



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.

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

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).<sup>1</sup> 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.

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<sup>1</sup> See UM 2255, Order No. 22-495, December 29, 2022.

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.<sup>2</sup>

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

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> OAR 860-089-0450(6).

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

In reply comments, the Company stated that the RFP evaluation team was functionally separated from the team preparing benchmark bids.<sup>7</sup> While this function separation is compliant with Oregon's CBRs,<sup>8</sup> 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,<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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

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

<sup>8</sup> OAR 860-089-0300(1)(b).

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

<sup>10</sup> OAR 860-089-0300(3)

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

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.<sup>12</sup> The Draft RFP states that bidders will have, "...a potential opportunity for updated pricing if necessary."<sup>13</sup> 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.<sup>14</sup>

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

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

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

<sup>14</sup> See Comments of Renewable Northwest, May 9, 2023, page 5.

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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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

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

<sup>16</sup> See Comments of Renewable Northwest, May 9, 2023, page 4.

<sup>17</sup> See Idaho Power Company's Reply Comments, March 24, 2023, page 24.

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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> 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."<sup>23</sup>

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

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

<sup>20</sup> 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.

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

<sup>22</sup> 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.

<sup>23</sup> 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.

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.

## Issues Common to Form PPA and Form BSA

### *Delay Damages*

Both LEI<sup>24</sup> and NIPPC<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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

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<sup>24</sup> 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.

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

<sup>26</sup> Ibid, page 29.

<sup>27</sup> Ibid, page 29.

<sup>28</sup> 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.

**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.<sup>29</sup> LEI concurred with all NIPPC's suggestions on this provision.<sup>30</sup>

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**

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<sup>29</sup> Ibid, page 29.

<sup>30</sup> 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.

**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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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

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

<sup>33</sup> 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.

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.<sup>34</sup>

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.<sup>35</sup>

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

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

<sup>35</sup> 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.

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.<sup>36</sup>

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.<sup>37</sup>

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.

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

<sup>37</sup> 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.

### *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.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> LEI agreed with NIPPC in its second report on the RFP.<sup>41</sup>

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.

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

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

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

<sup>41</sup> 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.

### 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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup>

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

<sup>43</sup> 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.

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

LEI agreed with NIPPC that IPC should provide a reasonable deadline for complying with charging/discharging instructions.<sup>45</sup> 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.<sup>46</sup>

**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.

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<sup>45</sup> 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.

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

### *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.

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.

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.