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 COALTION'S COMMENTS ON DRAFT REQUEST FOR PROPOSALS

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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") comments on Idaho Power Company's ("Idaho Power") Draft Request for Proposals filed in this docket on February 22, 2023 ("Draft RFP"). NIPPC previously provided limited oral comments on a prior draft of Idaho Power's RFP at the workshop held on February 21, 2023, which were necessarily limited to certain initial concerns and clarifications given that the workshop was held just two business days after the initial draft RFP was distributed to parties. However, NIPPC appreciates Idaho Power and the Independent Evaluator's ("IE") consideration of its feedback, and NIPPC understands from the IE's report that Idaho Power may already be editing certain elements of the Draft RFP. Given that Idaho Power's Draft RFP appears to be a work in progress, NIPPC includes in these comments all of its significant concerns and issues for clarification with the Draft RFP as filed on February 22, 2023, and NIPPC reserves the right to supplement its comments to address any changes Idaho Power proposes to its Draft RFP.

NIPPC notes that this is the first RFP Idaho Power has engaged in the OPUC's bidding rules, and thus this RFP carries added significance for that reason. While Oregon is only a relatively small percentage of Idaho Power's service territory and load, as compared to Idaho, the Idaho Public Utilities Commission ("IPUC") has declined to adopt its own competitive bidding rules due to the expectation that Idaho Power must follow this Commission's competitive bidding rules.[1] Thus, this Commission's enforcement of its own rules carries added value for

[1] *See In the Matter of Idaho Power Company's Application for a Certificate of Public Convenience and Necessity to Acquire Resources to Be Online by 2023 to Secure Adequate and Reliable Service to Its Customers*, IPUC Case No. IPC-E-22-13, Order No. 35643, p. 4 (Dec. 27, 2022) (explaining, "pursuant to [IPUC] Order No. 32745, the Company must follow the Oregon

Idaho Power's neighboring state in this case. Idaho Power's immediately prior RFP, the 2022 RFP, was held without following this Commission's RFP rules and received only 24 proposals from 12 different developers—far less than the level of bids received in other Oregon utilities' recent RFPs. For example, Portland General Electric Company's ("PGE") last Commission-approved RFP received 110 distinct proposals from 19 counterparties.[2] NIPPC hopes to see more robust participation in this RFP and appreciates Idaho Power's engagement with stakeholders thus far in the proceeding.

Substantively, NIPPC has several recommendations to improve the competitiveness of Idaho Power's proposed RFP and supporting form contracts discussed herein. The Commission has long recognized that an investor-owned electric utility has an inherent bias against power purchase agreement ("PPA") and tolling agreement proposals where a utility-owned proposal could be chosen instead and placed in the utility's rate base to earn a return for the utility's shareholders.[3] Given that Idaho Power's Draft RFP includes utility ownership options, including

Public Utilities Commission ('OPUC') rules applicable to the Company's Oregon service territory when it wants to procure resources to serve its Idaho customers."); *id.* at 13 (stating, "We expect the Company to closely monitor its projected capacity needs going forward and to act proactively to ensure a robust RFP process can be completed."); *In re Development of Request for Proposal (RFP) Guidelines for the Procurement of Supply-Side Resources by Idaho Power Company*, IPUC Case No. IPC-E-10-03, Order No. 32745, p. 2 (Feb. 12, 2013) (directing Idaho Power to use Oregon RFP process).

[2] PGE's Redacted Request Acknowledgement of Final Shortlist of Bidders in 2021 All-Source RFP, Docket No. UM 2166, p. 4 (May 5, 2022).

[3] *In the Matter of the Pub. Util. Comm'n of Ore.; An Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias*, Docket No. UM 1276, Order No. 11-001, p. 5 (Jan. 3, 2011) ("accept[ing] the premise that a bias exists in the utility resource procurement process that favors utility-owned resources over PPAs" and finding this bias "is really a logical inference drawn from an understanding of ratemaking practices" because "a utility's 'profit' is the opportunity to earn a return on the rate base and by purchasing a PPA in lieu of building a power plant, it is foregoing the potential to earn some amount of profit" (internal quotation omitted)).

both benchmarks and build transfer agreement ("BTA") options, NIPPC's review focuses on ensuring the Draft RFP limits potential bias in favor of those utility-ownership bids.

NIPPC recommends many modifications and clarifications to the Draft RFP discussed in detail in these comments, but the following issues include some of NIPPC's key concerns:

- Imputed Debt: NIPPC's biggest concern with the Draft RFP is the proposal to include imputed debt bid adders for all bids for PPAs and battery service agreements ("BSA"), as well as any other PPA or tolling agreement structures. Idaho Power reports that the use of imputed debt in its last RFP inflated the levelized cost of the PPA and BSA bids by an average of 18%, which confirms Idaho Power's proposed use of imputed debt would be a material and significant pricing penalty for the PPA and BSA bids. The Commission should reconfirm its longstanding policy against use of imputed debt in an RFP by rejecting Idaho Power's proposed bid adders for imputed debt.
- Fair Treatment of PPA and BSA Bids: NIPPC also stresses the importance of ensuring that the RFP design and scoring method does not bias the outcome in favor of utility-ownership bids that would otherwise be advantaged against the PPA and tolling agreement structures that are not offered on a cost-plus basis. To counter this problem, the Draft RFP's minimum requirements for utility ownership bids should be clarified to include express requirements for contractual protections against operational cost escalations and underperformance, or alternatively the scoring method should include adequate contingency cost and performance assumptions in the evaluation for utility ownership bids.
- Term Normalization: The Draft RFP should clarify Idaho Power's method of term

normalization to ensure it fairly treats bids of different term lengths.

- Clarification on Pricing Updates: The Draft RFP should clarify that bid prices may be updated at the final shortlist stage, due to ongoing supply chain and tariff risk factors that make it difficult to hold bid prices throughout the RFP.
- ROFO: NIPPC recommends removal of right of first refusal ("ROFO") clauses in the PPA and BSA forms that would compel the successful bidder to make an offer to sell the facility to Idaho Power, even before commercial operation and even without significant change in ownership of the facility.
- Qualified Operator: NIPPC recommends relaxation of overly restrictive requirements for a "Qualified Operator" of the resource in the PPA and BSA forms, which will drastically limit the pool of potential operators of the facilities if not revised.

II. COMMENTS

A. Scoring Issues

1. Price/Non-Price Points Allocation: NIPPC Recommends an 80%/20% Allocation of Price/Non-Price Points.

The Draft RFP allocates 75 points to the price score and 25 points to the non-price score.[4] NIPPC recommends adjusting the price/non-price allocation to 80/20.

Non-price scoring presents much higher risk of subjectivity and bias in favor of utility ownership bids and moves the evaluation away from purely quantitative analysis of the best resource for ratepayers. The Commission's administrative rules encourage limiting non-price scoring by converting proposed non-price factors to price factors or minimum bid criteria.[5]

[4] Draft RFP, pp. 28-29.
[5] OAR 860-089-0400(2); OAR 860-089-0400(2)(c).

Accordingly, recent OPUC-approved RFPs have used a price/non-price allocation of 80/20.[6] The OPUC recently ordered PGE to revise its scoring allocation to an 81.5% price/18.5% non-price allocation in Docket No. UM 2166.[7]

While PacifiCorp's RFPs in Docket Nos. UM 2059 and UM 2193 used a price/non-price allocation of 75/25, the Commission directed further that the IE analyze the impact of that decision and whether an 80/20 allocation would affect the shortlist.[8] NIPPC recommends an 80/20 allocation as the best practice to minimize any potential emphasis on subjective non-price criteria. Thus, an 80/20 allocation should be adopted in Idaho Power's RFP. Alternatively, at the minimum, the Commission should again require sensitivity analysis of the impact of the 75/25 allocation, including whether the results would differ with an 80/20 allocation, and reserve the right to revisit the issue at the final shortlist acknowledgment if there is an impact on the shortlist.

2. Price Scoring Issues.

The Draft RFP is somewhat vague on how certain aspects of the price scoring will work. While Idaho Power clarified certain points at the RFP workshop, Idaho Power's clarifications highlight the need to change Idaho Power's proposal in certain respects.

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6 *Re PacifiCorp 2017R RFP*, Docket No. UM 1845, PacifiCorp Draft RFP, p. 21 (Aug. 4, 2017); *Re PacifiCorp 2017R RFP*, Docket No. UM 1845, Order No. 17-345 (Sept. 14, 2017) (approving RFP without changing 80-20 price/non-price ratio)

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); *see also* Staff Report, Docket No. UM 2166, pp. 14-15 (Nov. 11, 2021) (discussing PGE's proposal for a 30/70 allocation).

8 *In the Matter of PacifiCorp's Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193, Order No. 22-130, pp. 8-9 (April 28, 2022).

a. Imputed Debt: NIPPC Recommends Deletion of the Proposed Imputed Debt Adder

NIPPC strongly recommends deleting the Draft RFP's price adder for imputed debt. The Draft RFP states Idaho Power will increase all PPA and BSA bids for alleged costs of imputed debt.[9] Idaho Power clarified at the workshop that it plans to use a proprietary model to individually calculate the imputed debt Idaho Power believes will result from each individual bid, and that the model will not be made available to any bidder or stakeholders except Staff and the IE. Idaho Power further explained that it included imputed debt adders in its recent non-compliant RFPs. This issue is not trivial or academic. Idaho Power reported in response to a NIPPC's information request that in its last RFP the imputed debt adder inflated the levelized cost of the PPA and BSA bids by an average of 18%.[10] This price adder will, of course, not apply to any utility-ownership bids, including the benchmarks or the BTA bids. Notably, as discussed below, the IE's Report agrees with NIPPC that imputed debt should not be included in the RFP.

Use of imputed debt bid adders is both bad policy and barred by the Commission's rules. The Commission has disallowed the use of imputed debt for use in selection of the initial shortlist at least since the Commission's 2006 bidding guidelines, which allowed consideration of imputed debt only for development of a final shortlist and reserved the possibility of requiring a ratings agency opinion to substantiate the utility's decision to use imputed debt at all.[11]

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9 Draft RFP, p. 28.

10 *See* Attachment No. 1 (containing Idaho Power's Response to NIPPC's first information request).

11 *In the Matter of an Investigation Regarding Competitive Bidding*, Docket No. UM 1182, Order No. 06-446, pp. 10-12 (Aug. 10, 2006) (discussing Guideline 10(c)).

Subsequently, in 2011, the Commission disallowed the use of imputed debt whatsoever in RFPs and directed utilities to raise the issue solely in a rate case where the utility's overall cost of capital could be fully analyzed in context.[12] When a utility next proposed use of imputed debt to penalize PPA and tolling agreement bids, the Commission rejected the proposal, citing its 2011 decision.[13] Consistent with that authority, the Commission's current rules require that price scores "*must* be based on the prices submitted by bidders and calculated using units that are appropriate for the product sought and technologies anticipated to be employed in responsive bids using real-levelized or annuity methods."[14] Thus, well-established policy and the Commission's existing rules do not allow for artificial bid adders of imputed debt.

Aside from violating the Commission's longstanding policy, Idaho Power's proposal runs counter to the central policies of good RFP design because it is completely lacking in transparency and justification. As the IE notes, the proprietary model to develop the imputed debt adders is not available to bidders, or even non-bidding stakeholders.[15] The IE also notes that use of imputed debt in an RFP is unjustified because it is far from clear that any ratings

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12 *In the Matter of the Pub. Util. Comm'n of Ore.; An Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias*, Docket No. UM 1276, Order No. 11-001, p. 6 (Jan. 3, 2011) (stating: "we allow the utilities to raise the impact on this practice on credit ratings and earnings in individual rate proceedings. We believe that this issue is more appropriately addressed in the context of an overall examination of a utility's cost of capital").

13 *See In the Matter of Portland Gen. Elec. Co.'s Request for Proposals for Capacity Resources*, Docket No. UM 1535, Order No. 11-371, p. 7 (Sept. 27, 2011) (rejecting PGE's proposed use of imputed debt in an RFP and stating: "We agree with CUB that, although PGE's position is consistent with our Competitive Bidding Guidelines, it conflicts with Order No. 11-001. We take this opportunity to clarify that this more recent order supersedes the guidelines and directs the parties to deal with debt imputation issues in rate cases.").

14 OAR 860-089-0400(2)(a).

15 London Economics International's Independent Evaluator Report, Docket No. UM 2255, pp. 14-15 (March 1, 2023).

agency would even treat a PPA as debt if the utility has regulatory mechanisms in place to recover the costs of the PPA, which Idaho Power clearly has in both of its jurisdictions through its annual power cost recovery proceedings. This all goes to show that—as the Commission has previously determined—it is unlikely that a single PPA emerging from an Oregon RFP would ultimately lead to imputed debt and even more unlikely that the impact of such imputed debt would actually flow through as a perceptible cost to ratepayers when considering all of the other factors that affect a utility's cost of capital and its impact on rates. Idaho Power did not provide any reasonable basis to assume that any ratings agency would impute debt to a prevailing PPA or tolling agreement in this RFP given Idaho Power's circumstances, much less explain how such imputed debt (if it were to be applied by a ratings agency) would ultimately result in a lower overall credit rating for Idaho Power or ultimately have a perceptible impact on rates Idaho Power would request to charge its customers. Nor has Idaho Power properly sought to waive the Commission's longstanding proscription against use of imputed debt in Oregon RFPs at the time it filed its request for approval of its RFP.[16]

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. 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.

NIPPC recommends further clarity and revision in the Draft RFP's proposed price

16 *See* OAR 860-089-0010(2) (request to waive RFP rules must be supported by good cause shown "prior to or concurrent with the initiation of a resource acquisition").

scoring method and sensitivity analyses. The Draft RFP states Idaho Power will use "portfolio optimization modeling" with AURORA to develop the initial shortlist.[17] The Draft RFP also provides no specific commitment to conduct any sensitivity analyses as to the impact of modeling, term normalization, or price/non-price scoring allocations. NIPPC has two recommendations on this subject.

First, NIPPC recommends that portfolio modeling be delayed until at least after development of the initial shortlist. This is a point of concern for NIPPC, because the "proprietary" formulas used in portfolio optimization models, such as AURORA, are not transparent and can easily be biased in favor of one outcome or the other. The model and the forecasts upon which it relies can also be very wrong, as is confirmed by Idaho Power's current capacity shortfall and the recent market price spikes, neither of which were predicted just five years ago. Developing at least the initial shortlist based primarily on the price and non-price scores provides stakeholders, the IE, and the Commission with a clear view of the ranking based primarily upon quantitative and known factors—the fixed bid prices submitted by the bidder and appropriate contingencies for utility-owned bids. If the portfolio modeling used to develop the final shortlist results in a drastically different ranking, then further investigation can occur to ensure the outcome is appropriate and the not the result of incorrect or biased modeling. However, if the initial shortlist already includes the effects of such proprietary modeling, then errors and biases can be much more difficult to uncover.

The Commission's current rules are consistent with NIPPC's recommendation. The rules require: "The electric company *must base* the scoring of bids and *selection of an initial shortlist*

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[17] *See* Draft RFP, p. 28 (stating the initial shortlist evaluation will include "portfolio optimization modeling to identify the lowest cost bids for inclusion in the Initial Shortlist").

on price and, as appropriate, non-price factors."[18] It is only after the initial shortlist is developed that the rules then provide the utility may use portfolio modeling to develop the "*final* shortlist" through consideration of "overall system costs and risks using modeling methods that are consistent with those used in the Commission-acknowledged [Integrated Resource Plan ("IRP")]."[19] NIPPC understands that recent Oregon RFPs have conducted the portfolio modeling only after first developing the initial shortlist.[20]

Second, NIPPC recommends that the Draft RFP expressly commit to perform the sensitivity analyses necessary to evaluate the final shortlist stage. The Commission's rules state that the step of developing the final shortlist must include sensitivity analyses, including a sensitivity analysis of the impact of changes to non-price scoring (e.g., modeling the outcome with different price/non-price scoring allocations) and a sensitivity analysis of the impact of bid term lengths in the portfolio modeling.[21] Both of these sensitivity analyses listed in the rules are relevant to this RFP, and they should therefore be performed in this RFP.

In sum, Idaho Power's RFP should delay the portfolio modeling until the final shortlist stage and confirm Idaho Power will also conduct and share the results of the relevant sensitivity analyses in the Commission's rules.

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18 OAR 860-089-0400(2) (emphasis added).

19 OAR 860-089-0400(5) (emphasis added).

20 *See, e.g., 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. 22-315, p. 2 (Aug. 31, 2022) (noting PGE used portfolio analysis at the final shortlist stage to rank order of bids on initial shortlist).

21 OAR 860-089-0400(5)(b).

c. Utility Ownership Price Scores: NIPPC Recommends Inclusion of Long-Term Service Agreement Requirements or Reasonable Contingency Price Adders for Utility Ownership Price Scores

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.

The Draft RFP provides no details as to how the performance and operational costs of utility-ownership bids will be handled. Those risks include lower capacity factor than forecast, lower round-trip efficiency on a battery than that required in the BSA applicable to tolling agreement bids, or lack of other performance guarantees and fixed prices for energy and capacity inherent in the PPA or tolling structure. The draft RFP states generally that operation and maintenance agreements ("O&M Agreement"), long-term service agreements ("LTSA"), and warranties should be included in the pricing of the utility-ownership bids, such as a benchmark or a BTA bid. [22] But the Draft RFP provides no description of the minimum protections it will require in such O&M Agreement, LTSA, or warranties, much less any assurance the protections therein will be equivalent to those in a PPA or BSA bids. Further, Idaho Power's submittal letter suggests that the IE need only independently score and evaluate the risk of utility ownership, including creation of appropriate contingency cost adders, in the case of the "benchmark" bid.[23]

However, the Commission's rules expressly require the IE to independently score and evaluate the risk of utility ownership for *all* utility ownership bids, which includes not just the benchmark but also the BTA bids in this RFP.[24] The Commission's rules state that the IE must

22 Draft RFP, pp. 13-14.
23 Idaho Power's Final Draft RFP, Docket No. UM 2255, at Submittal Letter p. 4 (Feb. 22, 2023).
24 OAR 860-089-0450(5)

evaluate the unique risks and advantages of utility-owned bids, including the risk of cost overruns, risk of performance assumptions, and operation and maintenance costs.[25] In NIPPC's view, this 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 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.

This is an important issue in this RFP because Idaho Power has demonstrated a preference to own and rate base a battery energy storage system ("BESS") as opposed to contracting under a tolling agreement with an independent power producer ("IPP"). Idaho Power's 2021 RFP did not even accept tolling agreement bids (through a BSA) or hybrid PPA-plus-storage tolling bids, and its 2022 RFP accepted such bids, but selected utility-owned BESS as the winner.[26] BESS requires significant ongoing maintenance and capital costs to continue operating at the peak performance levels due to battery degradation with use, especially for the 20-year term that Idaho Power appears to be prepared to model the benefits of the utility-owned 4-hour BESS bids in this RFP and the 35-year life of any 6-plus-hour BESS.[27] The Draft RFP

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[25] OAR 860-089-0450(6).

[26] *See* Idaho Power Company's Notice of Exceptions Report, Docket No. UM 2255, p. 1 & Ex. 2, p. 2 (Feb. 17, 2022) (2022 RFP); Idaho Power Company's Notice of Exceptions Report, Docket No. UM 2210, p. 1 (March 18, 2022) (2021 RFP); *see also id.* at Exhibit 1, pp. 9-11 (containing the 2021 RFP, which stated: "IPC will accept Project proposals that include a PPA for wind and solar, provided the proposal includes a BTA for the storage resource.").

[27] *See* Dept. of Energy, Pacific Northwest National Laboratory, *Energy Storage Technology and Cost Characterization Report*, p. 4.14 (July 2019), https://energystorage.pnnl.gov/pdf/PNNL-28866.pdf (collecting industry data and stating, "Li-ion systems have a typical usable life of approximately 10 years and require major maintenance

contains a BSA form that clearly expects the BSA bidders to maintain peak performance for the term of the BSA or potentially be subjected to scoring penalties if the form's requirements are changed. Thus, if Idaho Power-owned BESS would be compared equivalently, its costs would need to include equivalent LTSA or warranties for the life of the facility, or conservative cost and contingency risk adders to maintain that level of performance. The Draft RFP is silent on this critical subject.

In sum, NIPPC recommends that the RFP specify minimum requirements for LTSAs and/or warranties for all utility ownership bids that will make those bids subject to the same type of contractual protections as the PPA and BSA bids. To the extent the RFP does not require LTSAs and equipment warranties for the life of the project, the IE should develop appropriate operating and maintenance costs and appropriate contingency price bid adders, or performance contingency risk adjustments, for the added risk of the utility ownership bids and clearly document and opine on the adders used in the IE's final shortlist report.

d. Price Score Ranking: NIPPC Recommends Clarification of the Proposal to Rank Price Scores by Technology Type

The Draft RFP's technology-based ranking of price scores requires clarification and explanation. The Draft RFP states it will rank the bids against other bids of the "same technology" and then assign the points proportionally with the lowest price bid receiving 75 points.[28] NIPPC questions this method as opposed to ranking the price scores of all resource

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on the battery system usually every 5 to 8 years to remain operational"); *see also* Draft RFP, pp. 13-15 (asset life tables and bid term tables).

[28] *See* Draft RFP, p. 29 (stating, "For each technology, a maximum score of 75 points is assigned to the bid with the highest calculated relative score. The remaining bids using that same technology are scored on a 0-to-75-point scale according to their relative relationship to those of the highest and lowest performing bids.").

types against each other. Individually ranking technology types on separate 75 points scales would appear to be likely to result in a bid in a category with relatively few other bids, e.g., geothermal, getting a very high or very low score compared to similarly priced bids of other resource types. NIPPC recommends that Idaho Power provide further explanation and justification for this bid ranking method and that appropriate adjustments be made to avoid unintentionally advantaging or disadvantaging bids solely based on technology type.

e. Term Normalization: NIPPC Recommends that the RFP Clarify the Term Normalization Method

NIPPC recommends that the RFP's method of term normalization should be clarified to improve transparency for bidders and stakeholders. Specifically, the final RFP should state Idaho Power will not use "generic fill" to compare bids of different term lengths and it should further explain Idaho Power's proposed annuity/levelization method for term normalization.

The Draft RFP contains no discussion of how Idaho Power will conduct term normalization, such as whether "generic fill" from an IRP or model will be used to equalize the terms or whether an annuity-type analysis will occur. The Draft RFP states Idaho Power prefers PPA and BSA bids to match the RFP's specified design life of the resource type, 20 years for 4-hour BESS and 35 years for all other technologies.[29] At the RFP workshop, Idaho Power confirmed it will not use generic fill and instead will use annuity and/or levelization methods of term normalization. The IE recommends further clarity in the RFP itself on this point.[30]

NIPPC supports Idaho Power's proposal not to use generic fill and to instead use an annuity/levelization method, but NIPPC agrees with the IE that the final RFP should state so and

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[29] Draft RFP, pp. 12-14.

[30] London Economics International's Independent Evaluator Report, Docket No. UM 2255, p. 13 (March 1, 2023).

provide further details on the annuity/levelization method to provide transparency to bidders.

3. Non-Price Scoring: NIPPC Recommends More Clarity Be Included in the Non-Price Scorecard

NIPPC recommends that the Draft RFP's non-price scorecard be edited to remove subjectivity of certain scoring items and make each element of the scorecard subject to self-scoring by bidders.

The Draft RFP contains a scorecard with many line items for discrete non-price factors, totaling 34 separate line items, but none of them identify the points allocated for each individual line item or specify which line items apply to which bid types.[31] It appears that not all of the line items on the scorecard apply to all bid types. For example, it would appear that Item 5—"bidder has offered a fully dispatchable product to IPC from 0% to 100% of capacity"[32]—would not apply to non-dispatchable bids for a solar or wind PPA without co-located BESS. However, the scorecard does not organize the scoring items by bid or technology type. Additionally, the scorecard contains numerous subjective criteria that are not subject to self-scoring, even if points available were to be identified. For example, non-price scoring Item 9—"Bidder has demonstrated ability to achieve commercial operations by the proposed date"—introduces undue subjectivity when key milestone achievements could be identified as the basis for receipt of non-price points (e.g., bidder submitted interconnection study with estimated online date consistent with commercial operation date in proposed PPA).

As noted above, the Commission's rules require that "non-price scoring criteria must be

[31] Draft RFP, Ex. D.
[32] *Id.*

objective and reasonably subject to self-scoring analysis by bidders."[33] For reference, NIPPC is providing the final non-price scoring matrix from PacifiCorp's RFP in Docket No. UM 2059, which demonstrates the type of detail required to enable bidders to self-score the bid.[34] The PacifiCorp scorecard removes almost all subjective evaluation from the non-price scoring evaluation, and NIPPC considers this final UM 2059 non-price scorecard to reflect best practices for transparency that allows self-scoring of non-price scores in an RFP.

NIPPC recommends that Idaho Power's non-price scoring also remove subjective evaluation, especially subjective evaluation of a bidder's edits and comments on the RFP's applicable form contract. As discussed below, the contract forms for PPA and BSA bids contain elements that, in NIPPC's view, are not commercially reasonable. Many of those PPA and BSA provisions regard ongoing operation and performance after commercial operation and thus have no corresponding requirement specified in the RFP for the BTA or benchmark bids. Thus, subjectively penalizing edits to the PPA and BSA forms would inherently bias the RFP against those bid structures and favor the utility ownership bids that would not be required to commit to such contractual provisions to receive a perfect non-price score. The PacifiCorp UM 2059 non-price scorecard does not attempt to penalize bidders for the substantive degree to which the bidder agrees to all provisions of the RFP's applicable contract form (PPA, BSA, etc.), and instead assigns points for the act of providing a complete set of proposed revisions to the RFP's applicable contract form.[35] In contrast, the Draft RFP here suggests there will be a subjective

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33 OAR 860-089-0400(2)(b).

34 *See* Attachment No. 2 (containing PacifiCorp's 2020 All-Source Request for Proposals Resources, Docket No. UM 2059, Appendix L (June 1, 2020) (attached to PacifiCorp's Reply Comments)).

35 *Id.* (providing all five available points under category 2 if the bidder submits "Both written comments and redlines" to the applicable contract form).

evaluation and non-price point assignment based on the substantive content of bidders' revisions to the applicable form contract because Idaho Power's non-price scorecard's Item 2 provides: "Bidder provided redlines to Draft Form Agreements *that will likely lead to contract execution*."[36] NIPPC recommends deletion of a subjective evaluation of the bidder's edits to the contract forms because it creates risk of bias in the RFP against PPA and BSA bids and is impossible to self-score. NIPPC is including as an exhibit to these comments the Draft RFP's scorecard with NIPPC's comments highlighting all provisions that are not subject to self-scoring by bidders and could be improved.[37]

Idaho Power stated at the workshop that its goal is for the scorecard to be subject to self-scoring, and IE Report states Idaho Power has begun revising the non-price scorecard to achieve that objective. It appears the parties are aligned with their general intent, but NIPPC reserves the right to further comment after seeing the revised scorecard.

B. Minimum Bid Criteria: NIPPC Recommends that Additional Clarity Be Provided on Minimum Bid Criteria.

NIPPC recommends clarification of the Draft RFP's minimum bidding requirements. The Draft RFP states that its minimum criteria for resource-based bids are contained in the Draft RFP's Exhibit C, which is a "Bid Eligibility Checklist,"[38] but as explained below, other sections of the Draft RFP could be construed to create additional minimum criteria that are not included in Exhibit C. Additionally, the Draft RFP provides bidders insufficient time to correct any errors Idaho Power identifies with its bid, and as discussed below, NIPPC recommends bidders be provided a reasonable time to correct or clarify issues Idaho Power identifies.

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36 Draft RFP, Ex. D (emphasis added).
37 *See* Attachment No. 3 (NIPPC's market-up version of Idaho Power's Draft RFP Ex. D).
38 Draft RFP, p. 16 & Ex. C.

1. Bid Eligibility Checklist: The Checklist in Exhibit C Should Be Clarified.

With respect to the criteria listed in the Draft RFP's Exhibit C, NIPPC recommends clarification of two items that are too vague to give bidders the certainty their bids will meet the RFP's minimum criteria and, if not, how to adjust the bid before submittal.

First, Exhibit C's Item 2 requires documentation that "indicates viability of proposed commercial operation date . . . on or before June 1, 2027 AND matches the COD submitted."[39] This minimum bidding requirement is vague and needs far more clarity. 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. But no bidder of a greenfield project could reasonably forecast if it meets this requirement, as currently phrased, without more clarity because determining what type of documentation demonstrates "viability" of a proposed operation date is highly subjective. NIPPC reserves the right to further comment once Idaho Power's criteria are spelled out more clearly.

Second, Exhibit C's Item 4 states that off-system bidders must submit "appropriate transmission rights" in support of their bid.[40] However, the use of the term "appropriate *transmission rights*" is confusing because the Draft RFP states elsewhere that the off-system bidder must only "demonstrate it has submitted . . . any required transmission service request(s) to the relevant Transmission Providers and that it is meeting the requirements in those

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[39] Draft RFP, Ex. C.

[40] Draft RFP, Ex. C; *see also* Draft RFP. Pp. 13-14 (containing similar statement).

processes."[41] NIPPC opposes any requirement that bidders present transmission rights to be qualified to submit a bid because if the bidder is unsuccessful such take-and-pay transmission rights contracts cannot be terminated and may not be easily reassigned to another use. NIPPC supports the requirement that bidders have entered the applicable transmission queue to support their bid. This point should be clarified on the Draft RFP's Exhibit C to ensure the use of the term "transmission rights" does not suggest something more than entering the queue is required to have a bid considered.

2. Additional Requirements: Permissible Technologies, Points of Delivery, and Interconnection Status Should Be Clarified.

Aside from the items listed in Exhibit C, the Draft RFP appears to contain a number of other threshold requirements for a bid to be seriously considered. NIPPC recommends that these issues should be clarified and included in Exhibit C if they are indeed minimum criteria.

First, the Draft RFP is somewhat unclear on the allowed commercial structures and technology types for resource-based bids. With respect to technologies, the Draft RFP identifies only solar, wind, geothermal, BESS of 4+ hours, "long duration storage" defined as 6+ hours, and gas-fired convertible to hydrogen.[42] Additionally, as discussed further below, the Draft RFP contains contract forms only for a solar-specific PPA, a battery-specific Battery Storage Agreement, and a battery-specific Build Transfer Agreement. Thus, it is not clear if other technology types and bid structures will be allowed and seriously considered. Others might include combined cycle combustion turbines, pumped hydro storage, and a hybrid PPA-plus-BESS-tolling agreement for wind or solar co-located with BESS. The Draft RFP could more

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41 Draft RFP, p. 18

42 Draft RFP, pp. 13-14.

clearly specify any technology or commercial structure excluded and identify Idaho Power's preferences more clearly.

Second, the Draft RFP includes a useful list of points of delivery at which it would accept energy from for market purchase bids (i.e., shorter-term market purchases), including available capacity at such points, but the Draft RFP does not provide any similar information for the off-system resource-based bids.[43] The Draft RFP should clarify whether this same list of points of delivery applies to off-system resource-based bids, and if not, Idaho Power should identify any required points of delivery for such off-system resource based bids and explain the basis for such requirement.

Third, the Draft RFP contains potentially contradictory statements on its interconnection requirements for resource-based bids. It first states that a requirement of "late stage development with pending or executed LGIA/SGIA,"[44] but later states the bidder need only have an interconnection request pending, which does not necessarily mean an LGIA of SGIA has been tendered.[45] NIPPC supports the latter requirement of having at least filed an interconnection request. If that's the only requirement, the Draft RFP's suggestions of need for a "late stage" interconnection request should be deleted.

3. Cure Period: The RFP Should Provide More than Two Days to Cure Errors or Misunderstandings in a Bid Submission.

The Draft RFP provides too little time to work out any inadvertent errors in the bid submission or misunderstandings as to the requirements. The Draft RFP states a bidder has just two business days to correct a minimum bid criteria flaw identified by Idaho Power before being

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[43] Draft RFP, Ex. E.
[44] Draft RFP, pp. 13-14.
[45] Draft RFP, pp. 17-18.

disqualified from the RFP.[46] Two business days in not sufficient time to allow the bidder to respond. The IE should be involved in any such exclusions of bidders, and NIPPC recommends that bidders be given at least seven calendar days to cure any deficiencies in their proposal after notice of deficiency from Idaho Power and the IE.

C. Miscellaneous Issues

1. 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.

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.[47]

The Commission has long required transparency regarding the benchmark bids in RFPs. The Commission's IRP Guidelines even require discussion of the utility's planned benchmark bids in the IRP, well before the RFP is issued, but Idaho Power did not alert parties in its IRP that it would submit a benchmark bid.[48] The Commission's bidding rules further require identification of the benchmark for the purpose of disclosing and alerting the Commission, the IE, stakeholders, and bidders as to whether any benchmark assets, such as its site or interconnection and transmission rights, will be shared with bidders to utilize.[49] In adopting that rule, the Commission explained that "the use of utility owned resources by third parties to develop additional or better, more efficient bids will help facilitate the objective of more and

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46 Draft RFP, p. 16.
47 Draft RFP, pp. 8-9.
48 *In the Matter of Pub. Util. Comm'n of Or.*, *Investigation into Integrated Resource Planning*, Docket No. 1056, Order No. 07-002, pp. 22-24 (Jan. 8, 2007) (discussing Guideline 13) (emphasis added).
49 OAR 860-089-0450(6)(c); OAR 860-089-0300(2)-(3).

better proposal options."[50] Although utilities are not *required* to make their assets available in all cases, the rules do require "a filed analysis of the decision be provided to the Commission at the time of RFP development, as well in a subsequent prudence determination"[51] and, in NIPPC's view failure to make certain ratepayer-backed assets available to other bidders should be a consideration in the Commission's decision to acknowledge the final shortlist.

The Draft RFP states that Idaho Power is making its transmission rights available to market product bidders as described in Exhibit E, [52] but Exhibit E does not contain the type of benchmark assets contemplated by the Commission's rules. Exhibit E only pertains to Idaho Power's capability to accept 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; it does not offer bidders use of any transmission rights Idaho Power holds across third-party transmission systems. Additionally, Exhibit E only provides that clarity for the market-based bids (as distinct from resource-based bids), and it does not discuss any assets of the benchmark bid(s) or why those assets are not being shared for use by bidders. The most basic first step in the analysis required by the Commission's rules is identification of the benchmark resource and its supporting assets—information that is entirely missing from Idaho Power's Draft RFP.

In NIPPC's view, identification of the benchmark bids and why Idaho Power is apparently deciding not to share any potentially useful assets is important. Such assets are often ultimately supported by ratepayer-backed resources (utility funds and employee time) and

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50 *In the Matter of Rulemaking Regarding Allowances for Diverse Ownership of Renewable Energy Resources*, Docket No. AR 600, Order No. 18-324, p. 10 (Aug. 30, 2018).
51 *Id.* at p. 11.
52 Draft RFP, pp. 8-9.

making such assets available to obtain the best product for ratepayers is entirely logical. Indeed, NIPPC believes it would be per se imprudent not to do so where the assets are ratepayer-funded in any manner. Such assets can also be uniquely available to the utility due to its status as the incumbent generation monopoly in the balancing authority that can build off of its legacy rights and retiring facilities to perpetuate its position by outcompeting competitive bidders lacking access to such resources, such as advantageous interconnection or transmission rights tied to a retiring coal facility. 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 interconnection and transmission capacity to be released by its retiring fossil generation fleet.[53]

Without clarity in the RFP as to the location and details of the benchmark, it is not possible to comment further on this important subject. The Commission should require complete disclosure of the benchmark resource(s) and Idaho Power's decision not to share assets supporting such bid(s). 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 Recommends that the RFP Clarify that Bids May be Updated at the Shortlist Stage.

The Draft RFP states that bids must be held firm during the RFP, but it also suggests Idaho Power will provide the "potential opportunity" for a repricing at the shortlist stage "if necessary."[54] Idaho Power also suggested it will allow bid updates after the shortlist is developed at the RFP workshop. But the Draft RFP contains no criteria to determine whether

53 *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).

54 Draft RFP, p. 25; *see also id.* at p. 30 (discussing process if updates are allowed).

such an update will be deemed to be “necessary” or not.

NIPPC agrees that, within specific bounds, it makes sense to allow bidders to update their bids at the shortlist stage, given that today’s market conditions include significant tariff risks and supply chain issues. Such 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. However, NIPPC recommends the RFP document should provide more clarity on this point and should expressly state Idaho Power will allow for repricing at the shortlist stage. It is not clear what criteria would make an update “necessary” from the current Draft RFP’s language, and the lack of clarity could lead to misunderstandings and limit the ability to structure bids properly at the outset.

3. Exclusivity at Shortlist Stage: NIPPC Recommends Deletion of Idaho Power’s Proposed Exclusivity Rights to Projects During the Shortlist Stage.

The Draft RFP states that Idaho Power will have an exclusivity right to the bidder’s project if selected for the final shortlist.[55] Specifically, Idaho Power proposes that from the time of selection for the final shortlist until contract execution, the bidder “shall not execute an agreement with any other party for sale of the proposed Product(s) such that the bidder would no longer be able to provide the Products proposed in the bid.”[56]

NIPPC opposes this proposed exclusivity right. 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. Exclusivity on a final shortlist is not currently a normal element of other utility solicitations and

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55 Draft RFP, p. 33.

56 *Id.*

it could deter participation in this RFP. The proposed exclusivity right should not be allowed unless Idaho Power is willing to pay for that exclusivity, as other counter parties must typically do. At a minimum, any exclusivity rights should be limited in time to no longer than 60 days to limit its potential adverse impact.

4. Final Shortlist Fee: NIPPC Recommends Deletion of the RFP's Proposed Fee to Participate on the Shortlist

The Draft RFP proposes an unreasonable fee assessed to bidders selected to advance to the final shortlist. The proposed fee is $250/MW, which would be $25,000 for 100 MW bid.[57] This additional fee that would apparently apply only to independent bidders and not the benchmarks is just to advance to the final shortlist. NIPPC opposes this provision. As noted above, NIPPC believes it is unreasonable to require bidders to grant Idaho Power uncompensated exclusivity to advance to the final shortlist, but it is even more unfair to *charge* the bidders to grant Idaho Power such exclusivity. NIPPC recommends deletion of the proposed fee for IPPs to participate on the final shortlist.

D. Contract Forms

NIPPC recommends several revisions to the Draft RFP's contract forms. The Commission's rules require that an RFP must include "[s]tandard form contracts to be used in acquisition of resources."[58] The requirement to include the contract forms with the RFP is important because the forms provide an opportunity for the Commission and stakeholders to publicly review whether the utility's proposed contract terms are commercially reasonable or whether the utility may be driving too hard of a bargain with IPPs to advantage a utility

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57 Draft RFP, p. 21.

58 OAR 860-089-0250(b)(3)(b).

ownership structure it can place in rate base without the same contractual protections. As explained below, the limited contract forms included with the Draft RFP do not include forms or commercial terms expected for certain commercial structures and technologies allowed by the Draft RFP, and with respect to the forms included, NIPPC recommends several revisions and corrections to improve the forms.

1. The RFP's Set of Contract Forms Is Incomplete.

At the outset, no contract forms are provided for resources other than solar-specific PPA, battery-specific grid-charged tolling agreement (the Battery Storage Agreement or "BSA"), and battery-specific Build Transfer Agreement (or "BTA"). No forms, or even summary term sheets, specific to wind or geothermal technologies are provided, and no form, or even summary term sheets, for a hybrid solar-plus-BESS or hybrid wind-plus-BESS bids are provided, even though these are all technologies and bid structures that appear to be allowed by the RFP and should be expected in today's market.

This lack of a complete set of forms will make it difficult for bidders of these other common resource types to mark-up the form with relevant edits or to know what Idaho Power's baseline expectations are for their resource type. For example, will Idaho Power accept use of a minimum availability guarantee with wind bids and, if so, what level of annual or monthly guarantee? One of the preferred resources in today's market is a solar-plus-storage facility, but there is no solar PPA paired with tolling provisions for a co-located battery that pays $/MWh for the solar output and a $/kW-month rate for Idaho Power's BESS tolling rights, as has been provided in recent PacifiCorp and PGE RFPs, making it difficult for bidders to comment or mark-up the forms. There's also no PPA with wind-specific provisions, or a hybrid wind-plus-BESS PPA, which is also common in the market. The lack of additional information also makes it impossible for stakeholders to review for issues that could exist under such bid structures.

Additionally, although the rules require form contracts, the Draft RFP does not even include summary term sheets for the omitted technology types and commercial structures. NIPPC expects certain bidders would appreciate term sheets that summarize the key terms for each major technology and resource type solicited in the RFP, and it could ultimately be more efficient at the initial review stage to ask bidders to mark up such term sheets as opposed to marking up the entire, lengthy PPA, BSA, or BTA form.

One solution at this point would be for Idaho Power to provide a detailed term sheet for each resource technology and bid structure summarizing its key terms (e.g., delay damages provisions, performance guarantees, etc.), and the bidders could mark those forms up, instead of, for example, trying to mark-up a solar-specific PPA for a hybrid solar-plus-BESS facility or a hybrid wind-plus-BESS facility. NIPPC encourages Idaho Power to consider the use of simpler term sheets for the initial bid submittals and evaluation. Below, however, NIPPC submits its substantive concerns and recommendations with certain key issues in the contract forms provided.

2. Issues Applicable to Both the Solar-Specific Power Purchase Agreement Form and the Battery Storage Agreement Form.

NIPPC recommends a number of revisions to the contract forms for the Solar PPA and the Battery Storage Agreement. These two forms essentially mirror each other except for certain provisions specific to a battery performance and tolling provisions. Thus, this section of comments summarizes NIPPC's concerns and recommendations with respect to the generic terms applicable to both forms.

- **Right of First Refusal**: The PPA and SCA forms contain extensive right of first refusal ("ROFO") provisions that should be deleted (PPA §§ 8.1-8.8 & 9.4). These "ROFO" provisions can be a major problem that causes delays in finalizing financing and getting the project online timely. All of these provisions should be deleted, but Sections 8.4 and, especially 8.5, are particularly unreasonable, and would apply even before commercial operation. Section 8.4 requires the Seller to offer the facility to Idaho Power anytime a minor change in ownership may occur, and Section 8.5 states the Seller must begin negotiating with Idaho Power to sell the facility immediately after the contract's effective date without any change in ownership. These provisions essentially convert the PPA and BSA into a likely BTA. If the Seller wanted to bid a build transfer or enter into an asset sale, it should just bid a BTA or an asset sale; but the RFP should not turn every PPA or BSA offer into a BTA at Idaho Power's discretion. The Commission's rules do not allow Idaho Power to condition PPA and BSA bids on "an option for transferring ownership of the resource[,]"[59] and these provisions should be removed.
- **Delay damages**: The daily delay damages are set at $400/MWac (PPA §1.25) and $100/MWh (BSA §§ & 1.28 & 1.56).[60] This level of delay damages is higher than is reasonable and should be lowered. PGE's 2021 RFP, for example, had delay damages starting at $150/MWac and escalating to $300/MWac depending on the

59 OAR 860-089-0300(5).

60 The BSA's provision is calibrated to a 4-hour BESS to be the same magnitude of delay damages as an energy resource with the same capacity. For example, these provisions result in $40,000 in delay damages per day for 100 MWac energy resource or a 100-MW 4-hour BESS.

period of delay.[61] Puget Sound Energy's delay damages were $200/MWac in its 2021 All Source RFP.[62] NIPPC recommends that the overall level of delay damages be reduced to a level consistent with the other RFPs referenced. Additionally, the PPA form should reduce the delay damages owing by the MWac of the facility that is generating at that time in the case of partial completion, which is a feature already contained in the Draft RFP's form BSA (at § 1.28).

- **Development Security**: The contract forms should clarify that development security may be established with cash. As drafted, the forms suggest (e.g., PPA §§ 9.1, 9.2) that just a parental guaranty or letter of credit would be permitted, but PPA Exhibit 8 later suggests cash alone is sufficient. The documents should be clarified to confirm that cash alone is also sufficient.
- **IPUC Approval**: The forms include a condition precedent stating the contract will not be finally effective until after IPUC approval (e.g., PPA § 3.1), but there should be 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. A bidder cannot be reasonably expected to move forward with final procurement and commitments to proceed prior to receiving such IPUC approval, yet the delay in that IPUC approval process could, in today's market, could easily impede with the ability to perform as

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[61] Portland General Electric Co.'s 2021 All-Source RFP, Appendix A, p. 5 (Dec. 16, 2021) (Renewable PPA Term Sheet).

[62] Puget Sound Energy's 2021 All-Source RFP, Ex. G, p. G-4 (June 1, 2021) (Prototype Clean Energy PPA Term Sheet), available at https://www.pse.com/en/pages/energy-supply/acquiring-energy#2021all.

committed in the PPA or BSA. A lengthy period between contract execution and its final effectiveness could easily frustrate and delay procurements of key equipment and result in other delays and potential cost impacts. Additionally, references to OPUC approvals and waivers should be deleted because the OPUC does not approve PPAs or even the winning bidder in the RFP.

- **<u>Network Resource Interconnection Service</u>**: The initially circulated Draft RFP limited bidders to Network Resource Interconnection Service ("NRIS"), but Idaho Power revised the latest draft to specify that Energy Resource Interconnection Service ("ERIS") will also be accommodated.[63] NIPPC supports this flexibility. However, to avoid confusion, NIPPC recommends corresponding adjustments be made to the contract forms to allow use of ERIS (e.g., PPA § 7.3).
- **<u>PUC Jurisdiction and Jury Trial Waiver</u>**: NIPPC recommends that the "Governmental Authorities" provision and the Jury Trial Waiver provision (PPA §§ 20 & 26.4) be deleted as they could be interpreted to mean any adjudication of contractual disputes belongs before the IPUC or OPUC, instead of in court, potentially before a jury.[64]
- **<u>Limitation of Idaho Power Transmission Liability</u>**: Several provisions of the forms (PPA §§1.145, 7.2.1, 15.1) attempt to absolve Idaho Power of responsibility for delays that Idaho Power's interconnection department may make and would even

[63] Draft RFP, p. 19.

[64] The Commission and at least one court have ruled that the same type of "governmental authorities" provision in another PPA resulted in conferral of jurisdiction at the Commission over post-execution contractual interpretation disputes. *See Alfalfa Solar I LLC v. Portland General Electric Co.*, No 3:18-cv-40-SI, 2018 WL 2452947, *6 (D Or May 31, 2018).

potentially have the effect of eliminating the ability of Seller to point to Idaho Power's interconnection delays as an excuse for Seller's inability to perform under the PPA or BSA. These provisions should all be stricken as contrary to basic contract law and unreasonable.

- **Limits on Seller's Damages**: The form's provisions for liquidated damages applicable in a case of Idaho Power's breach exclude payment to Seller of lost tax credit value associated with Idaho Power's breach (e.g., PPA §§ 1.18, 1.42, 1.43, 1.72, 1.126, 12.2.2 & 12.4). That is not reasonable. Tax credits are a significant known value, and their loss is a known harm to Seller in the case of an Idaho Power breach that should be expressly included in calculation of the liquidated damages Idaho Power would owe.
- **Qualified Operator**: Both the Solar PPA and the BSA contain unreasonable requirements for the operator of the facility. The Solar PPA (PPA § 1.105) requires the operator have five years' experience operating 1,000 MW of solar facilities, and the BSA (BSA § 1.108) requires "at least five (5) years' experience with operating at least five hundred (500) MW(AC) of BESS facilities." Both of these requirements are too high and should be reduced. Batteries in particular have not been in widespread use long enough for IPP bidders to reasonably find operators with five years of experience of the magnitude specified in the current form. According to available data, only 1,629 MW of BESS was in operation worldwide by 2018.[65] So

[65] *See* Dept. of Energy, Pacific Northwest National Laboratory, *Energy Storage Technology and Cost Characterization Report*, p. 4.11 (July 2019), https://energystorage.pnnl.gov/pdf/PNNL-28866.pdf.

the BSA form appears to ask for an operator that was operating almost one third of the batteries in the world in 2018 (five years ago), or a higher percentage if they started operating the facilities earlier. That would severely limit the pool of bidders and support companies for BESS.

- **Force Majeure**: The PPA and BSA forms have a 180-day limit on Force Majeure claims (e.g., PPA § 15.5). The time limit should be extended to at least a year.

3. Issues Unique to Solar-Specific Power Purchase Agreement Form.

In this section, NIPPC addresses its concerns and recommendations unique to the solar-specific PPA form:

- **Forecasting Costs**: The PPA form (§ 7.7) requires the Seller to pay Idaho Power for a proportional share of Idaho Power's portfolio-wide solar forecasting costs. In an RFP with utility-ownership options, the PPA should not assign forecasting services to the Seller unless the costs of the utility ownership bids will include this added cost, and thus NIPPC recommends deleting this requirement. In the alternative, PPA bidders should have the alternative option to use their own forecasting service and provide that data to Idaho Power.
- **Performance Guarantee**: The PPA's performance guarantee is a monthly 90% minimum delivery guarantee, and the estimated monthly output target may be updated each month (§ 7.12), which NIPPC does not oppose. But § 12.1.2.8 confusingly contains a default and termination provision designed for an annual delivery guarantee structured entirely differently from the form's monthly guarantee and liquidated damage structure. It states that a default for two consecutive *years* of

failing to meet the performance guarantee will result in termination. This is confusing and appears to be a hold-over from a prior form using an annual delivery guarantee. NIPPC recommends there be no termination for falling below the 90% monthly guarantee because liquidated damages apply in that case to keep Idaho Power whole.

- **<u>Compensated Curtailment</u>**: The PPA includes compensated curtailment (§ 6.1.3) where Idaho Power may elect to pay the contract price for otherwise unexcused curtailments energy. However, this provision's calculation of the compensation to the Seller should also include lost tax credit value to the Seller (e.g., Production Tax Credits that cannot be captured during such curtailment, or potential harm for Investment Tax Credits recapture).
- **<u>"Special Contract" Provisions</u>**: Several provisions for the form refer to a "special contract" and "Idaho Power's customer", as would exist in a form used for a resource supporting a green-tariff style special contract to an Idaho Power retail customer, but the RFP makes no other reference to a green tariff or a special contract customer. These references should be deleted to avoid confusion for bidders and the need to edit such provisions at risk or fear of scoring penalty.

4. Issues Unique to Battery Storage Agreement Form.

In this section, NIPPC addresses its concerns and recommendations unique to the Battery Storage Agreement, which is structured as a tolling agreement paying the Seller a fixed $/kW-month price and giving Idaho Power dispatch rights to the grid-charged BESS.

- **Roundtrip Efficiency:** The form BSA (§§ 1.52, 4.5.3, 12.1.2.8) requires a guaranteed roundtrip efficiency ("RTE") of 87% and allows termination of the BSA if the guarantee is not met for two consecutive years. This is a high requirement, especially in later years of the contract because roundtrip efficiency is known to decline each year. Department of Energy data indicates that 4-hour lithium ion batteries have an initial DC-DC Roundtrip Efficiency of 86% with a 0.5% annual degradation factor and 10-year life, and "testing of grid-scale batteries yielded an AC-AC RTE of 83–87 percent over 1.5 years of testing, while RTE for a battery >5 years old was 81 percent."[66] Achieving Idaho Power's 87% RTE in each contract year for 20-35 years of a BSA term may require a costly overbuild of the system at the outset and would certainly require regular replacement of the batteries as RTE degrades 0.5% each year, both of which add substantial upfront and ongoing costs. As noted above, this type of high-performance level is not specified as a requirement in the Draft RFP for BTA or benchmark bids for BESS. NIPPC recommends a lower RTE be allowed without penalty or appropriate bid adders, or equivalent contractual guarantees be applied to utility ownership structures for BESS.
- **Charging Management**: The BSA's charging management provisions (§ 7.7) provide no deadline for Idaho Power's charging/discharging instructions (e.g., before the hour ahead of the charge/discharge event) and instead appear to subject the Seller to potential breach or violation if it does not instantaneously charge/discharge upon

[66] *See* Dept. of Energy, Pacific Northwest National Laboratory, *Energy Storage Technology and Cost Characterization Report*, pp. viii, 4.15 & Table ES.1 (July 2019), https://energystorage.pnnl.gov/pdf/PNNL-28866.pdf.

notification from Idaho Power. The protocol should be clarified to require a reasonable process. For example, PGE's UM 2166 term sheet (RFP Appendix B) provided: "The [Storage Capacity Agreement ('SCA') shall include charging and discharging protocols based on the technology and software communication available to the Seller, but at a minimum the Buyer shall communicate intraday adjustments no later than one-hundred and twenty (120) minutes prior to the flow hour."[67]

5. Issues Unique to Build Transfer Agreement Form.

The Draft RFP's BTA is specific to a BESS that would be constructed by the bidder and transferred to Idaho Power upon commercial operation. As noted earlier in these comments, NIPPC's concern with the form, and the rest of the Draft RFP's requirements for this bid structure, is the lack of clarity as to the length and substantive requirements of the associated O&M Agreement, LTSA, and warranties that would support such bids. The BTA itself contains no ongoing performance guarantees equivalent to those in the BSA. For example, unlike the BSA which has strict performance guarantees (such as a proposed 87% RTE, discussed above) with penalties and termination risk for non-performance, the BTA has no specific requirements for an O&M Agreement, an LTSA, or any warranties for ongoing performance, and indeed the BTA form does not even contain a specified level for the guaranteed RTE upon completion of construction before transfer of ownership. The form, or some other element of the RFP, should require comparable ongoing contractual warranties with damages and termination rights for the life of the resource over which the levelized cost of capacity its calculated for price score, or sufficient contingency cost risk adders should be included in the BTA bids, as noted above.

[67] Portland General Electric Co.'s 2021 All-Source RFP, Appendix B, p. 5 (Dec. 16, 2021) (Storage Capacity Agreement Form Term Sheet).

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: March 17, 2023

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Of Attorneys for the Northwest & Intermountain Power Producers Coalition

Attachment No. 1

Idaho Power's Response to NIPPC's First Information Request

TOPIC OR KEYWORD:

NIPPC'S INFORMATION REQUEST NO. 1: Reference Idaho Power's Notice of Exceptions Report Regarding the 2022 RFP, filed on February 17, 2023 at pp. 7-8 & n. 9, stating that Idaho Power calculated the levelized cost of capacity for each bid by converting "all fixed costs associated with the separate technologies of each project, including capital costs, depreciation expense, tax expense, *financing costs including both the return on Company-owned assets or the imputed debt cost associated with a PPA,* PPA, operations and maintenance expenses, and property taxes and insurance, to an equivalent, comparable value." (emphasis added).

a. Please provide a non-confidential estimate of the magnitude of the imputed debt cost attributed to a typical PPA and tolling agreement bid as a percentage of the overall levelized cost of capacity for the individual bids. This request could be answered by providing the median percentage impact of all bids, an average of the percentage impact across all bids, or any other reasonable estimate that provides a non-confidential good faith estimate of the impact of the imputed debt scoring element in the 2022 RFP for the PPA and tolling agreement bids.

b. Please provide bid scoring materials or work papers that demonstrate the levelized cost of return on Company-owned assets and/or levelized imputed debt cost (as applicable) assigned to each bid as well as the overall levelized cost of capacity for the bid.

c. Please confirm that the use of imputed debt in the 2022 RFP is generally consistent with Idaho Power's proposed use of imputed debt in the 2026 RFP subject to review in this docket. If the answer is no, please explain any differences in Idaho Power's proposal in the 2026 RFP.

IDAHO POWER COMPANY'S RESPONSE TO NIPPC'S INFORMATION REQUEST NO. 1:

a. The median percentage increase of imputed debt over the levelized cost excluding imputed debt is approximately 18 percent for a battery storage (tolling) agreement (BSA) and 18 percent for a power purchase agreement (PPA).

b. Please see the Confidential Excel spreadsheet attached to this request.

c. Yes, the company will use an imputed debt methodology in its evaluations of the 2026 RFP bids generally consistent with the methodology used for 2022 RFP bids; with the following adjustments:
    i. **Imputed debt risk factors.** The Company applied a 50 percent risk factor to all BSAs and PPAs in the 2022 RFP. For the 2026 RFP, the Company will continue to apply a 50 percent risk factor for PPAs. However, for BSAs the Company will apply a 100 percent risk factor as the transaction will result in capital lease accounting under generally accepted accounting principles. Under capital lease accounting the entire amount of imputed debt will be accounted for on Idaho Power's balance sheet as debt. It is the Company's understanding based on conversations with the rating agencies that they do not make any additional adjustments related to transactions accounted for as capital leases and see this as debt impacting credit risk.
    ii. **Renewal assumptions for PPAs.** Originally during the initial scoring process, Idaho Power assumed a renewal period for new PPA projects that had a contract term less than 35 years. After further review, Idaho Power removed this

methodology in the post-initial screen process. The Company does not plan to add a renewal period to PPAs in the 2026 RFP.

Attachment No. 2

PacifiCorp’s UM 2059 Non-Price Scoring Matrix

APPENDIX L
Non-Price Scoring Matrix

Assigned Bid #:	
PPA or BTA	
Bidder	
Project Name	
County/State	
MW	

Non-Price Factor	Max Score	Bid Score
1. Bid Submittal Completeness	**5%**	
Bids provided all required RFP information pursuant to RFP instructions for PPA and BTA, including accuracy of such information including the specific Appendices listed below; • Appendix B-2 Information required in Proposal • Appendix C-2 Bid Summary and Pricing Input Sheet • Appendix C-3 3rd Party Performance Report including site data • Appendix D Bidder's Credit Information	Multiple RFP bid submittal documents missing requested information = 1% One or two RFP bid submittal documents missing requested information = 2% All documents complete = 3%	
Bid in compliance with technical or operating specifications as outlined in **Appendix A** as applicable to resource type and bid structure	Major components out of compliance = 0% Some major components in compliance = 1% All major components in compliance = 2%	
2. Contracting Progression and Viability	**5%**	
Bidder provided Appendix E-2 PPA document redline and comments Bidder provided Appendix E-3 battery storage document redline and comments Bidder provided Appendix F-2 BTA termsheet redline and comments	No written comments or redlines provided, or bid states that redline and comments will be provided upon selection = 0% Completed task of providing either written comments or redlines, but not both = 3% Both written comments and redlines provided = 5%	
3. Project Readiness and Deliverability	**15%**	
Bidder's development and construction experience related to large energy and/or storage projects including O&M plan and financing plan.	No operating projects = 0% < 300 MW operating projects = 1% > = 300 MW operating projects = 2%	
Bids demonstrated site control consistent with PacifiCorp Transmission's Site Control definition.	< 50% under lease or purchase option = 0% Lease option on full site = 2% Lease or purchase for full site = 3%	
Bid provided sufficient detail, including schedule(s) and documentation, to demonstrate the ability of meeting all of the project's environmental compliance, studies, permits such that the December 31, 2024 COD is met (or a potential later date in the case of pump storage hydro resources)	Major studies & permits not started = 0% 50% of major studies & permits complete = 3% 100% of major studies & permits complete = 6%	
Bid provided sufficient detail, including schedule(s) and documentation, to demonstrate the ability of meeting equipment procurement needs and managing supply chain risks such that the December 31, 2024 COD is met (or a potential later date in the case of pump storage hydro and nuclear resources)	No documentation provided = 0% Detail provided without addressing management of supply chain risks = 1% Detail provided including addressing management of supply chain risks = 2%	
Bid included documentation that projects qualify for and would receive the full or partial value of the federal tax credit as interpreted by applicable guidelines and rules of the Internal Revenue Service at commercial operation.	No documentation = 0% Qualification through construction = 1% Documentation of safe harbor equipment = 2%	
TOTAL	**25%**	

Attachment No. 3

NIPPC's Mark-Up to

Idaho Power's Draft RFP Exhibit D Non-Price Scorecard

Non-Price Factor

NO.	I. Contracting Progress and Viability	Name of Supporting Document(s)	Comments	Response 1	Response 2	Response 3	Response 4	Response 5
1	Bid(s) includes a redline or an issues (or exceptions) list related to applicable technical specifications that substantively impacts the bid.			Please Select	Please Select	Please Select	Please Select	Please Select
2	Bidder provided redlines to Draft Form Agreements that likely lead to contract execution.					lease Select	Please Select	Please Select
3	Bidder provided fixed and firm pricing for the Contract Term consistent with the submitted Bid Definition Form.			Please Select	Please Select	Please Select	Please Select	Please Select
4	Bidder has provided safe-harbor strategy to maximize any applicable tax benefits which impact pricing.					lect	Please Select	Please Select
5	Bidder has offered a fully dispatchable product by IPC from 0% to 100% of capacity.					lect	Please Select	Please Select
6	Contract redlines are consistent with the submitted Bid Definition and the [Pricing] tab inputs (product, price, term, 8760, capacity factor, degradation, storage specifications, BTA milestone payments, etc).							ect
7	Price proposed reflects pro forma performance guarantees.							ect
8	Bidder has demonstrated it can meet the credit security requirements for the resource proposed.							Please Select
NO.	II. Project Readiness and Deliverability					esponse 3	Response 4	Yes
9	Bidder has demonstrated ability to achieve commercial operations by proposed date.			Please Select	Please Select	Please Select	Please Select	Please Select
10	Bidder will have site control and site access by contract execution date.							Please Select
11	Schedule and supporting documentation include development and construction milestones (major equipment procurement and delivery on site, EPC execution and notice to proceed, interconnection backfeed, mechanical completion) which support the commercial operations date.			Please Select	Please Select	Please Select	Please Select	Please Select

NIPPC's Comment: Item 2 - This is subjective and cannot be self-scored. Bidders to be penalized for making edits to contract forms that are not "likely to lead to contract execution."

NIPPC's Comment: Item 5 - Presumably dispatchability does not apply to the PPA structures? It would be helpful for the scorecard to specify where certain items apply only to certain bid types but the points allocated to each type of resource totaled up to the full amount for each resource type.

NIPPC's Comment: Item 7 - This is confusing. The RFP states bidders can make revisions to the contract forms and state that their bid price is contingent upon those edits. But this item 7 suggests that a bid price must also be submitted consistent with no edits to the contract form's performance guarantees, or else there will be a non-price scoring penalty. There should be no non-price scoring penalty for making edits to performance guarantees or else the RFP will be biased in favor of utility ownership structures which contain no ongoing performance guarantees.

NIPPC's Comment: Item 8 - Ability to comply with credit and security requirements may be better used as a minimum bid criteria, with reasonable time for bidder to cure any shortcomings IPC identifies.

NIPPC's Comment: Item 9 - Demonstration of "ability to achieve COD" is highly subjective and not subject to self-scoring without more detailed criteria (e.g., secured land use permits, or has achieved SIS phase of interconnection).

NIPPC's Comment: Item 10 - Again, the criteria - "will have site control"- is subjective and not subject to self scoring. Something more descriptive might be, e.g., 1 point for a letter of intent to negotiate lease, 2 points for a binding option agreement, 3 points for a binding lease for at least 75% of site.

12	Asset Purchase bid(s) support commercial operation date, 8760 resource estimates and net capacity factor through operating life, in terms of permits, leases, interconnection agreements, other contracts, resource assessments etc.			Please Select	Please Select	Please Select	Please Select	Please Select
13	Site is zoned for proposed use.	**NIPPC's Comment:** Item 14 - Execution of lease is potentially duplicative of Item 10. Recommend they be combined and additional options (e.g., letter of intent, option agreement) be provided besides just a full-blown lease, as discussed above.					se Select	Please Select
14	Bidder has executed and recorded lease or warranty deed of ownership.						se Select	Please Select
15	Required easements have been secured including project site, site access and any generation interconnection line up to point of interconnection.	**NIPPC's Comment:** Item 15 - Same comment as to Item 14.		Please Select	Please Select	Please Select	Please Select	Please Select
16	Permitting is complete (i.e. project is shovel ready).			Please Select	Please Select	Please Select	Please Select	Please Select
17	Critical Issues Analysis is provided, and has not identified any fatal flaw that would prevent resource from reaching commercial operations by the deadline.	**NIPPC's Comment:** Item 17 - "Critical Issues Analysis" is vague, not subject to self-scoring, and duplicative of Item 9			se Select	Please Select	Please Select	Please Select
18	Geotech report is provided, and wetlands are either not present or mitigation plans are in place.			Please Select	Please Select	Please Select	Please Select	Please Select
19	Endangered species are either not present on site or mitigations plans are in place.			Please Select	Please Select	Please Select	Please Select	Please Select
20	Interconnection studies are provided, and include an assessment of Network Resource Interconnection Service (NRIS).			Please Select	Please Select	Please Select	Please Select	Please Select
21	Bidder has signed LGIA which demonstrates ability to interconnect before proposed commercial operations date.			Please Select	Please Select	Please Select	Please Select	Please Select
22	75% or more Front End Engineering designs are complete.			Please Select	Please Select	Please Select	Please Select	Please Select
23	Bidder's supply chain and contracting plans are provided, and demonstrate ability to secure materials and complete construction, including securing safe harbor equipment, if applicable. Bidder has demonstrated 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.	**NIPPC's Comment:** Item 23 - Supply chain and contracting plans is somewhat vague, and not subject to self scoring, and potentially duplicative of Item 9		Please Select	Please Select	Please Select	Please Select	Please Select
24	For the proposed project, 1) Major equipment has been selected and 2) Engineering Procurement and Construction (EPC) and/or other balance-of-plant construction contracts have been identified and under negotiation.			Please Select	Please Select	Please Select	Please Select	Please Select

25	Proposed equipment is consistent with bid narrative, 8760, Technical Specifications, interconnection studies, one-line drawings and equipment supply matrix.			Please Select	Please Select	Please Select	Please Select	Please Select
26	Met stations have been installed - and are functioning - on site.			Please Select	Please Select	Please Select	Please Select	Please Select
27	Cultural resources are either not present or mitigation plans are in place.			Please Select	Please Select	Please Select	Please Select	Please Select
28	One or more year of avian studies are provided for proposed wind resources.			Please Select	Please Select	Please Select	Please Select	Please Select
29	Energy production estimate studies are provided for proposed renewable resources.			Please Select	Please Select	Please Select	Please Select	Please Select
30	Bidder has experience of at least 5 years with developing, constructing and/or operating the same technology as being proposed.			Please Select	Please Select	Please Select	Please Select	Please Select
31	Bidder has sufficient development experience (prior to construction) for size of project proposed (has completed at least one project 50% of proposed size).			Please Select	Please Select	Please Select	Please Select	Please Select
32	For proposed projects involving existing assets, the facility condition does not require significant capital improvements or repairs to ensure operations and reliability.			Please Select	Please Select	Please Select	Please Select	Please Select
33	With regards to safety, bidder represents it has a total recordable incident (TRI) level equal to or greater than the TRI for their industry as determined by the U.S. Occupational Health and Safety Administration (OSHA).			Please Select	Please Select	Please Select	Please Select	Please Select
34	Bidder provided a Financing Plan that demonstrates ability to finance project construction and/or ongoing operations.				lect	Please Select	Please Select	Please Select

NIPPC's Comment: Item 34 - Ability to Finance Plant is somewhat vague, not subject to self scoring and could be clarified