaho Power's Debt Equivalence Risk Factor Adjustments for PPAs is Flawed</u>

In its debt equivalency methodology, Idaho Power states that it is assigning a risk factor of 50%, an increase from the current PPA risk factor of 25%, to judge the debt equivalence of a PPA cost and to adjust PPA costs in its resource cost comparison.[8] Idaho Power maintains that the risk factor used by credit rating agencies to determine the PPA debt equivalence, at least with respect to its Public Utility Regulatory Policies Act of 1978 ("PURPA") contracts, was a 25% risk factor but the Company expects that to increase to 50% because the Company is moving from a capacity surplus position, to a capacity deficient position.[9] The Company has used a 50% risk factor in its quantification of a PPA embedded debt estimate in its last RFP, and plans to do so again in this RFP.[10] Idaho Power states that in its last RFP this methodology resulted in a bid adder with a median magnitude of 18% for the imputed debt for the PPA bids, when measured as a percentage of overall levelized revenue requirement for the bid.[11] Again, Idaho Power's debt equivalency is exaggerated and imbalanced.

There are several flaws in Idaho Power's adjustments. First, Idaho Power states the risk factor adjustment should be increased because it is moving from a capacity surplus to a capacity deficient position, and this increased need for capacity will increase the PPA risk factor in calculating its debt equivalent. However, S&P's published methodologies do not support this assumption. Rather, as quoted above, S&P's debt equivalency risk factor is more impacted by the cost recovery mechanisms in place for the utility's recovery of the costs it must pay to the seller under the PPA, and not Idaho Power's capacity surplus or deficiency position.

Second, Idaho Power's assumption that new accounting standards may result in a PPA being regarded as an operating lease and recorded as a regulatory liability on its balance sheet, which would be treated by credit rating agencies as long-term debt, is also not

[8] Idaho Power's Reply Comments, pp. 12-13 (March 24, 2023).
[9] *Id*.
[10] *Id*.; Idaho Power's Response to NIPPC's Information Request No. 1(c).
[11] Idaho Power's Response to NIPPC's Information Request No. 1(a).

supported. S&P states that it will continue to make a risk factor adjustment to a lease obligation in assessing the PPA's off-balance debt equivalence. Rate recovery mechanisms make a significant impact on Idaho Power's credit risk attributable to a PPA.

The debt risk of a utility-owned facility is considerably greater than that of a PPA because under a PPA a third-party supplier, in whole or at least in great part, assumes the operating risk of the resource used to provide capacity and energy to Idaho Power. Comparing a PPA to a utility-owned facility, if the resource fails to operate as expected, under a PPA, Idaho Power can terminate capacity and energy payments to the third-party supplier if they fail to deliver capacity and energy to Idaho Power.[12] This ability to terminate fixed capacity payments to a PPA reduces its debt equivalence attributed by the credit rating agency. In contrast, with a utility-owned facility, the credit rating agency will consider the risk that a utility will develop a facility which fails to operate, in which case the utility will continue to be obligated to make debt service payments for debt it took to finance this facility, or other infrastructure investments, irrespective of whether or not the utility-owned facility actually operates as planned. In this instance, the utility would both be obligated to make debt service payments on the generation resource option it developed and owns, plus it would be obligated to go to the market to buy replacement power costs.

Further, Idaho Power acknowledges its cost recovery mechanisms for a PPA may be different than those for a utility-owned facility. Idaho Power states that a utility-owned facility typically would be recovered in the utility's rate case, and recovered through traditional tariff rates. However, a PPA may be subject to the Company's Power Cost Adjustment Mechanism ("PCAM"). The Company states in a discovery response, that its PCAM reflects an actual cost reconciliation relative to the forecast costs, and variances outside of a symmetrical bandwidth are subject to recovery or refund to customers.[13] This reconciliation factor within the PCAM

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[12] Idaho Power's Response to NIPPC's Information Request No. 10.
[13] *Id*.

transfers most of the cost recovery risk of a PPA to customers, and thus reduces the debt-like nature of the PPA in the credit rating process. Hence, credit rating agencies recognize if a utility has less cost recovery risk under a PPA due to the regulatory mechanisms which provide the utility greater assurance of full cost recovery, those cost recovery assurances mitigate the debt-like nature of a PPA compared to utility-owned resources, and would reduce Idaho Power's leverage risk for a PPA relative to a utility-owned resource.

Because Idaho Power's recovery mechanisms for PPA costs are not changing, there is no legitimate reason to assume that the PPA debt equivalent will increase by adjusting the risk factor from 25% as it currently exists up to 50%, as Idaho Power proposes. Hence, Idaho Power's debt equivalency adder for a PPA is not only imbalanced and unfair, but it is also intentionally exaggerated in amount.

<u>Utility-Owned Financial Leverage Cost Adjustments</u>

Idaho Power's proposal to include a PPA leverage cost adjustment to fully account for the cost of PPAs is not balanced by making similar financial leverage cost adjustments to reflect additional leverage costs associated with utility-owned resources.

Utility-owned resources have investment and operating risks that are greater than those inherent in a PPA, in which case the third party assumes the investment and operating risks. For example, a PPA has far less financial risk to the utility compared to utility-owned facilities for the following reasons:

1. A PPA poses little or no cash flow constraints on the utility while the resource is initially being developed. Indeed, Idaho Power acknowledges that under a PPA, it typically would not pay for the capacity and energy from the unit until the unit is actually able to provide capacity and energy to Idaho Power.

2. For a utility self-build project, the utility can go through a period of cash deficiency in the resource development stage if, prior to the unit being placed in service and providing service to customers, the resource cost is not included in tariff rates. This cash stress period during development can also impact the utility's financial leverage and generally could result in the utility increasing the equity ratio of its

ratemaking capital structure to accommodate the weak cash flow experienced during the development of a utility-owned resource. The utility cash flow would not be stressed during the development of a PPA resource.

3. The PPA exposes the utility to less asset risk than a utility-owned facility. Specifically, if a PPA failed to operate sufficiently and did not provide capacity and energy, then the utility may not be obligated to pay capacity and energy payments to a third-party supplier under the PPA. In some instances, Idaho Power acknowledges that the third-party supplier may be liable to Idaho Power for replacement capacity and energy costs if it failed to perform under the PPA.[14] Also, to the extent there is significant prolonged damage to the resources underlying a PPA, Idaho Power may be able to declare the third-party supplier to be in default and can cancel its financial obligations under a PPA.[15] The utility may be largely protected from resource failure under a PPA but not under utility ownership.

4. Under a utility-ownership scenario, the utility has full asset risk for the generating resource, and will still be obligated to make debt service payments for the funding used to develop or acquire the utility-owned resource even if it has a catastrophic event which removes the resource from public service and precludes full recovery of the utility's costs and outstanding debt from ratepayers.

These resource asset development and operating risks would be considered by credit rating agencies in developing the overall leverage risk and financial risk of Idaho Power in a credit rating review. These risks are unique to utility-owned resources, which Idaho Power would need to manage in balancing a capital structure to maintain its financial integrity and investment grade credit standing. These are all financial costs associated with utility-owned resources which would not be risks or costs incurred under a PPA. Ignoring these utility-owned financial costs to manage development and operating risks as an offset to the PPA debt equivalent renders Idaho Power's proposed cost comparison of the various resources inexact, imbalanced, and biased against PPA bids in the RFP.

Idaho Power's proposal to include a PPA debt equivalence adder as part of a PPA's cost in an economic comparison of various resource options should be denied.

[14] Idaho Power's Response to NIPPC's Information Request No. 9.
[15] *Id*.

Summary of Professional Qualifications and Experience

Michael P. Gorman

Areas of Expertise

Competitive Procurement
Competitive Energy Procurement
Price Forecasts
Risk Management
Supplier Management

Cost of Service/Rate Design
Alternative/Incentive Regulatory Plans/Mechanisms
Cost of Service
Electric Fuel and Gas Cost Reviews and Rates
Marginal Cost Analysis
Nuclear Decommissioning Costs
Performance Based Rates
Prudence and Used/Useful Evaluation
Rate Design and Tariff Analysis
Storage Cost/Necessity

Financial
Asset /Enterprise Valuation
Cost of Capital
Depreciation Studies
Financial Integrity
Merger Evaluations (Benefit/Costs)
Revenue Requirement Issues

Special Projects
Site Selection and Evaluation
Training Seminars

Mr. Gorman is a Managing Principal at BAI. He received Degrees of Bachelor of Science in Electrical Engineering from Southern Illinois University at Carbondale and Master of Business Administration from the University of Illinois at Springfield. Mr. Gorman has also done extensive graduate studies in Financial Economics. He earned the designation Chartered Financial Analyst (CFA) from the CFA Institute.

Mr. Gorman has been in the consulting practice since 1990, and in the energy business since 1983. Mr. Gorman was employed by the Illinois Commerce Commission and held positions including Director of the Financial Analysis Department, Senior Analyst, Planning Analyst and Utility Engineer. Mr. Gorman was also employed by Merrill Lynch as a Financial Consultant. In this position, he consulted on cash management and investment strategies.

His responsibilities at BAI include project management, cost of capital studies, depreciation studies, financial integrity studies, system resource planning studies, alternative regulation plan/mechanisms, cost of service, rate design, production cost evaluations, commodity risk management, commodity procurement management, competitive supplier management and counterparty credit risk.

Project Work

Project Work in Western States

- Oregon, Washington, California, Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, and Nevada

Attachment No. 2

NIPPC's Table of Issues

Table of NIPPC's Issues

Draft RFP Issues

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by Idaho Power?	NIPPC Recommendation Adopted by Staff Recommendation?	Issue Resolved or Unresolved/ Disputed?
1. Price/Non-Price Points Allocation	Change Allocation from 75%/25% to 80%/20%[1]	No[2]	Not directly addressed	Unresolved
2. Imputed Debt	NIPPC Recommends Deletion of the Proposed Imputed Debt Adder[3]	No[4]	Yes	Resolved by Staff Report, but disputed by IPC
3. Portfolio Modeling and Sensitivity Analysis	NIPPC Recommends Delaying Portfolio Modeling Until After Development of the Initial Shortlist and the RFP Should Confirm Idaho Power Will Conduct Relevant Sensitivity Analyses[5]	Yes[6]	Yes	Resolved
4. Utility Ownership Price Scores	NIPPC Recommends Inclusion of Long-Term Service Agreement Requirements or Reasonable Contingency Price Adders for Utility Ownership Price Scores[7]	No[8]	No	Unresolved

[1] NIPPC Comments, pp. 4-5 (March 17, 2023).
[2] Idaho Power Reply Comments, pp. 20-21 (March 24, 2023)
[3] NIPPC Comments, pp. 6-8 (March 17, 2023).
[4] Idaho Power Reply Comments, pp. 6-15 (March 24, 2023).
[5] NIPPC Comments, pp. 8-10 (March 17, 2023).
[6] Idaho Power Reply Comments, p. 21 (March 24, 2023)
[7] NIPPC Comments, pp. 11-13 (March 17, 2023).
[8] Idaho Power Reply Comments, p. 22 (March 24, 2023).

5. Price Score Ranking	NIPPC Recommends Clarification of the Proposal to Rank Price Scores by Technology Type[9]	Yes[10]	Yes	Resolved
6. Term Normalization	NIPPC Recommends that the RFP Clarify the Term Normalization Method[11]	Yes[12]	Yes	Resolved
7. Non-Price Scoring	NIPPC Recommends More Clarity Be Included in the Non-Price Scorecard[13]	Not completely. Revised RFP improved clarity on many points but still has subjective evaluation for edits to RFP's form contracts, technical specification edits, and credit form.[14]	Yes. Staff SMM Condition 2 recommends removal of non-price score penalty for edits to form contracts and RFP exhibits.	Resolved by Staff, but disputed by IPC.
8. Minimum Bid Criteria: Eligibility Checklist	a. The Checklist in Exhibit C Should Be Clarified[15] b. Permissible Technologies, Points of Delivery, and Interconnection Status Should Be Clarified[16] c. The RFP Should Provide More than Two Days to Cure Errors or Misunderstandings in a Bid Submission[17]	a. No. Revised Exhibit C still has vague requirement to provide supporting material for proposed COD and "appropriate transmission rights."[18] b. No.[19]	a. Yes, but NIPPC has concerns with Staff's corrective language in RFP Condition 4. b. No. c. Yes.	a. Unresolved b. Unresolved c. Resolved by Staff, but disputed by IPC

9 NIPPC Comments, pp. 13-14 (March 17, 2023).

10 Idaho Power Reply Comments, p. 15; Draft RFP, pp. 25, 27 (April 5, 2023).

11 NIPPC Comments, pp. 14-15 (March 17, 2023).

12 Idaho Power Reply Comments, pp. 5, 23 (March 24, 2023)

13 NIPPC Comments, pp. 15-17 (March 17, 2023).

14 Idaho Power Reply Comments, pp. 3-4, 17; Draft RFP, Ex. D (April 5, 2023).

15 NIPPC Comments, pp. 18-19 (March 17, 2023).

16 NIPPC Comments, pp. 19-20 (March 17, 2023).

17 NIPPC Comments, pp. 20-21 (March 17, 2023).

18 Draft RFP, Ex. C (April 5, 2023).

19 *See* Draft RFP, Ex. E p. 1 (April 5, 2023) (still stating: "this Exhibit E focuses exclusively on market purchases" and provides no list of permissible points of delivery for off-system resource-based bids); Draft RFP, pp. 9-10 & 13-14 (April 5, 2023) (still containing contradictory statements regarding interconnection requirements); *id.* at 9-10 (still containing the same suggested limitations on resource technologies).

		c. No[20]		
9. Benchmark Bids	NIPPC Recommends that Idaho Power Disclose the Details of the Its Benchmark Bids and Explain Whether Project Components Will Be Available for Use by Bidders[21]	No[22]	No	Unresolved
10. Firmness of Bids	NIPPC Recommends that the RFP Clarify that Bids May be Updated at the Shortlist Stage[23]	No. Idaho Power states that it clarified whether updates will or will not be allowed, but the revised Draft RFP still contains the confusing statement that "the bid evaluation process does have potential opportunity for updated pricing if necessary."[24]	No.	Unresolved
11. Exclusivity at Shortlist Stage	NIPPC Recommends Deletion of Idaho Power's Proposed Exclusivity Rights to Projects During the Shortlist Stage[25]	No[26]	No.	Unresolved
12. Final Shortlist Fee	NIPPC Recommends Deletion of the RFP's Proposed Fee to Participate on the Shortlist[27]	No[28]	Yes	Resolved by Staff, but disputed by IPC
13. Contract Forms/Term Sheets	The RFP's Set of Contract Forms Is Incomplete; NIPPC Recommends Idaho	No. Revised Draft RFP states that bidders should submit	No	Unresolved

[20] Idaho Power Reply Comments, p. 23 (March 24, 2023).
[21] NIPPC Comments, pp. 21-23 (March 17, 2023).
[22] Idaho Power Reply Comments, pp. 2-3, 22-23 (March 24, 2023).
[23] NIPPC Comments, pp. 23-24 (March 17, 2023).
[24] Idaho Power Reply Comments, p. 24; Draft RFP, p. 21 (April 5, 2023).
[25] NIPPC Comments, pp. 24-25 (March 17, 2023).
[26] Idaho Power Reply Comments, p. 24 (March 24, 2023)
[27] NIPPC Comments, p. 25 (March 17, 2023).
[28] Idaho Power Reply Comments, p. 24 (March 24, 2023).

	Power Provide Term Sheets for All Key Terms for All Resource Types and Bid Structures[29]	alternative contract terms for different technologies and bid structures.[30]		

Issues Applicable to Both the Solar-Specific PPA Form and the Battery Storage Agreement Form

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by Idaho Power?	NIPPC Recommendation Adopted by Staff Recommendation?	Issue Resolved or Unresolved/ Disputed?
Right of First Refusal	Delete the PPA and SCA's ROFO[31]	No	Yes, but only as to ROFO on Effective Date in § 8.5 and not with respect to the ROFO for facility ownership changes	Resolved by Staff in part but still largely disputed
Delay Damages	Reduce Delay Damages level for PPA and BSA, and provide reduction to daily delay damages after partial completion in PPA consistent with terms of BSA[32]	No	No	Unresolved
Development Security	Clarify that development security may be established with cash[33]	No	No	Unresolved
IPUC Approval	Provide a day-for-day extension to Scheduled Commercial Operation Date in the instance that IPUC approval of the contract takes more than six months and a right to terminate without damages by Seller for longer delays and remove	No	No	Unresolved

29 NIPPC Comments, pp. 26-27 (March 17, 2023).
30 Idaho Power Reply Comments, pp. 24-25; Draft RFP, p. 23 (April 5, 2023).
31 *E.g.,* PPA §§ 8.1-8.8 & 9.4; NIPPC Comments, p. 28 (March 17, 2023).
32 PPA §1.25; BSA §§ & 1.28 & 1.56; NIPPC Comments, pp. 28-29 (March 17, 2023).
33 *E.g.*, PPA §§ 9.1, 9.2; NIPPC Comments, p. 29 (March 17, 2023).

	references to OPUC approvals and waivers[34]			
Network Resource Interconnection Service	Make to the contract forms to allow use of ERIS, consistent with changes already made to the RFP itself to allow ERIS[35]	No	No	Unresolved
PUC Jurisdiction and Jury Trial Waiver	Delete “Governmental Authorities” provision and the Jury Trial Waiver provisions[36]	No	No	Unresolved
Limitation of Idaho Power Transmission Liability	Delete provisions attempting to absolve Idaho Power of responsibility for delays caused by Idaho Power’s interconnection department[37]	No	No	Unresolved
Limits on Seller’s Damages	Include Seller’s lost tax credits as part of liquidated damages owing to Selling if Idaho Power breaches[38]	No	No	Unresolved
Qualified Operator	Relax the unreasonable requirements for five years operating 1,000 MW of solar facilities and five years’ operating 500 MW of BESS[39]	No	No	Unresolved
Force Majeure	Revise 180-day limit on force majeures to at least a year[40]	No	No	Unresolved

34 *E.g.,* PPA § 3.1; NIPPC Comments, pp. 29-30 (March 17, 2023).
35 *E.g.*, PPA § 7.3; NIPPC Comments, p. 30 (March 17, 2023).
36 *E.g.,* PPA §§ 20 & 26.4; NIPPC Comments, p. 30 (March 17, 2023).
37 *E.g.*, PPA §§1.145, 7.2.1, 15.1; NIPPC Comments, pp. 30-31 (March 17, 2023).
38 *E.g.*, PPA §§ 1.18, 1.42, 1.43, 1.72, 1.126, 12.2.2 & 12.4; NIPPC Comments, p. 31 (March 17, 2023).
39 PPA § 1.105; BSA § 1.108; NIPPC Comments, p. 31 (March 17, 2023).
40 *E.g.*, PPA § 15.5; NIPPC Comments, p. 32 (March 17, 2023).

Issue Unique to Solar-Specific PPA Form

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by Idaho Power?	NIPPC Recommendation Adopted by Staff Recommendation?	Issue Resolved or Unresolved/ Disputed?
Forecasting Costs	Delete provision requiring Seller to pay a share of Idaho Power's portfolio wide solar forecasting service or allow Seller to elect to supply its own forecasting to Idaho Power[41]	No	No	Unresolved
Performance Guarantee	Delete ambiguous termination provision and include no termination for falling below the 90% monthly guarantee because liquidated damages apply in that case to keep Idaho Power whole[42]	No	No	Unresolved
Compensated Curtailment	Include lost tax credit value to the Seller as part of payment to Seller for compensated curtailment events[43]	No	No	Unresolved
"Special Contract" Provisions	Delete confusing provisions designed for a green tariff PPA[44]	No	No	Unresolved

41 PPA § 7.7; NIPPC Comments, p. 32 (March 17, 2023).
42 PPA §§ 7.12 & 12.1.2.8; NIPPC Comments, pp. 32-33 (March 17, 2023).
43 PPA § 6.1.3; NIPPC Comments, p. 33 (March 17, 2023).
44 NIPPC Comments, p. 33 (March 17, 2023).

Issues Unique to Battery Storage Agreement Form

Issue	NIPPC Recommendation	NIPPC Recommendation Adopted by Idaho Power?	NIPPC Recommendation Adopted by Staff Recommendation?	Issue Resolved or Unresolved/ Disputed?
Roundtrip Efficiency	Allow bidders to propose a lower RTE than the BSA Form's 87% without any scoring penalty, or ensure appropriate bid adders are applied to utility-owned BESS bids to maintain 87% RTE during entire life of BESS bid[45]	No	No	Unresolved
Charging Management	Revise charging management protocols to give Seller reasonable time to respond to Idaho Power's charge/discharge instructions[46]	No	No	Unresolved

Issues Unique to Build Transfer Agreement Form

Issue	NIPPC Recommendation	Resolved by Idaho Power?	NIPPC Recommendation Adopted by Staff Recommendation?	Issue Resolved or Unresolved/ Disputed?
O&M Agreement	No form O&M Agreement or term sheet is required; minimum terms equally protective of the PPA/BSA forms should be required, or appropriate	No	No	Unresolved

45 BSA §§ 1.52, 4.5.3, 12.1.2.8; NIPPC Comments, p. 34 (March 17, 2023).
46 BSA § 7.7; NIPPC Comments, pp. 34-35 (March 17, 2023).

	contingency price adders included for such bids[47]			
Long Term Service Agreement	No form LTSA or term sheet is required; minimum terms equally protective of the PPA/BSA forms should be required, or appropriate contingency price adders included for such bids[48]	No	No	Unresolved

[47] NIPPC Comments, p. 35 (March 17, 2023).
[48] NIPPC Comments, p. 35 (March 17, 2023).