

ORDER NO. 24-055

ENTERED Feb 22 2024

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2255

In the Matter of

IDAHO POWER COMPANY,

2026 All-source Request for Proposals.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on February 20, 2024, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Nolan Moser

Chief Administrative Law Judge



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
February 1, 2024
Page 2

Upon request or its own motion, the Commission may waive any of the Division 089 rules for good cause shown.² If a request for waiver is made, it must be made in writing to the Commission prior to or concurrent with the initiation of a resource acquisition.^{3,4}

OAR 860-089-0500 states that, in an RFP process:

“acknowledgment” is a finding by the Commission that an electric company’s final shortlist of bid responses appears reasonable at the time of acknowledgment and was determined in a manner consistent with the rules in this division.

OAR 860-089-0500(2) provides that an electric company must request that the Commission acknowledge the electric company's final shortlist of bids before it may begin negotiations. Acknowledgment of a shortlist has the same legal force and effect as a Commission-acknowledged IRP in any future cost recovery proceeding.

Per OAR 860-089-0500(3), requests for acknowledgement must, at minimum, include the independent evaluator’s (IE’s) closing report, the electric company’s final shortlist, all sensitivity analyses performed, and a discussion of the consistency between the final shortlist and the electric company’s last-acknowledged IRP Action Plan.

The IE’s closing report contains an evaluation of the applicable competitive bidding processes in selecting the least-cost, least-risk acquisition of resources and any additional analyses requested by the Commission, under OAR 860-089-0450(9). The IE participates in the final short list acknowledgment proceeding and may be required by the Commission to have expanded involvement through final resource selection.⁵

Analysis

Background

IPC filed its Request for Acknowledgment of the Final Short List in IPC’s 2026 All Source Request for Proposals (Request for Acknowledgement) on December 4, 2023. The Independent Evaluator’s (IE) Closing Report was included as an attachment to the

² OAR 860-089-0010(2).

³ OAR 860-089-0010(2)(a).

⁴ “Resource acquisition” is defined in OAR 860-089-0020(9) to refer “to a process for the purpose of acquiring energy, capacity, or storage resources that starts with... [c]ommunication of a final offer or receipt of a final offer in a two-party negotiation.”

⁵ OAR 860-089-0450(10).

Docket No. UM 2255
February 1, 2024
Page 3

filing. Staff filed comments on the Request for Acknowledgement on December 20, 2023. No other parties filed comments. IPC filed reply comments on January 4, 2024.

Purpose of the 2026 RFP

IPC is seeking acknowledgment of the 2026 RFP Final Shortlist (FSL) to meet remaining incremental 2026 and 2027 capacity needs identified in the acknowledged 2021 Integrated Resource Plan (2021 IRP), adjusted to reflect two interim procurement efforts.⁶ The Company explains that the primary drivers of its rapid change in resource position from the 2019 IRP included:

1. Third party transmission constraints and changes to buildout assumptions regarding transmission capacity availability following coal retirements;
2. Market unavailability of import transmission capacity;
3. New use of Loss of Load Expectation reliability metric;
4. Increasing demand due to increasing population and large load customers;
5. Decreased demand response resources and lower generation effectiveness of variable energy resources during critical hours.⁷

The Company initially sought bids for a combination of capacity and energy resources to provide a minimum of approximately 350 MW of peak capacity and up to 1,100 MW of variable energy resources. Products to meet the needs included both resource-based products, and “firm energy (WSPP Schedule C or equivalent) that meets the eligibility requirements of the Western Resource Adequacy Program.”⁸ However, after two interim procurement efforts, its remaining incremental capacity need from the 2021 IRP was 249 Megawatts (MW) in 2026 and 354 MW in 2027.⁹

Overview of IPC’s Final Short List

IPC requests acknowledgement of a FSL that includes projects with a possible total nameplate capacity 2,730 MW of mutually exclusive projects.¹⁰ While this is more than double the need identified in the RFP, in Reply Comments the Company explains that the list provides diverse project operational characteristics and development status sufficient to meet the need with contingency, providing necessary depth to “confidently and economically address the deficits and reliability needs in both 2026 and 2027.”¹¹

⁶ See Idaho Power Request for Acknowledgment, December 4, 2023, Page 1.

⁷ See Idaho Power 2021 IRP. Pages 168-170.

⁸ See Idaho Power Request for Acknowledgement, December 4, 2023, Page 7.

⁹ See OPUC Docket No. LC 78 – Idaho Power 2021 IRP (Table 10.7), Page 142.

¹⁰ Two projects represent variations on a project, of which only one could ultimately be selected.

¹¹ See IPC Reply Comments. Page 8.

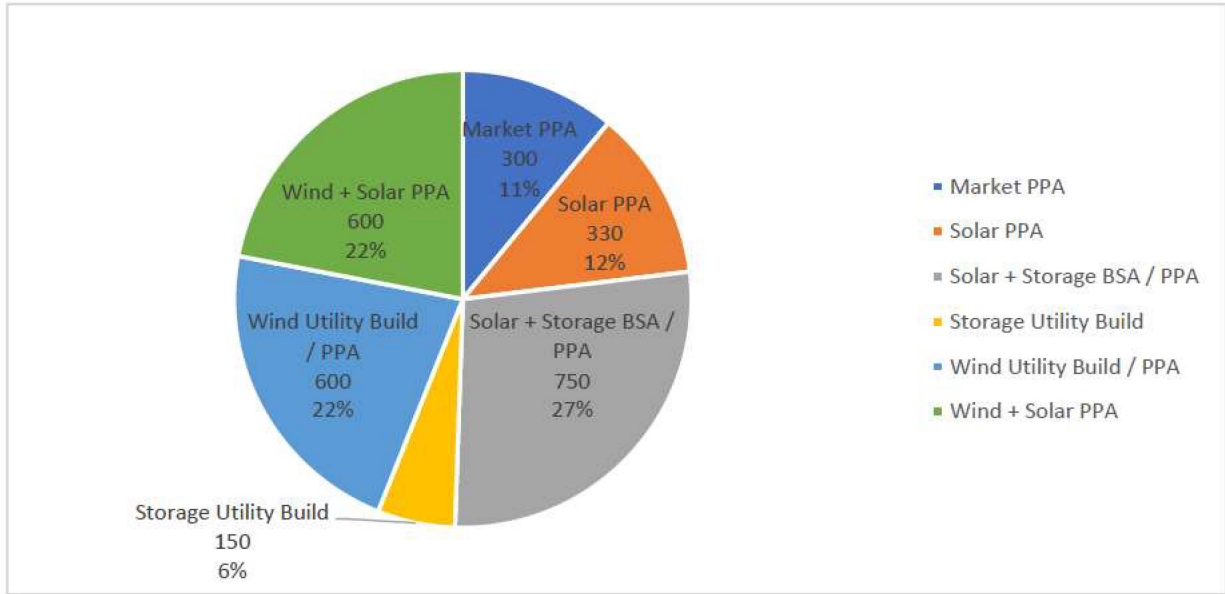
Docket No. UM 2255
 February 1, 2024
 Page 4

Table 1: FSL Projects

Delivery Year	Project	Project owner	Technology and capacity	Bid Structure	Bid type
2026	[BEGIN CONFIDENTIAL] [REDACTED]	[REDACTED]	Up to 300 MW	PPA	Market purchase
2026	[REDACTED]	[REDACTED]	200 MW Solar + 100 MW BESS	BSA / PPA	Resource-based
2026	[REDACTED]	[REDACTED]	200 MW Solar	PPA	Resource-based
2026	[REDACTED]	[REDACTED]	150 MW BESS	Utility Build	Resource-based
2026	[REDACTED]	[REDACTED]	100 MW Solar + 100 MW BESS	BSA / PPA	Resource-based
2026	[REDACTED]	[REDACTED]	200 MW Solar + 50 MW BESS	BSA / PPA	Resource-based
2027	[REDACTED]	[REDACTED]	600 MW Wind	Utility Build / PPA	Resource-based
2027	[REDACTED]	[REDACTED]	350 MW Wind + 250 MW Solar	PPA	Resource-based
2027	[REDACTED]	[REDACTED]	350 MW Wind	PPA	Resource-based
2027	[REDACTED]	[REDACTED] [END CONFIDENTIAL]	330 MW Solar	PPA	Resource-based

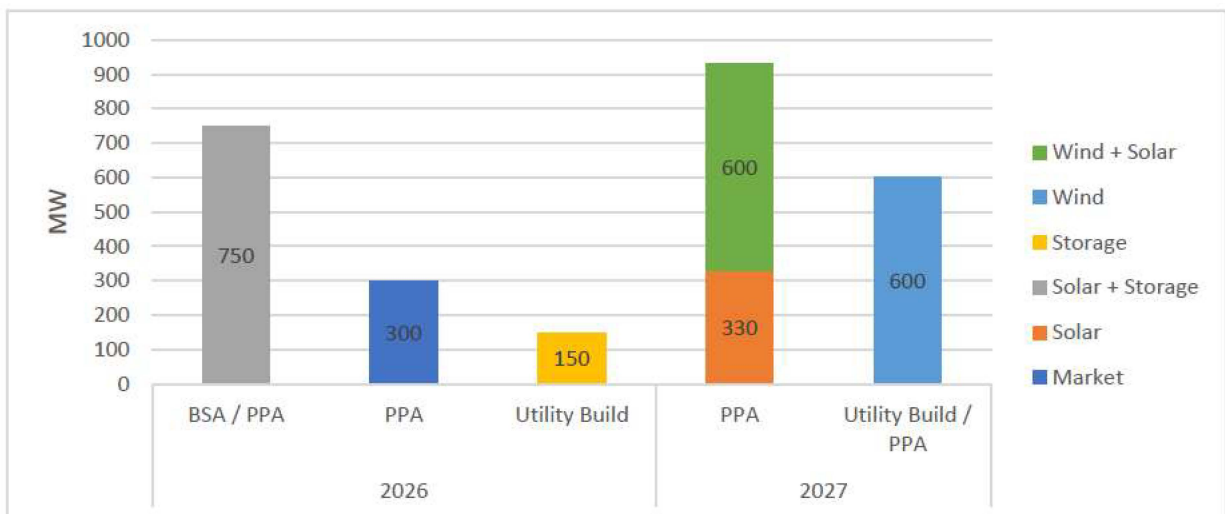
Docket No. UM 2255
 February 1, 2024
 Page 5

Figure 1: FSL Maximum Capacity (MW and %) of Unique Projects



As seen in Figure 1, benchmark projects, including a 600 MW Wind Utility Build / PPA and a 150 MW Storage Utility Build, make up 28 percent of the total possible capacity on the FSL. Figure 2 shows the years in which FSL capacity would come online.

Figure 2: Maximum MW Capacity by Year, Technology, and Ownership



Docket No. UM 2255
February 1, 2024
Page 6

Staff Analysis and Recommendations

Staff is generally supportive of acknowledging the FSL, but has overarching concerns about the identified need, benchmark and utility-owned resource risks, and contract negotiations that result in Staff's recommendation to acknowledge with conditions.

In Comments, Staff discussed concerns about the identified capacity need; procurement size; unique risks of benchmark bids, bid eligibility, and scoring of the initial shortlist; determination of the preliminary final shortlist and FSL contract negotiations; and potential changes to ownership structure as part of those negotiations. IPC's responses in Reply Comments and discovery have resolved Staff's concerns regarding bid eligibility and scoring of the initial short list, and the Company's determination of the preliminary final short list. However, Staff's concerns about the following items remain:

- Identified need: Misalignment with acknowledged IRP and continued updates;
- Benchmark risks: The risk of utility build cost overruns impacting customers and such costs/omissions providing a competitive edge against third party PPAs / BSA; and
- Contract negotiation activities: Push to finalize negotiations on contracts prior to FSL acknowledgement, possible changes to ownership structure as part of negotiations, and timing of IE monitoring of and reporting on contract negotiations.

Compliance with Competitive Bidding Rules

Acknowledgement requires consideration of whether the final shortlist was determined consistent with the competitive bidding rules.¹²

Staff finds that IPC has vastly complied with the competitive bidding rules throughout the 2026 RFP process. This included conducting a competitive process to identify and request LEI to act as the IE for the 2026 RFP and engagement with the IE in a contract that outlines the IE duties as described in OAR 860-089-0450. The Company followed the guidelines in its development of the draft RFP and the scoring and modeling methodology, and in this case, included a waiver request to allow for the review the Scoring and Modeling Methodology at the same time as the review of the draft RFP.¹³ The Commission approved IPC's 2022 All-Source RFP on July 17, 2023, with multiple conditions, as enumerated in Order No. 23-260.¹⁴ Staff and the IE reviewed the Conditions and determined that the Company has complied with all of them noting only one deviation. Regarding Supplemental RFP Condition 1, the Company provided

¹² OAR 860-089-0500(1).

¹³ Order No. 22-495.

¹⁴ Order No. 23-260.

Docket No. UM 2255
February 1, 2024
Page 7

additional benchmark projects details, except for “expected efficiency.” It is not clear to Staff why this information was omitted, but Staff does not see this as having a material impact on its recommendations for FSL acknowledgment.

IPC subsequently issued its RFP. Consistent with the competitive bidding rules, benchmark bids were due before third-party bids. The IE and IPC worked together on scoring the benchmark bids and submitted the required report before opening and scoring the third-party bids.

As part of its Request for Acknowledgement, IPC included the IE’s Closing Report, the electric company’s final shortlist, all sensitivity analyses performed, and a discussion of the consistency between the final shortlist and the electric company’s last-acknowledged IRP Action Plan.

The IE observed that the RFP process was run in accordance with the rules laid out in the RFP document; bidders were treated fairly under the rules of the RFP; offers selected for the final shortlist were selected fairly and transparently; and IPC’s price and non-price scoring were reasonable.¹⁵

Concerns About Deviations from the Competitive Bidding Rules (CBRs)

IPC engaged in three activities that raise concerns about compliance with the CBRs. These included not maintaining a connection with the last-acknowledged IRP (see section on Evolving Capacity Need), aiming to execute a contract prior to the FSL (see section on Contract Execution Prior to FSL Acknowledgement), and IPC’s apparent willingness to considering changing the ownership structure of a bid as part of the contract negotiation process (see section on Alternative Ownership Considerations in Negotiations). Each of these topics are taken up in more detail in the sections that follow.

Evolving Capacity Need

The approved RFP states that IPC is seeking to procure 1,100 MW of variable energy resources and a minimum of 350 MW of peak capacity to meet identified 2026 and 2027 capacity deficits.¹⁶ However, over the course of the RFP the Company changed its stated capacity need, as well as the method by which it determined that need, from what was included in its last-acknowledged IRP (IPC 2021 IRP in LC 78). The Company’s 2023 IRP, currently under Staff and stakeholder review in LC 84, includes modeling, input, and assumption changes impacting IPC’s capacity need that have yet to be fully evaluated by Staff and stakeholders. The capacity need was further updated

¹⁵ IE’s Closing Report, filed with IPC’s Request for Acknowledgement. Page 10 (PDF Page 44).

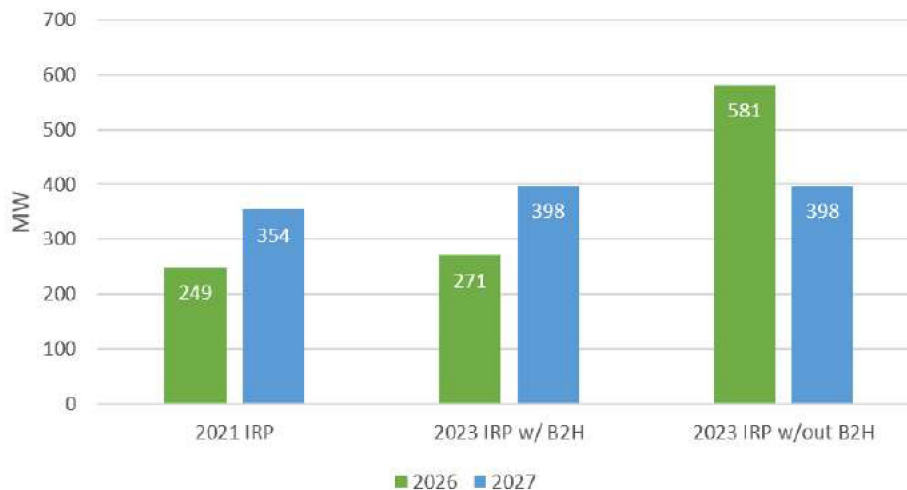
¹⁶ IPC Final Draft 2026 All-Source RFP, February 22, 2023. Page 2.

Docket No. UM 2255
 February 1, 2024
 Page 8

from a recent load forecast update impacting the FSL modeling, which introduced additional deviations from the 2023 IRP.

The Company's initial RFP filing on September 15, 2022, referenced the capacity need identified in the 2021 IRP, and pressed for expedited action on this RFP, despite having not yet received acknowledgement of the 2021 IRP.¹⁷ It explained that the RFP was aligned with the resource opportunities identified in the 2021 IRP. But over the course of the RFP, IPC continued to change the targeted capacity need it intends to fill, based on new, but unvetted information. The Company's 2023 IRP filing, filed approximately eight months after the acknowledgement of its 2021 IRP, showed additional incremental capacity needs of 22 MW in 2026 and 44 MW in 2027, assuming the Boardman to Hemingway (B2H) transmission line would be online by July 2026, along with other transmission capacity.¹⁸ The 2027 capacity need has ranged from as low as 354 MW to as high as 807 MW,¹⁹ having changed as recently as the Company's Reply Comments, where it noted that the FSL was modeled with an updated load forecast indicating the capacity need was even greater than what the 2023 IRP presents as filed.²⁰

Figure 3: Summary of IPC's Needed Annual Capacity Additions



¹⁷ See Idaho Power's Application to Open Independent Evaluator Selection Docket, September 15, 2022, Page 2.

¹⁸ See Idaho Power Request for Acknowledgement, December 4, 2023, Page 4.

¹⁹ See Idaho Power's Application to Open Independent Evaluator Selection Docket, September 15, 2022, Page 6.

²⁰ See Idaho Power Reply Comments, January 4, 2024, Page 6.

Docket No. UM 2255
February 1, 2024
Page 9

The Company explained that its analysis considered the costs and risks associated with “different procurement scenarios including the procurement of resources in excess of the need identified in the acknowledged 2021 IRP and filed 2023 IRP.”²¹ The Company further indicated that it intended to use this solicitation to “procure a volume of projects sufficient to meet its reliability threshold” and that additional FSL projects would only be pursued if they were considered economic.²²

Staff Analysis

Under OAR 860-089-0250(3)(g), a draft RFP should address an identified need in an acknowledged IRP, or a need that is subsequently identified or that addresses a change in circumstances and demonstrates good cause. Any request for acknowledgment is required to address the consistency between the FSL and the last-acknowledged IRP or Update.²³ Staff has identified a significant disconnect between the needs identified in the last-acknowledged IRP and those used to determine the FSL but recognizes this as a challenge inherent to the rapid pace of procurement at this time.

IPC’s changes to the capacity need, and the RFP’s use of the term ‘minimum’, has proven to be a source ambiguity regarding the Company’s anticipated procurement volume. Staff engaged with the Company over the course of the RFP to try to understand the upper limits of the procurement and the source of the analysis informing that volume.

In its response to Staff’s Comments regarding the Company’s intended procurement volumes, the Company said it would procure volumes necessary to economically meet capacity shortfalls for 2026 and 2027.²⁴ In an effort to understand the analysis behind the most recent capacity shortfalls, Staff requested that IPC provide the Aurora inputs and assumptions used for modeling the FSL and to specify the IRP with which they are aligned.²⁵ In its response, IPC noted that, except for a few examples, all the assumptions aligned with the 2023 IRP. However, one of the updated assumptions that diverged from the 2023 IRP was the load forecast, which now suggested even more growth than what was included in the 2023 IRP.²⁶ Staff followed up with OPUC IR 07, seeking IPC’s most recent load forecast and associated assumptions. In its response, IPC shared workpapers with Staff that show an increase, but that also employed

²¹ See Idaho Power Request for Acknowledgement, December 4, 2023, Page 4.

²² IPC Reply Comments, January 4, 2024. Page 2.

²³ See OAR 860-089-0500(3).

²⁴ IPC Reply Comments, January 4, 2024. Page 2.

²⁵ Staff Comments, December 20, 2023. Page 10.

²⁶ IPC Reply Comments, January 4, 2024. Page 6.

Docket No. UM 2255
February 1, 2024
Page 10

different independent variables and estimated coefficients from those employed in the 2023 IRP without providing additional support for this change.²⁷

Staff appreciates the value of using the most up to date information to inform procurement decisions and leveraging an open RFP process to identify projects that can meet near-term needs. However, Staff's concern is that acknowledgement of a FSL that is used to fill an unvetted capacity need may be interpreted to signal the Commission's position on the reasonableness of that capacity need. Staff is continuing to review the reasonableness of the stated capacity need in LC 84 and notes the inputs and assumptions in that docket have had some review through the IRPAC and IRP review processes. More problematic to Staff are the input and assumption changes made to the load forecast that deviate further from the 2023 IRP without the benefit of stakeholder vetting, analysis, or recommendations, and that were ultimately used to generate the FSL. However, Staff also understand that Idaho Power is facing rapid, near-term load growth.

The Company explains that it will only procure what is economic to meet load. Staff recommends that if the volume of resource procurement exceeds the 2021 IRP values of 1,100 MW of variable energy resources and 350 MW of peak capacity for the 2026 and 2027 capacity deficits the Company explain its rationale in a follow-up report accompanying the IE's Contract Negotiations report at the end of UM 2255 (see IE Monitoring of Contract Negotiations). The reason for this is that Staff cannot opine on the current reasonableness of volumes beyond those identified in the 2021 IRP. Exact amounts are the subject of an open IRP docket for which opening comments have not yet been filed and in which the topic of the reasonableness of the capacity is being reviewed. Even with this caveat, Staff understands the directionality and magnitude of forecasted growth in Idaho Power's territory. As such, we propose this compromise approach that places the onus on the Company to use its best judgement when selecting a final procurement volume from this RFP. If the company decides to pursue a higher volume of projects, any such procurement beyond the scope of the most recently acknowledgment IRP, must be informed by a report by the Company detailing the reasons for such a decision. Such a report could point to the findings and recommendations from a more finalized LC 84 and/or other relevant dockets.

Condition 1: Acknowledge FSL volume up to 1,100 MW of variable energy resources and 350 MW of peak capacity to meet the 2026 and 2027 capacity needs identified in the 2021 IRP. The Company shall file a report accompanying

²⁷ Staff notes that these workbooks were provided to Staff through discovery and that at the time of the writing of this report, were not also provided to LEI. LEI has not reviewed or provided feedback regarding this additional increase in load.

Docket No. UM 2255
February 1, 2024
Page 11

the IE’s Contract Negotiations report with an explanation and justification for any procurement volume in excess of the 1,100 MW of variable energy resources and 350 MW of peak capacity necessary to meet the 2026 and 2027 capacity needs identified in the 2021 IRP.

Benchmark and Utility-Owned Bid Unique Risks and Advantages

The CBRs require the IE to evaluate the unique risks and advantages associated with any utility-owned resource.²⁸ IPC submitted three benchmark projects into the RFP, two of which were included in the FSL. Further, the RFP included 20 bids that would result in utility-ownership through build transfer agreements (BTAs), none of which were selected for the FSL.

In Comments on the Draft RFP, NIPPC expressed concern over how the risk of cost overruns, risk of performance assumptions, and operation and maintenance costs associated with utility-owned bids would be considered.²⁹ NIPPC argued that the RFP “should contain strict [Long Term Service Agreement] LTSA and warranty requirements for utility ownership structures and develop reasonable contingency price adders for those bids that do not provide such contractual protections.”³⁰

Fixed Operations & Maintenance Costs and Cost Overruns

In its Closing Report, the IE describes the estimated fixed operations and maintenance (FOM) costs for the Hemingway Storage 3 and Boise Bench projects as lower than the FOM costs provided in the documents that the IE reviewed from reputable sources as well as the 2021 IPC IRP.^{31,32} These costs include basic services only and exclude optional costs such as (i) installation costs for capacity augmentation, (ii) extended warranty (beyond year five), (iii) extended warranty for the Power System Controller, and (iv) capacity performance guarantees. Staff further explored FOM costs in DRs 13-15, in which IPC explained where additional costs were captured, increasing the FOM to a cost more in line with national averages. However, concerns remain about the ability of the Company to pursue future cost recovery if it experiences cost overruns, beyond those costs included in utility-owned bids.

²⁸ OAR 860-089-0450

²⁹ NIPPC Comments on Draft RFP, March 17, 2023. Page 12.

³⁰ Ibid.

³¹ LEI Closing Report 2026 All Source Request for Proposals for Peak Capacity and Energy Resources, December 1, 2023, Page 13.

³² The IE looked at the following sources: (i) National Renewable Energy Laboratory Annual Technology Baseline 2022 v3, 2023 Lazard Levelized Cost of Energy+, and the Energy Information Administration Annual Energy Outlook.

Docket No. UM 2255
February 1, 2024
Page 12

Staff recommends that IPC be held to their projected operation and maintenance (O&M) costs for utility-owned bids, where applicable. If IPC is confident with their O&M costs, especially with batteries, in the event of cost overruns of utility-owned projects, for which third party PPA or BSA alternatives were available, IPC should be held to the O&M costs used to bid into the RFP and cost recovery above such values should be reviewed in future rate cases.

IE Evaluation of Unique Risks and Advantages

NIPPC argued that the IE should provide additional detail regarding LTSA by utility-owned bids, as compared to PPAs or BSAs, in particular for BESS bids with contract terms that do not reflect the life of the asset. Staff's Supplemental Report requested that the IE Report address LTSA and O&M provisions for utility-ownership bids and ensure fair scoring of prices accordingly.³³ In email communications with Staff, the IE articulated the steps it took to conduct this aspect of the review.

First, LEI investigated the potential of including a cost adder to get the BTA and PPA bids "on equal footing" early in the RFP process, revealing a lack of readily available evidence to easily quantify the risks associated with BTAs relative to PPAs. LEI identified a past cost adder proposal put forth by NIPPC in 2012 (in Docket No. UM 1182), which the Commission ultimately rejected in Order No. 13-204 due to its reliance on a limited dataset and concerns about precision, as it would apply bid adders uniformly to all benchmark resources irrespective of individual bid circumstances.³⁴ The Commission also acknowledged that the application of generic cost adders to every utility-owned resource could distort the comparative analysis done by the IE.

Instead of the cost adder approach, the Commission requested that the IE assess the unique risks associated with benchmark bids—which is the approach that LEI took in this engagement. LEI agreed with the Commission's determination in UM 1182 that there is no fair, sure way to quantify/determine cost adders. As such, the IE reviewed risks and advantages of the benchmark bids, as well as the Company's financial model including inputs like FOM, and concluded that IPC used a sound and justifiable approach that resulted in fair scoring.³⁵

Second, to ensure the equal treatment of all bids, LEI scrutinized the financial assumptions incorporated into the Company's financial model used to determine the

³³ Staff Supplemental Report, May 31, 2023. Page 11.

³⁴ Order No. 13-204. Page 4.

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 Assessment Report, May 10, 2023, page 24.

Docket No. UM 2255
February 1, 2024
Page 13

price score. This included general O&M costs, escalation rates, financing composition and costs, discount rates, and more. LEI benchmarked these assumptions against reputable sources such as the EIA and NREL to ensure credibility and uniformity across similar technologies and found the assumptions to be reasonable. With respect to LTSA for energy storage technologies in particular, LEI noted that the maintenance levels can vary, and it is often tricky to know in advance what approach developers will take with respect to maintenance. Some LTSAs encompass preventive maintenance and a warranty against a degradation curve, ensuring the BESS degrades as scheduled. Others may include augmentation plans, aimed at sustaining system performance over the asset's lifetime, albeit often at a higher cost. Given the absence of specific information on the types of LTSA needed for the associated assets, LEI considered IPC's assumption of uniformly applying certain parameters (like FOM and others) across all BESS (utility-based) bids to be reasonable.

Third, although LEI did not assess the LTSA and O&M agreements in the context of the price score due to the challenge in determining cost adders, the existence of these agreements was taken into account in the non-price score. Specifically, LEI examined these in the context of Criteria No. 3 - *Resource Based Product – Bidder has provided redlines or confirmed no redlines to Draft Form Agreements for the Resource Based Product (Exhibit H)*. The IE explained that not all bidders submitted LTSA and O&M agreements, so they could not have assessed these agreements earlier in the process.

Staff notes that the FSL did not include examples of BTA projects that outbid PPA/BSA projects, which lends support to LEI's assessment of the general fairness and equal treatment of PPA/BSA and BTA bids.

Staff recommends that the IE, in its monitoring of the contract negotiation process, report out on LTSA terms and identify contracts where such LTSAs are misaligned with the life of the asset. See the Section below on IE Monitoring of Contract Negotiations below for more details of the recommended condition.

Final Shortlist Negotiations

In its FSL filing, IPC explains that it will pursue contract negotiations with all projects on the FSL and, as contract discussions progress, will “prioritize negotiation efforts with the bids that ranked highest on the FSL first. As time allows or as circumstances change with the higher-ranked projects, IPC will then proceed with negotiations with lower-ranked projects.”³⁶ The Company explains that various project details may be subject to change during contract negotiations. These could include components of the transaction

³⁶ See Idaho Power Request for Acknowledgement, December 4, 2023, Page 23.

Docket No. UM 2255
February 1, 2024
Page 14

that may not have been addressed in the bid proposals or that vary from what was proposed because of the negotiation process, changed circumstances, and/or economic opportunities. In its explanation, IPC states that in the contract negotiation phase it may consider, among other elements "...alternative contract arrangements (for example, Power Purchase Agreements vs. Build-Transfer Agreements)"³⁷ Lastly, it has communicated verbally to Staff and the IE that it began contract negotiations upon its Request for Acknowledgement of the FSL, and that one of the contracts was proceeding such that it could be executed before Commission Acknowledgement of the FSL.

Staff has three concerns about IPC's statements regarding FSL contract negotiations: 1) IPC's indication that it may allow for ownership structure modifications in contract negotiations, 2) contracts that might be executed before FSL acknowledgment, and 3) timing of ensuring IE monitoring and reporting of contract negotiations.

Alternative Ownership Considerations in Negotiations

In its request for FSL Acknowledgment, IPC explains that in the negotiation process it may consider "alternative contract arrangements (for example, Power Purchase Agreements vs. Build-Transfer Agreements), contract term lengths (for example, five vs 10 years or 20 vs 25 years), or other variations proposed by the shortlisted projects, to come to the most cost-effective and reliable final transaction."³⁸

Staff has significant concerns about PPA or BSA bids being converted to a BTA as part of contract negotiations as that would appear to skirt rules regarding how utility-owned bids must be evaluated by the IE. For example, the IE must evaluate unique risks and advantages associated with any utility-owned resources, including consideration of construction cost over-runs, reasonableness of forced outage rates, end effect values, reasonableness of O&M costs, performance assumptions and construction schedules or delay risks.³⁹ If projects were converted to BTAs as part of the FSL, they would not have been subject to this required review.

In conversations with the Company, Staff understands that it does not expect negotiations to include consideration of any such ownership changes like the one described above and in the request for Acknowledgement of the FSL. However, Staff expects this topic to be included among those monitored and reported on in the IE's oversight of contract negotiations (see IE Oversight of Contract Negotiations, below).

³⁷ See Idaho Power Request for Acknowledgement, December 4, 2023, Page 24.

³⁸ See Idaho Power Request for Acknowledgement, December 4, 2023, Page 24.

³⁹ From OAR 860-089-0450 (6)(a) – (i).

Docket No. UM 2255
February 1, 2024
Page 15

Contract Execution Prior to FSL Acknowledgement

In conversations with the Company, IPC described making substantial progress on contract negotiations with one of the projects on the FSL, which would not be in line with the CBRs. While the CBRs allow contract negotiations to begin upon filing of the FSL, Staff does not interpret the provision afforded in OAR 860-089-0500(2) to mean that a FSL might include bids for which contracts have been executed. Acknowledgement serves no purpose if the resource has already been acquired prior to that decision.

Staff has communicated to the Company that while rules allow for negotiations to start upon filing for a request for acknowledgment of the FSL, the execution of a contract prior to acknowledgment would likely remove it from consideration for acknowledgment. The Company has verbally communicated understanding of this aspect of the CBRs and has signaled that it will not execute any binding contracts prior to acknowledgment of the FSL.

IE Monitoring of Contract Negotiations

Regarding changes made during negotiations, Staff understands that contract negotiations can result in changes to bids. However, Staff and stakeholders have issued concerns in other RFP dockets with how contract negotiations can be leveraged by the utility to 1) provide more lenient terms to utility-owned bids that could result in increased costs and risks to ratepayers, and/or 2) to screen out third-party bids through the use of contract terms that are generally not well received by third-party bidders. As such, decisions made as part of the contract negotiation process could result in increased costs to ratepayers and anti-competitive behavior on the part of the utility. In UM 2166 and UM 2274, Staff recommended that the utility retain the IE to monitor and report on contract negotiations to provide transparency to this aspect of procurement and protect against ratepayer cost and anti-competitiveness risks.⁴⁰ As recommended in Staff Comments, Staff again recommends IE monitoring of and reporting on contract negotiations in this procurement effort.

In Reply Comments, IPC expressed concern about the 1) legal difficulties of including the IE in contract negotiations, due to potential attorney client privilege and other confidentiality issues; 2) timing and logistics of including another party (the IE) in scheduling and overlapping contract negotiation meetings; and 3) potential for duplication of effort, given what it describes as similar review of contracts as part of the CPCN process with the Idaho Public Utility Commission. However, in conversations with the Company, and in sharing similar IE Contract Monitoring scopes of work from other

⁴⁰ See UM 2166 Order No. 22-315, Page 4 and UM 2274 Staff Report for the January 4, 2023, Special Public Meeting, Page 43.

Docket No. UM 2255
February 1, 2024
Page 16

Oregon RFPs, IPC has indicated its willingness to amend its contract with LEI to include Contract Negotiation monitoring.

Staff notes that because IPC began engaging in contract negotiations upon filing its FSL, the IE has not participated in any negotiations to date. Staff and the IE discussed this with IPC, who has agreed to include LEI in contract negotiation communications going forward with an interim contract amendment, if and until the Commission provides direction to do so in an order in this docket. Additionally, IPC should provide all communications and documents related to contract negotiations to date.

Staff recommends the IE, in monitoring contract negotiations, report information about the role of performance guarantees in negotiations, post-FSL price updates and the associated drivers and outcomes of price updates. Staff further expects to meet with the IE regularly during negotiations.

Lastly, as Staff has increasingly seen value in retaining the IE to monitor and report on contract negotiations, which can start as soon as a utility files its FSL, Staff notes that future RFP proceedings should consider including this requirement as a default role for the IE.

Condition 2: IPC shall retain the IE to monitor and report on all contract negotiations. The IE will report to Staff at least monthly on contract negotiations and any impacts to pricing or bid withdrawals and file a final report in UM 2255 including:

- 1. LTSA, O&M costs, and any other areas of risk for cost over-runs by projects involving utility ownership that outbid a PPA or BSA alternative.**
- 2. A description of any negotiations that resulted in a modification to the ownership structure of the bid, as compared to how it was presented in the FSL, including a full account of the unique risks and advantages of bids that became utility-owned bids as part of contract negotiations.**
- 3. A full analysis of how the specific commercial terms shaped the FSL and any impact to bid prices, including but not limited to analysis of negotiations on the following contract terms: Guaranteed COD, Transmission Upgrade Cost, Transmission Scheduling of Energy Effective Date, curtailment, and output guarantees.**

Docket No. UM 2255
February 1, 2024
Page 17

Summary of Staff Conditions:

Condition 1: Acknowledge FSL volume up to 1,100 MW of variable energy resources and 350 MW of peak capacity to meet the 2026 and 2027 capacity needs identified in the 2021 IRP. The Company shall file a report accompanying the IE's Contract Negotiations report with an explanation and justification for any procurement volume in excess of the 1,100 MW of variable energy resources and 350 MW of peak capacity necessary to meet the 2026 and 2027 capacity needs identified in the 2021 IRP.

Condition 2: IPC shall retain the IE to monitor and report on all contract negotiations. The IE will report to Staff at least monthly on contract negotiations and any impacts to pricing or bid withdrawals and file a final report in UM 2255 including:

1. LTSA, O&M costs, and any other areas of risk for cost over-runs by projects involving utility ownership that outbid a PPA or BSA alternative.
2. A description of any negotiations that resulted in a modification to the ownership structure of the bid, as compared to how it was presented in the FSL, including a full account of the unique risks and advantages of bids that became utility-owned bids as part of contract negotiations.
3. A full analysis of how the specific commercial terms shaped the FSL and any impact to bid prices, including but not limited to analysis of negotiations on the following contract terms: Guaranteed COD, Transmission Upgrade Cost, Transmission Scheduling of Energy Effective Date, curtailment, and output guarantees.

PROPOSED COMMISSION MOTION:

Acknowledge IPC's final shortlist, subject to the conditions set forth in the Summary of Staff Conditions in this memo.

Appendix A – IE Review of Compliance with Conditions

Condition	Compliance	Notes
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.	Y	
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.	Y	
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.	Y	
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.	Y	Exhibit Q
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.	Y	
RFP Condition 3: Idaho Power removes from the Final RFP the Supplemental Fee to bidders selected for the Final Shortlist.	Y	
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."	Y	
RFP Condition 5: Idaho Power changes the transmission requirements in Exhibit C of the Final RFP to make them consistent with Exhibit D.	Y	Item No. 2

Docket No. UM 2255
 February 1, 2024
 Page 19

Condition	Compliance	Notes
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.	Y	Implemented this, but the RFP still has the typo in Sections 5.1 and 7.2. of the RFP.
RFP Condition 7: Idaho Power removes section 8.5 “Negotiation of Facility Purchase” from all Draft Form Agreements in which it appears.	Y	
Supplemental SMM Condition 1: Idaho Power includes an example of its term normalization methodology within the RFP.	Y	
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.	Y	In Exhibit S, except for “expected efficiency”.
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.	Y	Exhibit S
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.	Y	RFP Sections 6.5, 7.3
Supplemental RFP Condition 4: Idaho Power amends section 7.7 to limit exclusivity to 60 days following acknowledgement of the Final Shortlist.	Y	
Supplemental RFP Condition 5: Idaho Power reduces delay damages in the form PPA to \$200 per MW of nameplate capacity per day. Modified per Order No. 23-260 to leave the term blank.	Y	Blank cost in Item 1.28 of the RFP

Docket No. UM 2255
 February 1, 2024
 Page 20

Condition	Compliance	Notes
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.	Y	
Supplemental RFP Condition 8: Idaho Power amends the form PPA by removing §1.145, §7.2.1, and §15.1.	Y	
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.	Y	Item No. 2 on pg. 445 and E(2)(a) on pg. 611 of the RFP PDF
Supplemental RFP Condition 10: Idaho Power removes the numeric value 87 percent from the definition of guaranteed roundtrip efficiency in the form BSA.	Y	
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. Modified per Order No. 23-260 to leave this section blank.	Y	No mention of the minimum of one-hundred and twenty minutes prior to the flow hour charge/discharge notification