

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2255

In the Matter of

IDAHO POWER COMPANY,

Application for Approval of 2026 All-Source Request for Proposals to Meet 2026 Capacity Resource Need.

ORDER

DISPOSITION: STAFF’S RECOMMENDATIONS ADOPTED EXCEPT AS NOTED BELOW

In this order, we adopt Staff’s recommendations to approve Idaho Power Company’s 2026 all-source request for proposals and the associated scoring and modeling methodology, along with Staff’s recommended conditions for both as presented in the May 2, 2023 Staff Report, and the May 31, 2023 Supplemental Staff Report, except where alternatives to Staff’s conditions were acceptable among the parties. These alternatives are noted in the discussion below.

I. INTRODUCTION AND BACKGROUND

On September 15, 2022, Idaho Power filed an application requesting: (1) the appointment of an independent evaluator (IE) to oversee the request for proposals (RFP) process in accordance with our competitive bidding rules; and (2) for approval of the proposed RFP scoring and modeling methodology (SMM).¹ With the RFP, Idaho Power seeks to solicit the acquisition of energy and capacity from variable energy resources up to 1,100 MW, with a minimum of approximately 350 MW of peak capacity.

Idaho Power held a workshop on October 19, 2022, outlining the IE process, the RFP scoring and bid evaluation process, and its estimated timeline for the proceedings. On December 29, 2022, we issued Order No. 22-495 approving Staff’s recommendation to select London Economics International (LEI) to serve as the IE for Idaho Power’s 2026 all-source RFP process. Idaho Power held a second workshop on February 21, 2023, providing additional, significant detail on eligible products, bid submissions and

¹ OAR 860-089-0100 - 0550.

evaluations, and initial shortlist information. The company filed its final draft of the RFP on February 22, 2023.

On March 2, 2023, LEI filed an initial set of observations on Idaho Power's draft RFP. The observations presented a series of recommended changes for the RFP before the final RFP presentation. Staff and NIPPC submitted comments on the final draft RFP on March 17, 2024, and the company filed its response on March 24, 2023, which included a lengthy discussion explaining the proposed inclusion of imputed debt in its price scoring methodology.

A. Recommendations in the May 2, 2023 Staff Report

On May 2, 2023, Staff presented a series of recommended conditions for our review and consideration regarding Idaho Power's SMM and RFP:

- SMM Condition 1: Idaho Power provides the specific weighting for each question included in the Project Readiness and Deliverability section of its Non-Price Scoring Matrix.
- SMM Condition 2: Idaho Power amends 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.
- SMM Condition 3: Idaho Power does not add or apply any cost of imputed debt to the price scores of any bids, specifically those using power purchase agreements (PPA), battery storage agreements (BSA), or similar contractual structures.
- RFP Condition 1: Idaho Power provides a table clearly delineating any and all modeling inputs and assumptions that will be used in this procurement, showing how those values differ from the values provided in its 2021 IRP and providing support for all changes.
- RFP Condition 2: Idaho Power clarifies that no bids will be excluded or otherwise penalized as long as all materials and documentation have been completed and submitted by the Bid Due Date, scheduled for June 13, 2023, in the Final RFP.
- RFP Condition 3: Idaho Power removes from the Final RFP the Supplemental Fee to bidders selected for the Final Shortlist.
- RFP Condition 4: Idaho Power updates item no. 2 on the BEC by adding the following language, "Documentation can include construction plans and schedules, evidence 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."

- RFP Condition 5: Idaho Power changes the transmission requirements in Exhibit C of the Final RFP to make them consistent with Exhibit D.
- RFP Condition 6: Idaho Power increases the cure period in the final RFP for mistakes in the bid entry or other forms to five calendar days from the date the bidder is notified of the deficiency by the company.
- RFP Condition 7: Idaho Power removes section 8.5 “Negotiation of Facility Purchase” from all Draft Form Agreements in which it appears.²

We discussed Staff’s recommendations at the May 16, 2023 Regular Public Meeting, including the imputed debt issue (SMM Condition 3). We made no decisions at that time. The parties, including Staff, requested time to review and consider the second LEI assessment report submitted May 10, 2023, a day after Staff’s report. Upon subsequent agreement from the parties, we scheduled a Special Public Meeting (SPM) on June 7, 2023.

B. Recommendations in the May 31, 2023 Supplemental Staff Report

On May 31, 2023, Staff submitted a supplemental report which included additional recommended conditions incorporating several of LEI’s May 10, 2023, observations on Idaho Power’s updated 2026 RFP draft, and reflecting discussions with the Northwest and Intermountain Power Producers Coalition (NIPPC) and the company. These included:

- Supplemental SMM Condition 1: Idaho Power includes an example of its term normalization methodology within the RFP.
- Supplemental RFP Condition 1: Idaho Power creates a new exhibit to the draft RFP that provides the size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target commercial operation date, status (new build vs. existing facility), and product type (resource-based or market purchase) for each benchmark bid.
- Supplemental RFP Condition 2: Idaho Power must provide its proposal regarding the availability, or not, of benchmark bid assets to third parties as part of this RFP.
- Supplemental RFP Condition 3: Idaho Power states explicitly that bidders will be provided with an opportunity to update their bid pricing upon selection to the final shortlist.
- Supplemental RFP Condition 4: Idaho Power amends section 7.7 to limit exclusivity to 60 days following acknowledgement of the Final Shortlist.

² Staff Report at 1-2 (May 2, 2023).

- Supplemental RFP Condition 5: Idaho Power reduces delay damages in the form PPA to \$200 per MW of nameplate capacity per day.
- Supplemental RFP Condition 6: Idaho Power amends the development security section of all form contracts attached to the RFP to allow cash as an acceptable form of security.
- Supplemental RFP Condition 7: Idaho Power amends both the form PPA section 4.2 commercial operation date and the form BSA section 4.2 to include language stating that the scheduled commercial operation date will be extended on a day-for-day basis in the event that Idaho Power approval of the contract extends beyond six months.
- Supplemental RFP Condition 8: Idaho Power amends the form PPA by removing §1.145, §7.2.1, and §15.1.
- Supplemental RFP Condition 9: Idaho Power removes any set numeric values for the minimum experience in either years of operation or MW of resources managed from all form contracts.
- Supplemental RFP Condition 10: Idaho Power removes the numeric value 87 percent from the definition of guaranteed roundtrip efficiency in the form BSA.
- Supplemental RFP Condition 11: Idaho Power amends section 7.7 Charging Energy Management of the form BSA to provide charge/discharge notification a minimum of one-hundred and twenty (120) minutes prior to the flow hour.³

Idaho Power and NIPPC provided reply comments to Staff’s supplemental report on June 6 and 7, 2023, respectively.

II. LEGAL AUTHORITY

Division 89 rules govern procurement of major resources by investor-owned utilities. When an electric utility seeks to acquire a resource or a contract for more than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1), the commission’s competitive bidding rules (CBRs) apply. Requirements for RFPs are set forth in OAR 860-089-0250.

OAR 860-089-0250(2) requires that a draft RFP must reflect the elements, scoring methodology, and associated modeling from a commission-acknowledged IRP. OAR 860-089-0250(3) specifies that a draft RFP must include minimum bidder requirements, standard form contracts, bid evaluation and scoring criteria, language allowing bidders to negotiate final contract terms, a description of how the utility will

³ Supplemental Staff Report at 1-3 (May 31, 2023).

share information, the bid evaluation and scoring criteria for the selection of the shortlist, the alignment of the needs addressed by the RFP with an identified need from an acknowledged IRP, and the impact of any multi-state regulation on the development of the RFP.

Under OAR 860-089-0250(5), we may approve an RFP with any necessary conditions if we find the RFP meets the requirements of the CBRs and will result in a fair and competitive bidding process.

III. DISCUSSION

At the June 7 meeting, Staff noted that only two of the conditions from the original report remained in dispute,⁴ as well as three items from the supplemental report.⁵ All other conditions proposed by Staff are acceptable to the parties for Idaho Power's current RFP process. Therefore, our discussion below focuses on those provisions that remained in dispute as of the time of the SPM. We express our appreciation to Staff, NIPPC, LEI and Idaho Power for working quickly and diligently to discuss and resolve several issues prior to the SPM.

A. SMM Condition 3: Imputed Debt

Staff recommended Idaho Power not add or apply any cost of imputed debt adder to the price scores of any bids, specifically those using PPAs, BSAs, or similar contractual structures. LEI and NIPPC objected to the inclusion of an imputed debt adder.

Staff is concerned that the imputed debt adder could add up to 20 percent of a bid's total price. Staff stated that the adder could disadvantage third-party bids by adding significant cost compared to company resources. The imputed debt adder would be based on company financial models that would not be easily accessible, thus resulting in a less transparent and less competitive RFP process. Staff provided a review of commission precedent excluding imputed debt adders. Finally, Staff stated that assessing these types of calculations and review of the documentation involved in assessing an imputed debt adder would be better suited to a rate case.

At the same meeting, Idaho Power argued for the inclusion of imputed debt costs by noting that financial commitments such as PPAs could result in a downgrade in its credit rating, making its access to capital more difficult. The company stated that the exclusion

⁴ SMM Condition 3 regarding the inclusion of imputed debt in scoring methodology, and RFP Condition 7 regarding the removal of facility purchase language (section 8.5) from the draft form agreement.

⁵ Supplemental RFP Condition 5 regarding reduction of delay damages in the PPA form; Supplemental RFP Condition 8 regarding limitation of Idaho Power potential transmission liability; and Supplemental RFP Condition 11 regarding charging management instructions in the BSA form.

of imputed debt calculations may tip the balance in favor of third-party bids, which would not result in a least-cost RFP outcome.

We are not persuaded to depart from established precedent and include imputed debt costs as a part of this RFP process. We do not find that Idaho Power's methodology is an appropriate adder to the costs of PPAs. Among other things, we are concerned about how its proposed methodology fails to take into account the other impacts on the agency's credit ratings from non-PPA resources and are not convinced that it appropriately estimates how the impact of PPAs would actually flow through to customers.

We agree with Staff that including an imputed debt adder may result in a less-transparent RFP, given the different rating agencies' methodologies and the risk-factor variables. Therefore, we adopt Staff's SMM Condition 3 to exclude from Idaho Power's RFP any provision applying cost of imputed debt to the price scores of any bids, specifically those using PPAs, BSAs, or similar contractual structures. While we will not consider imputed debt for purposes of acknowledging a short list, we do not object to Idaho Power providing additional informational model runs.

B. RFP Condition 7: Facility Purchase Negotiations

Staff recommended removal of section 8.5 "Negotiation of Facility Purchase" from all Draft Form Agreements in which it appears in the RFP. This section provided Idaho Power with the right of first offer (ROFO) to purchase a facility. Staff noted their concern that this provision essentially converts PPA or BSA contracts into build and transfer agreements. Staff noted that both the company and NIPPC proposed revisions to this language, but Staff declined to make a different or additional recommendation. Staff noted that this section, along with other provisions, may be subject to commercial negotiations between bidders and the company.

Counsel for Idaho Power noted that it previously agreed to remove this section from the form contracts. NIPPC noted that a similar ROFO provision exists in section 8.4 and stated its preference for removal of the ROFO from that provision also. Idaho Power's response distinguished the two sections and noted that provision in section 8.4 was subject to revision via negotiation between parties. We appreciate the company's cooperation and explanation regarding the different recommendations. We adopt Staff's recommendation to remove section 8.5.

C. Supplemental RFP Condition 5: Delay Damages

Staff initially recommended a reduction of delay damages in the PPA form contract to \$200 per MW of nameplate capacity per day. In its June 6, 2023, reply comments, Idaho Power offered an alternative of leaving this dollar figure provision blank, allowing the

amount to be determined through commercial negotiation between bidders and the company. Staff noted that NIPPC indicated its acceptance of this alternative, and therefore stated a willingness to accept this modification in place of its recommended condition.

NIPPC noted that a delay damages provision also exists in the latest version of the battery storage agreement (BSA) form and requested that the damage amount be changed to blank on that form as well. Idaho Power agreed to modify the BSA form and leave the amount blank in that form also. We adopt this agreed-upon alternative from the parties to both the PPA and the BSA forms in lieu of Staff's proposed Supplemental RFP Condition 5.

D. Supplemental RFP Condition 8: Limitation of Idaho Power Transmission Liability⁶

Staff recommended deleting sections 1.145, 7.2.1, and 15.1 from the form PPA entirely. These provisions included language that appeared to hold Idaho Power harmless for delays caused by company's interconnection department. In its reply, Idaho Power presented an alternative to deleting these three provisions by offering specific, targeted revisions to the three sections. NIPPC noted that edits addressed its concerns "for the purposes of this case only" and with the understanding that "bidders can propose further edits without scoring penalty."⁷ Upon consideration of NIPPC's support, Staff also supports the specific modifications to these three sections, rather than their complete removal. We adopt the agreed-upon edits to these sections in the form PPA as presented by Idaho Power.

E. Supplemental RFP Condition 11: Charging Management Instructions for Battery Energy Storage Facilities

Staff recommended adding charge and discharge instructions in the RFP based on concerns voiced by NIPPC. Idaho Power disagreed with the inclusion of Staff's instructions, noting that operating parameters for battery systems will be subject to negotiation and based on technical specifications that will be provided by bidders. The technical specifications portion of the current BSA form contract agreement is currently blank. While NIPPC supported Staff's proposed instructions, it also noted that it was comfortable in this case with leaving the section blank and subject to negotiations

⁶ During the June 7 meeting, this condition was mistakenly referred to by Staff as Supplemental RFP Condition #7. It is Staff Supplemental Condition #8, based on the content of Staff's supplemental conditions, Idaho Power's specific edits offered in the company's June 6 reply comments (pp 4-6), NIPPC's June 6 reply comments (p 8 first row of table on that page), and the context of the SPM discussion.

⁷ NIPPC Reply Comments at 8 (June 6, 2023).

between bidders and Idaho Power. Staff noted that due to NIPPC and Idaho Power's agreement, Staff would withdraw this recommendation.

We questioned whether leaving several material elements blank, rather than naming specific parameters for certain technical items, could lead to issues with evaluating bids and thus interfere with scoring objectivity. Staff agreed that risk of leaving several elements blank or subject to redline is that bidders may offer a bid based on a different understanding than the company. Staff also noted that while some issues would benefit from further definition, it was appropriate to leave other items, such as delay damages, to negotiation. We note this as a concern as we continue to receive and evaluate future RFPs and associated scoring methodologies. We adopt the agreement of the parties for this RFP to leave the section blank, rather than adopting Staff's proposed charge and discharge instructions.

F. Other Items

Staff pointed out that several other modifications were proposed by parties and were also endorsed by LEI. Staff included several of these as conditions in its supplemental report. After discussions with the company, Staff did not adopt some of these recommendations. Staff was generally assured by Idaho Power's statements that the company agreed to allow bidders to offer redlines to the form contracts with no scoring penalties, that the RFP forms and elements therein were subject to negotiations between parties, and that the company considered proposals received as a starting point for negotiations, rather than representing a final agreement. Staff also noted specific items for which it did not provide a recommendation.

1. Solar Forecasting Costs

NIPPC objected to Idaho Power including in the form contracts a pro rata share of the company's portfolio-wide solar forecasting costs to its PPA counterparties as a contract provision. NIPPC advocated for the removal of this charge because sellers already prepare and provide their own solar forecasts. LEI endorsed NIPPC's position. Staff noted Idaho Power's explanation that, in addition to PPA counterparties providing their own forecasts, the company aggregated all individual forecasts received into a portfolio-wide forecast needed for the company's operations. Further, the cost was capped by Idaho Power at 0.1 percent of energy payments. Therefore, Staff opted not to include this recommendation in its supplemental report. During the SPM, an Idaho Power representative further explained the forecasting charge is a result of the company using its own personnel, including its own meteorologist, to aggregate the individual forecasts.

2. *Solar Annual Performance Guarantees and PPA Special Contract Provisions*

NIPPC recommended removal of language from the form contracts having to do with solar annual performance guarantees and other special contract provisions. NIPPC characterized these items as extraneous and left over from other, previous versions of procurement contracts. LEI conditionally supported the removal of these items if they were extraneous and unnecessary for Idaho Power’s current RFP. Idaho Power explained to Staff that the provisions in question were relevant and necessary for inclusion in the current RFP. Based on Idaho Power’s statements, Staff declined to recommend deleting these items from the form contracts. We appreciate Staff’s diligence in its efforts to address, investigate, and discuss the recommendations of the participants in this case. We note these items for future RFP discussions. We agree with Staff’s decision not to include or adopt these recommendations for this RFP process.

IV. ORDER

IT IS ORDERED that:

1. Idaho Power Company’s 2026 all-source request for proposals and the associated scoring and modeling methodology is approved, and;
2. Staff’s recommended conditions for Idaho Power Company’s 2026 all-source request for proposals and the associated scoring and modeling methodology, as set forth in the May 2, 2023 Staff Report, attached as Appendix A, and the May 31, 2023 Supplemental Staff Report, attached as Appendix B, are adopted, except as noted above.

Made, entered, and effective Jul 17 2023.



Megan W. Decker
Chair

COMMISSIONER TAWNEY WAS
UNAVAILABLE FOR SIGNATURE

Letha Tawney
Commissioner



Mark R. Thompson
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

Docket No. UM 2255
Date May 2, 2023
Page 2

RFP Condition 2: Idaho Power clarifies that no bids will be excluded or otherwise penalized as long as all materials and documentation have been completed and submitted by the Bid Due Date, scheduled for June 13, 2023, in the Final RFP.

RFP Condition 3: IPC removes from the Final RFP the Supplemental Fee to bidders selected for the Final Shortlist.

RFP Condition 4: IPC updates item No. 2 on the BEC by adding the following language, "Documentation can include construction plans and schedules, evidence 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."

RFP Condition 5: IPC changes the transmission requirements in Exhibit C of the Final RFP to make them consistent with Exhibit D.

RFP Condition 6: IPC increases the cure period in the Final RFP for mistakes in the Bid Entry or other forms to five calendar days from the date the bidder is notified of the deficiency by IPC.

RFP Condition 7: IPC removes §8.5 "Negotiation of Facility Purchase" from all Draft Form Agreements in which it appears.

DISCUSSION:

Issue

1. Whether the Commission should approve Idaho Power's Final Draft 2026 All-Source Request for Proposals with Staff's recommended conditions.
2. Whether the Commission should approve the associated Scoring and Modeling Methodology, with Staff's recommended conditions.

Applicable Rule or Law

The Commission's Competitive Bidding Requirements (CBRs) in OAR Chapter 860, Division 89 apply when an electric utility may acquire a resource or a contract for more than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1).

Docket No. UM 2255
Date May 2, 2023
Page 3

Requirements for RFPs are set forth in OAR 860-089-0250. OAR 860-089-0250(2) requires that a draft RFP must reflect the elements, scoring methodology, and associated modeling from a Commission acknowledged IRP.

OAR 860-089-0250(3) specifies that a draft RFP must include minimum bidder requirements, standard form contracts, bid evaluation and scoring criteria, language allowing bidders to negotiate final contract terms, a description of how the utility will share information, the bid evaluation and scoring criteria for the selection of the shortlist, the alignment of the needs addressed by the RFP with an identified need from an acknowledged IRP, and the impact of any multi-state regulation on the development of the RFP.

Under OAR 860-089-0250(5), the Commission may approve an RFP with any necessary conditions if the Commission finds the RFP meets the requirements of the CBRs and will result in a fair and competitive bidding process.

Analysis

Background

On September 15, 2022, Idaho Power Company filed an application to open an Independent Evaluator (IE) selection docket for its 2026 All-Source Request for Proposals. In that filing, IPC included a proposed Scoring and Modeling Methodology (SMM) and a preliminary draft of its RFP (Attached as Appendix A to the filing).

At a public meeting on December 27, 2022, the Commission adopted Staff's recommendation to approve IPC's selection of London Economics International (LEI) as the IE for this procurement and granted a partial waiver of OAR 860-089-0250(2)(a).¹ The partial waiver allowed for the concurrent review and consideration of both the SMM and the draft RFP. This waiver was requested by Staff to expedite the review process and was based on feedback from some stakeholders who felt it would be an efficient and effective way to evaluate the SMM within the context of the RFP, rather than in isolation.

Prior to filing, IPC held a stakeholder workshop on the draft RFP on February 21, 2023. The Company subsequently made some alterations based on initial feedback from stakeholders, the IE, and Staff before filing its draft RFP and associated SMM on February 22, 2023.

¹ See UM 2255, Order No. 22-495, December 29, 2022.

Docket No. UM 2255
Date May 2, 2023
Page 4

LEI filed its initial observations and assessment of the RFP on March 1, 2023. On March 17, 2023, the Northwest and Intermountain Independent Power Producers Coalition (NIPPC) filed comments on the proposed SMM and the Draft RFP.

IPC subsequently filed an updated Draft RFP, along with its reply comments, on March 24, 2023. This updated draft included several improvements suggested by the IE, Staff, or other commenters. The Company later posted another draft of the RFP to its website on April 5, 2023.² Based on the Company's representation that the changes in this version will be included in the Final RFP, Staff's analysis is based upon that most recent draft, and the recommended conditions are in addition to adoption of the changes in that draft.

Staff Analysis

Idaho Power is seeking approximately 350 MW of peak capacity and 1,100 MW of variable energy resources to fill needs identified in its 2021 IRP. Eligible resources cover a wide swath of different technologies, contractual arrangements, and ownership structures which must be capable of achieving a commercial operation date (COD) of either June 1, 2026, or June 1, 2027. Since the initial RFP draft was filed in February, Staff has worked with stakeholders, the IE, and the Company to identify and, where possible, resolve issues with the draft RFP and associated scoring. Some issues and concerns remain outstanding and have led to the recommendations contained in this report. Below, Staff will provide its analysis and recommendations for both the scoring and modeling methodology and the Draft RFP itself.

Staff appreciates IPC's willingness to address concerns raised by the IE and stakeholders over multiple iterations of the Draft RFP. While some issues remain open, the Company has resolved many of those identified earlier in the review process. IPC also provided clarification on several ambiguous points that sparked questions at its stakeholder workshop and in written comments. Finally, Staff thanks IPC for its responsiveness and constant communication with Staff throughout the process thus far.

Several issues identified early by Staff, LEI, and NIPPC have already been satisfactorily resolved by the Company and warrant no further action or recommendations. Staff has some remaining concerns, which will be discussed below along with Staff's recommended conditions to address them. The issues addressed by Staff are not exhaustive of all the concerns raised in public comments, but only those for which Staff has specific recommendations based on stakeholder feedback.

² chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://docs.idahopower.com/pdfs/AboutUs/businessToBusiness/2026_IPC_AllSource_RFP.pdf.

Docket No. UM 2255
Date May 2, 2023
Page 5

Staff finds that IPC's Draft 2026 AS RFP complies with the Commission's CBRs that are applicable to this RFP, except as otherwise waived by the Commission. Further, Staff believes that the IPC Draft RFP, and the associated SMM, can be employed in a generally fair and open competitive procurement process. In recommending that the Commission approve the Draft RFP, Staff is also recommending the approval of the SMM included in the Draft RFP, with the conditions described throughout this report.

Staff Analysis of Scoring and Modeling Methodology

Per Commission Order No. 22-495, the SMM for this procurement were reviewed and analyzed in conjunction with the rest of the draft RFP.

AURORA Modeling

In its initial draft, IPC proposed using its AURORA modeling for the development of both the initial and final shortlists. In its comments, NIPPC proposed delaying the use of AURORA portfolio modeling until the development of the final shortlist. NIPPC argued that given the complexity of AURORA modeling, and the fact that it is opaque to bidders, AURORA should only be used for the development of the final short list. The initial shortlist, NIPPC argued, should be developed using only the price and non-price scores of each bid.³

In its updated draft filed with its reply comments on March 24, IPC reconfigured its scoring process. Rather than using AURORA to develop the initial shortlist, the Company opted to use price scoring based on the price and non-price factors provided as NIPPC suggested. Staff appreciates the Company's willingness to accommodate this change and agrees with NIPPC that it will result in a more transparent process.

While no longer utilized for the development of the initial shortlist, AURORA modeling will still be used to develop the final shortlist. Both Staff and LEI have been provided with the assumptions, system topology, and other elements of its AURORA model that will be used to evaluate the initial shortlist and create the final shortlist.

IPC's IRP Team will utilize the Long-Term Capacity Expansion (LTCE) functionality in AURORA to conduct portfolio analysis and create a final shortlist that represents a least-cost, least-risk portfolio mix. Staff has worked with AURORA models before in other contexts and is generally familiar with the functionality of the software.

Overall, Staff feels confident that AURORA's LTCE module is an appropriate tool for developing a final shortlist. Staff expects to work closely with the IE and the Company

³ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, pages 9.

Docket No. UM 2255
Date May 2, 2023
Page 6

as bids are received to ensure that the AURORA modeling that leads to a final shortlist conforms to the Commission's expectations for a fair, competitive procurement.

IPC will also use AURORA's electric market model to perform stochastic and sensitivity analyses as an additional step in the development of a final shortlist and evaluates the resources available for its portfolio. In addition to the sensitivity analyses required by Oregon's CBRs and those generally performed by IPC as part of its IRP modeling process, this stage of the process will include sensitivities specifically regarding the Boardman to Hemingway (B2H) transmission project, which is discussed below. As this procurement moves towards a final shortlist and begins using AURORA modeling, Staff will continue to work with the IE and Idaho Power to determine what additional sensitivity analyses may be required to ensure the portfolio of projects in the final shortlist are least-cost, least-risk.

Staff has no specific recommendations regarding AURORA modeling. We plan to work with the IE to ensure that LEI has full access to any modeling and information it may require to evaluate the final shortlist as the procurement moves forward.

Non-Price Scoring

Over multiple iterations of the RFP, Idaho Power has made several improvements to clarify this procurement's non-price scoring rubric. Staff appreciates the Company's willingness to incorporate suggestions from Staff, the IE, and NIPPC. In previous RFPs, Staff has supported changes to make the non-price scoring components as clear and objective as possible, as required by OAR 860-089-0400(2), 2(c). For PacifiCorp's 2022 All-Source RFP, following significant effort by Staff, the IE, stakeholders, the Company employed a non-price scoring matrix that was objective and amenable to self-scoring. NIPPC incorporated Appendix L from PacifiCorp's 2022 AS RFP as Attachment No. 2 to its comments in this docket as an example of a clear, well-designed, and objective non-price scoring matrix.⁴

In its initial draft, the Company's non-price scoring matrix included elements that were not fully explained and would have made accurate self-scoring difficult. Additionally, the Company failed to provide a description of how the various elements would be weighted to calculate a final non-price score.

The non-price scoring matrix is divided into two sections, one addressing Contracting Progress and Viability and the other demonstrating Project Readiness and

⁴ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, Attachment No. 2.

Docket No. UM 2255
Date May 2, 2023
Page 7

Deliverability. These are worth five points and twenty points, respectively, which will be summed to assign each bid a non-price score out of twenty-five total available points.

The Contracting Progress and Viability section includes five questions with three possible responses each. The responses indicate different assessments by bidders of how likely their requested amendments to different contractual terms are to allow for the successful conclusion of commercial negotiations on terms acceptable to IPC. Responses will be awarded zero, one, or two points based on the bidders' assessment of whether their contractual redlines would be totally inconsistent with, somewhat inconsistent with, or totally consistent with the specifications sought by the Company. Total scores for this section would then be divided in half to arrive a total out of five possible points.

The Project Readiness and Deliverability section consists of twelve questions and is worth a total of twenty points. These questions cover things like site control, interconnection progress, bidder experience, and other elements that may indicate how likely a project is to be able to achieve the COD sought by the Company.

Although the Company provided more detail on how bidders should respond to the non-price scoring matrix and a more thorough explanation of how those answers would translate into a total score, there is still some ambiguity present in the non-price scoring. For example, the Company provides a clear and concrete weighting for each question in the Contracting Progress and Viability section of the matrix. However, for the Project Readiness and Deliverability Section, the Company states that each question will receive different weighting, but provides no further details.⁵

The non-price scoring matrix included in the Final Draft RFP showed several improvements from the preliminary draft. Many questions were changed to allow for intermediate options where appropriate, rather than offering only binary options which might encourage bidders to over- or understate their ability to meet certain criteria, per the recommendation of the IE.⁶

In comments to the RFP, Staff expressed concern that the non-price scoring matrix would penalize bidders for providing redlines or changes to the form contracts and other documents contained within the RFP and its exhibits.⁷ This concern was shared by

⁵ See Idaho Power 2026-2027 All Source Request for Proposals, page 26.

⁶ See Observations on Idaho Power Company's Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Independent Evaluator Assessment Report, March 1, 2023, pages 12.

⁷ See Staff Comments on Draft RFP and Scoring and Modeling Methodology, March 17, 2023, pages 3-5.

Docket No. UM 2255
Date May 2, 2023
Page 8

NIPPC and raised in its comments as well.⁸ Although IPC did make a number of clarifications and improvements to the overall Non-Price Scoring Matrix, the version provided in its Final Draft continues to penalize bidders for offering redlines to various terms and form contracts contained in the RFP.

Moreover, items 1-3 of the Non-Price Scoring Matrix require bidders to assess whether the redlines they have provided would reduce the likelihood of successfully contracting with Idaho Power. This is an inherently subjective evaluation and therefore runs counter to the Commission's goal of objective non-price scoring elements that are reasonably subject to self-scoring by bidders.⁹

SMM Condition 1: IPC provides the specific weighting for each question included in the Project Readiness and Deliverability section of its Non-Price Scoring Matrix.

SMM Condition 2: IPC amends 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.

Price Scoring Model

IPC has provided Staff and the IE with its proprietary price scoring model. Additionally, the Company provided a thorough walkthrough of its model to both Staff and the IE. The IE requested additional information from the Company, such as supporting detail for variables values that were hardcoded into the pricing model, in order to more fully evaluate the appropriateness of the model for scoring purposes. IPC has committed to providing updated models to the IE that provide this additional information. Staff has no recommendations based on the price scoring model.

Imputed Debt

The Draft RFP includes within its price scoring an imputed debt adder for all long-term financial contracts between the Company and a bidder, namely Power Purchase Agreements (PPAs) and Battery Storage Agreements (BSAs). Concerns with this issue were raised by NIPPC at the Company's stakeholder workshop on February 21, 2023.

⁸ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 16.

⁹ OAR 860-089-0400(2)(b).

Docket No. UM 2255
Date May 2, 2023
Page 9

The issue was discussed further in the IE's initial report,¹⁰ in Staff's Opening Comments,¹¹ and in comments filed by NIPPC,¹² all of which objected to its inclusion in the price scores for the RFP.

In its reply comments, Idaho Power provided an extensive explanation of the imputed debt adder and justification for its inclusion in the price scoring for the RFP.¹³ IPC also provided examples to Staff, the IE, and NIPPC showing exactly how imputed debt costs would be calculated and what those costs would amount to when applied to a hypothetical PPA. Staff appreciated this discussion and the Company's willingness to engage on this subject and provide additional information to all parties.

In brief, IPC states that bond ratings agencies such as Standard and Poor's (S&P) and Moody's treat the long-term financial obligations represented by a PPA or BSA as equivalent to debt for purposes of assessing the credit worthiness of a utility. As a result, the Company claims that its borrowing costs increase any time it is a party to such a long-term contract.¹⁴ In fact, the Company relates that its credit rating has already suffered due to its large outstanding obligations under PPA and BSA contracts, with Moody's citing those obligations in its most recent downgrade to IPC's credit rating.¹⁵

To compensate for these increased borrowing costs, the Draft RFP states that for all PPAs and BSAs, the Company intends to include an imputed debt adder which would attribute its increased borrowing costs to its counterparties. IPC claims that this is an attempt to protect ratepayers, who ultimately bear the increased cost of borrowing when the Company's credit rating is lowered.

In its initial report on the RFP, the IE raised concerns with the inclusion of an imputed debt adder for PPAs, BSAs, and similar contractual structures. LEI argued that the imputed debt adder would add significant complexity to the scoring process and make that process much less transparent to bidders and other stakeholders. Further, LEI

¹⁰ See Observations on Idaho Power Company's Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Independent Evaluator Assessment Report, March 1, 2023, pages 14-15.

¹¹ See Staff Comments on Draft RFP and Scoring and Modeling Methodology, March 17, 2023, pages 3-4.

¹² See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, pages 6-8.

¹³ See Idaho Power Company's Reply Comments, March 24, 2023, pages 6-14.

¹⁴ See Idaho Power Company's Reply Comments, March 24, 2023, page 7.

¹⁵ Ibid, page 8.

Docket No. UM 2255
Date May 2, 2023
Page 10

stated that the inclusion of imputed debt would add so much complexity to the price scoring that it may be necessary to engage a utility accounting expert to assess.¹⁶

NIPPC also objected to the imputed debt adder, noting that it lacked transparency, would make the price scoring much more opaque to bidders, and would disadvantage third-party resources.¹⁷ In its reply comments, IPC stated that it applies its costs of debt and equity to self-build resources, however those costs are not necessarily equivalent to the imputed debt adder that the Company intends to add to third-party owned resources.¹⁸ According to models provided by the Company, the imputed debt adders contemplated in the draft RFP could add eighteen percent to the cost of PPAs, BSAs, and similar contractual structures.¹⁹ Staff is concerned this would put third-party bids using those structures at a marked disadvantage to utility-owned resources.

Additionally, Staff, the IE, and potential bidders are unable to independently verify the imputed debt costs the Company seeks to impose on bidders. As IPC noted in its reply comments, Moody's and S&P calculate the impact of imputed debt differently and both utilize at least some proprietary elements.²⁰ While Idaho Power did attempt to provide a clear explanation for how imputed debt would be calculated, there are still too many unknown variables for Staff to assess the imputed debt adder the Company is seeking to impose.

In its reply comments, IPC provided a detailed description of its current credit position and relayed information it has received from the ratings agencies about how future obligations may affect its creditworthiness and, therefore, its cost of borrowing. While this information was useful, it did not provide sufficient justification for the imputed debt adder. For example, IPC stated that imputed debt relating to contractual obligations "contributed" to the financial risk score of 'Significant' in S&P's most recent credit report on the Company. Similarly, IPC states that imputed debt "contributed" to the factors which led Moody's to downgrade the Company's credit.²¹

However, 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. Evaluating the accuracy of the debt attribution would require

¹⁶ See Observations on Idaho Power Company's Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Independent Evaluator Assessment Report, March 1, 2023, pages 15.

¹⁷ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, pages 7-8.

¹⁸ See Idaho Power Company's Reply Comments, March 24, 2023, page 11.

¹⁹ Ibid, Attachment No. 1, Idaho Power's Response to NIPPC's First Information Request.

²⁰ See Idaho Power Company's Reply Comments, March 24, 2023, page 6.

²¹ Ibid, page 8

Docket No. UM 2255
Date May 2, 2023
Page 11

information and a level of analysis that are outside of what is feasible within the context of this procurement.

The Commission provided direction on this topic in docket number UM 1267, which was an investigation into buy versus build bias in utility acquisitions. That investigation culminated in Commission Order No. 11-001, which addressed the issue of debt imputation. At that time, the Commission stated that debt imputation issues are more appropriately addressed in a general rate case where there can be a comprehensive examination of a utility's cost of capital.²²

While appreciative of the extended explanation provided by Idaho Power, Staff is not persuaded that an imputed debt adder is appropriate for this RFP. With the limited information provided, and with limited ability to fully investigate and evaluate that information, Staff believes the Commission's concerns in Order 11-001 apply here and recommends that any issues related to IPC's credit profile and credit risks be addressed in a rate proceeding. As such, Staff recommends that any imputed debt adder be removed from the price scoring in IPC's 2026 AS RFP.

SMM Condition 3: IPC does not add or apply any cost of imputed debt to the price scores of any bids, specifically those using PPAs, BSAs, or similar contractual structures.

Staff Analysis of Draft RFP

RFP Issues and Staff Recommendations

IRP Alignment

This RFP is somewhat complicated by the timing of Idaho Power's current planning process. IPC has been working on its 2023 IRP, which it intends to file in September. The needs the Company is seeking to fill are derived from its 2021 IRP, which used one set of assumptions and parameters for all portfolio modeling.

However, in the interest of using the best and most timely information available, the Company intends to update a number of those assumptions and parameters based on its forthcoming 2023 IRP. As a result, the Company has yet to specify exactly which assumptions and inputs will be used for the modeling in this procurement and whether they align with the 2021 IRP. OAR 860-089-0250(3)(g) requires, "The alignment of the electric company's resource need addressed by the RFP with an identified need in an acknowledged IRP or subsequently identified need or change in circumstances with

²² See Docket UM 1276, Commission Order No. 11-001, January 3, 2011, page 6.

Docket No. UM 2255
Date May 2, 2023
Page 12

good cause shown.” While the needs filled by this RFP are derived from a Commission acknowledged IRP, the modeling will be based on the work IPC has done in preparing its 2023 IRP, which will be filed later this year.

In several responses to comments and information requests, the Company has directed Staff or the IE to its 2021 IRP or to materials provided as part of its Integrated Resource Plan Advisory Council (IRPAC) stakeholder process for the 2023 IRP.²³ While the information regarding its IRP modeling may already available, it is unclear to Staff and the IE, what values are being used and notes that requiring bidders to seek information from multiple sources imposes an unnecessary burden on them. Moreover, Staff wishes to ensure alignment between the RFP and IRP processes as much as possible as the 2023 is developed and filed.

For the sake of clarity, Staff requests that the Company provide a clearly laid-out table showing assumptions, inputs, or other variables from its IRP modeling that will be used as part of the scoring and evaluation for this RFP. The table should indicate which of those variables are likely to be updated; what those values were as of the 2021 IRP; any updated values; and support for those updates, including whether the values align with the 2023 IRP in development.

RFP Condition 1: Idaho Power provides a table clearly delineating any and all modeling inputs and assumptions that will be used in this procurement, showing how those values differ from the values provided in its 2021 IRP and providing support for all changes.

Benchmark Resource Scoring and IE Review

Idaho Power has informed Staff, LEI, and stakeholders that it expects one or more benchmark bids will be submitted in response to this RFP. The IE expressed initial concern that IPC’s proposed schedule would not allow sufficient time for it to fully analyze, evaluate, and score any benchmark bids offered in this procurement.²⁴ The Company subsequently amended its suggested schedule and allowed more time for the IE to perform these functions. Staff appreciates Idaho Power’s flexibility on this point.

IPC Proposed Schedule

²³ See Idaho Power Company’s Reply Comments, March 24, 2023, pages 2.

²⁴ See Observations on Idaho Power Company’s Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Independent Evaluator Assessment Report, March 1, 2023, page 10-11.

Docket No. UM 2255
Date May 2, 2023
Page 13

Section 2.8 of the Draft RFP includes a schedule of key milestones preferred by IPC. In the interest of efficiency, IPC has opened its bid portal to allow bidders to begin completing the Bid Definition Form, Bid Entry Form, Bid Eligibility Checklist, and Non-Price Scoring Matrix (Exhibits A, B, C, and D, respectively). While this may be a prudent way to provide additional time to potential bidders, the Draft RFP has not been approved by the Commission and the Company has revised it. Despite this fact, the draft suggests that Bid Entry Forms must have been completed by April 13.²⁵ Staff is concerned that such actions sow confusion and may impact the competitiveness of the procurement.

RFP Condition 2: Idaho Power clarifies that no bids will be excluded or otherwise penalized as long as all materials and documentation have been completed and submitted by the Bid Due Date, scheduled for June 13, 2023, in the Final Draft RFP.

Supplemental Fee for Final Shortlist

IPC proposed a fee of \$250 per MW for bidders selected for the final shortlist. NIPPC objected to the Draft RFP's inclusion of a Supplemental Fee, arguing that such a fee would not apply to benchmark bids and therefore disadvantage independent developers.²⁶

In reply comments, IPC described this fee as a "passive obligation" to ensure good faith negotiations.²⁷ The Company also notes in the RFP that this fee may be refunded to the bidder at IPC's discretion.

In Staff's view, the Company's treatment of this fee is vague and confusing. By describing it as a passive obligation and allowing refund of the fee at its own discretion, IPC would be introducing ambiguity into the process. Moreover, allowing the Company discretion to charge or refund this fee would introduce a potential source of favoritism or bias. Given IPC's assertion that the fee is only to ensure good faith negotiations rather than to compensate the Company for actual resources consumed in the bid evaluation process, Staff questions the efficacy of this provision in the RFP and agrees with NIPPC that it should be removed.

RFP Condition 3: IPC removes the Supplemental Fee to bidders selected for the Final Shortlist.

²⁵ See Idaho Power 2026-2027 All Source Request for Proposals, page 7.

²⁶ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, pages 25.

²⁷ See Idaho Power Company's Reply Comments, March 24, 2023, pages 24.

Docket No. UM 2255
Date May 2, 2023
Page 14

Bid Eligibility Checklist

NIPPC argued in its comments that two particular elements of the Bid Eligibility Checklist (BEC) that address COD viability and transmission rights warranted additional clarification. Item 6 of the BEC requires that bidders provide documentation indicating the viability of the bid's COD.²⁸ However, neither the BEC exhibit nor the RFP specify what documentation the Company would accept. NIPPC suggested that the Company should clarify what documentation would be considered sufficient evidence that a bid could meet its proposed COD, for example by listing what leases, permits, regulatory approvals, construction plans, or similar documents would be deemed acceptable.

Staff agrees that further clarification on this point is warranted. If the Company wishes to require documentation 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. In PacifiCorp's 2022 All-Source RFP, the non-price scoring matrix included a section on demonstrating project readiness and deliverability, in which the bidder could provide the following elements:

“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 operation date...Bidder has signed LGIA which demonstrates ability to interconnect before proposed commercial operations date”²⁹

Staff proposes the Company include similar language to clarify this element of the BEC to ensure bidders know what documentation must be provided to demonstrate the viability of proposed CODs. Staff encourages both the Company and stakeholders to react to this proposed language in their reply comments.

RFP Condition 4: IPC updates item No. 2 on the BEC by adding the following language, “Documentation can include construction plans and schedules, evidence 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.”

Transmission and Interconnection

²⁸ See Idaho Power 2026-2027 All Source Request for Proposals, Exhibit C – Bid Eligibility Checklist.

²⁹ See PacifiCorp 2022 All-Source Request for Proposals, Appendix L - Non-Price Scoring Matrix.

Docket No. UM 2255
Date May 2, 2023
Page 15

In its comments, NIPPC noted the inconsistency in the treatment of transmission rights between the Bid Eligibility Checklist and the Non-Price Scoring Matrix. The BEC (Exhibit C) requires that a bidder indicate that it has “provided appropriate transmission rights to deliver to IPC points of delivery” on the IPC system.³⁰ In the Non-Price Scoring Matrix (Exhibit D), however, IPC details specific milestones in the interconnection process well-short of having secured transmission rights and awards bidders points for having achieved those milestones.

Staff agrees with NIPPC that the inconsistency between Exhibits C and D may cause confusion for bidders. NIPPC suggests Exhibit C transmission requirements align with the description in Exhibit D, in which the bidder can “demonstrate it has submitted...any required transmission service request(s) to the relevant Transmission Providers and that it is meeting the requirements in those processes.” Staff supports this suggested condition.

RFP Condition 5: IPC changes the transmission requirements in Exhibit C to make them consistent with Exhibit D.

Cure Period

In its comments, NIPPC objected to the two-day cure period for errors or insufficiencies in the Bid Eligibility Form, arguing that this was an unreasonably short time that could exclude potential bidders for minor, inadvertent mistakes. NIPPC suggested in its comments that this cure period should be increased to seven calendar days at a minimum.³¹

In its reply comments, the Company asserted that a two-day cure period was consistent with its past RFPs.³² Staff would note that this is IPC’s first RFP which is subject to the Commission’s CBRs. Staff agrees with NIPPC that two days is an unreasonably short time to allow for bidders to correct errors and recommends providing additional time to cure bids. Furthermore, IPC would allow five business days for bidders to respond to requests from the Company for clarification or additional information.³³ As such, Staff believes that five calendar days should be allowed for the correction of bids.

³⁰ See Idaho Power 2026-2027 All Source Request for Proposals, Exhibit C – Bid Eligibility Checklist.

³¹ See Northwest & Intermountain Power Producers Coalition’s Comments on Draft Request for Proposals, March 17, 2023, pages 20-21.

³² See Idaho Power Company’s Reply Comments, March 24, 2023, pages 23.

³³ See Idaho Power 2026-2027 All Source Request for Proposals, page 23.

Docket No. UM 2255
Date May 2, 2023
Page 16

RFP Condition 6: IPC increases the cure period for mistakes in the Bid Entry or other forms to five calendar days from the date the bidder is notified of the deficiency by IPC.

Form Contracts

In Exhibit H to the draft RFP, Draft Form Agreements for Resource Based Bids, IPC provided provisional form agreements for BSAs, PPAs, and Build Transfer Agreements (BTAs). In its comments, NIPPC raised several concerns with the form contracts attached as exhibits to the Draft RFP. NIPPC divided these concerns among those specific to the form PPA, those specific to the form BSA, and those common to both contracts.

NIPPC's concerns that spanned by the form PPA and form BSA included the provision on Right of First Refusal; the amount of delay damage; allowable forms of development security; the contingency of all contracts on Idaho Public Utilities Commission approval; consistency in the treatment of interconnection between the form contract and the RFP; PUC jurisdiction over disputes; the lack of recourse for delays caused by Idaho Power's interconnection department; limits on seller's damages; and the definition of Qualified Operator.

Regarding the solar-specific form PPA, NIPPC raised the issues of solar forecasting cost attribution; consistency in performance guarantees between different sections of the contract; the treatment of compensated curtailment; and extraneous language that did not seem to apply to this agreement. Finally, NIPPC raised issues with the form BSA agreement, namely roundtrip efficiency requirements and charging management.

In response to the list of contractual issues identified by NIPPC, Idaho Power stated that specific components of the form contracts it provided in Exhibit H should be negotiated between the Company and its counterparties after shortlist selections have been made, rather than debated in the context of RFP approval.³⁴ IPC did not reply to any of the specific contractual concerns raised by NIPPC.

³⁴ See Idaho Power Company's Reply Comments, March 24, 2023, page 24.

Docket No. UM 2255
Date May 2, 2023
Page 17

Staff appreciates IPC's stance that contractual negotiations should be left to the Company and its selected counterparties, but finds that one of the contractual elements identified by NIPPC would run counter to the CBRs and the Commission's goal of fostering truly competitive procurements. The Commission has an expressed interest in ensuring that those contracts do not unreasonably burden potential bidders to the advantage of Company owned resources. Furthermore, the Commission has made clear its goal of reducing the potential for bias for utility-owned resources.

Right of First Refusal

In its comments, NIPPC objected to the inclusion of an overly broad right of first refusal provisions in the form contracts for both PPAs and BSAs. The provision in question is §8.5 of both draft form agreements. The language in §8.5 would require that upon signing the agreement, the parties thereto would be compelled to immediately begin negotiations in good faith for IPC to purchase the facility outright.³⁵ NIPPC noted that this provision of the form PPA and BSA contracts would effectively render all PPA or BSA bids into Build Transfer Agreements (BTA).³⁶

The Commission's CBRs "are intended to provide an opportunity to minimize long-term energy costs and risks, complement the integrated resource planning (IRP) process, and establish a fair, objective, and transparent competitive bidding process, without unduly restricting electric companies from acquiring new resources and negotiating mutually beneficial terms."³⁷ A competitive bidding process must necessarily be open to bids encompassing resources with a diversity of ownership structures. The CBRs expressly provide for participation by third-party bidders.³⁸ Third-party bidders should be permitted to offer projects under eligible contractual structures, PPAs and BSAs among them, and provisions that limit those structures are likely to have a chilling effect on the number of third-party bids responsive to the RFP. Staff agrees with NIPPC's concern and finds that this provision effectively converts any projects offered under a PPA or BSA into a BTA. This is not consistent with the purpose of the CBRs, to establish a fair competitive bidding process.

RFP Condition 7: IPC removes §8.5 "Negotiation of Facility Purchase" from all Draft Form Agreements in which it appears.

³⁵ See Idaho Power 2026-2027 All Source Request for Proposals, Exhibit H.

³⁶ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 24, 2023, page 28.

³⁷ OAR 860-089-0010(1).

³⁸ E.g. OAR 860-089-0300.

Docket No. UM 2255
Date May 2, 2023
Page 18

Other RFP Issues

In addition to the issues raised above, there are two other, related issues unique to this RFP as compared to prior procurements reviewed by Staff. While Staff currently has no specific recommendations or concerns regarding these issues, Staff and the IE will continue to monitor them and engage with the Company.

Boardman to Hemingway

The 2026 AS RFP assumes that the Boardman to Hemingway transmission line will be energized by June 2026, making it operational in time to serve resources acquired through this procurement.

Uncertainty remains around the B2H project. As of the date of this report, the Commission has still not issued a decision on the Company's application for a Certificate of Public Convenience and Necessity (CPCN), in Docket PCN 5, although the procedural schedule for that docket indicates a decision is anticipated by the end of June 2023.

In addition to the regulatory uncertainty around the project, there is the practical risk of construction delays that may prevent a transmission line the size and length of B2H from being fully constructed and energized in time to serve resources selected in this procurement.

Staff raised these concerns in its comments to the RFP, requesting that the Company agree to perform different sensitivity analyses around the B2H completion by certain dates, including the possibility that the line is never available to serve potential resources in this procurement.³⁹

In its reply comments, Idaho Power assured Staff that it would perform a number of sensitivity analyses around B2H as it moves from its initial shortlist to its final shortlist using its AURORA planning model.⁴⁰ Staff will work collaboratively with the Company and the IE to identify B2H and any other sensitivities to perform on the final shortlist, and to establish adequate timeframes to perform and report out on sensitivity findings.

Market Energy Purchases

Idaho Power's 2021 IRP identified energy purchases via B2H as part of the least-cost, least-risk portfolio to meet its needs.⁴¹ In Exhibit C to the 2026 AS RFP, the Company

³⁹ See Staff's Comments on Draft RFP and Scoring and Modeling Methodology, March 17, 2023, page 8.

⁴⁰ See Idaho Power Company's Reply Comments, March 24, 2023, page 20.

⁴¹ Idaho Power Company's 2021 IRP, page 152.

Docket No. UM 2255
Date May 2, 2023
Page 19

specifies the preferred volumes, times, and delivery points for market energy purchases. This is a new element that Staff has not seen in prior RFPs. Staff will continue to monitor the inclusion of market energy purchases as an eligible resource in this RFP.

The 2021 IRP demonstrated that market purchases would be particularly effective early in the planning period, namely in the years 2026-2031.⁴² Between its initial draft and final draft of the RFP, IPC specified which elements of the RFP would apply to market energy bids versus resource bids. The Company also divided its description of the price and non-price scoring into different sections for market and resource bids, providing additional clarity.

Idaho Power issued an RFP specifically for market energy purchases in 2021 but received no bids. In meetings with the IE and Staff, the Company provided an overview of how it views the potential for market energy purchases in this RFP, but was unsure whether it expected to receive bids for the total market energy purchases sought.

However, the Company expects the increased transmission capacity to deliver energy from Mid-Columbia to its territory may yield different results in this 2026 RFP. Staff has no concerns or recommendations regarding market energy purchases at this time.

Conclusion

Based on the above analysis, Staff believes IPC's Draft 2026 All-Source Request for Proposals should be approved for issuance, subject to the conditions recommended by Staff. Below is a summary of Staff's recommendations:

SMM Condition 1: IPC provides the specific weighting for each question included in the Project Readiness and Deliverability section of its Non-Price Scoring Matrix.

SMM Condition 2: IPC amends 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.

SMM Condition 3: IPC does not add or apply any cost of imputed debt to the price scores of any bids, specifically those using PPAs, BSAs, or similar contractual structures.

⁴² Ibid, page 152.

Docket No. UM 2255
Date May 2, 2023
Page 20

RFP Condition 1: Idaho Power provides a table clearly delineating any and all modeling inputs and assumptions that will be used in this procurement, showing how those values differ from the values provided in its 2021 IRP and providing support for all changes.

RFP Condition 2: Idaho Power clarifies that no bids will be excluded or otherwise penalized as long as all materials and documentation have been completed and submitted by the Bid Due Date, scheduled for June 13, 2023, in the Final Draft RFP.

RFP Condition 3: IPC removes the Supplemental Fee to bidders selected for the Final Shortlist.

RFP Condition 4: IPC updates item No. 2 on the BEC by adding the following language, "Documentation can include construction plans and schedules, evidence 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."

RFP Condition 5: IPC changes the transmission requirements in Exhibit C to make them consistent with Exhibit D.

RFP Condition 6: IPC increases the cure period for mistakes in the Bid Entry or other forms to five calendar days from the date the bidder is notified of the deficiency by IPC.

RFP Condition 7: IPC removes §8.5 "Negotiation of Facility Purchase" from all Draft Form Agreements in which it appears.

PROPOSED COMMISSION MOTION:

Approve Idaho Power Company's 2026 All-Source Request for Proposals with the RFP Conditions recommended by Staff.

Approve the associated Scoring and Modeling Methodology (SMM) with the SMM Conditions recommended by Staff.

Docket No. UM 2255

Docket No. UM 2255
May 31, 2023
Page 2

RFP Condition 2: Idaho Power clarifies that no bids will be excluded or otherwise penalized as long as all materials and documentation have been completed and submitted by the Bid Due Date, scheduled for June 13, 2023, in the Final RFP.

RFP Condition 3: IPC removes from the Final RFP the Supplemental Fee to bidders selected for the Final Shortlist.

RFP Condition 4: IPC updates item No. 2 on the BEC by adding the following language, "Documentation can include construction plans and schedules, evidence 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."

RFP Condition 5: IPC changes the transmission requirements in Exhibit C of the Final RFP to make them consistent with Exhibit D.

RFP Condition 6: IPC increases the cure period in the Final RFP for mistakes in the Bid Entry or other forms to five calendar days from the date the bidder is notified of the deficiency by IPC.

RFP Condition 7: IPC removes §8.5 "Negotiation of Facility Purchase" from all Draft Form Agreements in which it appears.

Supplemental SMM Condition 1: IPC includes an example of its term normalization methodology within the RFP.

Supplemental RFP Condition 1: IPC creates a new exhibit to the Draft RFP that provides the size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase) for each benchmark bid.

Supplemental RFP Condition 2: IPC must provide its proposal regarding the availability, or not, of benchmark bid assets to third parties as part of this RFP.

Supplemental RFP Condition 3: IPC states explicitly that bidders will be provided with an opportunity to update their bid pricing upon selection to the Final Shortlist.

Supplemental RFP Condition 4: IPC amends §7.7. Exclusivity to limit exclusivity to 60 days following acknowledgement of the Final Shortlist.

Docket No. UM 2255
May 31, 2023
Page 3

Supplemental RFP Condition 5: IPC reduces delay damages in the form PPA to \$200 per MW of nameplate capacity per day.

Supplemental RFP Condition 6: IPC amends the Development Security section of all form contracts attached to the RFP to allow cash as an acceptable form of security.

Supplemental RFP Condition 7: IPC amends both the form PPA §4.2 Commercial Operation Date and the form BSA §4.2 Commercial Operation Date to include language stating that the Scheduled Commercial Operation Date will be extended on a day-for-day basis in the event that IPUC approval of the contract extends beyond six months.

Supplemental RFP Condition 8: IPC amends the form PPA by removing §1.145, §7.2.1, and §15.1.

Supplemental RFP Condition 9: IPC removes any set numeric values for the minimum experience in either years of operation or MW of resources managed from all form contracts.

Supplemental RFP Condition 10: IPC removes the numeric value 87 percent from the definition of Guaranteed Roundtrip Efficiency in the form BSA.

Supplemental RFP Condition 11: IPC amend §7.7 Charging Energy Management of the form BSA to provide charge/discharge notification a minimum of one-hundred and twenty (120) minutes prior to the flow hour.

DISCUSSION:

Issue

1. Whether the Commission should approve Idaho Power's Final Draft 2026 All--Source Request for Proposals with Staff's recommended conditions.
2. Whether the Commission should approve the associated Scoring and Modeling Methodology, with Staff's recommended conditions.

Applicable Rule or Law

The Commission's Competitive Bidding Requirements (CBRs) in OAR Chapter 860, Division 89 apply when an electric utility may acquire a resource or a contract for more

Docket No. UM 2255
May 31, 2023
Page 4

than an aggregate of 80 megawatts and five years in length, as specified in OAR 860-089-0100(1).

Requirements for RFPs are set forth in OAR 860-089-0250. OAR 860-089-0250(2) requires that a draft RFP must reflect the elements, scoring methodology, and associated modeling from a Commission acknowledged IRP.

OAR 860-089-0250(3) specifies that a draft RFP must include minimum bidder requirements, standard form contracts, bid evaluation and scoring criteria, language allowing bidders to negotiate final contract terms, a description of how the utility will share information, the bid evaluation and scoring criteria for the selection of the shortlist, the alignment of the needs addressed by the RFP with an identified need from an acknowledged IRP, and the impact of any multi-state regulation on the development of the RFP.

Under OAR 860-089-0250(5), the Commission may approve an RFP with any necessary conditions if the Commission finds the RFP meets the requirements of the CBRs and will result in a fair and competitive bidding process.

Analysis

Background

On September 15, 2022, Idaho Power Company filed an application to open an Independent Evaluator (IE) selection docket for its 2026 All-Source Request for Proposals. In that filing, IPC included a proposed Scoring and Modeling Methodology (SMM) and a preliminary draft of its RFP (Attached as Appendix A to the filing).

At a public meeting on December 27, 2022, the Commission adopted Staff's recommendation to approve IPC's selection of London Economics International (LEI) as the IE for this procurement and granted a partial waiver of OAR 860-089-0250(2)(a).¹ The partial waiver allowed for the concurrent review and consideration of both the SMM and the draft RFP. This waiver was requested by Staff to expedite the review process and was based on feedback from some stakeholders who felt it would be an efficient and effective way to evaluate the SMM within the context of the RFP, rather than in isolation.

Prior to filing, IPC held a stakeholder workshop on the draft RFP on February 21, 2023. The Company subsequently made some alterations based on initial feedback from stakeholders, the IE, and Staff before filing its draft RFP and associated SMM on February 22, 2023.

¹ See UM 2255, Order No. 22-495, December 29, 2022.

Docket No. UM 2255
May 31, 2023
Page 5

London Economics International filed its initial observations and assessment of the RFP on March 1, 2023. On March 17, 2023, the Northwest and Intermountain Independent Power Producers Coalition (NIPPC) filed comments on the proposed SMM and the Draft RFP.

IPC subsequently filed an updated Draft RFP, along with its reply comments, on March 24, 2023. This updated draft included several improvements suggested by the IE, Staff, or other commenters. The Company later posted another draft of the RFP to its website on April 5, 2023. The Company provided another updated draft with its reply comments to the Staff Report, filed on May 9, 2023, which incorporated additional suggestions from various parties.

Due to a scheduling oversight by Staff, the Staff Report on the RFP and SMM was filed prior to the IE's second report. That report from LEI contained many additional recommendations, including endorsements of some stakeholder positions that had not been adopted by Staff.

At the Public Meeting on May 16, 2023, the Commission deliberated on some of Staff's recommendations and conditions for approval of the RFP and associated SMM. During those deliberations, the Company confirmed its acceptance of most of the conditions recommended in the Staff Report.

Staff's original conditions discussed at the Public Meeting continue to stand, but Staff has additional recommendations to propose based on the IE report and other issues raised by stakeholders after the filing of Staff's initial report. This supplemental report will describe those additional conditions as well as noting areas where Staff chose not to make adopt recommendations made by the IE or other parties following the initial report.

Supplemental Recommendations on SMM

Term Normalization

The IE has recommended providing additional clarity on the process for evaluating PPA bids of varying contract terms. This was also a concern raised by NIPPC at IPC's stakeholder workshop held on February 21, 2023, although at that time, NIPPC was satisfied with the Company's description of how it intended to normalize contract terms.²

² See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 14.

Docket No. UM 2255
May 31, 2023
Page 6

Despite agreeing with the approach described by the Company, the IE continued to recommend that Idaho Power provide additional detail on this subject in the RFP itself.³

As noted by LEI, IPC provided the relevant models demonstrating its term normalization methodology to Staff and to the IE. The Company also provided a walk-through of those models. Staff agrees with the IE that providing a demonstrative example would be helpful for prospective bidders and therefore recommends IPC include one in the RFP.

Supplemental SMM Condition 1: IPC includes an example of its term normalization methodology within the RFP.

Supplemental Recommendations on RFP

Benchmark Resources

Oregon's CBRs delineate several requirements and procedures regarding benchmark resource bids. IPC's Draft RFP is missing two elements regarding benchmark bids. One missing element is a description of the potential benchmark bids contemplated by the IPC. The other regards the Company's approach for handling the availability of company owned or benchmark resources to third parties as part of the RFP.

Benchmark Resource Disclosure

In both its first and second reports on the RFP, LEI recommended that IPC provide details such as the location, technology, size in MW, expected facility life, and other similar information. As LEI noted in its report, PacifiCorp's most recent RFP (See Docket No. UM 2193) provided an exhibit to the RFP listing potential benchmark resources and providing high-level details on those resources.⁴ Including this information would both provide useful information to potential bidders and facilitate the IE's review of the unique risks and advantages associated with company-owned resources, as required by the CBRs.⁵ NIPPC also advocated for the inclusion of benchmark bid details to make the RFP compliant with Oregon's CBRs and to provide important information to potential bidders.⁶

³ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 11.

⁴ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 8.

⁵ OAR 860-089-0450(6).

⁶ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, pages 22-23.

Docket No. UM 2255
May 31, 2023
Page 7

In reply comments, the Company stated that the RFP evaluation team was functionally separated from the team preparing benchmark bids.⁷ While this function separation is compliant with Oregon's CBRs,⁸ which require that no individual may participate in both the preparation of benchmark bids and bid evaluation, Staff does not believe that the CBRs prohibit sharing of the type of information requested by LEI and NIPPC within the RFP.

Staff agrees with NIPPC and LEI that high-level information on potential benchmark bids would increase the overall transparency of the RFP. Additionally, as both PGE and PacifiCorp have provided this type of information in recent RFPs,⁹ Staff finds value in maintaining consistency across RFPs from all the utilities subject to Oregon's CBRs.

Supplemental RFP Condition 1: IPC creates a new exhibit to the Draft RFP that provides the size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase) for each benchmark bid.

Project Component Availability

OAR 860-089-0300 requires that utilities specify what utility assets, such as transmission rights or sites, are being made available to benchmark resources and either offer those assets to third-party bidders or provide a justification for why those assets were not made available.¹⁰ Further, section 0450 states that it is the duty of the IE to evaluate the reasonableness of the Company's proposal for offering, or not offering Company-owned or benchmark resources to third party bidders at part of the RFP.

In both its initial comments and reply comments to the Staff Report, NIPPC argued that IPC should disclose details on prospective benchmark bids in the RFP. NIPPC noted that this issue has increased in importance due to FERC's recent decision to allow utilities to maintain preferential access to interconnection rights when retiring fossil fuel generation units.¹¹

Staff agrees that the RFP is missing important information about the Company's proposed approach for handling utility-owned assets associated with benchmark bids, in

⁷ See Idaho Power Company's Reply Comments, March 24, 2023, page 2.

⁸ OAR 860-089-0300(1)(b).

⁹ See UM 2193, PacifiCorp 2022 All-Source Request for Proposal; UM 2166, PGE 2021 All-Source Request for Proposals.

¹⁰ OAR 860-089-0300(3)

¹¹ See Northwest & Intermountain Power Producers Coalition's Reply Comments on the Staff Report, May 9, 2023, pages 12-13.

Docket No. UM 2255
May 31, 2023
Page 8

particular any bid for which legacy interconnection rights are leveraged or otherwise retained by the Company and not made available to third parties. The Company's approach may be reasonable, but without more information about the assets at stake or the approach, the IE is unable to perform its duties at this time regarding this evaluation.

Supplemental RFP Condition 2: IPC must provide its proposal regarding the availability, or not, of benchmark bid assets to third parties as part of this RFP.

RFP Schedule

LEI has raised concerns with the RFP schedule throughout this process. Staff understands that the Company is pursuing an aggressive timeline for this procurement in order to ensure necessary resources are online to fill the capacity and energy shortfalls it has identified beginning in 2026. While Staff has worked to move as expeditiously as possible to accommodate Idaho Power's desired schedule, the IE must be allotted enough time to perform its duties.

Following the Public Meeting on May 16, 2023, Idaho Power provided an updated schedule to Staff and the IE. It is the view of Staff and the IE that this new schedule provides sufficient time for LEI to carry out its duties under the CBRs. Staff will continue monitoring the schedule with the IE and adjust as necessary if the IE believes it requires more time to faithfully and accurately conduct all required review and prepare its report at all stages of the procurement going forward. At this time, Staff makes no additional recommendations regarding the RFP schedule.

Price Updates

In its opening comments, NIPPC suggested changes to the language around firmness of bids and potential price updates.¹² The Draft RFP states that bidders will have, "...a potential opportunity for updated pricing if necessary."¹³ The Company also stated in its stakeholder workshop that bid updates would be allowed at the shortlist stage. However, NIPPC continues to argue that the RFP should explicitly state that there will be an opportunity for bid price updates. In reply comments to the Staff Report, Renewable Northwest (RNW) agreed that in the current environment, bidders should be provided an opportunity to update pricing upon selection to the Final Shortlist.¹⁴

Given the ongoing concerns of inflation, supply chain disruptions, high demand for many project components, labor constraints, and evolving federal guidance on the implementation of major legislation such as the Inflation Reduction Act, Staff believes it

¹² See Northwest & Intermountain Power Producers Coalition's Reply Comments on Draft Request for Proposals, March 17, 2023, page 24.

¹³ See Idaho Power 2026-2027 All Source Request for Proposals, page 21.

¹⁴ See Comments of Renewable Northwest, May 9, 2023, page 5.

Docket No. UM 2255
May 31, 2023
Page 9

is appropriate to allow for repricing at the final shortlist stage. While it seems that the Company agrees with NIPPC and RNW that an opportunity for repricing should be provided, Staff believes that it would make the RFP clearer to make that fact more explicit.

Supplemental RFP Condition 3: IPC states explicitly that bidders will be provided with an opportunity to update their bid pricing upon selection to the Final Shortlist.

Bid Exclusivity

Section 7.7 of the RFP requires that upon selection to the Final Shortlist, bidders may not execute agreements to sell their resources to any other buyer. NIPPC objected to this provision in both its opening and reply comments, arguing that contractual negotiations may extend over many months during which resources on the final shortlist would be prevented from negotiating with other parties, but without any assurance that they are likely to execute a contract with IPC.¹⁵ In reply comments to the Staff Report, RNW agreed with NIPPC, noting that bidders do not have sufficiently high certainty that inclusion on the Final Shortlist will lead to successful execution of a contract.¹⁶

In its reply comments, the Company argued that prior to beginning contractual negotiations, it must be sure that the resources in question will be available.¹⁷

Staff appreciates IPC's response and acknowledges its interest in having a high degree of certainty that the bidders with which it negotiates are acting in good faith and will be available to execute a contract if selected from the Final Shortlist. However, experience in recent RFPs for other utilities demonstrate that NIPPC's concern is a valid one. For example, PGE's 2021 RFP saw contractual negotiations with some resources stretch to more than six months. Staff believes requiring open-ended bid exclusivity would impose an unduly high burden on bidders.

Supplemental RFP Condition 4: IPC amends §7.7. Exclusivity to limit exclusivity to 60 days following acknowledgement of the Final Shortlist.

Utility Ownership Price Scores

NIPPC argued in its opening comments that the Draft RFP should include additional information on the evaluation of utility-owned resources, including both benchmark bids and resources offered under a Build Transfer Agreement (BTA). Specifically, NIPPC

¹⁵ See Northwest & Intermountain Power Producers Coalition's Reply Comments on the Staff Report, May 9, 2023, pages 15-16.

¹⁶ See Comments of Renewable Northwest, May 9, 2023, page 4.

¹⁷ See Idaho Power Company's Reply Comments, March 24, 2023, page 24.

Docket No. UM 2255
May 31, 2023
Page 10

was concerned that while the Draft RFP does provide that utility-owned bids must include Long Term Service Agreement (LTSA) and Operations & Management (O&M) provisions, no minimum requirements or protections were established to ensure equivalent treatment compared to Power Purchase Agreement (PPA) and Battery Storage Agreement (BSA) bids.¹⁸

In reply comments, IPC argued that it will treat utility-owned bids equivalently to non-utility-owned bids and that it requires both benchmark and BTA bids to provide costs for operation and maintenance over the life of the asset.¹⁹

In its second report, LEI agreed with NIPPC that the form BTA should include an LTSA, O&M agreement, or other foundational contracts to ensure that the equivalent treatment between utility-owned and non-utility-owned bids.²⁰

In its reply comments to the Staff's report, NIPPC continued to raise this issue and suggested that if time did not permit for the Commission to direct the Company to include LTSA and O&M contracts, then the IE should be tasked with developing a schedule for O&M and LTSA costs.²¹ NIPPC suggested this schedule could be incorporated into the IE's report on the final shortlist to ensure fair treatment of PPA or BSA bids.

In subsequent communications with Staff, IPC maintained that it will treat both utility--owned and non-utility-owned bids the same. The Company also noted that any performance guarantees, irrespective of the ownership structure of the bid, will be subject to commercial negotiation upon selection. Staff would also note that the financial assumptions included in the Company's IRP, also incorporated in Figure 5 of LEI's report on the RFP, do show the basic O&M escalator IPC uses.²² Staff would further note that in the description of the financial model included in its report, LEI deemed the model, "...a sound and justifiable approach for ranking bid proposals."²³

¹⁸ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 11-12.

¹⁹ See Idaho Power Company's Reply Comments, March 24, 2023, page 22.

²⁰ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 17.

²¹ See Northwest & Intermountain Power Producers Coalition's Reply Comments on the Staff Report, May 9, 2023, pages 15.

²² See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Assessment Report, May 10, 2023, page 23.

²³ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Assessment Report, May 10, 2023, page 24.

Docket No. UM 2255
May 31, 2023
Page 11

Staff agrees with both NIPPC and the IE that equal treatment between utility- and non-utility-owned resources is essential. Staff also appreciates IPC's stated commitment to evaluating the performance guarantees, LTSAs, and O&M costs on equal footing as it negotiates with bidders.

To ensure that all bidders, irrespective of ownership structure, are treated equivalently and fairly, Staff is requesting that in its report on the final shortlist, LEI evaluate the treatment of minimum performance and damage guarantees for LTSAs and O&M agreements for utility-ownership bids. Staff will work with LEI to evaluate IPC's assertion that the treatment of these factors in the price scores of utility and non-utility-owned resources is fair, equal, and unbiased.

Form Contracts

In the most recent Draft RFP, Idaho Power provided form contracts for a Power Purchase Agreement, a Battery Storage Agreement, and a Build Transfer Agreement. Throughout this process, in both its opening comments and reply comments to the Staff Report, NIPPC has raised various issues with these form contracts that it believes will unfairly disadvantage third-party bidders in favor of utility-owned resources.

In its initial Reply Comments and in subsequent discussions, the Company has largely opted not to discuss most individual recommendations on the form contracts, instead maintaining that these form contracts are merely starting points and subject to negotiation once a bidder has been selected to the final shortlist.

Staff recognizes the Company's position on the negotiability of any element of these form contracts, but is also cognizant of NIPPC's concerns that some of these provisions, while negotiable, may set initial limits or conditions which could disadvantage third-party resources in favor of utility-owned ones. In its most recent report, LEI endorsed many, but not all, of the recommended amendments to the form contracts.

Based on the additional support provided by LEI in its report, Staff is making several recommendations to address some of NIPPC's concerns with the form contracts. Regarding issues discussed below for which Staff is making no recommendation, Staff would again note that bidders will not be penalized for providing redlines to any or all form contracts and that all final terms are subject to commercial negotiations between the parties.

Docket No. UM 2255
May 31, 2023
Page 12

Issues Common to Form PPA and Form BSA

Delay Damages

Both LEI²⁴ and NIPPC²⁵ have suggested that the delay damages for failure to meet the contracted COD included in the form contracts are too high. IPC currently proposes delay damages of \$400 per MW of nameplate capacity per day for PPA resources and \$100 per MWh for BSA resources.

As both LEI and NIPPC noted, these amounts, particularly in the PPA, are above the range they have seen in recent RFPs in other jurisdictions. NIPPC specifically cited PGE's 2021 RFP (see Docket No. UM 2166), in which delay damages were capped at \$150 per MWAC with an escalation depending on the length of the delay.

NIPPC further argued that the form PPA should be updated to match the form BSA, which reduces the delay damages owed by sellers if their facility is partially complete and generating some energy.²⁶ LEI also agreed with this suggestion.

Given the examples cited by NIPPC and LEI's endorsement of NIPPC's suggestions, Staff finds that the current delay damages included in the form PPA are too high and should be reduced to a level consistent with other recent RFPs. However, as Staff is already recommending the damages in the form PPA be capped at a lower level, Staff does not find that they should be further reduced for a partially complete project.

Supplemental RFP Condition 5: IPC reduces delay damages in the form PPA to \$200 per MW of nameplate capacity per day.

Development Security

In its opening comment, NIPPC recommended that the form contracts should allow for development security to be established with cash.²⁷ As NIPPC noted, one exhibit to the form PPA already references the use of cash to establish development security. The IE endorsed this change in its second report.²⁸

Staff concurs with NIPPC and the IE that the Company should specifically include cash as allowable form of development security.

²⁴ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 14.

²⁵ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 28.

²⁶ Ibid, page 29.

²⁷ Ibid, page 29.

²⁸ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 14.

Docket No. UM 2255
May 31, 2023
Page 13

Supplemental RFP Condition 6: IPC amends the Development Security section of all form contracts attached to the RFP to allow cash as an acceptable form of security.

Idaho Public Utility Commission Approval

The draft BSA and BTA require Idaho Public Utility Commission (IPUC) approval before they go into effect. In its opening comments, NIPPC suggested that there should be a day-for-day extension of the Scheduled Commercial Operation Date if IPUC approval takes more than six months. NIPPC further suggested that sellers should be permitted to terminate any agreement without penalties or damages in the event that IPUC approval takes more than six months. Finally, NIPPC noted that there is a reference to OPUC approval of contracts, which is unnecessary and potentially confusing as OPUC does not approve agreements between the utility and bidders.²⁹ LEI concurred with all NIPPC's suggestions on this provision.³⁰

Staff agrees with NIPPC and the IE that sellers should not be penalized for failure to meet a scheduled COD if the failure to do so is caused by a delay in IPUC approval of the relevant contract, as the timing of such approval is outside the seller's control.

However, Staff does not agree with NIPPC's proposal to allow sellers to terminate a contract without penalty if IPUC approval extends beyond six months. Just as Staff believes it would be unfair to penalize sellers for delays at the IPUC which are outside their control, Staff finds that it would be unreasonable to penalize IPC for such delays despite it executing a contract with a seller in good faith and submitting it to IPUC for approval in a timely fashion. Allowing sellers to terminate a contract at that stage might require IPC to begin fresh negotiations with another bidder, which could potentially prevent the Company from acquiring all the resources necessary to fill its forecasted deficits in time.

Finally, Staff disagrees that the references to OPUC regulatory approvals should be removed from the form contracts. While NIPPC is correct that OPUC does not approve contracts that result from an RFP, this language seems to be legal boilerplate that Staff does not believe will cause undue confusion among bidders. Furthermore, Staff would note that bidders will not be penalized by IPC for redlining out form contract provisions.

Supplemental RFP Condition 7: IPC amends both the form PPA §4.2 Commercial Operation Date and the form BSA §4.2 Commercial Operation Date to include language stating that the Scheduled Commercial Operation Date will be extended

²⁹ Ibid, page 29.

³⁰ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 14.

Docket No. UM 2255
May 31, 2023
Page 14

on a day-for-day basis in the event that IPUC approval of the contract extends beyond six months.

Interconnection Service

NIPPC requested that both the form PPA and the form BSA should be amended to allow the use of Energy Resource Interconnection Service (ERIS) in addition to Network Resource Interconnection Service (NRIS). This change was already made within the Draft RFP, but NIPPC suggested that making a similar change to the form contracts would avoid potential confusion.

Staff is making no recommendation regarding this issue and would note that all final contractual terms are subject to commercial negotiations.

PUC Jurisdiction and Waiver of Jury Trial

The set of draft agreements currently attached to the RFP require the parties thereto to waive the right to a jury trial. NIPPC objected to this provision in its opening comments, arguing that in conjunction with another referenced provision on Governmental Jurisdiction and Authorizations, could be interpreted to require adjudication of contractual disputes before either the IPUC or OPUC.³¹ NIPPC recommended deleting form PPA §20 and §26.4 in their entirety.

Staff is making no recommendation regarding this issue and would note that all final contractual terms are subject to commercial negotiations.

Limitation of Idaho Power Transmission Liability

NIPPC argued in its opening comments that several provisions of the form PPA would disadvantage sellers by holding IPC harmless for delays caused by the Company's interconnection department.³² NIPPC identified three specific provisions (Form PPA §§ 1.145, 7.2.1, 15.1) which it claimed would allow sellers to be penalized for actions of Idaho Power's Interconnection Provider and Transmission Provider and which it claimed are entirely outside the control of the seller.

In its second report, the IE agreed with NIPPC that the provisions in question would disadvantage sellers if they were not mitigated by language holding sellers harmless for delays caused by the Interconnection or Transmission Provider.³³

³¹ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 30.

³² See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 30-31.

³³ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 15.

Docket No. UM 2255
May 31, 2023
Page 15

Staff agrees with both NIPPC and LEI that these provisions, as currently written and without mitigating language, are unreasonable to sellers. Staff is hesitant to propose mitigating language on these issues at this time. Therefore, Staff recommends removing these provisions entirely, fully understanding that similar provisions will be negotiated on terms acceptable to both the Company and the seller.

Supplemental RFP Condition 8: IPC amends the form PPA by removing §1.145, §7.2.1, and §15.1.

Limits on Seller's Damages

NIPPC noted in its opening comments that the form PPA and form BSA contained provisions for liquidated damages that exclude the payment of lost tax credit value. NIPPC requested that the relevant provisions (Form PPA §§ 1.18, 1.42, 1.43, 1.72, 1.126, 12.2.2 & 12.4) be amended to expressly include the value of tax credits in the liquidated damages owed to sellers in the event of a breach by IPC.

Staff believes these provisions are better left to commercial negotiations between the parties and makes no recommendation.

Qualified Operator

In its opening comments, NIPPC objected to the definitions of Qualified Operator contained in the BSA and Solar PPA form contracts. NIPPC argued that the requirements for minimum years of experience and minimum size of resources operated are prohibitively high and would potentially exclude almost all third-party bidders. NIPPC specifically noted that the BSA requirement that a Qualified Operator have five years of experience operating 500 MW of BESS facilities was so high that few if any developers would qualify.³⁴

In its second report on the RFP, LEI agreed with NIPPC's objection to these definitions, stating that the minimum requirements should be reduced and should be made applicable to utility-owned resources as well as to third-party bids.³⁵

Staff agrees with NIPPC and LEI that the Qualified Operator definition should have minimum requirements that are reasonable and will not unfairly exclude any bidders. However, Staff is hesitant to suggest any particular level of minimum operating experience for this provision. Moreover, the IE indicated in conversations with Staff that

³⁴ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 31.

³⁵ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 15-16.

Docket No. UM 2255
May 31, 2023
Page 16

more important than setting a specific, appropriate level for this provision, was ensuring that any definition of Qualified Operator should be applied to both non-utility-owned and utility-owned resources. Therefore, Staff recommends that the minimum operating experience be modified to remove any set numeric value for minimum experience in the form contracts and be fully subject to negotiation between IPC and bidders.

Supplemental RFP Condition 9: IPC removes any set numeric values for the minimum experience in either years of operation or MW of resources managed from all form contracts.

Force Majeure

In its opening comments, NIPPC argued that the limitation on Force Majeure claims in the Form PPA and Form BSA, currently set at 180 days, should be extended to at least one year.³⁶

Staff is making no recommendation regarding this issue and would note that all final contractual terms are subject to commercial negotiations.

Solar PPA Form

Solar Forecasting

The form solar PPA requires that sellers pay for a proportional share of IPC's portfolio-wide solar forecasting costs, capped at 0.1 percent of the total energy payments made to the Seller in the prior year. NIPPC objected to this provision, arguing that sellers should be permitted to supply their own forecasts instead. LEI agreed with NIPPC that sellers should be allowed to provide their own forecasts in lieu of paying for a share of IPC's portfolio-wide forecasting.³⁷

In discussions with Staff, IPC stated that this cost is for the aggregation of individual resource's production forecasting, which is based upon production forecasts from those facilities. Given that this cost is capped at a relatively low level and that all provisions of the Form PPA are subject to commercial negotiation, Staff is making no recommendation to alter this provision.

³⁶ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 32.

³⁷ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 16-17.

Docket No. UM 2255
May 31, 2023
Page 17

Performance Guarantee

NIPPC noted in its opening comments that there is a default and termination provision regarding failure to meet an annual output guarantee that NIPPC does not believe is applicable to this form contract.³⁸ However, in subsequent communications with Staff and the IE, IPC indicated that it believes these provisions are a necessary component of the contract.

Staff makes no recommendation regarding this provision, but notes that bidders may redline all form contracts without penalty.

Compensated Curtailment

NIPPC argued in its opening comments that the Form PPA's provision on compensated curtailments should be amended to include the value of any lost tax credits, such as the Production Tax Credit and the Investment Tax Credit.³⁹

Research conducted by the IE and shared with Staff suggests that compensated curtailment is often a major point of commercial negotiation between parties. As such, Staff is making no specific recommendation at this time.

"Special Contract" Provisions

In opening comments, NIPPC requested that any references to a Special Contract or to Idaho Power's customer under a special contract, be removed from the form PPA. NIPPC suggested that these provisions seemed to be extraneous provisions related to a green tariff and were not applicable within the context of the Form PPA.⁴⁰ LEI agreed with NIPPC in its second report on the RFP.⁴¹

Further research by Staff shows that these provisions are in reference to contracts with large-load IPC customers (20 MW or greater) to assist those customers in meeting their clean energy goals. These contracts are approved by the IPUC and Staff therefore finds that these provisions should remain in the Form PPA. Moreover, Staff believes that NIPPC's concern is addressed at least in part by IPC's agreement not to penalize bidders for redlining the form contracts.

³⁸ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 32.

³⁹ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 33.

⁴⁰ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 33.

⁴¹ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 16.

Docket No. UM 2255
May 31, 2023
Page 18

Battery Storage Agreement Form

Roundtrip Efficiency

The Form BSA currently attached to the Draft RFP requires a guaranteed roundtrip efficiency of 87 percent. This guarantee must be met both during an initial performance test and each subsequent year. In its opening comments, NIPPC pointed out that this 87 percent roundtrip efficiency is at the high end for current battery installations. Furthermore, NIPPC noted that this guaranteed level is not lowered in subsequent years, despite well-known degradation of battery efficiency over time which may reduce roundtrip efficiency by as much as 0.5 percent per year.⁴²

In its second report on the RFP, LEI agreed with the concerns raised by NIPPC. LEI noted that the National Energy Renewable Laboratory adopted 86 percent as its baseline for roundtrip battery efficiency in 2021.⁴³

Staff believes that this issue has been at least partially addressed by IPC's agreement to impose no penalties on bidders for providing redlines to the various form contracts attached to the RFP, which would allow bidders to propose different levels of roundtrip efficiency without seeing their non-price scores reduced by the Company. However, to further resolve this matter, Staff agrees with the IE that the best solution is to make these values fully negotiable. As such, Staff recommends removing any specific numeric values from the guaranteed roundtrip efficiency definition.

Supplemental RFP Condition 10: IPC removes the numeric value 87 percent from the definition of Guaranteed Roundtrip Efficiency in the form BSA.

Charging Management

The BSA attached to the Draft RFP includes a section on charging management which does not contain any specific timing or other operational details specifying how far in advance IPC must provide notice to the operator before charging or discharging must occur. NIPPC argued in its opening comments that the Company should provide specificity on this point to bidders. As NIPPC pointed out, the contract in its current form could be interpreted to mean that operators must charge or discharge a BESS instantaneously upon receipt of instructions from the utility and could be penalized for failure to do so.⁴⁴

⁴² See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 34.

⁴³ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 16-17.

⁴⁴ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 34-35.

Docket No. UM 2255
May 31, 2023
Page 19

LEI agreed with NIPPC that IPC should provide a reasonable deadline for complying with charging/discharging instructions.⁴⁵ In its comments, NIPPC made reference to the term sheet used for PGE 2021 RFP, which required charge/discharge notification no later than two hours prior to the flow hour.⁴⁶

Supplemental RFP Condition 11: IPC amend §7.7 Charging Energy Management of the form BSA to provide charge/discharge notification a minimum of one-hundred and twenty (120) minutes prior to the flow hour.

Additional Comments Received

Oregon & Southern Idaho District Council of Laborers

The Oregon & Southern Idaho District Council of Laborers (Laborers) submitted comments to the Public Utility Commission on May 9, 2023. In those comments, Laborers requested that the Commission require IPC to include labor provisions from HB 2021 and from the Inflation Reduction Act (IRA). Specifically, Laborers requested that:

1. The Bid Eligibility Checklist be updated to require a labor procurement plan;
2. All bidders comply with the labor standards included in HB 2021, irrespective of the location of the project;
3. All bidders for product types potentially eligible for bonus tax credits be required to submit a plan to comply with prevailing wages and registered apprenticeship requirements of the IRA, along with appropriate documentation; and
4. IPC report on certain metrics on the employment impacts of projects under the RFP link those required of PAC in its 2022 RFP in Docket No. UM 2193.

Staff appreciates these comments. However, Staff does not recommend imposing project labor agreement requirements beyond what is currently required under HB 2021. The Commission has not done so with respect to other recent RFPs, and Staff sees no reason for a different practice in this docket. Further, Staff is making no recommendation to require bidders to submit a plan to comply with IRA labor provisions, leaving that decision to the discretion of bidders.

⁴⁵ See Observations on Idaho Power Company's Updated Draft 2026 All Source Request for Proposals for Peak Capacity and Energy Resources: Second Independent Evaluator Report, May 9, 2023, page 17.

⁴⁶ See Northwest & Intermountain Power Producers Coalition's Comments on Draft Request for Proposals, March 17, 2023, page 35.

Docket No. UM 2255
May 31, 2023
Page 20

Key Capture Energy

Key Capture Energy (KCE) submitted comments to the Public Utility Commission on May 9, 2023, requesting a change to the Non-Price Scoring Matrix. KCE argued that an exclusive option-to-lease or exclusive option-to-purchase should be awarded the same points as an executed and recorded lease or warranty deed of ownership for demonstrating site control.

Staff thanks KCE for these comments, but is making no further recommendation to adjust the Non-Price Scoring Matrix. Staff would note that in response to a question submitted by a prospective bidder and posted to the website for this procurement, IPC confirmed that bidders may self-score based on their own assessment of their ability to meet the various criteria in the Non-Price Scoring Matrix. As such, Staff believes bidders may make their own assessment of whether they meet those criteria and provide the relevant documentation. The Company further stated in its answer that a bidder making a different assessment of its ability to meet the criteria will not be penalized as a non-compliant answer.

Conclusion

Based on the above analysis in conjunction with the analysis contained in the Staff Report dated May 2, 2023, Staff believes IPC's Draft 2026 All-Source Request for Proposals should be approved for issuance, subject to the conditions recommended by Staff. Below is a summary of Staff's recommendations:

SMM Condition 1: IPC provides the specific weighting for each question included in the Project Readiness and Deliverability section of its Non-Price Scoring Matrix.

SMM Condition 2: IPC amends 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.

SMM Condition 3: IPC does not add or apply any cost of imputed debt to the price scores of any bids, specifically those using PPAs, BSAs, or similar contractual structures.

RFP Condition 1: Idaho Power provides a table clearly delineating any and all modeling inputs and assumptions that will be used in this procurement, showing how those values differ from the values provided in its 2021 IRP and providing support for all changes.

Docket No. UM 2255
May 31, 2023
Page 21

RFP Condition 2: Idaho Power clarifies that no bids will be excluded or otherwise penalized as long as all materials and documentation have been completed and submitted by the Bid Due Date, scheduled for June 13, 2023, in the Final Draft RFP.

RFP Condition 3: IPC removes the Supplemental Fee to bidders selected for the Final Shortlist.

RFP Condition 4: IPC updates item No. 2 on the BEC by adding the following language, "Documentation can include construction plans and schedules, evidence 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."

RFP Condition 5: IPC changes the transmission requirements in Exhibit C to make them consistent with Exhibit D.

RFP Condition 6: IPC increases the cure period for mistakes in the Bid Entry or other forms to five calendar days from the date the bidder is notified of the deficiency by IPC.

RFP Condition 7: IPC removes §8.5 "Negotiation of Facility Purchase" from all Draft Form Agreements in which it appears.

Supplemental SMM Condition 1: IPC includes an example of its term normalization methodology within the RFP.

Supplemental RFP Condition 1: IPC creates a new exhibit to the Draft RFP that provides the size (in MW), location, technology type, interconnection status, expected life, expected efficiency, target COD, status (new build vs. existing facility), and product type (resource-based or market purchase) for each benchmark bid.

Supplemental RFP Condition 2: IPC must provide its proposal regarding the availability, or not, of benchmark bid assets to third parties as part of this RFP.

Supplemental RFP Condition 3: IPC states explicitly that bidders will be provided with an opportunity to update their bid pricing upon selection to the Final Shortlist.

Supplemental RFP Condition 4: IPC amends §7.7. Exclusivity to limit exclusivity to 60 days following acknowledgement of the Final Shortlist.

Supplemental RFP Condition 5: IPC reduces delay damages in the form PPA to \$200 per MW of nameplate capacity per day.

Docket No. UM 2255
May 31, 2023
Page 22

Supplemental RFP Condition 6: IPC amends the Development Security section of all form contracts attached to the RFP to allow cash as an acceptable form of security.

Supplemental RFP Condition 7: IPC amends both the form PPA §4.2 Commercial Operation Date and the form BSA §4.2 Commercial Operation Date to include language stating that the Scheduled Commercial Operation Date will be extended on a day-for-day basis in the event that IPUC approval of the contract extends beyond six months.

Supplemental RFP Condition 8: IPC amends the form PPA by removing §1.145, §7.2.1, and §15.1.

Supplemental RFP Condition 9: IPC removes any set numeric values for the minimum experience in either years of operation or MW of resources managed from all form contracts.

Supplemental RFP Condition 10: IPC removes the numeric value 87 percent from the definition of Guaranteed Roundtrip Efficiency in the form BSA.

Supplemental Condition 11: IPC amend §7.7 Charging Energy Management of the form BSA to provide charge/discharge notification a minimum of one-hundred and twenty (120) minutes prior to the flow hour.

PROPOSED COMMISSION MOTION:

Approve Idaho Power Company's 2026 All-Source Request for Proposals with the RFP Conditions recommended by Staff.

Approve the associated Scoring and Modeling Methodology (SMM) with the SMM Conditions recommended by Staff.

Docket No. UM 2255