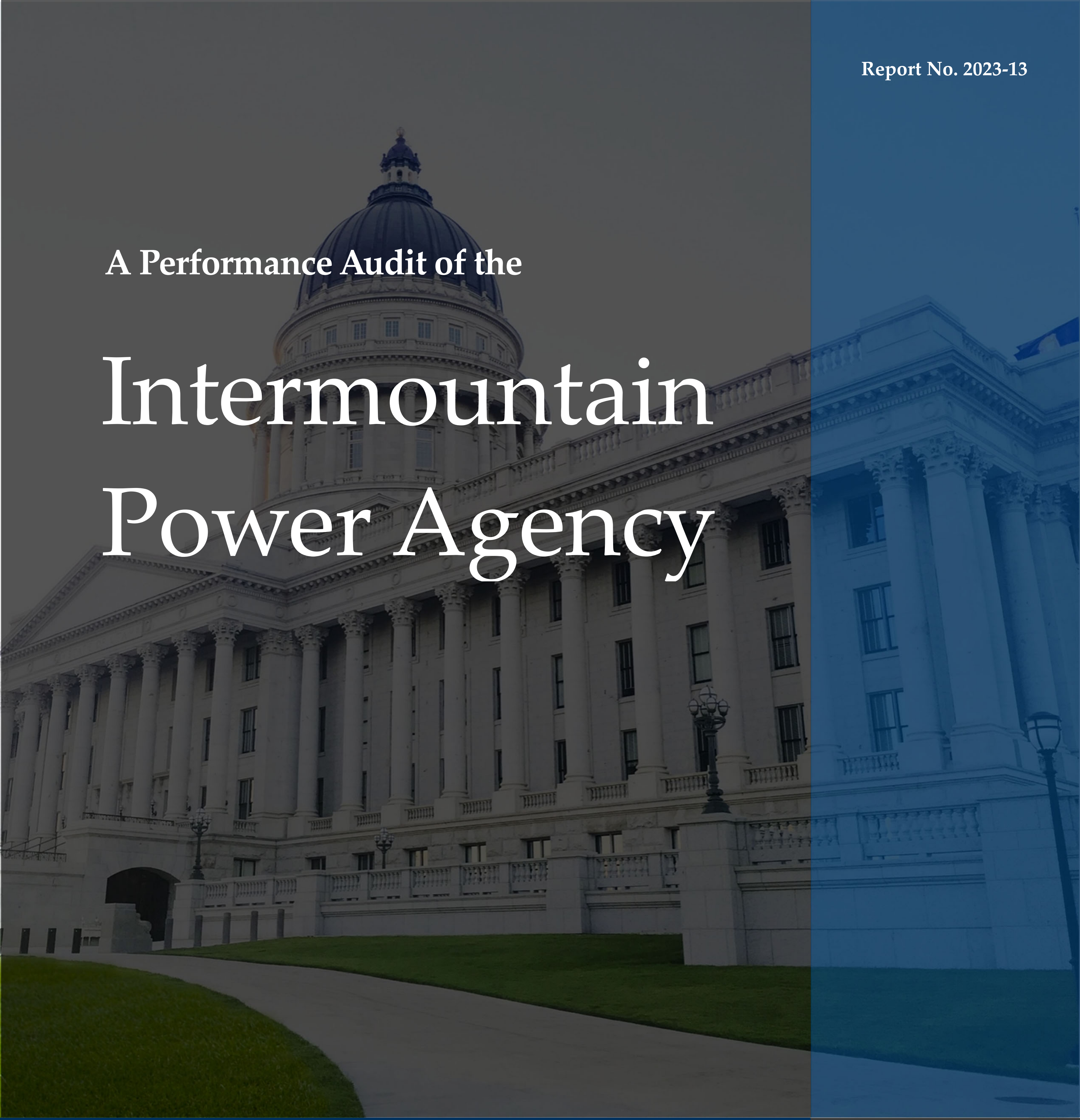
Report No. 2023-13



A Performance Audit of the

Intermountain Power Agency

Office of the Legislative Auditor General

Report to the **UTAH LEGISLATURE**

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Audit Staff

Kade R. Minchey, Auditor General, CIA, CFE

Brian Dean, Manager, CIA, CFE

Matthias Boone, Audit Supervisor, CIA, CFE

Jentrie Willey, Audit Staff

Abigail Armstrong, Audit Staff

Office of the Legislative Auditor General

Kade R. Minchey, Legislative Auditor General

W315 House Building State Capitol Complex | Salt Lake City, UT 84114 | Phone: 801.538.1033

October 10, 2023

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report:

"A Performance Audit of the Intermountain Power Agency" [Report #2023-13].

An audit summary is found at the front of the report. The scope and objectives of the audit are included in the audit summary. In addition, each chapter has a corresponding chapter summary found at its beginning.

This audit was requested by Senator Derrin Owens.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade minchey

Kade R. Minchey, CIA, CFE

Auditor General

kminchey@le.utah.gov

PERFORMANCE AUDIT

THE INTERMOUNTAIN POWER AGENCY

AUDIT REQUEST

The Legislative Audit Subcommittee requested an audit of the Intermountain Power Agency (IPA), the purpose of which is to ensure efficient and effective operations and protection of Utah residents and resources. This is the first state-level review of IPA since its creation in 1977.

BACKGROUND

IPA was created in May 1977 as a Utah interlocal cooperation entity when 23 Utah municipalities jointly signed an organization agreement.

The Intermountain Power Project (IPP) refers to the power generating station and supporting facilities used to deliver power to Utah and California municipalities. IPA owns, operates, and maintains the project. Los Angeles Department of Water and Power (LADWP) oversees the day-to day operations and management of the plant. IPP is now transitioning from coal powered generating units to natural gas and hydrogen units.

KEY FINDINGS

- **1.1** IPP's original value to the state and local communities has diminished, raising policy and governance questions
- **2.1** California purchasers have greatly influenced the project's direction
- **2.2** The IPA Board can improve its governance to better align with some best practices
- **3.1** IPA has historically benefitted as a government entity with limited statutory governance
- **4.1** The Legislature could consider reviewing whether some statutory provision that appear to negatively impact Millard County are still desirable

RECOMMENDATIONS

- **1.1** The Legislature consider whether the diminished benefits of IPP are still desired and whether more action is necessary to direct the project moving forward.
- **2.1** The Legislature consider the appropriate level of influence that an out-of-state government entity should have on the operations of a Utah government entity.
- **2.2** The IPA Board establish direction, preferences, and commitment to the project and state of Utah by creating a long-term strategic plan.
- **3.2** The Legislature consider the degree to which taxed project entities should have transparency and accountability for their operations.
- **4.1** The Legislature consider policy options for taxes to ensure statute is properly balanced between a project entity and a host county.

REPORT SUMMARY

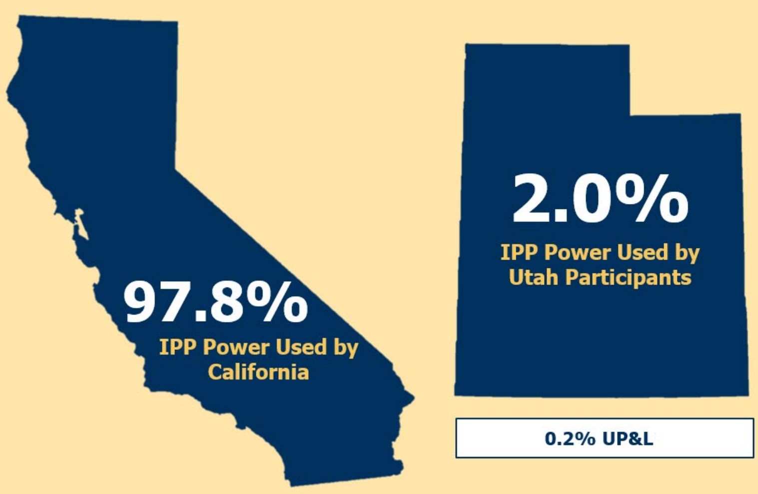
The Original Vision of the IPP Has Shifted

IPA made early commitments to provide benefits to the state and local communities as an interlocal entity. Over time, the envisioned benefits of the project have diminished, and Utah participants have used a minimal amount of IPP power. Given the shifts in the original commitments, the Legislature can consider if changes to the project are needed moving forward.

California Purchasers Have Greatly Influenced Project Direction

Despite what appears to be good collaboration among participants, California purchasers have strongly influenced key decision and the overall direction of the project. We believe stronger governance from a state- and IPA Board-level is needed to ensure that Utah's preferred outcomes are defined and achieved.

Utah Municipalities and Cooperatives Have Used Just 2% of all IPP Generated Electricity



The IPA Board Should Do More to Provide Direction Amid Outside Influence

The IPA Board does not lead with its own planning or preferences. Without proper planning, the IPA Board may facilitate power needs for participants outside the state without adequately considering future, Utah-specific needs.

IPA Has Historically Benefitted as a Government Entity with Limited Statutory Governance

IPA has been granted statutory exemptions that allow for limited state-level governance, including limited accountability and transparency. IPA is a government entity and yet is the only in Utah afforded such a collectively unique governance structure. The Legislature can determine whether it is desirable for IPA to maintain these exemptions.

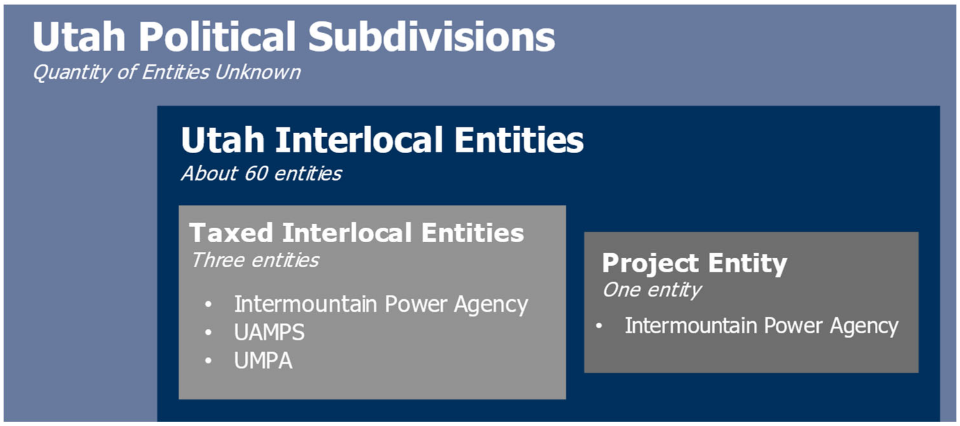
The Legislature Should Review Whether Some Statutory Provisions that Appear to Negatively Impact Millard County Are Still Desirable.

IPA and Millard County have two statutory interaction points, taxes and impact alleviation payments, that appear to negatively impact Millard County. The Legislature can determine whether these interaction points are appropriately balanced.

Table of Contents

Introduction

The Intermountain Power Agency (IPA)[1] was created in May 1977 as a Utah interlocal cooperation entity (interlocal) when 23 Utah municipalities jointly signed an organization agreement. IPA's enacting statute, the Utah Interlocal Cooperation Act (***Utah Code*** 11-13), specifies IPA as a Utah political subdivision,[2] interlocal entity, taxed interlocal entity, and project entity.[3]



These designations will be important throughout this report. IPA's status as both a Utah political subdivision and interlocal entity will be discussed in greater detail in Chapter 1 of this report. Given its unique designations, IPA is a one-of-a-kind entity in the state, which is discussed in Chapter 3 of this report.

Utah Municipalities, Cooperatives, and California Municipalities Participate in IPP

Municipal and cooperative purchasers have entitlement shares for power from the Intermountain Power Project (IPP)[4], granted by the Power Sales Contracts with IPA.[5] The 23 Utah municipalities that own IPA and six California municipalities have entitlement shares for IPP power. Six cooperative purchasers also have entitlement shares.

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[1] IPA owns, operates, and maintains the project.
[2] ***Utah Code*** 17B-1-102(19) "political subdivision" means a county, city, town, metro township, special district under this title, special service district under Title 17D, Chapter 1, Special Service District Act, and entity created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state.
[3] Utah Interlocal cooperations are governed under ***Utah Code*** 11-13, Interlocal Cooperation Act. IPA is the only "project entity" and is governed by ***Utah Code*** 11-13 Part 3, Project Entity Provisions. IPA is one of three "taxed interlocal entities" governed by ***Utah Code*** 11-13 Part 6, Taxed Interlocal Entities. IPA is governed along with all other interlocals in Parts 1 and 2.
[4] IPP refers to the generating station and supporting facilities, which currently consists of two 900 MW coal fired electric generating units located in Millard County, a microwave system, a railcar service center, and two transmission systems that extend to California and Nevada.
[5] Refer to Appendix A for additional information on entitlement shares.

Utah Municipal Owners (23)	• Murray City • Logan City • The City of Bountiful • Kaysville City • Heber Light & Power Company • Hyrum City • Fillmore City • The City of Ephraim	• Lehi City • Beaver City • Parowan City • Price • Mount Pleasant • City of Enterprise • Morgan City • City of Hurricane	• Monroe City • The City of Fairview • Spring City • Town of Holden • Town of Meadow • Kanosh • Town of Oak City
Utah Cooperative Purchasers (6)		• Moon Lake Electric Association, Inc. • Mt. Wheeler Power, Inc. • Dixie-Escalante Rural Electric Association, Inc.	• Garkane Power Association, Inc. • Bridger Valley Electric Association • Flowell Electric Association
California Purchasers (6)		• Los Angeles Department of Water and Power • City of Anaheim	• City of Riverside • City of Pasadena • City of Burbank • City of Glendale

The governance bodies for the project are as follows:

- **The IPA Board**[6] is a seven-member board of directors[7] that collectively represents the project's owners. The board members represent the 23 Utah municipalities and serve a staggered four-year term. The IPA Board appoints a general manager who oversees nine staff members. IPA has operated with an average annual budget of over $520 million between fiscal years 2018-2022.[8]
- **The Coordinating Committee** is made up of power purchaser representatives and provides project oversight and coordination. The committee is comprised of 12 voting members,[9] with each member's voting share equal to their power generation entitlement share. The power sales contracts require any action to have at least an 80 percent vote, based on voting shares. Utah purchasers have 21 percent of the vote and California members have 79 percent of the vote.
- **Los Angeles Department of Water and Power (LADWP), as Project Manager and Operating Agent,** oversees the day-to-day operations and management of the plant, including the planning and dispatch of all

[6] The IPA Board is governed by ***Utah Code***, its organization agreement, board bylaws, and other internal documents.
[7] The IPA Board has five committees. Each is staffed exclusively by IPA Board members, except for the IPA finance committee, which has three California participants serving on the 10-member committee.
[8] Refer to Appendix B for additional budget information.
[9] The IPP Coordinating Committee consists of six California municipal purchaser representatives, three Utah municipal representatives, and three Utah cooperative representatives. The non-voting chairperson of the committee is the general manager of IPA.

electricity.[10] LADWP has acted in this capacity for 43 years and is contracted to continue to do so with the IPP conversion to natural gas and hydrogen through 2077. LADWP oversees major portions of the budget, including contracting for services, materials, and fuels for the plant.
- **The Intermountain Power Service Corporation (IPSC) Board** has six directors: four from LADWP (acting as operating agent and project manager) and two from the IPA Board. IPSC staff operate the plant.

California legislation passed in 2002, requiring that all generating resources meet new carbon dioxide limits, which were reported by IPA to be neither technically possible nor economically feasible. IPP is now transitioning from 1800 MWs of coal generating units to 840 MWs of natural gas and hydrogen units. Full hydrogen generation is planned by 2045. "IPP Renewed" began construction on the new generation units in 2022 which also will include hydrogen production and storage, not owned by IPA, near the IPP site. Thereafter, the two coal units are scheduled to be decommissioned.[11]

Report Roadmap to Policy Options the Legislature Can Consider for Improved IPA Governance

This report found that some IPA governance is lacking and provides policy options for the Legislature to consider to strengthen it. The Legislature could maintain the status quo or consider the following options in each chapter:

- **Chapter 1** the Legislature can consider whether the diminished benefits of the project to the state and its communities are desired, and whether more action is necessary to direct the project moving forward.
- **Chapter 2** makes recommendations to the Legislature to consider strengthening governance amid out-of-state influences and requiring goals, targets, and measures to be created and reported.
- **Chapter 3** makes recommendations to the Legislature regarding reporting requirements and the degree to which IPA should have transparency and accountability for its operations.

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[10] The power sales contract and Construction Management and Operating Agent (CMOA) contract establish LADWP as the project manager and operating agent. These contracts also outline LADWP's responsibilities acting in these positions.

[11] HB 425 (2023 General Session) requires the Office of Energy Development to conduct a study of IPA's coal unit decommissioning and options moving forward, to be reported to the Public Utilities, Energy, and Technology Interim Committee. A preliminary report was presented to the committee in September 2023 and the final version of the study is anticipated to be completed in late October or early November of 2023.

- **Chapter 4** the Legislature can consider reviewing ***Utah Code*** to determine the desired objectives for taxes and impact alleviations between IPA and Millard County.

Some Conditions Hindered Audit Work, Which Require the Disclosure of Potential Risk

During this audit we encountered some barriers that audit standards require us to disclose. It is important to note that overall IPA was cooperative with the audit and spent many hours and staff resources facilitating information and cooperating with the audit team. IPA also worked to retrieve many documents throughout this audit and collaborated with personnel from IPSC (who operate the plant) and LADWP (who is project manager, operating agent, and largest customer of the project).

Despite this, the Institute of Internal Auditor's (IIA) Code of Ethics 2.3 requires auditors to "disclose all material facts known to them that, if not disclosed, may distort the reporting of activities under review." Throughout this audit we encountered some impediments to our audit work, which audit standards require us to disclose. The following were materially impactful conditions the auditors encountered during this audit:

- All closed IPA Board meetings from Fall 2022 to Fall 2023 were closed to the audit team
- Requested and did not receive recordings and minutes for all closed IPA Board meetings from 2017 to 2022[12]
- IPA provided many documents nearly two months after our request
- Had conversations about not having access to "privileged" data and we cannot verify if all data withheld was appropriately classified as privileged
- A non-IPA project leader wanted to be involved in conversations between their staff and auditors and did not make staff fully accessible to auditors

Considering these barriers, we acknowledge there may be risk that we were unable to discover conditions relevant to audit objectives because access to relevant documentation and personnel was limited.

[12] IPA sent us the meetings minutes for only one closed board meeting between October 2022 and September 2023. However, this came five months after we requested it and after this chapter was already in draft form. IPA considered all other closed board meeting minutes over the last five years to be "privileged" and did not provide them to the auditors.

CHAPTER 1 Summary

The Legislature Has Policy Questions to Consider Given the Original Vision of Intermountain Power Project Has Shifted

BACKGROUND

IPA was formed in 1977 through joint action by 23 Utah municipalities. Historically, the project has produced benefit to the 23 municipalities in the form of access to reliable baseload power and a low-cost ownership model. The benefits to the state included the project's use of in-state natural resources and economic development through the project's support of a rural workforce. However, over time the operations and direction of the project have changed significantly and many of the envisioned benefits of the project have diminished. Given the shifts in the original commitments for IPP, the Legislature can consider if changes are needed to the project moving forward.

FINDING 1.1
Intermountain Power Project's Original Value to the State and Local Communities Has Diminished, Raising Policy and Governance Questions

RECOMMENDATION 1.1
The Legislature consider whether the diminished benefits of IPP are still desired and whether more action is necessary to direct the project moving forward.

FINDING 1.2
Utah Participants Have Used a Minimal Amount of IPP Power

NO RECOMMENDATION

FINDING 1.3
Unless There are Changes from The Legislature, IPA Will Continue to Operate Without Specific Commitments to Benefit Utah and Its Communities

RECOMMENDATION 1.2
The Legislature consider what requirements, if any, IPA should fulfill related to its political subdivision status.

CONCLUSION

We believe there are policy questions that the Legislature should consider regarding IPA's future operations and determine whether any changes are desired moving forward. The Legislature can also maintain the status quo or consider other state-level governance options found in Chapter 2 and Chapter 3 of this report.

Chapter 1
The Legislature Has Policy Questions to Consider Given the Original Vision of Intermountain Power Project Has Shifted

In 1977 ***Utah Code*** paved the way for the Intermountain Power Project[13] (IPP) to benefit 36 project participants and the State of Utah. Historically, the project has produced benefit to the 23 Utah municipalities in the form of access to reliable baseload power and a low-cost ownership model. The Intermountain Power Agency (IPA), a Utah interlocal entity with political subdivision status, made early commitments for the project to provide benefits to the state. These benefits include the project's use of in-state natural resources and economic development through the support of a rural workforce. However, over time the operations and direction of the project have changed and the envisioned benefits of the project have diminished. Given the shifts in the original commitments for IPP, the Legislature should consider if changes are needed to the project moving forward.[14]

1.1 Intermountain Power Project's Original Value to the State and Local Communities Has Diminished, Raising Policy and Governance Questions

As an interlocal entity, IPA is charged with a dual mission to provide benefits to project participants and to the State of Utah and some of its communities. However, while the project remains beneficial to the participants, some of the project's originally stated benefits have diminished. For example, the project's use of Utah coal will be eliminated in the future and its workforce will be reduced from 600 to around 120 by 2025. The project has changed over the last several decades, and thereby the original benefits to the state that justified its existence of a Utah governmental entity have changed. We believe the Legislature should consider if adjustments should be made to the project.

[13] ***Utah Code*** 11-13 (the Interlocal Cooperation Act) is IPA's governing statute. The section was not created for IPA but was changed significantly in 1977 to allow Utah municipalities to create IPA as a form of "governmental organization".

[14] We note that prior Utah Legislatures allowed for some changes through the legislative process. However, with a large shift in electrical generation and changes to the early commitments of the project, these prior decisions do not preclude the current Legislature from considering many of the policy options provided in this report.

IPA was Created as a Utah Interlocal to Benefit the Participants, State, and Local Communities

Utah Code and IPA's organizational agreement[15] established IPA to provide a dual advantage to project participants and the State of Utah. The purposes outlined in the Interlocal Cooperation Act in ***Utah Code*** 11-13 (Act) for all entities granted interlocal status are to:

Interlocal Cooperation Act

Permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to
(1) provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities, and
(2) to provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the state.

Current ***Utah Code*** (which retains the same language from when IPA was founded in 1977) establishes that an interlocal entity is created with special provisions, to balance a commission to benefit all parties of the cooperation and provide for the "promotion of the general welfare of the state."

An interlocal entity is created to provide benefits to local government units and the State of Utah.

Further, the Act outlines the intent to provide economic development and utilization of natural resources. Verbal agreements made early in the project also demonstrated a commitment to support these benefits outlined in the Act. The agreements from IPA to the governor at the time were to create and maintain Utah jobs to provide economic benefits and to use Utah coal to fuel the plant. The conditions of these agreements, though not formal contracts, were documented during this audit, including our review of testimony made from a former IPA representative who was party to the agreements.[16]

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[15] ***Utah Code*** 11-13-203(2)(a) requires all political subdivisions that are interlocal entities to have an organizational agreement. These entities are formed by agreement and directed through statute.
[16] It was difficult for us to verify the accuracy of these verbal agreements that were made over 40 years ago. Moving forward we suggest that all critically important agreements between IPA and state leaders regarding the project be documented in writing.

The Project Has Historically Provided Many Benefits

From local and state sources, including surveys and interviews conducted during the audit, we believe this project has provided many benefits. These benefits extend to the participating 23 Utah municipalities, Millard County (where the plant is located), other in-state communities, six California municipalities, power cooperative associations in and out-of-state, and the State of Utah. Some benefits of the project include:

- When desired, Utah municipalities and power cooperatives have access to reliable baseload electricity, providing a cost savings by allowing them to seek the most economical energy sources.

- Over $490 million in property taxes paid in the form of fee-in-lieu of ad valorem taxes providing an ongoing large tax base for Millard County and supporting, at one time, over 600 permanent staff (see Figure 1.1 for historical staffing numbers). IPA reports that taxes paid to Millard County will increase with IPP Renewed.

- The payment for and consumption of over 160 million tons of Utah coal over the life of the project and indirect support of mining, transportation, and other in-state jobs (see Figure 1.2 for IPP's coal consumption over time).

- The payment of sales and use (an estimated $4.07 million in FY22) and gross receipt taxes (an estimated $1.87 million for FY22).

- Ongoing donations (approximately $220,000 in FY23) and scholarship support ($110,000 in FY23) to local communities.

Additionally, we interviewed many individuals within the community and there was a common sentiment that the plant has been good for the local community. We also note that there are some costs associated with the project, including those common to power plants, such as water consumption and air pollution.

Project Changes Have Maintained Value To Out of State Power Recipients, But Have Led to Reduced Benefits for Utah Residents

The direction of the project has changed since the original 1977 organization agreement. The project has also shifted away from some original verbal agreements, which has led to diminishing benefits envisioned at the beginning of the project. While some of the benefits of the project remain intact for participants in Utah and California, there has been diminished value to the state and local communities. We acknowledge that many of these changes could have been made to promote operational efficiencies and to facilitate the continuation of the project. In these cases, we recognize that these decisions were not taken lightly and may align with good management practices and commercial realities. We also note that if the participants did not work to keep the project operating, it may have shuttered, possibly leading to no future benefit for the next 50 years.

While many of the benefits of the project remain for participants, there has been diminished value to the state and local communities.

The cooperative nature of IPP includes the unique need to balance interests from in-state and out-of-state project participants (see the Introduction for more on participants). Other periodic updates to the organizational agreement show changes in electrical output, generation fuel type and source, and anticipated life of the project, as shown in the following graphic. IPP's net capacity factor also has decreased over time (see Appendix C for more information).

	Planned Megawatts	*Fuel*	*End Year*
Original Agreement	**3,000 mw**	**Coal**	**2027**
Amendment 1 *(1983)*	**1500 mw**	Coal	2027
Amendment 2 *(1990)*	1500 mw	Coal	2027
Amendment 3 *(2003)*	1500 mw	Coal	**2044**
Amendment 4 *(2013)*	1500 mw	**Fuel Source as Approved by the Board**	**2063**
Amendment 5 *(2018)*	1500 mw	Fuel Source as Approved by the Board	2063
Future of IPP	**840 mw**	**Natural Gas and Hydrogen**	**2077**

Source: Auditor generated.

IPP participants in Utah and California plan to continue the project from 2027 to 2077 without some of the original commitments agreed-to between IPA and state leaders. In 2012, the Legislature approved IPP to shift energy sources to meet California law, requiring more stringent environmental standards. While the Legislature approved a shift in sources for energy generation, we did not find evidence of discussions concerning the project's original commitments and whether they should be updated.

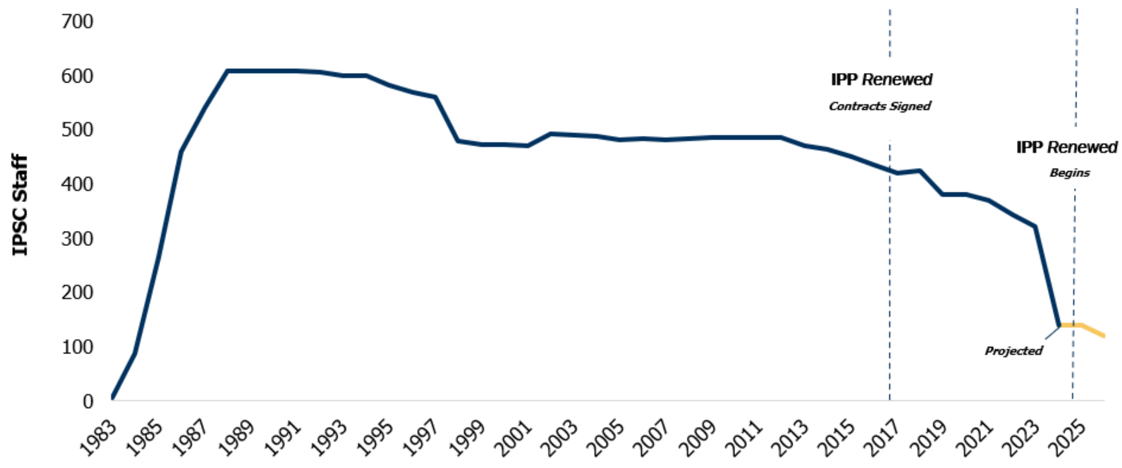
IPP participants in Utah and California plan to continue the project until 2077 without some of the original commitments to the state and local communities.

In 2015 individual members agreed to construct a new plant and in 2017 the Coordinating Committee and IPA Board voted to decommission the coal units. That same year, the Utah and California participants signed new 50-year contracts for IPP power for the new IPP units. The benefits of the project to the state, Millard County, and local communities have in some ways been in a state of decline; however, with the shift to "IPP Renewed" some of these benefits will further be diminished. The original verbal agreements between IPA and the state to 1) maintain staffing to support rural communities will be minimized and 2) exclusively use Utah coal will be eliminated as they transition to the new generating units. IPA reports that this commitment for Utah coal was fulfilled.

Project Staffing Levels Will Decline with the Project's Transition to Alternative Fuels. Staffing levels for permanent employees peaked at over 600 employees between 1988 and 1991.[17] Plant staffing levels have declined or remained fairly consistent most years since this period.

[17] Around 2009, IPA literature stated that IPA was an "economic engine" touting 485 jobs and half a billion dollars paid in lieu of Utah taxes. With the reduction in jobs and a reduced taxable value (until the new plant is operational), we conclude that IPA's economic impact is not what it once was.

Figure 1.1 IPP Staffing Levels Will Continue to Decline with the IPP Conversion to Alternative Fuel Units. The IPP plant is estimated to have around 120 permanent employees in 2025.



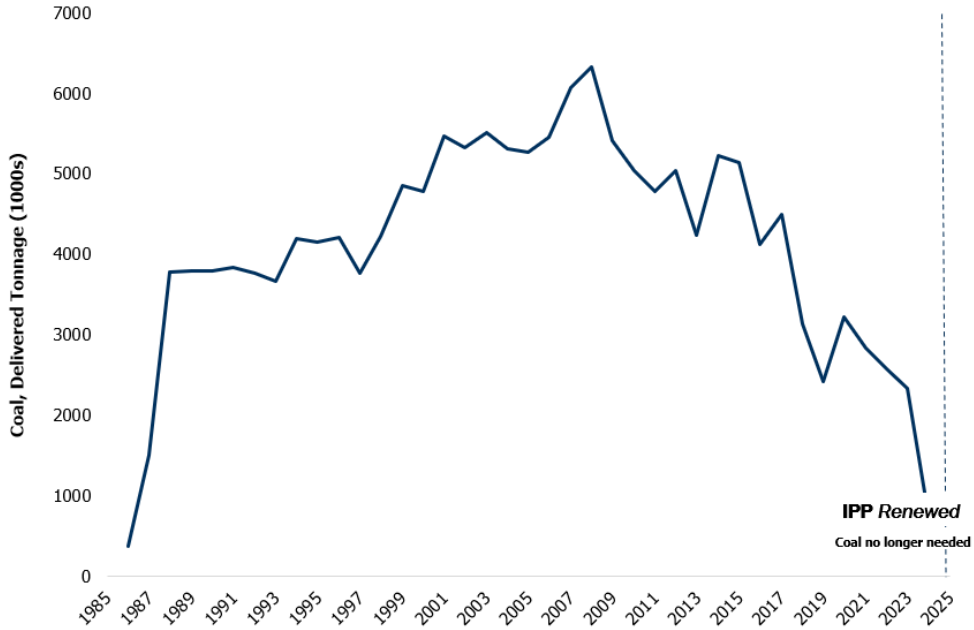
Source: Auditor generated from data provided by IPSC.

The Intermountain Power Service Corporation (IPSC) operates and staffs the plant and as of 2023 employs 320 employees.[18] Once the renewal project comes online in 2025, IPP plans to retain an estimated 120 workers to operate the natural gas units.[19]

IPP Will No Longer Prioritize Utah Natural Resources or Consume Fuel That Can Be Traced to Utah. IPA reported that it was not the coal contracts IPA entered into historically, but IPA's commitment to Utah leaders to only use Utah coal that kept them buying from Utah mines. IPA's general manager told us that he believes IPA fulfilled its commitment to exclusively use Utah coal. IPA reports that, in 1997, it received verbal approval from the governor at the time to be released from this commitment. Since 1997, a portion of IPP's coal was sourced out of the state. IPP's out-of-state coal purchases peaked in 2009, with out-of-state coal accounting for 26 percent of IPP fuel. However, even beyond 1997, a substantial amount of the plant's coal has come from Utah mines, measured as coal delivered, as shown in Figure 1.2.

[18] 320 employees work on either the coal plant or the renewal project and do not include construction workers for the new plant. Construction jobs have drastically increased during construction of the new plant but are expected to be eliminated once the project is completed around 2027.
[19] Around 20 additional workers are estimated to be working on the renewal project construction and the coal plant decommissioning for 2026 and 2027.

Figure 1.2 Utah Coal Delivered to IPP.* The Intermountain Power Project will no longer consume any coal once the new IPP units are constructed.



Source: Auditor Generated from data provided by IPA.
* Coal delivered in 2023 includes amounts from January to July. There is uncertainty on how much coal the project will use in 2024 and 2025 and we therefore do not provide an estimate for these years.

In the new project, participants plan to transition to a 70 percent natural gas and 30 percent hydrogen blend and be 100 percent hydrogen fueled by 2045. This will impact the indirect jobs IPP has historically supported, particularly the in-state mining industry.

Costs of the Project Also Include Water Consumption

IPP's use of water has been a topic of recent interest, as the project will use its water rights and shares in a historically different way. In 1979, IPA acquired water to operate four 750 MW coal fired generators. To facilitate this, according to project records, IPA purchased 27 percent of the total shares owned by the five regional water companies and additional ground water rights.[20] However, only two coal fired generators were constructed, leaving IPA with a large amount of excess water.[21] Altogether, IPP owns a combined annual average of 45,000-acre feet of water. Water that is not used for IPP operations has historically been leased to local farmers. Moving forward, the project will use the water for

[20] Due to incomplete water rights data, the Utah Division of Water Rights was unable to give us context for how much of Millard County's water rights IPP has purchased to date.
[21] IPA's two coal units were originally built at 820 MW per unit but have increased to 950 MW per unit.

hydrogen generation and storage, salt cavern development, and may lease excess to farmers or for other regional development.

IPA Members Still Largely Find the Project Beneficial

IPA owner municipalities have reported that they find IPP beneficial for their cities as a dependable source of power that can be utilized when needed.

We should note that IPA owner municipalities have reported that they find IPP beneficial for their cities as a dependable source of power that can be utilized when needed. We interviewed IPA Board members, many of which are also the utility managers for their municipalities. We also surveyed a broader group of owners of the project from all Utah municipalities. Overall, we found that the Utah participants, despite reportedly having cheaper alternative sources of power much of the time, like the option to purchase power only when they need it. IPA reported that the Excess Power Sales Agreement, which allows for Utah members to decide whether to take their entitlement shares of IPP power, is a great advantage for the Utah members. This allows Utah purchasers to secure the best energy costs for their residents. Despite this, we believe some advantages that the state envisioned in the creation of IPP will be diminished with the transition to natural gas and hydrogen units.

RECOMMENDATION 1.1

The Legislature consider whether the diminished benefits of the Intermountain Power Project are still desired and whether more action is necessary to direct the project moving forward.

1.2 Utah Participants Have Used a Minimal Amount of IPP Power

Historical documents indicate that Utah municipalities were looking for sources of available, affordable power and created the project with the intent to use IPP's electrical output. However, the Utah participants have used only 2 percent of the power produced by IPP since power production began in 1986. During this audit we solicited the services of Daymark Energy Advisors (Daymark)[22] to provide expertise and to review for appropriateness the rates that are

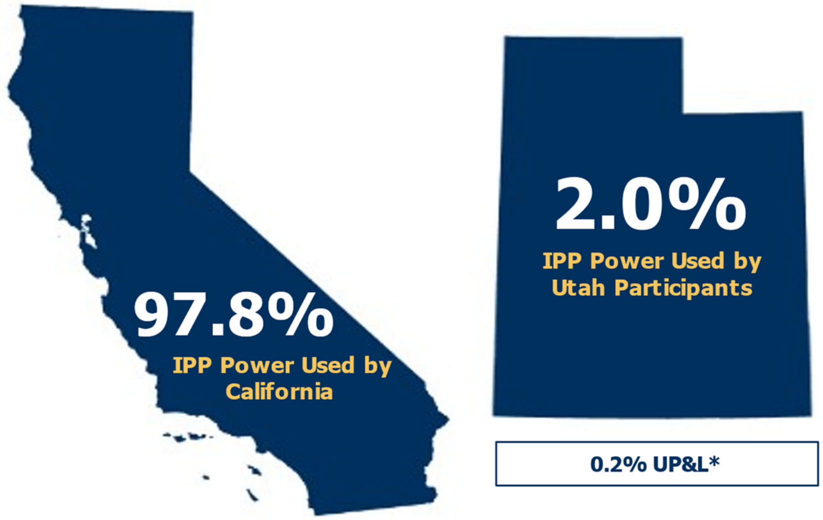
Utah members use IPP power when it is the most economical option.

[22] Daymark provides expertise to state regulatory agencies on matters including resource planning and ratemaking and has periodically assisted the Utah Division of Public Utilities. Their services were competitively bid.

charged to all project participants. The consultant determined that IPP's rates appear to be reasonable. Coinciding with our work, we found that Utah members use IPP power when it is the most economical option. We believe this is an additional example of how the project may not be providing the full benefits as planned.

IPP Participants Intended to Use IPP Power

When IPP was founded, Utah municipalities intended to use the power produced by the project. In 1970, the United States Bureau of Reclamation notified Utah municipalities of energy allocation changes for energy produced by the Colorado River Storage project. These changes would begin in 1976 and were anticipated to not meet the energy needs of the Utah members. After this notice, Utah municipal-owned utilities looked for access to available affordable power and met with some Southern California municipalities to discuss a joint power project. In 1974, the Utah and the California participants entered the IPP Membership and Study Agreement, which led to the creation and construction of the IPP coal generating units. In 1980, Utah members signed the Excess Power Sales Agreement to account for years they did not wish to take power and in 1983 the project was downsized from four units to two units. Many Utah member owners we surveyed report they like IPP as a type of insurance policy or backup plan to get the most affordable power possible. Since its creation, Utah municipalities and cooperatives have used just 2 percent of all IPP generated electricity.



Source: Auditor generated from IPA data.
**According to available documentation, Utah Power and Light's total power taken for 1986-2023 was 0.18% of all IPP generated electricity and was not attributed to California or Utah in this figure because we could not document to where power transmission was delivered. Utah Power and Light later became known as PacifiCorp and is no longer a participant in the project.*

IPP Rates are Generally Higher Than Other Power Sources Available to Utah Purchasers, but Affordable for California Markets

We believe that IPP has not fulfilled some original participant expectations for available affordable power. Our review of the project operations since the plant started generation in 1986 revealed that Utah participants have not taken IPP power for nearly half of the years the project has been operational. During this audit we solicited the services of Daymark to provide expertise and to review for appropriateness the rates that are charged to all project participants. The primary questions of the study were 1) Do the rates appear to be justified? and 2) Are the rates high enough to benefit California purchasers at the disadvantage of the Utah municipalities?[23] Acting in collaboration with our office, Daymark interviewed project personnel and reviewed budgets, actual costs, and applicable project contracts.

We believe that IPP has not fulfilled some original participant expectations for available affordable power.

In summary, the consultant concluded, and we concur, that rates appear to be reasonable when evaluating budgeted to actual costs and generation. They reported that, for the year with available comparison data, Utah Purchasers had better options that they would have chosen even if actual rates were known. This coincides with what we found in speaking with Utah members, who use IPP power when it is the most economical option. Daymark concluded that "we have found no evidence that IPA's slightly conservative budgeting over the 2013-14 to 2019-20 time period led to any regretted decisions by Utah purchasers." Daymark's full report, with additional details and questions answered, is found in Appendix D of this report.

While the consultant concluded that budgeted costs that build IPA's rates appear reasonable, we believe the rates produce some divergence in electrical consumption among in state and out-of-state participants. The rates IPP charges project participants are attractive enough to keep most California purchasers in the project. However, the rates have not been economical enough for Utah purchasers to want to buy the electricity for nearly half of the 38 years of the project.[24] Despite this, and as mentioned earlier, the Utah participants that we

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[23] The consultant was not able to fully address this question because of some data limitations. However, Utah owners reported to us that they do not take IPP power in favor of more economical alternatives.

[24] Project resources help to offset the costs for electrical purchasers. These include the revenues from leases of IPA water purchased from Millard County residents and others, the sale of fly ash, salvage sales, and other items. California entities that have purchased nearly 98 percent of the electricity over the life of this project have primarily benefitted from these offsets. However, the revenues from these resources were $4.12 million on average between 2018 and 2022, which represent less than 1 percent of IPP's average budget over that same period.

spoke with during this audit were in favor of the project and signed contracts to continue the project.

1.3 Unless there are Changes from the Legislature, IPA Will Continue to Operate Without Specific Commitments to Benefit Utah and Its Communities

We believe that when IPA was founded, there were specific benefits to the state that may have justified its creation as a governmental entity. In 2017, IPA entered into a new round of contracts with Utah and California municipalities and rural cooperatives to operate IPP until 2077. With 50-year contracts signed, IPA's operations will continue long into the future, but without some of the original and specific commitments to the state. The Legislature should decide what specific benefits similar to the original commitments, if any, IPP should provide to local communities and to the state as a governmental entity moving forward. The Legislature also should consider other governance options, such as maintaining the status quo or options discussed in Chapter 2 and Chapter 3 of this report.

IPA Is a Governmental Entity, Not a Private Entity. When it was created, IPA was established as a form of "governmental organization" in a joint action among 23 Utah municipalities. IPA is not a private investor-owned entity; rather it is owned by Utah municipalities. In short, ***Utah Code*** establishes IPA as a governmental entity.[25] However, IPA has not consistently been viewed as a governmental entity, which is further discussed in Chapter 3 of this report.

> ***Utah Code* establishes IPA as a governmental entity.**

IPA's Political Subdivision Status Is Important for Project Success, But Not Reliant on Continuing Benefits to the State. IPA's ability to provide electrical services in and out-of-state among many cooperating municipalities and to be financed through municipal bonds are powers made possible through provisions granted in ***Utah Code***. For example, IPA is now issuing a series of bonds that total $1.65 billion, 93 percent of which are tax exempt. Although IPA's financing was not within the scope of this audit, we believe that tax-exempt municipal bonds provide significant benefit. IPA acknowledges that the political subdivision status, and accompanying benefits, are important for project success. Other exemptions, discussed in Chapter 3 of this report, have further benefited the project.

[25] ***Utah Code*** 11-13-203, 11-13-103 (19)

It is unclear whether the early commitments of the project were contingent on the governmental status given to IPA from the beginning. However, unlike how the project started in 1977, we could not document any requirements for IPA's operations as a political subdivision of the State of Utah. IPA's founding commitments for coal and staffing previously provided a level of responsibility for IPA to benefit the state and local communities.

IPA's founding commitments for coal and staffing previously provided a level of responsibility for IPA to benefit the state and local communities.

Given IPA's shift from its original direction and its planned operations until at least 2077, the Legislature has policy questions to consider. For example, we believe the Legislature can consider whether to require terms for IPA and its work with IPP conversion to natural gas and hydrogen units and other future developments as IPA continues to operate as a political subdivision of Utah. The Legislature also can maintain the status quo or consider other state-level governance options found in Chapter 2 and Chapter 3 of this report. For example,

- **Chapter 2** makes recommendations to the Legislature to consider strengthening governance amid out-of-state influences and requiring goals, targets, and measures to be created and reported.

- **Chapter 3** makes recommendations to the Legislature regarding reporting requirements as well as the degree to which IPA should have transparency and accountability for its operations.

RECOMMENDATION 1.2

The Legislature consider what requirements, if any, Intermountain Power Agency should fulfill related to its political subdivision status.

CHAPTER 2 Summary

The Legislature Should Consider Ways to Strengthen IPA Governance and the IPA Board Should Do More to Provide Direction Amid Outside Influence

BACKGROUND

California has planned well for regional success. Opportunities exist for Utah participants to improve their planning and energy leadership. Without a strong Utah plan, California participants have directed the project in important ways. Governance of IPA can be strengthened. The Legislature should consider whether it wants to statutorily require stronger state-level governance of the project. The IPA Board also should provide project leadership by formalizing its priorities with strategic vision, goals, targets, and measures.

FINDING 2.1
California Purchasers Have Greatly Influenced Project Direction

RECOMMENDATION 2.1
The Legislature consider the appropriate level of influence that an out-of-state government entity should have on the operations of a Utah government entity.

FINDING 2.2
The IPA Board Does Not Provide Governance in Alignment with Some Best Practices

RECOMMENDATION 2.2
The IPA Board establish direction, preferences, and commitment to the project and state of Utah by creating a long-term strategic plan.

RECOMMENDATION 2.3
The Legislature consider requiring IPA to set goals and targets to establish measures of success and publicly report them moving forward.

RECOMMENDATION 2.4
The IPA Board establish stronger Utah-specific governance and more transparently share how its decisions relate to those of the Coordinating Committee.

FINDING 2.3
LADWP Has Long-Term Plans That Involve IPP and the Surrounding Region

NO RECOMMENDATION

FINDING 2.4
The Legislature Can Consider Providing Stronger State-Level Governance of the Project

RECOMMENDATION 2.5
The Legislature consider the desired level of IPA governance to determine if changes are desired.

CONCLUSION

The IPA Board can do more to account for Utah's preferences. The board should develop stronger long-term planning, goals, targets, and measures to better understand their preferences and to maintain benefits amid outside influences. The Legislature can also consider whether to provide additional oversight of the project.

Chapter 2
The Legislature Should Consider Ways To Strengthen IPA Governance and the IPA Board Should Do More To Provide Direction Amid Outside Influence

2.1 California Purchasers Have Greatly Influenced Project Direction

Improved governance from Utah participants, including stronger leadership, planning, and transparency are needed within the Intermountain Power Project (IPP). We found that, by design, no single entity provides the sole leadership and direction for the project. Still, despite what appears to be good collaboration among participants,[26] California purchasers have strongly influenced key decisions and the overall direction of the project. We note that IPP has brought multiple instances of positive economic impacts to Utah and local communities over many years. However, California purchasers' influence has also led to some repeated negative economic impacts on Utah communities. While it is important to note the positive economic impact the project has had on Utah and its communities, the purpose of this report is to provide the Intermountain Power Agency (IPA) and the Legislature with recommendations to minimize or mitigate the risk where negative economic impact has occurred.

For example, California purchasers will have a 79 percent vote among purchasers on the Coordinating Committee, where an 80 percent vote is required for any action, for the next 50 years. The Legislature could consider the desired level of influence that an out-of-state government should have on the operations of a government entity of the State of Utah.

California Purchasers Have Influenced Project Direction, And Reduced Utah Benefits, In a Few Important Ways

California purchasers have a 79 percent voting share in the Coordinating Committee, where major project decisions are made.[27] While we did not find any instance where California participants acted in violation of ***Utah Code***, we do highlight three instances where California participants had a major influence on the operations and direction of this project. These examples suggest areas where

[26] See the Introduction of this audit report for a list of all entities participating in this project.
[27] California purchasers have paid for the majority of project costs and use most of the power.

it was not clear what Utah-specific governance was provided, including to maintain the early project commitments mentioned in Chapter 1 of this report.

- **Shifts in Markets Led Californians to Request Reductions in Plant Staff and Utah-Specific Coal.** Deregulation in the utility industry in the late 1990s created a potential financial crisis, where IPP was viewed as "non-competitive" among California power purchasers. The Los Angeles Department of Water and Power (LADWP) presented two primary options to increase IPP's competitiveness: (1) reduce debt, and (2) reduce costs at the plant.[28] The project did both. Despite the operating agent's continual use of a third-party consultant from 1986 to monitor appropriate staffing levels, IPP reduced plant staff by 14 percent, the largest one-year decrease in staffing over the life of the project.[29] Also critical to IPP cost reductions, IPA reportedly requested from the governor at the time to be released from its commitment to exclusively purchase Utah coal. It is not possible to know if this request would have been made if stronger Utah governance had been in place. However, it is certain that the California purchasers were strongly in favor of this change. Furthermore, the move away from Utah coal negatively impacted the project's original commitment to provide economic development for rural communities.

California pressures led to some impacts to the early Utah-specific commitments of the project.

- **California Participants Would Not Allow a Third Unit at IPP to Meet Utah Energy Needs.** In the early 2000s a group of electric utilities expressed the need for additional sources of energy for some Utah members. Major groundwork was laid to allow IPP to provide this electricity through a third generating unit. Multiple efforts were made to push this forward: planning, the passage of SB 29 (2002 General Session) which extended an interlocal's life beyond 50 years, and a commissioned study through the University of Utah. The study found that a third unit would "pump $111.0 million annually into the local economy," increase

[28] Other options were considered, such as obtaining a tax reduction, re-evaluating alternatives for fuel sources, reconfiguring the entire project to include other power purchasers, and permanently laying off some Utah entitlement shares.
[29] We acknowledge the business need to reevaluate operations and to periodically adjust staffing numbers. However, third-party services to monitor appropriate staffing levels indicates that this reduction was primarily to reduce costs and not merely for operational effectiveness and efficiency. While documentation shows that California participants pushed for these cost reductions, we acknowledge that project savings helps decrease costs for all project participants.

state tax revenues, and produce additional jobs in Utah for construction and mining. However, California participants would not support, and LADWP reportedly blocked, the project from moving forward. Meanwhile the California participants have contracted to utilize the project's infrastructure to receive renewable power from other sources, including the Milford Wind Project in Millard County and Beaver County. We cannot know whether the project would have moved forward if California had supported the project. However, we can conclude that Utah participants were limited in directing the project for Utah's benefit. We recommend that the Legislature consider reviewing IPA's ability to govern and influence this project.

Utah is limited in its ability to use the project to provide additional benefits to the state.

- **California Energy Requirements Forced the Project to Be Carbon-Free or Eventually Lose Its California Purchasers.** In 2002, California passed environmental law[30] requiring that all generating resources meet new emissions limits. Additional California legislation created timelines for renewable and carbon-free thresholds, including 100 percent zero-carbon resources by 2045. California law requires California energy sources to meet standards or have environmental controls, which IPA determined was not technically possible or economically feasible. In 2009, IPP participants commissioned studies to develop an alternative to the coal units. These studies led to the IPP Renewed project, which will migrate from a coal-based power plant to a natural gas and hydrogen-based generation facility. Ultimately, project participants were faced with the choice of either supporting California's environmental standards or eventually closing the coal power plant. We could not determine Utah's preferences in this matter—other than to remain in the project and keep new contract provisions intact.

California Purchasers Will Continue to Have Large Voting Rights on The Project

For the next 50 years, California purchasers will maintain a collective 79 percent vote among members on the Coordinating Committee, where an 80 percent vote is required for action. Because of the 80 percent voting threshold, California participants cannot unilaterally make decisions. The vote of Utah purchasers, although representing a smaller voting percentage, is needed for action (see

30 California Senate Bill 1078 (2002)

Appendix A for individual voting rights). Despite this, and as demonstrated above, California can continue to influence the project's operations and direction.

Further, we could not document an instance where the IPA Board provided a check on the Coordinating Committee (where California and Utah members make project decision) through a vote that did not support a decision made of the Coordinating Committee. IPA's general manager stated in an email that "The IPA Board has not needed to withhold its approval of IPP Coordinating Committee decisions because IPA member interests are addressed before the matter is presented to the IPA Board." Also, we were not allowed in IPA Board closed meetings and IPA did not provide us with closed meeting minutes as requested.[31] Therefore, with little transparency, we could not document that the IPA Board has done anything, aside from negotiated terms in contracts, to provide a check on the Coordinating Committee decisions and voting.

Transparency is limited and we could not document instances where the IPA Board opposed decisions made by the Coordinating Committee.

Considering the three examples discussed previously, we believe there is cause for some concern about the influence California participants have on this project and the unknown nature of IPA governance as a Utah governmental entity. Still there is some effort to balance interests where possible. For example, IPA's general manager explained there was a deliberate effort to maintain the balance of power by keeping the California voting block below the 80 percent voting threshold. This was structured to require either a Utah municipality or power cooperative vote to take any action. IPP participants have attempted to balance the project governance so that no one entity can drive all important decisions.

There is cause for some concern with California's influence on a government entity, including LADWP's role as operating agent and largest customer.

We further believe that the lines between LADWP as the largest customer, operating agent, and project manager could become blurred.

- LADWP (as the operating agent) oversees project expenses and the day-to-day operations of the plant. They also make recommendations to the Coordinating Committee and IPA Board and oversees the budget creation, subject to IPA Board approval.

[31] IPA sent us the meetings minutes for only one closed board meeting between October 2022 and September 2023. However, this came five months after we requested it and after this chapter was already in draft form. IPA considered all other closed board meeting minutes over the last five years to be "privileged" and did not provide them to the auditors.

- LADWP (as the largest customer), has the largest vote on the Coordinating Committee, with voting rights that have increased from 45 percent to 71 percent over the life of the project.

An LADWP representative participates in most meetings of the IPA Board (a Utah member board) and Coordinating Committee (a joint California and Utah member committee) and can influence operations from both perspectives.[32] IPA periodically audits the operating agent's costs and billings to confirm operating agent compliance with project agreements. Further, some IPA staff and at least one project participant stated their satisfaction with LADWP's services. Nevertheless, California participants, including LADWP, will continue to have a major influence on this project moving forward.

Good governance goes beyond balancing the power dynamic of the project. We believe Utah's desired outcomes should be defined, monitored, and achieved.

Further, good governance goes beyond balancing the power dynamic of the project. Governance plays a pivotal role in ensuring that outcomes are defined and achieved, and that transparency, accountability, and efficiency are continually monitored and evaluated. We believe stronger governance from a state- and IPA Board-level is needed to ensure Utah's preferred outcomes are defined and achieved.

RECOMMENDATION 2.1

The Legislature consider the appropriate level of influence that an out-of-state government entity should have on the operations of a Utah government entity.

[32] IPA explained that LADWP, as IPA's agent, has a fiduciary duty to IPA through its contracts. As operating agent and project manager, LADWP cannot take actions inconsistent with those duties irrespective of its interest as a purchaser.

2.2 The IPA Board Can Improve Its Governance To Better Align with Some Best Practices

Despite the large California influence on this project, the IPA Board does not lead with its own planning or preferences. Without proper planning, the IPA Board may facilitate power needs for those outside the state without adequately considering future, Utah-specific needs. In *A Performance Audit of State Energy Policy* (Report #2023-06), our office found that a lack of planning, goals, and targets has led Utah "to be responsive to other states' policies." **We believe that IPA is in a similar situation to be influenced by outside pressures in five important ways:**

1) **The IPA Board does not have strong planning, goals, targets, or measures**
2) **It is not always clear which body makes which project decisions**
3) **Most IPA responsibilities have been delegated**
4) **The IPA Board is responsive to project participants on the Coordinating Committee, which could shift the project away from Utah benefits without defined goals or preferences**
5) **IPA's mission differs from the mission of IPP Renewed**

Considering these factors, the IPA Board can do more to strengthen its governance and leadership, to establish and maintain its preferences, all while accounting for outside pressures.

The IPA Board Needs Strong Planning, Goals, Targets, and Measures to Guide Decisions Amid Outside Pressures. The IPA Board should have a strong, long-term plan to drive its and Utah's interests and further its statutory commission to balance benefits to participants and to the state. Although IPA's organizational agreement has reflected a commitment to Utah's economic benefit since 1977, Chapter 1 of this report demonstrates a diminishing benefit to the state over time. Further, California's influence may continue to place pressures on the IPA Board's decision making in a way that counters the original vision for the project.[33]

[33] We understand the need for an entity to adapt to market and regulatory forces. However, the IPA Board should do better to account for outside pressures by developing its own long-term plan, goals, and measures to ensure Utah-specific preferences are achieved.

IPA has a mission, vision, and values that may prove helpful in guiding some board decisions, but it does not have other long-term planning documents. Best practices for long-term planning indicate a good plan is more than these basic statements.

Planning Best Practices

Long-Term Planning:

- *Provides the structure, long-term vision, and objectives of an organization.* ***When carefully crafted plans are implemented, they steer an organization to achieve its desired results. Developing a strategic plan can clarify organizational priorities and define what the agency seeks to accomplish.***
  – OLAG Best Practices Handbook (Report# 2023-05)

- ***Should include the organization's mission, vision, values, goals, objectives, strategies, performance measures, and annual work plan.*** *Strategic plans should be reviewed and updated at least every four years.*
  – Utah Governor's Office of Planning and Budget, Guide to Strategic Planning

- ***Should identify external factors that could significantly affect the achievement of goals and objectives and should solicit and consider the views and suggestions of its stakeholders, including government bodies.***
  –Federal Government Accountability Office, Agency Strategic Plan

Specific to the energy industry, some utilities are required to submit an integrated resource plan (IRP), which is a decision-making tool and planning document.[34] These documents are used to transparently roadmap the utility's direction, targets, and plans for future investments. IPA does not provide an IRP to Utah's Public Service Commission because it says this is a function of its members and it is not statutorily required. Whatever the format, the IPA Board should develop a long-term plan to set organizational priorities, include performance measures, consider external factors that could impact the achievement of goals, and solicit input from its Utah-specific stakeholders.

[34] An IRP is a roadmap for meeting the utility company's objective of providing reliable and least-cost electric service. ***Utah Code*** 54-17-102 specifies what an IRP should contain.

RECOMMENDATION 2.2

The IPA Board establish direction, preferences, and commitment to the project and State of Utah by creating a long-term strategic plan.

With the absence of IPA accountability measures, this report largely considers the successes of the project solely based on original project commitments.

Accountability tools such as goals, targets, and measures are critical for influencing activities and decisions. This report largely considers the successes of the project based on agreements made at the beginning of the project. We attended several open board meetings and reviewed project documents and could not identify that the IPA Board has any goals, targets, and measures that drive its decisions. We believe IPA's lack of accountability tools may allow outside entities that have better planning and statutory targets to dictate the direction of the project.

Best practices compel the use of goals and the measurement of outcomes. For example, our office found that performance measures drive an organization toward its objectives and goals, and influence activities and decisions.[35] Goals, targets, and measures help improve overall operational effectiveness, efficiency, and accountability. It is unclear how our office—or the Legislature—can determine the future success of IPA without appropriate measures in place.

IPA explained that it makes decisions in response to its customers, many of which are the California participants. We believe that California participants play an important role in this project, and their voice should be considered. Further, we acknowledge that adjustments may have been needed at times to satisfy all cooperating parties of the project. However, without the IPA Board having formalized goals, outcomes, and Utah-specific preferences in a long-term plan, the IPA Board can do more to ensure it directs the project in alignment with its preferences and remaining Utah-specific commitments through IPP Renewed. We therefore recommend that IPA strengthen its governance to provide these elements to guide future decision-making.

RECOMMENDATION 2.3

The Legislature consider requiring Intermountain Power Agency to set goals and targets to establish measures of success and to publicly report them.

[35] Report# 2023-05 *The Best Practice Handbook, A Practical Guide to Excellence for Utah Government*.

It Is Not Always Clear Which Body Makes Which Decisions. IPP governance is further complicated by its decision making and approval process. IPP has two voting bodies, the IPA Board and the Coordinating Committee, an operating agent, and a project manager. IPA's general manager explained that IPA Board approval is required for most matters that come before the IPP Coordinating Committee.[36] Some decisions related to IPP's power generation and transmission are decided exclusively by the Coordinating Committee. In certain situations, the IPA Board may act without the approval of the Coordinating Committee, although IPA reports this authority has never been exercised. In its role as operating agent, LADWP has major influence in final decisions through the recommendations it makes to both voting bodies.

Most IPA Responsibilities Have Been Delegated to the Los Angeles Department of Water and Power. IPP contracts govern the responsibilities and relationships for participants of the project. In these contracts, IPA has delegated all of its powers, except for the financing of the project, to LADWP to perform. This is summarized in the table below (responsibilities in **bold** have been delegated).

IPA Powers (Power Sales Agreement)	Powers Delegated to LADWP (CMOA Agreement)[37]
"IPA will *be responsible for* **planning**, **negotiating**, **designing**, financing, **constructing**, **insuring**, **contracting for**, **administering**, **operating**, and **maintaining** the Project…"	"IPA has agreed to appoint Los Angeles as Project Manager and Operating Agent to *be responsible for* **planning**, **negotiating**, **designing**, **constructing**, **insuring**, **contracting for**, **administering**, **operating**, and **maintaining** the Project…"

[36] IPA's general manager explained that approval from the IPA Board and the IPP Coordinating Committee is needed for decisions to repower IPP with natural gas, to approve budgets for IPA and IPP, to enter into or modify contracts, and to plan for the decommissioning of IPP.
[37] The Construction Management and Operating Agreement was entered into in 1983. The contract establishes LADWP as the operating agent and project manager and, as IPA's agent, outlines LADWP's responsibilities.

We understand that a part-time board cannot perform many day-to-day tasks; however, it could potentially hire its staff to fulfill some of these duties. IPA, as a political subdivision that owns a project with assets valued over a billion dollars, has delegated most of the operational responsibilities of its ownership.[38] There may be cases where IPA retains some of these functions, but we could not find documentation aside from the contracts mentioned earlier. In our review, it was not always clear to what degree IPA Board and staff are involved in or understand the power plant's operations and management.

As a practice, the IPA Board vote generally comes after the coordinating committee votes.

Shifts in Direction May Occur as the IPA Board Is Responsive to the Coordinating Committee. The Power Sales contract requires the IPA Board to "timely request and duly consider the recommendations of the Coordinating Committee…provided however that such recommendations shall not be legally binding on IPA." Although the contract does not specify which body votes first, IPA legal counsel stated that this language has led the IPA Board to wait to act until the Coordinating Committee deliberates and votes on an action. We note that there is some value in this practice, as it allows all project participants to be aligned before voting. However, this also has the potential to create an environment where the IPA Board is overly reliant on project participants' views and may prioritize the wishes of the Coordinating Committee ahead of its own.

IPA could not document any instance where the IPA Board voted against a decision made by the Coordinating Committee. IPA's general manager explained that consensus is developed prior to the vote. Notably, the level of governance we see in most audits of governmental entities is more visible, or we have access to review it further. However, with IPA, visible governance is limited. Accordingly, we have not seen that the IPA Board has demonstrated its use of voting to ensure its unique values and priorities are heard.

[38] IPA reported that LADWP was selected because they are experienced in constructing and operating power plants and the Utah purchasers saw an opportunity to create a resource that was beyond their capacity to finance and construct.

Differences in IPA's Mission and That of IPP Renewed May Weaken Future Decision-Making. As shown in the following graphic, IPA's mission[39] shows a commitment to the economic benefits of the communities in the state. Meanwhile, the IPP Renewal mission statement focuses on green energy for its stakeholders, with stakeholder and environmental "safety" as its highest value. This can be confusing, as IPP Renewed is the operational side of IPA's mission. Though we have not documented any issues with this difference, it could result in future misalignment in participant decisions.

In alignment with best practices, IPA should develop long-term planning, goals, and measures to help in decision-making and to drive Utah-specific interests.

IPA's Mission

"To utilize its assets to provide reliable, economic, and legally compliant energy products and services for the benefit of its purchasers, members, and other stakeholders, which includes supplying a ready energy resource reserve and ***supporting direct and multiplier economic contributions to rural communities and the state."***

IPP Renewal Project Mission

"To ***build an economical green energy hub*** *for our stakeholders with reliable, operable, and maintainable generation and transmission,* ***embracing the safety of our people, communities, and environment as our highest value."***

IPA does not have a long-term plan to maintain the priorities of its Utah participants and the State of Utah. The IPA Board's responsiveness to the Coordinating Committee and differences in mission statements may further lead to a shift in IPA's not-yet-formalized desired direction for the project. In alignment with best practices, IPA should develop a long-term plan that communicates direction, preferences, and accountability and that guides the IPA Board's decision making moving forward. If the IPA Board does not drive Utah's interests, no other project body will.

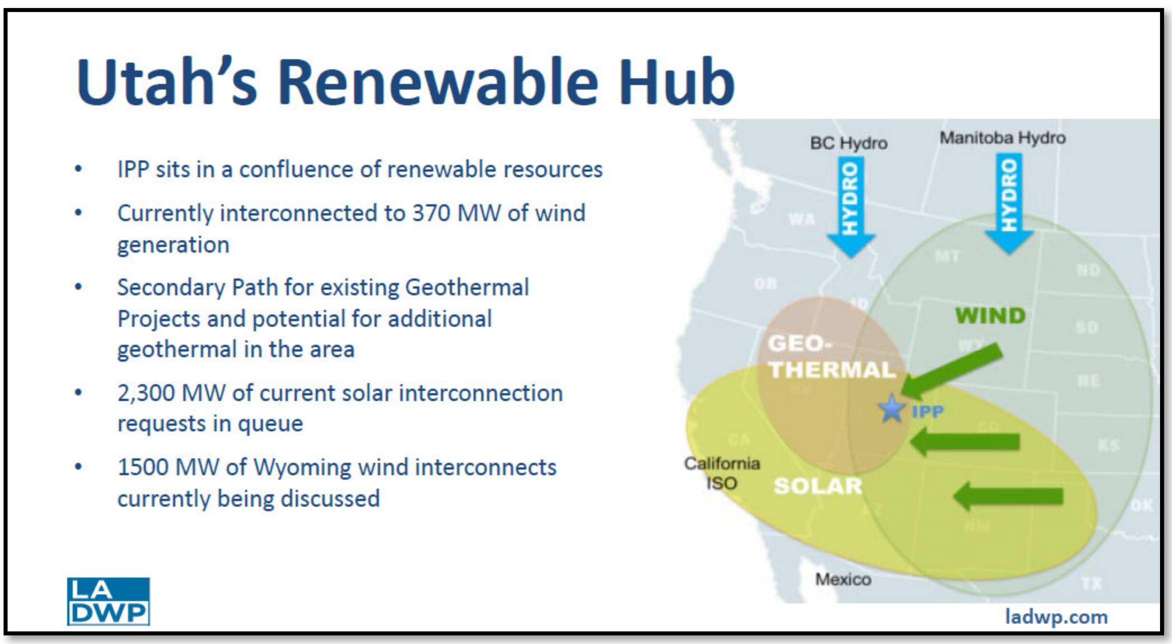
[39] IPA's **vision statement** is to "seek to advance development of an energy hub and leverage regional cooperation to identify and capitalize on opportunities to realize the potential for generation, storage and transmission toward net-zero-carbon energy." IPA's **values statement** is to "strive to employ ethical business practices, comply with applicable laws and regulations, honor contractual obligations, and provide a safe work environment." In 2019, IPA updated its policy on ethical business conduct to further guide decision-making.

RECOMMENDATION 2.4

The IPA Board establish stronger Utah-specific governance and more transparently share how its decisions relate to those of the Coordinating

2.3 LADWP Has Long-Term Plans That Involve IPP and the Surrounding Region

Utah-specific governance is especially needed to account for external pressures of the project. LADWP will continue to have the largest voting percentage of the project, with a 71 percent voting right when IPP Renewed launches in 2025. In addition to its large stake in the project, LADWP has major plans for the region. In a December 2019 Los Angeles city council meeting, LADWP made a report on "Utah's Renewable Hub." In the presentation, LADWP explained that IPP is a necessity to meet LADWP's 100 percent renewable goals and is central to the development of renewable energy. Project representatives shared their plan to deliver power from wind, solar, and geothermal sources through the IPP transmission system in Millard County to Los Angeles.[40] The following is a slide from that 2019 presentation which outlines their plans for the region.



Source: Los Angeles Department of Water and Power, Board of Water and Power Commissioners Meeting, December 2019.

[40] Salt caverns located near IPP provide additional opportunities for energy storage and the development of a renewable energy hub.

California participants have agreements to use IPP, including:

- The TransWest project will transmit wind power from Wyoming through IPP facilities to deliver power to LADWP and other southern California municipal utilities. The federal Bureau of Land Management approved this action earlier in 2023.
- Milford Wind Phase 1 and 2 in Milford, Utah. The projects commenced in 2009 and 2011, respectively, and combine to provide 306 MWs to Los Angeles, Burbank, Glendale, and Pasadena.
- Though not benefiting a specific participant, one element of IPP Renewed is the multimillion-dollar modernization of the 2,400 MW capacity Southern Transmission System (STS). The STS provides the current link from IPP to Southern California and the western US power grid.

California participants have demonstrated strong goal setting and planning to ensure their preferences are fulfilled and that there are opportunities to further develop California standards for renewable energy. Transitioning from a coal-generating capacity of 1,800 MWs to 840 MWs with IPP Renewed, the STS (which delivers electricity from IPP to LADWP's converter station at Adelanto) has the capacity for approximately 1,600 MWs of additional capacity outside of what IPP can generate.

California will have more regional influence and more Utah-specific governance is needed to set Utah-specific preferences and desired outcomes.

IPA reported that these long-term plans are governed by contracts and the federal government, and IPA has a limited role in interconnections and cannot deny access. We are not proposing IPA deny access to IPP generation and transmission. We are noting that LADWP has strong planning for the future and IPA has no formalized long-term planning. Long-term planning can better protect Utah's interests from outside influences, and this further supports the need for a long-term strategic plan as stated in Recommendation 2.2 of this report.

2.4 The Legislature Can Consider Providing Stronger State-Level Governance of the Project

IPA governance is not typical of what we see in most Utah governmental entities. The governance that was visible to us appears to be weak, and our audit team was barred from viewing meetings where potentially stronger governance by IPA occurred. We believe the Legislature could consider steps to strengthen IPA governance. Furthermore, at the 2022 IPA annual meeting, it was referenced that the Legislature has created unnecessary oversight of the project. However, it is up to the Legislature to determine IPA's governance moving forward.

The Legislature can consider changes related to IPA's governance, with many policy options available.[41] For example, the Legislature can amend existing statute to increase transparency, reporting, and oversight requirements, create a new governmental entity to oversee the project's operations, or change IPA's status to require operation as a private entity. The following figure outlines options, with some examples of potential action items that the Legislature could consider related to IPA's governance. The purpose of these examples is to provide potential options available to the Legislature, any changes could have an impact on current operations and/or contractual obligations.

Change IPA's Governance Requirements In Existing Statute

Potential Legislative Action- Add new reporting or transparency requirements, restrictions on future operations, or legislative appointees to the IPA Board.

Create a New Entity to Provide Legislative Oversight Over IPA

Potential Legislative Action- Create a new government entity, with outlined requirements, to oversee or manage IPA operations.

Require the Privatization of IPA's Operations

Potential Legislative Action- Change IPA's status to require operation as a private entity.

There is precedence for the Legislature adjusting a local entity's governance structure, as it did this with the Utah Transit Authority in the 2018 General Session. The Legislature in SB 136 codified and reduced UTA's board of trustees from 16 members to three full-time members. The Legislature also specified the appointment of trustees is to be made by the governor with the advice and consent of the Senate, outlined powers and duties of the board members, and specified the process by which trustee compensation will be determined. Though IPA is an interlocal entity and not a local district like UTA, the project is

[41] We note that prior Utah Legislature's allowed for IPA's governance through the legislative process. However, these prior decisions do not preclude the current Legislature from considering many of the policy options provided in this report.

managed by local entities, and the Legislature may provide governance adjustments where desired.

IPA expressed concern that legislative changes could potentially interfere with project contracts and bond covenants. Understandably, the pros and cons of these potential changes should be carefully weighed. Ultimately the policy decision is vested in the Utah Legislature. We therefore recommend the Legislature consider IPA's governance structure.

RECOMMENDATION 2.5

The Legislature consider the desired level of Intermountain Power Agency governance to determine if changes are desired.

BACKGROUND

The Intermountain Power Agency was established as a political subdivision of the state and has benefitted from that status, yet it has not been consistently treated as such. There are statutory exemptions specific to IPA that allows for limited legislative governance related to accountability and transparency.

FINDING 3.1
The Intermountain Power Agency Has Benefitted as a Governmental Entity

NO RECOMMENDATION

FINDING 3.2
The Intermountain Power Agency's Statutory Governance Structure has Unique Exemptions That the Legislature Could Consider Reviewing

RECOMMENDATION 3.1

The Legislature consider how accountable the Intermountain Power Agency should be in its communications with the Legislature and how legislative reporting should occur in the future.

RECOMMENDATION 3.2

The Legislature consider the degree to which taxed project entities should have transparency and accountability for their operations.

CONCLUSION

Utah Code includes exemptions for interlocal entities and a considerable amount is solely dedicated to IPA as a taxed interlocal. IPA is a government entity and yet is the only in Utah afforded such a collectively unique governance structure.

Chapter 3
Intermountain Power Agency Has Historically Benefitted as a Government Entity with Limited Statutory Governance

3.1 Intermountain Power Agency Has Benefitted as a Governmental Entity

From the beginning of the project, ***Utah Code*** established Intermountain Power Agency (IPA) as a political subdivision of the State of Utah. As a government entity IPA benefits from that status but has not always been viewed as a government entity. Also, IPA has historically leveraged its taxed interlocal position for specific legislative treatment. IPA believes this treatment is provided because it does not receive public funds. IPA is unlike any other entity we could document in the state, and while there may be reasons for IPA's uniqueness we believe the state-level governance of this project should be reviewed.

IPA receives substantial government benefits while also being exempt from common elements of governance.

As mentioned in Chapter 1, ***Utah Code*** created IPA as a governmental entity. Some uncertainty about how to treat this entity has resulted in IPA receiving substantial governmental benefits while also being exempt from common elements of governance. For example,

- In the 2021 General Session floor debates for Senate Bill (S.B.) 2002, legislators debated on whether IPA was a governmental entity or private entity.

- IPA believes that because it is unlike any other entity (being a taxed interlocal and project entity), it pays taxes but does not receive taxpayer money, that it should be treated differently from other interlocal entities. IPA representatives have spoken before the Legislature supporting its role as a political subdivision of Utah, while simultaneously seeking exemptions to government oversight and reporting.

Ultimately, it is for the Legislature to decide what benefits and exclusions IPA should be afforded. From a governance perspective, we believe additional review and consideration of IPA's status is important for how this project is governed moving forward. The following are some of the benefits IPA receives as a government entity:

Municipal Tax-Exempt Bonding

IPA has issued billions in municipal bonds between its first and subsequent rounds of financing. In 2022, 93 percent of all IPA's financing came from tax-exempt bonds that were only allowed because of its political subdivision status.

Unique Tax Structure

IPA pays a fee in lieu of ad valorem tax instead of property tax. IPA receives a municipal exemption to account for the portion of power used by the Utah municipal power systems owned by IPA members.*

Governmental Immunity

IPA, as an interlocal entity, is statutorily protected under the Governmental Immunity Act of Utah. IPA's governmental immunity is referenced in its service contracts with vendors.

Public Employees Health Plan

IPA uses Utah government employee health benefits through the Public Employees Health Program (PEHP).

Source: Auditor generated.
**There was some uncertainty on the use of this exemption, many of the benefits were provided to the California purchasers. The Utah Legislature amended the statute in 2022 to ensure no more exemption benefits went to California.*

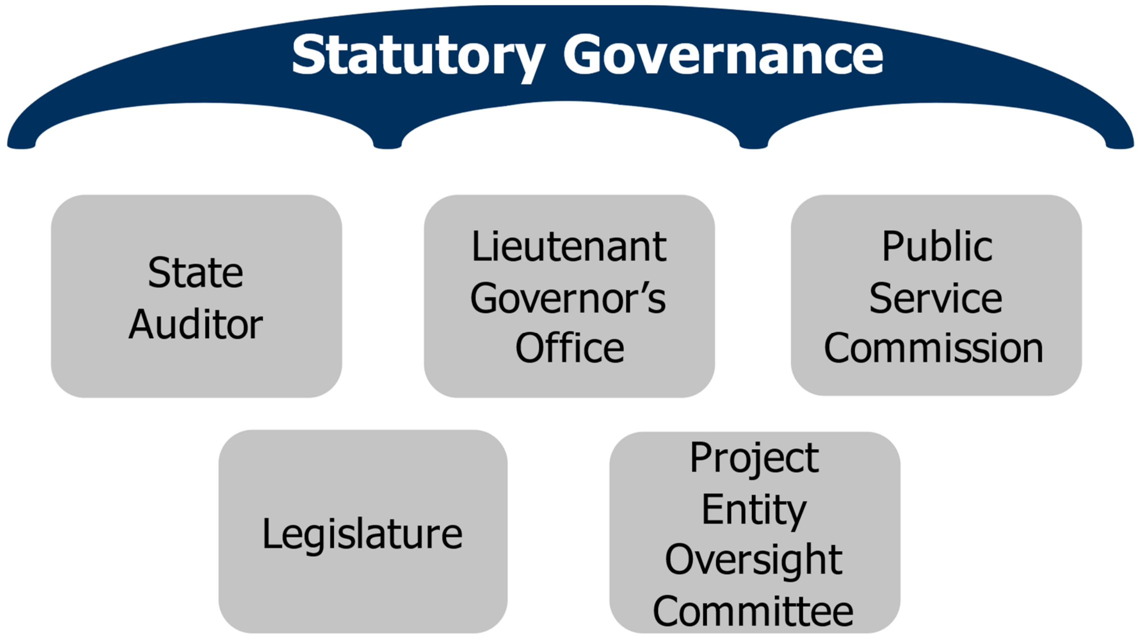
3.2 Intermountain Power Agency's Statutory Governance Structure Has Unique Exemptions That the Legislature Could Consider Reviewing

IPA has been granted statutory exemptions that allow for limited state-level governance, including limited accountability and transparency. IPA is a government entity yet has unique governance exemptions. IPA plans to operate at least until 2077 and this audit report poses a policy question for the Legislature to consider on whether the current level of oversight and governance is desired for IPA over the next 50 years. Past Legislative decisions on oversight and governance do not prevent a current legislature from reviewing the degree of governance and making changes if desired. We recommend that the IPA's

IPA plans to operate at least until 2077. This report identifies areas that the Legislature could strengthen governance moving forward.

governance structure, as defined in statute, be reviewed to ensure it appropriately reflects the Legislature's desired structure.

Effective governance broadly establishes the structures and processes necessary to direct, inform, manage, and monitor an organization. The following graphic highlights the areas in this chapter where IPA lacks statutory governance that the Legislature could examine.[42]



Source: Auditor generated.

The Legislature can consider the level of state-level governance, accountability, and transparency that IPA should have as a government entity within the state. The remainder of this chapter discusses five statutory exemptions that IPA has received. The Legislature can determine whether it is desirable for IPA to maintain these exemptions.

IPA Provides Basic Financial Reporting Compared with What Other Interlocal Entities Provide. Good governance involves transparent disclosure of key information, such as financial information, to stakeholders. ***Utah Code*** 11-13-528 requires IPA (and two other taxed interlocal entities) to file within 180 days after the closing of each fiscal year, copies of the annual fiscal report with the state auditor. Contrastingly, non-taxed interlocal entities are required to submit to the state auditor their budget, financial reports, fraud risk assessment, financial certification, and the transparent Utah reporting with compensation for

[42] Notably, other Utah requirements that IPA is exempt from are some governmental laws, including parts of Utah's Finance Code (***Utah code*** *63A-3*), Procurement Code (***Utah Code*** *63G-6a*), and Accounting Reports Code (***Utah Code*** *51-2a*).

employees, revenues, and expenses. This exemption may be permitted because IPA does not receive public funds, however, IPA receives public benefits, including the ability to issue billions of dollars in municipal bonds.[43] Statute does not specify the rationale for differentiating state auditor reporting requirements for taxed versus non-taxed interlocal entities. It is unclear whether this exemption provides an appropriate degree of accountability based on whether IPA receives public funds.

Since the Creation of the Registry, IPA Has Not Annually Filed with the Lieutenant Governor's Office—a Process That Provides Government Oversight and Accountability for Political Subdivisions. While interlocal entities are required to register with the Lieutenant Governor's Office, IPA was treated as an entity exempt from this requirement from its creation. IPA reported that it was unaware of this registration requirement; however other taxed interlocals have reported to the Lieutenant Governor's Office. The primary purpose of this statewide entity registry is to address limited government oversight and accountability of Utah political subdivisions. ***Utah Code*** 11-13-204 requires each local government entity and limited purpose entity to register with the Lieutenant Governor's Office and annually renew the entity's registration. After the audit team inquired with both IPA and the Lieutenant Governor's Office as to why IPA does not register, as of August 29, 2023, IPA fulfilled the requirements for the interlocal entity registry. Historically, IPA has been treated as an exempt entity from this requirement and has not reported to the office annually.

IPA Is an Energy Entity That Is Not Regulated by the Public Service Commission (PSC)—An Entity That Ensures Utility Services Are Safe, Reliable, Adequate, and Affordable. IPA's lack of reporting to a state-level utility regulator allows IPA to have limited governance and to be treated as an independent organization within the state. The PSC is the regulatory authority over large power entities, such as PacifiCorp and Dominion Energy. The PSC implements a cost-of-service regulation framework that requires utilities to justify their rates on a cost basis. It also requires a certification of public convenience for utility construction. The Legislature has previously considered requiring IPA to be accountable to the PSC and could consider it in the future.[44] We acknowledge

There have been legislative attempts at requiring IPA to report to the PSC, but no legislation has been enacted.

[43] There is no cost to the State of Utah for IPA issuing these municipal bonds.
[44] House Bill (H.B.) 198 (1988), H.B. 425 1st and 2nd substitute (2023), H.B. 215 (2022). This last bill originally intended IPA to report to the PSC but was amended to require IPA to report to the Project Entity Oversight Committee.

that IPA is different than investor-owned utilities and therefore there are pros and cons to being regulated by the PSC. For example, IPA reports that being regulated by the PSC could influence its financing. If the Legislature were to require that IPA report to the PSC, this would be a different model than how the PSC currently regulates utilities. The Legislature would need to specify reporting requirements, which may differ from requirements for investor-owned utilities.

IPA Should Improve Its Reporting to the Legislature. IPA's transparency and reporting requirements to the Legislature are relatively new, given that the entity is 46 years old. For the majority of IPA's history, it has had limited statutory governance by the Legislature and acted as a private entity. In recent years, IPA rarely presented to legislative committees for accountability purposes; rather, its presentations to the Legislature appear to support bills that further the operations of the Intermountain Power Project (IPP), which is owned by IPA.[45] For example, over the last 11 years, IPA has presented to legislative committees around 30 times. The primary purpose of more than 74 percent of those presentations was to speak to a bill. Given that IPA historically has had limited state oversight and reporting requirements compared with what is required of other interlocal entities, we recommend the Legislature consider whether IPA should report on its operations more regularly to the Legislature.

The Legislature has required more accountability in recent years. More specifically, the Legislature enacted bills from 2021 to 2023 to:

- Remove IPA's ability to exercise eminent domain and create a segment (S.B. 2002, 2021).
- Establish an oversight committee for the project (H.B. 215, 2022).
- Require IPA to report to the Tax Commission the electricity sold to an energy supplier and public agency (S.B. 20, 2022).
- Require IPA to comply with the Open and Public Meetings Act (S.B. 92, 2022).
- Require a feasibility study for continued operation of IPP's coal units owned by IPA, to be completed and reported by the Office of the Energy Development in October 2023 (H.B. 425, 2023).

[45] The portion of the Interlocal Cooperation Act that exclusively governs IPA has been amended 27 times since 2002. Though not all changes to the Act can be attributed to IPA's lobbying efforts, we found many that can be.

Based on our analysis for this audit, these bills created the greatest change in IPA's legislative reporting requirements over the life of the project.

In 2022, the Legislature created the Project Entity Oversight Committee (Oversight Committee) as one way to facilitate better accountability (H.B. 215, 2022 General Session).[46] The committee is required to submit a report annually to the Public Utilities, Energy, and Technology Interim Committee. This report includes some of IPA's financial information, along with input and concerns from the local community and stakeholders regarding IPA. Given the recent creation of this Oversight Committee, 2023 will be the first year that a report is presented to the committee. We anticipate that the Oversight Committee's process of gathering input and concerns from stakeholders, compiling the report, and informing the Legislature will lead to greater accountability, transparency, and familiarity with this project.

Whether IPA should report directly to the Legislature, or report indirectly through the Oversight Committee, is for legislators to determine as they decide how accountable IPA should be in its communication with the Legislature and how reporting should occur in the future.

RECOMMENDATION 3.1

The Legislature consider how accountable Intermountain Power Agency should be in its communications with the Legislature and how legislative reporting should occur in the future.

With regard to S.B. 92, the requirement does not instruct the IPP's Coordinating Committee, which is a primary voting body that makes important project decisions, to be subject to the Open and Public Meetings Act. This may be concerning as from 2017 to 2022, 76 percent of all IPA board meetings and 68 percent of all Coordinating Committee meetings included a closed-meeting portion in their meetings. IPA's general manager stated that after S.B. 92 was passed and in accordance with the Open and Public Meetings Act, the IPA board has been more judicious in deciding under what conditions to close meetings and what kind of records are to be kept for those meetings. Further, we could not confirm compliance with the Open and Public Meetings Act for closed meetings

[46] The Oversight Committee is composed of one member appointed by the following entities: the House of Representatives, the Senate, the Governor, the Millard County Commission, IPAs Board, Millard County School District, School and Institutional Trust Lands Administration, the Utah League of Cities and Towns, and the Millard County Department of Economic Development.

and were unable to verify what took place in those meetings by the IPA Board. We requested the minutes or recordings from those closed meetings, but these were not provided[47] by IPA. IPA reports that closed meetings discussed privileged information, a fact the audit team could not verify.

IPA did not provide the minutes or recordings for closed meetings.

RECOMMENDATION 3.2

The Legislature consider the degree to which taxed project entities should have transparency and accountability for their operations.

Importantly, IPA has done nothing wrong or misaligned with ***Utah Code*** in its reporting as an interlocal entity. IPA provides some environmental reporting to the Department of Environmental Quality (DEQ) regarding air, water, and landfill waste.[48] However, the purpose of certain reporting exemptions is unclear. We therefore recommend that the Legislature consider the desired degree of statutory governance for a project entity in the future.

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47 IPA sent us the meetings minutes for one closed board meeting between October 2022 and September 2023. However, this came five months after we requested it and after this chapter was already drafted. IPA considered all other closed board meeting minutes to be privileged.

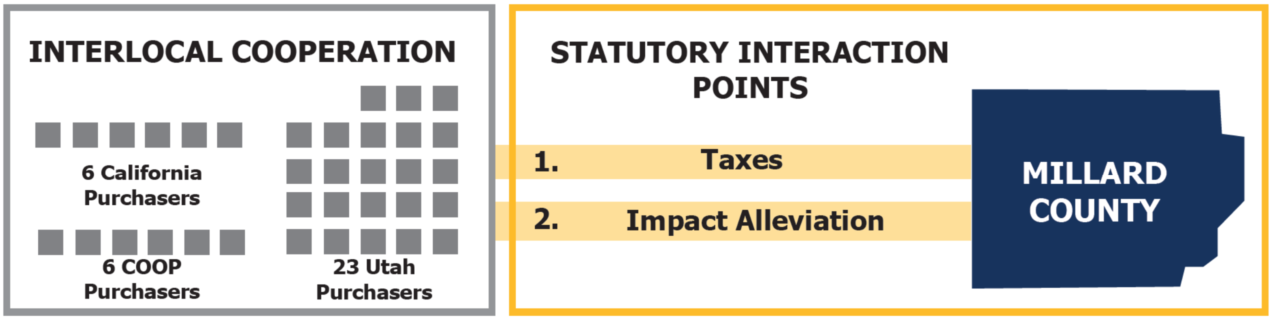
48 IPA participates in DEQ permitting and reporting for sanitary landfill, CCR landfill and surface impoundment, ground water discharge, and Title V operating permits.

CHAPTER 4 Summary

The Legislature Should Review Whether Some Statutory Provisions That Appear to Negatively Impact Millard County Are Still Desirable

BACKGROUND

In this chapter we note two instances where statutory tax provisions that benefits the project resulted in some unintended and potentially negative consequences to Millard County.



FINDING 4.1
Legislature Should Determine if Utah Code Properly Balances Relations Between a Project Entity and a Host County

RECOMMENDATION 4.1

The Legislature consider policy options for taxes to ensure statute is properly balanced between a project entity and a host county.

RECOMMENDATION 4.2

The Legislature consider policy options for impact alleviation payments to ensure statute is appropriately balanced between a project entity and a host county.

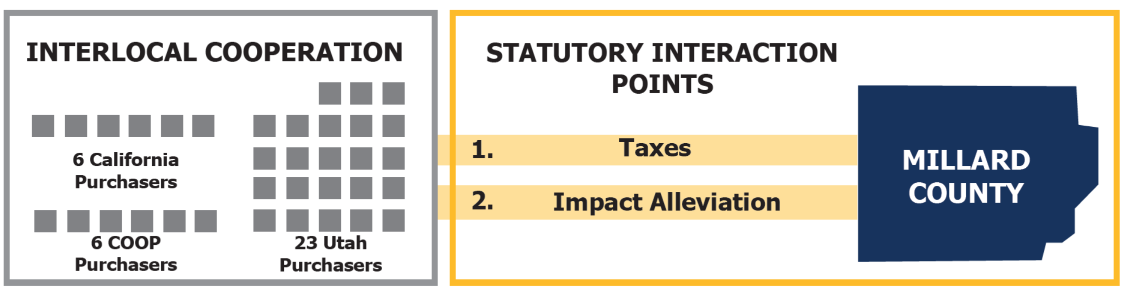
CONCLUSION

IPA, as a project entity, has been granted several special provisions through ***Utah Code***. From our audit work reviewing statute and interviewing personnel form IPA and Millard County, it appears that some statutory provisions may impact the host county and its citizens in unintended way. Some statutory changes could be made to determine the desired objectives for provisions between a project entity and a host county to better meet the needs of Millard County.

Chapter 4
Legislature Should Review Whether Some Statutory Provisions That Appear to Negatively Impact Millard County Are Still Desirable

4.1 Legislature Should Determine If Utah Code Properly Balances Relations between a Project Entity and a Host County

As mentioned in Chapter 3, statutory exemptions for the Intermountain Power Agency (IPA) have supported a lack of governance which the Legislature may wish to consider. In this chapter we note two statutory provisions where a benefit to the project resulted in some unintended and potentially negative consequences to Millard County.[49] While there may be rationale for some of these provisions, we recommend that the Legislature consider reviewing ***Utah Code*** to determine the desired objectives for taxes and impact alleviations between a project entity and host county.



*Source: Auditor generated from **Utah Code**.*

The following are two statutory interactions points between IPA (a project entity) and Millard County (a host county) that appear to negatively impact the host county.

- Taxes – IPA pays a unique fee in-lieu of ad valorem property tax that statutorily can be negotiated between IPA and the taxing entity. The ability to negotiate was enacted in 2003, reportedly at the request of Millard County, as a result of millions of dollars spent to litigate taxes. The discussion surrounding the bill also cited the desire to streamline the tax assessments and provide better communication between Millard

[49] IPA believes these provisions were originally intended to benefit both IPA and Millard County. However, we could not identify any documentation on substantial benefits to Millard County related to impact alleviation payments and the ability to negotiate tax amounts.

County and IPA. We have seen evidence where this model has worked, but also have seen instances where it has not worked. For example, IPA and Millard County have been in litigation over taxes spanning 2014 to 2022, which has impacted the county budget and other taxpayers.

- Impact Alleviation Payments – IPA may pay impact alleviation payments to the county being impacted by its development; however, it is statutorily allowed to receive a tax credit for that same amount.

It is the Legislature's prerogative to determine whether these interaction points are appropriately balanced.[50]

IPA and Millard County Tax Negotiations and Litigations Impact Millard County's Budget and Taxpayers

The first statutory interaction point is the fee-in-lieu of ad valorem property tax, which IPA is required to pay. According to the Utah State Tax Commission (Tax Commission), IPA's taxes are unique to only IPA as a project entity. Throughout the Intermountain Power Project's (IPP) lifetime, the project has provided many benefits to Millard County and the local community. However, we found that the rapid depreciation of IPA's property resulting from the coal units' change in expected useful life, tax litigations, and other statutory provisions created a burden to the other county taxpayers. Before expounding further, it is instructive to explain the model Millard County uses to collect property taxes.

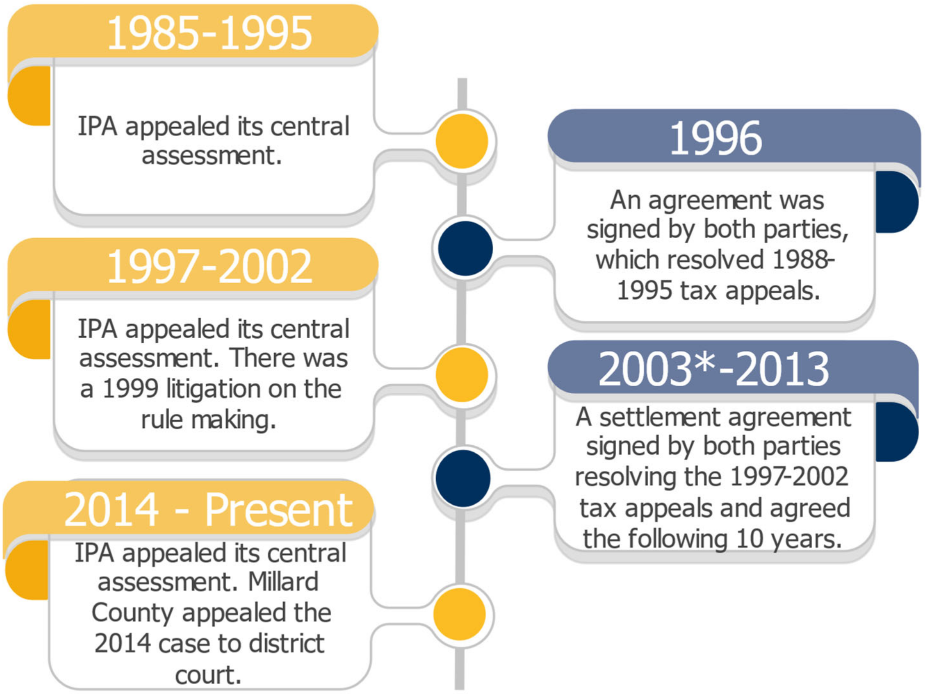
All County Budgets Are Fulfilled by Property Taxes Including from Residential and Centrally Assessed Sources; a Decrease in Tax Revenues in One Source Must Be Fulfilled by Another. "Truth in Taxation" is Utah's model, which prevents counties from receiving excess tax revenue from their taxpayers. We found in 2018, IPA's taxes made up 35 percent of Millard County's tax revenue. By 2022, IPA's taxes made up 20 percent of Millard County's tax revenue. Through this model, the decrease of 15 percentage points in tax revenues over four years was made up by other Millard County taxpayers. Though the taxed amount has diminished over time, IPA anticipates this amount will increase with the IPP Renewed project which is contracted to begin in 2027 and extend to 2077. Regardless, for an entity like IPA, appeals and litigations that

[50] There may be other interactions that influence IPA and Millard County's relationship, however, this chapter exclusively addresses taxes and impact alleviation payments as touch points between a revenue generating entity and a governmental taxing entity.

adjust its taxes inadvertently places the tax burden on county residents—in this case, taxpayers in Millard County.[51]

IPA Has Benefitted from Negotiated and Litigated Taxes. Uniquely, ***Utah Code*** states that IPA can negotiate the amount an entity pays in taxes and come to a settlement agreement, rather than requiring the Tax Commission to complete an assessment. IPA is the only centrally assessed entity in Utah that is statutorily allowed to negotiate its taxes. It could be argued that Millard County also benefits from negotiations that, in theory, could provide a more stable tax amount. However, the tax revenue has not been consistent as IPA and Millard County have historically only settled a tax amount in 11 of 20 years a settlement agreement was statutorily permitted, and both parties have engaged in some litigation throughout the project's history.

The timeline below highlights the tax-related actions taken by IPA and Millard County, from 1985 to 2022. As shown, Millard County and IPA came to a settlement from 2003 to 2013. If IPA and Millard County are unable to reach a settlement agreement in a given year, the Property Tax Division of the Tax Commission will conduct a central assessment evaluation. The Property Tax Division uses Utah State Tax Commission *Administrative Rule* R884-24P-16 to guide the assessment. This rule and valuation procedure apply to no other entity besides IPA. *Administrative Rule*, in tandem with the ad valorem taxes, makes this situation highly unique.



Source: Auditor generated.
**S.B. 21 (2021) enacted the ability for a project entity and a taxing entity to negotiate each year's taxing amount.*

[51] Early in the project Millard County tax revenue significantly swelled from IPA's fee-in-lieu of ad valorem taxes. From 1985 to 2022, IPA paid $497 million in fee in-lieu of ad valorem taxes to Millard County.

IPA and Millard County negotiated settlement agreements in 11 of the 20 years a settlement agreement was statutorily permitted, however IPA has exercised its right to appeal 26 of the 38 years. The two entities have been in litigation over the property tax valuation at various times throughout the project, including an ongoing litigation dating back to 2014. Any litigation comes at a cost to both IPA and Millard County, which if lost by Millard County is ultimately borne by the county's other taxpayers.[52],[53]

A settlement agreement was reached in 11 of 20 years while IPA exercised its right to appeal 26 of 38 years.

Throughout the 38 years of IPP's operations, California has purchased 97.8 percent of the project's power, essentially paying the majority of the taxes. IPA is uniquely structured in that it does not gain a profit, so taxes are fulfilled through its annual budget. This means that IPP power purchasers fulfill the IPP budget and therefore pay the ad valorem taxes. Any decrease in IPA taxes over time or through appeals or exemptions reduces the nonresident's tax burden while increasing the burden on other Millard County taxpayers to make up the difference. We understand there may be practical reasons for the current policy; we also acknowledge benefits to IPA providing tax revenue to Millard County. Our purpose for raising this policy question is not to direct the policy, rather to identify areas the Legislature could consider since IPA will continue operating for another 50 years.

The following infographic demonstrates the impact on other Millard County taxpayers caused by the decrease in IPA's tax amount. We believe there may continue to be an incentive from IPP's out-of-state participants to negotiate lower taxes to get cheaper electricity costs. Additionally, we believe there may continue to be an incentive for Millard County to negotiate a tax level sufficient to address needed services.

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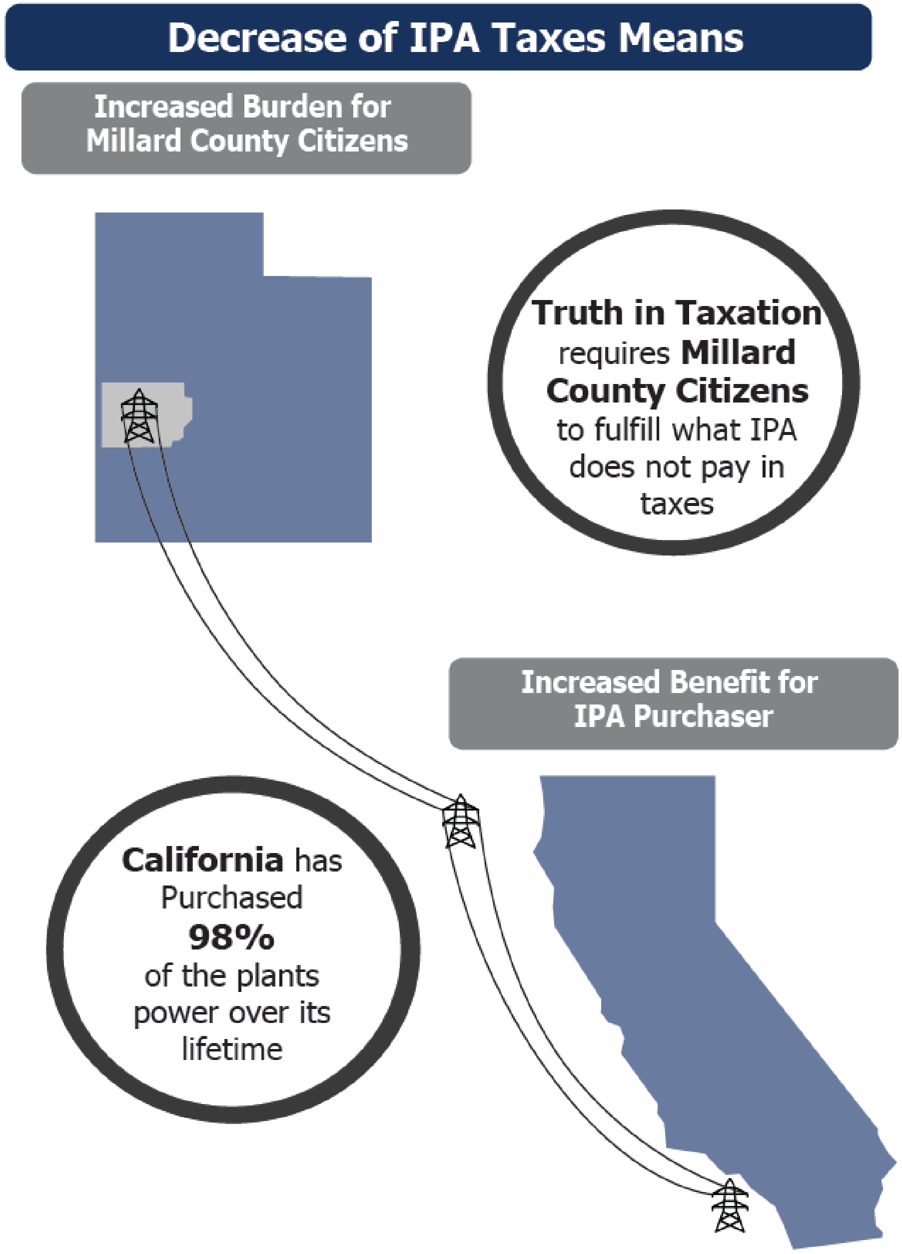
52 Notably, IPA's tax counsel reported if a judgement levy is issued, IPA pays its own refund up to the percentage of the county-wide tax value that IPA represents.

53 The IPA general manager believes as the project transitions to IPP Renewed the value of the plant will be known, the taxable value will be easier established, and better relations with Millard County are anticipated. We believe IPA and Millard County should consider establishing a long-term valuation model for the fee-in-lieu of ad valorem taxes to improve relations and potentially decrease the need for future appeals and litigation.



Source: Auditor generated.

RECOMMENDATION 4.1

The Legislature consider policy options for taxes to ensure statute is properly balanced between a project entity and a host county.

Impact Alleviations May Not Support Millard County as Envisioned

The second statutory interaction point is impact alleviation payments. IPA, as the only project entity, provides impact alleviation payments and receives a tax credit for those payments. ***Utah Code*** 11-13-305 states that a project entity may provide for the alleviation of a project's direct impacts created by the construction or operations to the extent the impacts are attributable to the project. Historically, this statute was established because Millard County was incurring expenses beyond its own capacity to provide essential services. It is also statutorily specified that the same project entity will be credited the amount of impact alleviation payments against the taxes due to a taxing entity

IPA Reportedly Paid **$21 Million** in Impact Alleviation Payments to Millard County	IPA Received **$17 Million*** in Impact Alleviation Credit on Taxes to Millard County

Source: Auditor generated.
**IPA reports, due to Truth in Taxation, it paid its tax base percentage to make up this credit within Millard County's budget. We were unable to document the adjustment made in Millard County budgets. However, Administrative Rule R884-24P-16 does specify a taxing jurisdiction shall add the credit amount to its budget therefore incorporated it into the tax rate.*

Impact alleviation appears to be statutorily unique to IPA as the only project entity. The credit to IPA's taxes was codified in the 1980 legislation that created the impact alleviation payment. A Millard County commissioner reported that the impacts of the project are significant, and it is unclear why it is specified in ***Utah Code*** that IPA receives a tax credit for the impact alleviation payments. We believe it is unclear whether a credit to IPA's taxes fully compensates for impacts of the project on Millard County and residents. Therefore, we recommend that the Legislature consider reviewing whether the credit for impact alleviation payments should be statutorily authorized for future changes to the project.

We note that the 2022 amended Conditional Use Permit between Millard County and IPA states that IPA will not receive credits for impact alleviation payments for "IPP Renewed" against future payments in lieu of property taxes. However, ***Utah Code*** still permits the impact alleviation payment credit and there is no guarantee both parties will adhere to the conditional use permit amendment through the life of the project.

RECOMMENDATION 4.2

The Legislature consider policy options for impact alleviation payments to ensure statute is appropriately balanced between a project entity and a host county.

In conclusion, IPA as a project entity, has been granted several special provisions through ***Utah Code***. Our review of statute and our interviews with personnel from IPA and Millard County suggest that some statutory provisions may impact the host county and citizens in unintended ways. This chapter highlighted two such statutory touch points that have negatively impacted Millard County and its other taxpayers. We recommend that the Legislature review ***Utah Code*** to determine the desired objectives for taxes and impact alleviations for IPP, as the project is scheduled to operate for an additional 50 years.

Complete List of Audit Recommendations

Complete List of Audit Recommendations

This report made the following eleven recommendations. The numbering convention assigned to each recommendation consists of its chapter followed by a period and recommendation number within that chapter.

Recommendation 1.1

The Legislature consider whether the diminished benefits of Intermountain Power Project are still desired and whether more action is necessary to direct the project moving forward.

Recommendation 1.2

The Legislature consider what requirements, if any, Intermountain Power Agency should fulfill related to its political subdivision status.

Recommendation 2.1

The Legislature consider the appropriate level of influence that an out-of-state government entity should have on the operations of a Utah government entity.

Recommendation 2.2

The IPA Board establish direction, preferences, and commitment to the project and state of Utah by creating a long-term strategic plan.

Recommendation 2.3

The Legislature consider requiring Intermountain Power Agency to set goals and targets to establish measures of success and publicly report them moving forward.

Recommendation 2.4

The IPA Board establish stronger Utah-specific governance and more transparently share how its decisions relate to those of the Coordinating Committee.

Recommendation 2.5

The Legislature consider the desired level of Intermountain Power Agency governance to determine if changes are desired.

Recommendation 3.1

The Legislature consider how accountable Intermountain Power Agency should be in its communications with the Legislature and how legislative reporting should occur in the future.

Recommendation 3.2

The Legislature consider the degree to which taxed project entities should have transparency and accountability for their operations.

Recommendation 4.1

The Legislature consider policy options for taxes to ensure statute is properly balanced between a project entity and a host county.

Recommendation 4.2

The Legislature consider policy options for impact alleviation payments to ensure statute is appropriately balanced between a project entity and a host county.

Appendices

A. Participant Power Energy Shares and Voting Rights

Entitlement and voting shares determine the amount of IPP energy each project purchaser is contractually entitled to receive and participant voting rights on the IPP Coordinating Committee. The 23 Utah municipalities that own IPA, six California municipalities, and six cooperatives have entitlement shares that allow them to purchase IPP power. The following demonstrates the voting and entitlement shares in the 1983 shares amended from the original agreement before the plant was officially running, the 2015 amended shares, and what will be the 2027 shares established in the IPP Renewed contracts.

	Original 1983	Amended 2015	Renewed 2027
Anaheim	13.225	13.225	
Burbank	3.371	3.371	3.334
Glendale	1.704	1.704	4.167
Pasadena	4.409	4.409	
Riverside	7.617	7.617	
Los Angeles Dept. of Water & Power	44.617	48.617	71.442
California Total	74.943	78.943	78.943

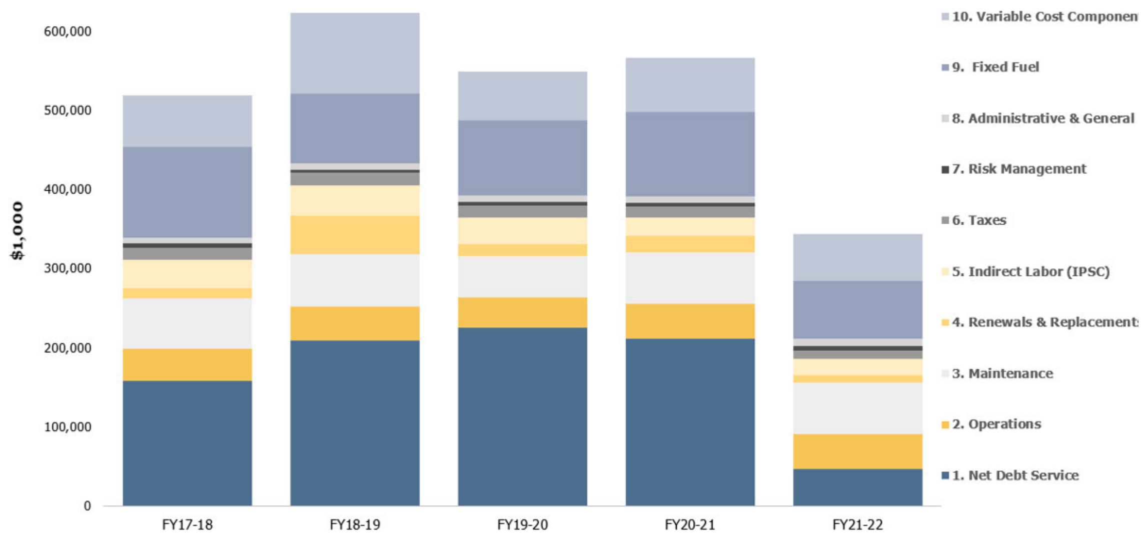
	Original 1983	Amended 2015	Renewed 2027
Bridger Valley REA	.230	.230	.232
Dixie-Escalante REA	1.534	1.534	1.548
Flowell Electric Assoc.	.200	.200	.202
Garkane Power Assoc.	1.267	1.267	1.279
Moon Lake Elec. Assoc.	2.000	2.000	2.018
Mt. Wheeler Power, Inc.	1.786	1.786	1.803
Utah Power & Light Co.	4.000		
Utah Coop Total	11.017	7.017	7.082

	Original 1983	Amended 2015	Renewed 2027
Beaver	.413	.413	.413
Bountiful	1.695	1.695	1.711
Enterprise	.199	.199	.199
Ephraim	.503	.503	.508
Fairview	.120	.120	.121
Fillmore	.512	.512	.517
Heber Light & Power Co.	.627	.627	.633
Holden	.048	.048	.048
Hurricane	.147	.147	.148
Hyrum	.551	.551	.551
Kanosh	.040	.040	.041
Kaysville	.739	.739	.746
Lehi	.430	.430	.434
Logan	2.469	2.469	2.491
Meadow	.045	.045	
Monroe	.130	.130	
Morgan	.190	.190	.192
Mt. Pleasant	.357	.357	.357
Murray	4.000	4.000	4.036
Oak City	.040	.040	.041
Parowan	.364	.364	.364
Price	.361	.361	.364
Spring City	.060	.060	.060
Utah Total	14.040	14.040	13.975

B. Intermountain Power Agency’s Budget

The project has operated with an average budget of over $520 million a year between fiscal years 2018-2022. Also indicating the size of operations are IPA's assets, which were valued at over $1.8 billion for fiscal year 2022.

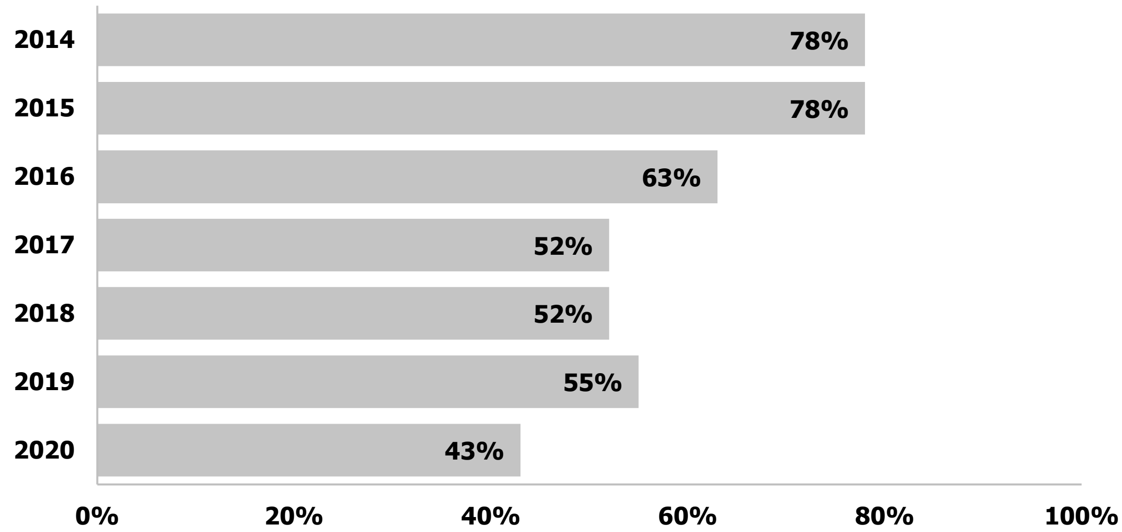
Intermountain Power Agency's Budget for FY2018-2022. In FY2021-2022, the project's largest costs were fixed fuel (21%), maintenance (19%) and its variable cost component (17%). Taxes were 3% of IPA's annual expenses during this period.



Source: Auditor generated from data provided by IPA.

C. IPP Net Capacity Factor Over Time

IPP's Capacity Factor. The capacity factor is the overall utilization of a power-generating facility. IPP decreased its overall capacity factor from 2014 to 2020.



Source: Auditor generated from IPA's budgets.

D. Consultant's Rate Report

INTERMOUNTAIN POWER AGENCY FACILITIES RATE ANALYSIS FINDINGS

AUGUST 9, 2023

PREPARED FOR

Office of the Legislative Auditor General

PREPARED BY

Daymark Energy Advisors

DAYMARK ENERGY ADVISORS
370 MAIN STREET, SUITE 325 | WORCESTER, MA 01608
TEL: (617) 778-5515 | DAYMARKEA.COM

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I. ASSIGNMENT

Daymark Energy Advisors ("Daymark") was retained by the Office of the Legislative Auditor General, a staff office of the Utah State Legislature ("OLAG"), to provide power and energy rate analysis services related to the Intermountain Power Agency ("IPA"). IPA is a Utah interlocal entity comprised of 23 Utah municipal utilities organized for the purpose of financing, constructing, operating and maintaining the Intermountain Power Project ("IPP"), an 1,800 MW coal-fired generation station in Delta, Utah and associated high voltage transmission lines and other facilities. IPP serves 35 participant cooperative and municipal-owned utilities serving Utah and California. IPA is a "Project Entity" as defined in Utah Code § 11-13-103.

Daymark's assignment was to perform the following tasks:

Task A: Research and analyze the power and energy rates set by IPA using a combination of publicly available sources and data requests.

Task B: Conduct a high-level survey of publicly available information on power generation stations or other entities similar to IPA to provide a benchmark point of comparison for power rates, budgeting and ratemaking practices, and other data points.

Task C: Research and analyze the following questions:

- i. *How do power rates for energy purchasers and regional power rates from other cities in Southern California compare to current market rates in Utah?*
- ii. *How do the IPA's power rates compare to the benchmark power rates described in Task B and Task C(i)?*
- iii. *Are IPA's rates consistently higher than final reconciled cost-based rates over the past five years? If so, what is the source of the upward bias, and do the rates raise any concerns about the reasonableness of the IPA's ratemaking practices?*
- iv. *How are various entities impacted by mismatches between power rates set through the IPA's budget process and final reconciled charges, after surplus credits, based on actual costs?*

Daymark's research and analysis assignment was not intended to be an in-depth analysis nor a comprehensive audit. It is intended as a preliminary and high-level investigation that clarifies certain basic dynamics in IPA's rate setting mechanism, and which may indicate issues or questions for further analysis. Daymark had limited ability through OLAG to make informal data requests to IPA and related stakeholders. The materials provided and some interviews with IPA representatives were helpful to our investigation, but did not always provide sufficient detail or documentation to reach firm conclusions in our task assignments. Scope limitations required some reprioritization to focus on questions deemed most germane.

Our findings are organized by task area in the sections that follow.

II. FINDINGS

Task A: IPA rates

Our first task was to research and analyze the rates set by IPA for participants with entitlement shares to IPP production ("Purchasers").

Purchasers are entitled to a specific percentage share of IPP's generation capability through Power Sales Contracts, executed initially in the late 1970s and subsequently amended. Each Purchaser is allocated a percentage entitlement share, with 14% of shares allocated to twenty three (23) Utah municipal Purchasers, 7% to six Utah cooperative Purchasers, and 79% to six California municipal Purchasers. Holders of entitlement shares are assessed a pro rata share of the monthly power costs associated with owning, operating and maintaining IPP.

All of the Utah Purchasers have also entered into Excess Power Sales Agreements with certain of the California Purchasers. Under the Excess Power Sales Agreements, the Utah participants sell the capacity and energy allocated to them under the Power Sales Agreement, though the Utah participants may recall some or all of their shares during prescribed windows in the annual cycle. The Excess Power Sales Agreements amount to offering Utah Purchasers an annual option, either taking IPP power at cost-of-service-based rates under the Power Sales Contracts, or laying off the entitlement and the corresponding payment obligation.

IPP rates are structured with two basic components: a minimum cost component and a variable cost component. The minimum cost component is fixed monthly amounts based on an annual budget put forward by the IPA for all costs except variable fuel and transmission costs. The minimum cost component includes net debt service, operations, maintenance, renewals and replacements, indirect labor for Intermountain Power Service Corporation, ad valorem taxes, other taxes, insurance, administration and general, and fixed fuel costs (fuel handling labor and transportation; "take or pay" type fuel supply contracts, fixed transportation costs, etc). The variable cost component is assessed only for generation above the minimum component generation, which is the generation produced with no more than the fixed cost fuel. Beyond this "minimum component generation" level, additional megawatt-hours ("MWh") of IPP output is assessed at a dollar per MWh variable cost rate tied to the variable cost of procuring incremental fuel amounts.

IPA produces an annual budget with estimates of IPP costs and expected generation levels, which is used to set rates assessed for participants with retained entitlement shares (i.e. California Purchasers and any Utah Purchaser that has recalled some or all of its Excess Power Sales). Once the fiscal year is complete and actual costs are known, the IPA assesses a "true up" adjustment reconciling payments made by all participants to actual incurred costs.

The table below compares budget costs and rates (as well as forecast IPP generation amounts) against actual. For the years reviewed, fiscal years 2013-14 through 2019-20, actual costs were less than budgeted costs in all years. However, actual generation was also lower than budgeted generation in all years. As a result, the average rate ($/MWh) varied both up and down, though the actual average rate has been higher than budgeted in the last five years reviewed. These variances are reviewed further in Task C.

Table 1. Intermountain Power Facilities budget vs. actual comparison

Intermountain Power Facilities	FY 2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Total Cost ($millions)							
Budget	$ 769.1	$ 764.2	$ 678.8	$ 651.9	$ 593.7	$ 642.0	$ 668.2
Actual	$ 701.3	$ 709.7	$ 601.0	$ 543.7	$ 518.4	$ 623.3	$ 548.6
Variance	*$ (67.8)*	*$ (54.5)*	*$ (77.7)*	*$ (108.2)*	*$ (75.3)*	*$ (18.7)*	*$ (119.6)*
Variance (%)	*-9%*	*-7%*	*-11%*	*-17%*	*-13%*	*-3%*	*-18%*
Generation (GWh)							
Budget	12,609	12,614	12,642	11,831	11,038	9,460	10,248
Actual	12,358	12,334	10,027	8,143	8,125	8,704	6,805
Variance	*(251)*	*(280)*	*(2,615)*	*(3,688)*	*(2,913)*	*(756)*	*(3,443)*
Variance (%)	*-2%*	*-2%*	*-21%*	*-31%*	*-26%*	*-8%*	*-34%*
Average Rate ($/MWh)							
Budget	$ 60.99	$ 60.58	$ 53.69	$ 55.10	$ 53.79	$ 67.87	$ 65.20
Actual	$ 56.75	$ 57.54	$ 59.94	$ 66.77	$ 63.80	$ 71.61	$ 80.62
Variance	*$ (4.24)*	*$ (3.04)*	*$ 6.25*	*$ 11.67*	*$ 10.02*	*$ 3.74*	*$ 15.41*
Variance (%)	*-7%*	*-5%*	*12%*	*21%*	*19%*	*6%*	*24%*

Task B: Survey of comparable rates

It is quite common for municipal utilities and public utility districts to join together in ownership of generation and transmission, which is sold back to member utilities at cost in some way. These entities may be called power agencies, power authorities or joint action agencies. IPA is one of 57 joint action agency members of the American Public Power Association ("APPA").[1]

Generation and transmission cooperatives ("G&T coops") also provide a common model for joint funding and ownership of generation resources. There are 63 G&T coops providing generation supply and transmission services on behalf of their local distribution cooperative members.[2]

Using data from S&P Capital IQ, Daymark pulled together a database of coal-fired generation owned in whole or in part by an APPA joint action agency. Joint action agencies own more than 10 gigawatts of existing coal-fired generation, including stakes in 43 units at 27 plants.

[1] https://www.publicpower.org/joint-action-agency-members

[2] https://www.electric.coop/electric-cooperative-fact-sheet

The specifics of the rate setting for these potential comparable units are not conducive to broad survey because individual investigation is required for each generator and/or joint action agency. Many of these entities own portfolios of assets that are intermingled for rate setting purposes. The publicly-available details are contained in documents such as financial statements, websites and annual reports, which vary significantly in data availability and granularity and specifics about the rate-setting mechanism. We identified a comparable coal unit with detailed public rate information available and reviewed its rates in comparison to IPA.

Whelan Energy Center Unit 2

Whelan Energy Center Unit 2 ("Whelan 2") is a 220 MW coal-fired power plant located near Hastings, Nebraska. Like IPA in Utah, Public Power Generation Agency ("PPGA") is the Nebraska interlocal agency established for the sole purpose of building and owning Whelan 2. There are 5 PPGA participants sharing the cost and output of the baseload power resource: Municipal Energy Agency of Nebraska, Heartland Consumers Power District, Hastings Utilities, Grand Island Utilities and Nebraska City Utilities. One of the participants, Hastings Utilities, serves as the Project Operating Agent. PPGA participants each hold entitlement shares entitling each to a percentage share of capacity and energy from Whelan 2, in exchange for accepting the same percentage share of project and production-related cost.

Based on audited financial statements available on PPGA's website[3], there are a few notable differences between PPGA and IPA. Whelan 2 participates in the Southwest Power Pool ("SPP") Integrated Marketplace and is economically dispatched into wholesale markets. There is no transmission network included – participants receive their power through the SPP system. The reconciliation method differs from IPA – net costs to be recovered from billings to members (variance between actual costs and billing revenue) are recorded as a noncurrent asset on PPGA's balance sheet and recovered in future periods. This can lead to longer lag periods relative to IPA's true-up approach, but the intent is for aggregate expenses to equal aggregate billable power costs over the term of the participant agreement.

The following table shows PPGA statements of revenue and expense for 2016-2021.

[3] https://ppga-ne.com/financial-information/audits/

Table 2. PPGA statements of revenue and expense for years ended 2016 – 2021[4]

	2016	2017	2018	2019	2020	2021
Operating Revenues						
Billings to members, net	65,245,101	64,003,840	68,833,698	69,360,731	62,565,752	67,399,757
Total operating revenues	65,245,101	64,003,840	68,833,698	69,360,731	62,565,752	67,399,757
Operating Expenses						
Fuel and other variable production	19,469,233	17,395,230	19,193,363	19,149,515	12,153,954	14,812,951
Other production	5,377,483	6,061,779	5,975,047	5,977,790	6,343,261	7,524,392
HIP Turbine outage costs			2,437,310	500,000		
Administrative and general	1,405,199	1,411,433	1,419,601	1,554,270	1,850,532	1,922,105
Depreciation and amortization	21,858,180	21,746,094	22,067,222	21,966,834	22,147,004	22,114,512
Total operating expenses	48,110,095	46,614,536	51,092,543	49,148,409	42,494,751	46,373,960
Operating Income	17,135,006	17,389,304	17,741,155	20,212,322	20,071,001	21,025,797
Nonoperating Revenues (Expenses)						
Interest expense	(31,836,657)	(30,995,751)	(30,352,088)	(29,538,922)	(28,685,823)	(27,759,679)
Investment return	596,899	540,042	1,426,548	2,149,181	1,853,981	(337,128)
Federal subsidy - Build America Bonds	4,372,353	4,377,047	4,393,476	4,299,529	4,207,501	4,078,077
Bond issue costs	(831,028)					
Other	(22,897)	50,865	58,365	61,755	374,332	513,018
Total nonoperating expenses, net	(27,721,330)	(26,027,797)	(24,473,699)	(23,028,457)	(22,250,009)	(23,505,712)
Change in Net Costs to be Recovered from Billings to Members	(10,586,324)	(8,638,493)	(6,732,544)	(2,816,135)	$ (2,179,008)	$ (2,479,915)

There are limitations to comparing operations and net costs between IPP and Whelan 2. The generating plants are very different in size (220 MW for Whelan 2 compared to 900 MW per unit for IPP) and located in different commercial contexts, with Whelan 2 dispatching economically into SPP's wholesale market and IPP dispatched to signals from its participants. Nevertheless, there is some general similarity in trends observed in net plant capacity factor and net billing to members on a $/MWh basis. Figure 1 below shows these trends. The inverse relationship between capacity factor and total cost is particularly noticeable for Whelan 2.

[4] Daymark compilation of revenue and expense information from audited financial statements downloaded from PPGA website (https://ppga-ne.com/financial-information/audits/).

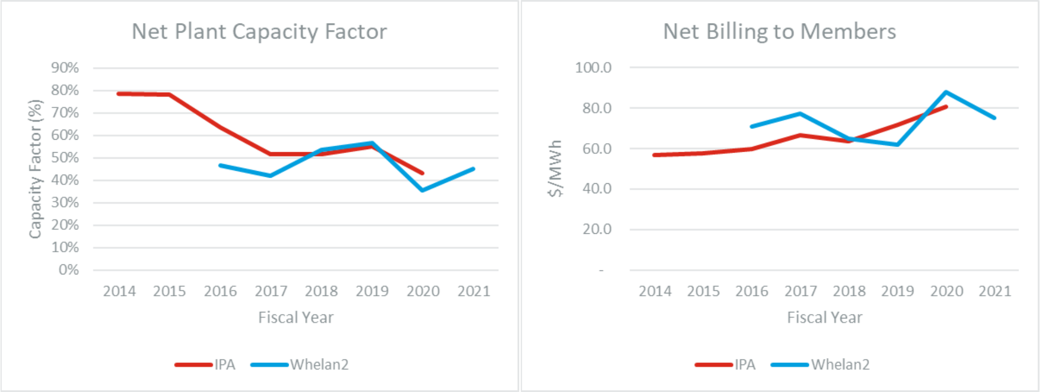

Figure 1. Comparison, IPP vs Whelan 2 net capacity factor and billing to members

In our limited survey of comparable units, we did not find any other examples of an option mechanism similar to IPA's Excess Power Sales Agreements.

Task C: Investigative questions

We were tasked with researching and analyzing four questions. In the course of our investigation, we identified some questions that required more exploration and some which could be de-prioritized. Findings related to each question, if any, are presented in the subsections below.

i. How do power rates for energy purchasers and regional power rates from other cities in Southern California compare to current market rates in Utah?

This question was de-prioritized based on our initial findings and the lower relevance to the key questions at hand. We were unable to collect sufficient data from UAMPS or the California Purchasers to fully explore this question.

ii. How do the IPA's power rates compare to the benchmark power rates described in Task B and Task C(i)?

We focused our comparison on the IPA Financial Year 2017-18 (July 2017 to June 2018). For this period, the actual rate paid by California Purchasers for power delivered to Southern California over the Southern Transmission System, as well as the Utah Purchasers' shares of rights to the Northern Transmission System, averaged $63.80/MWh. Comparison to a similar coal-fired unit in Nebraska was shown in Figure 1 above. Differences in fiscal periods make direct comparison difficult – Whelan 2 billings to members averaged $77.20/MWh in calendar year 2017 and $64.80/MWh in CY 2018.

Figure 2 below shows a map of southwest power pricing hubs as well as high voltage (230kV and above) transmission lines. Palo Verde is a highly liquid market location that is a key trading hub for Utah and other non-CAISO regions in the southwest. SP15 is a Southern California hub located in the Los Angeles area, near the terminus of the Southern Transmission System.

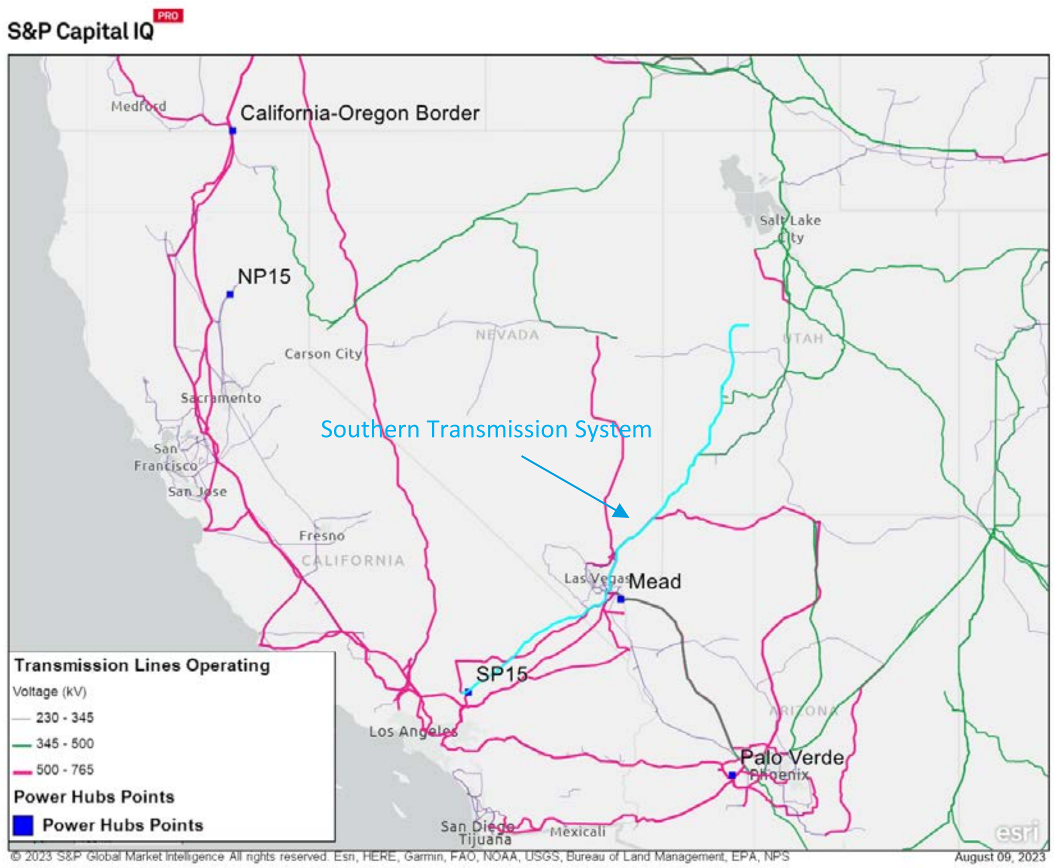

Figure 2. High voltage (230kV+) transmission lines and power wholesale market hubs in the southwest

Day ahead on peak power prices averaged $31.72/MWh at Palo Verde and $39.46/MWh at SP-15 for the FY 2017-18 period.[5] On peak prices are for Monday through Saturday (except NERC-recognized holidays), 6:00am through 10:00pm, when demand (and power prices) tend to be higher. About 56% of hours are in the on peak period annually. IPP had an annual net capacity factor of 52% in FY 2017-18, with hours of production presumably skewed toward higher-priced hours. Using on-peak prices provides a better (though still highly imperfect) proxy for comparison.

Major caveats must be accounted for when comparing IPA rates to spot market index pricing. First, the spot market prices at hub locations do not account for transmission charges that would be required to deliver purchased power to the utilities' service

[5] Quotes for SNL Day-ahead monthly on peak power prices obtained through S&P Capital IQ.

territories. Second, IPA purchasers have assurance that IPP's full capability will be available when needed, even in times of high demand and/or short market supply. Market transactions do not offer the same guarantee, and cannot be used to assure reliability in the same way.

In response to a data request, Utah Associated Municipal Power Systems ("UAMPS") noted that firm market purchases on behalf of their member utilities (including Utah municipal participants) averaged $39.8/MWh for the FY 2017-18 period.[6]

Based on this comparison, both Southern California and Utah have access to market-priced energy that is at significant discount to IPA rates on an "all hours" basis. However, spot market purchases do not provide the same level of reliability contribution. To the extent that there is risk that market purchases may not be available (or may only be available at extremely high prices) during hours of need, the comparison breaks down. Finally, market prices may be volatile. IPA rates provide a hedge in the upcoming fiscal year against uncertainty in markets.

iii. Are IPA's rates consistently higher than final reconciled cost-based rates over the past five years? If so, what is the source of the upward bias, and do the rates raise any concerns about the reasonableness of the IPA's ratemaking practices?

As noted in Task A findings, IPA's rates have resulted in overcollection of revenue in every year reviewed, from FY 2013-14 through FY 2019-20, with an average variance from budget to actual of 11%.[7] However, it is also true that the plant has dispatched less than budgeted in every year as well, with an average variance of 18%. As a result, five of the seven years in our review period saw actual reconciled cost-based average rates ($/MWh) higher than budgeted rates.

[6] Response to DR 1(d), UAMPS Response_07262023.pdf

[7] We note that budgeted variable costs are not actually collected, as variable costs are billed based on actual production levels. However, budgeted amounts may still factor into decision-making around

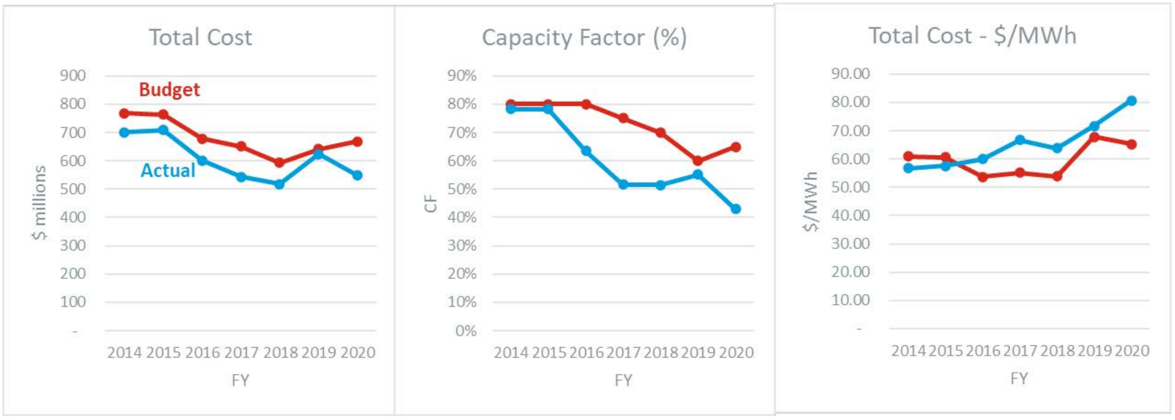

Figure 3. **Intermountain Power facilities budget to actual comparison**

Forecast error (or variance) is inevitable – no organization is capable of perfect foresight when setting a budget, and unexpected events beyond IPA's control impact actual costs.

The budget forecast variance can be thought of in two basic components: a) variance in fixed costs, unrelated to the actual generation dispatch; and b) variance in variable costs, which are tied directly to generation output.

Some cost categories are easy to assign – clearly, net debt service costs and taxes are completely independent of IPP's energy output. On the other hand, variable fuel costs are clearly tied directly to production and will vary almost linearly with output. Some costs fall somewhere in between. Maintenance, for instance, is generally budgeted before the year based on schedules of outages and maintenance needs that will change little based on dispatch of the plant, but increased production may cause slightly greater failure rates or reduce maintenance intervals slightly.

IPA's budget collects costs into 10 line items, shown in Table 3 below. Nine of the ten line items are charged as fixed (or "minimum") costs and billed in equal monthly installments through the year. The 10th line item, "variable cost component", includes only variable fuel and transmission costs and is billed as a $/MWh charge on energy delivered that exceeds minimum cost generation.

Table 3. Intermountain Power Facilities Budget vs. Actual, FY 2013-14 to FY 2019-20 average

All figures in $millions unless noted

	Budget	Actual	Variance	Variance (%)
1. Net Debt Service	229,941	222,846	(7,095)	-3%
2. Operations	44,983	40,831	(4,152)	-9%
3. Maintenance	56,364	62,933	6,568	12%
4. Renewals & Replacements	23,541	22,165	(1,376)	-6%
5. Indirect Labor (IPSC)	32,929	33,498	568	2%
6. Taxes	18,225	16,595	(1,630)	-9%
7. Risk Management	5,007	2,779	(2,228)	-45%
8. Administrative & General	13,948	7,730	(6,218)	-45%
9. Fixed Fuel	129,686	113,638	(16,048)	-12%
Total Minimum Costs	554,624	523,013	(31,611)	-6%
10. Variable Cost Component	126,494	83,564	(42,930)	-34%
TOTAL	681,118	606,578	(74,541)	-11%
Total Min Costs excluding Fixed Fuel	*424,938*	*409,375*	*(15,563)*	*-4%*

In our review of budget to actual variance, it appears that fixed fuel costs also have a stronger correlation to output than other minimum cost categories. A note to the IPA's 2017-18 budget comparison explains a decrease in budgeted fixed fuel costs: "The Fixed Fuel cost decreased because the contract tonnage under the two Fixed Fuel component coal contracts adjusted downward based on recent lower plant capacity factor values."[8] Notably, the fixed fuel cost budget for that year tracked very closely to actual costs, in contrast to most other years. It is unclear if such adjustments in minimum contracts (which may occur after the budget has been prepared) may explain some budget to actual variance in other years. Further investigation would be required to understand the relationship between the fixed fuel cost component and actual production levels. Figure 4 shows how variable and fixed fuel cost variances comprise the greatest share of cost variance compared to all the other categories combined.

[8] FY2017-2018 Annual Budget Packet_Operating Budget_Resolutions.pdf, at p 78.

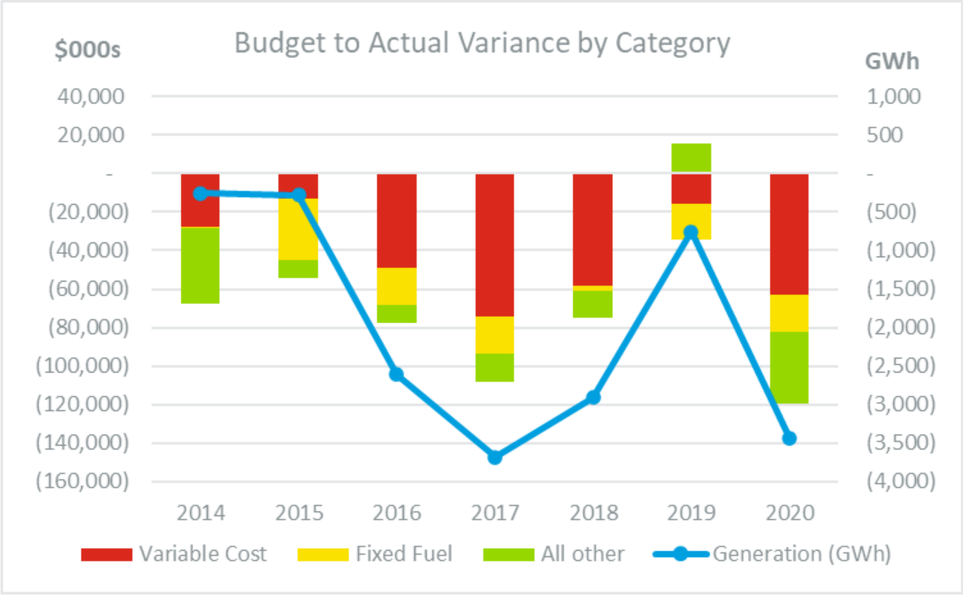

Figure 4. Intermountain Power facilities budget to actual variance by cost category and net generation

If we treat the minimum cost components excluding fixed fuel as the fixed cost component, actual costs have trended reasonably close to budget, ranging in variance from 9% under budget to 4% over budget, and averaging 4% under budget. Adding fixed fuel to the variable cost component and dividing by production to control for forecast error in net plant capacity factor yields similarly close budget-to-actual comparison. Actual fuel plus variable costs on a $/MWh basis have ranged in variance from 14% under budget to 1% over budget, averaging 6% under budget. Figure 5 shows these comparisons.

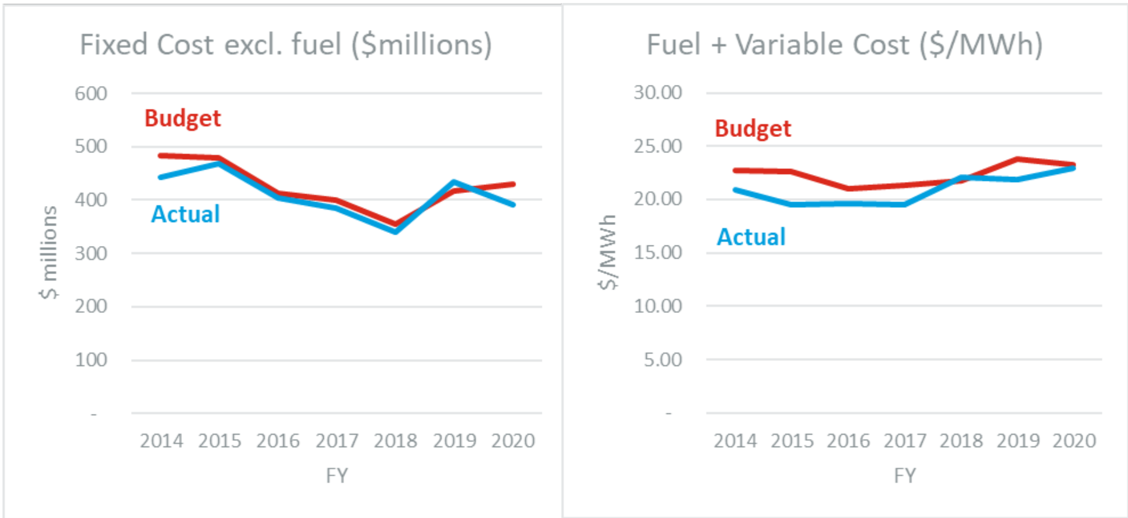

Figure 5. Intermountain Power facilities budget to actual variance for fixed cost (excluding fixed fuel) and fuel plus variable cost

The remaining driver of variance is the consistent under-production of the plant relative to forecast. As noted above, actual net capacity factor has averaged 18% under budgeted capacity factor between FY 2013-14 and 2019-20 (see Table 1). This period coincides with a period when low natural gas prices and increasing amounts of wind and solar generation in the region were displacing coal dispatch. Based on interviews with IPA's operating agent, our understanding is that production estimates used in the budgeting process are indicative estimates based primarily on past performance and estimates of future coal availability. IPA also produces low and high alternative production scenarios that allow participants to plan for variances in production from budgeted amounts.[9] Volatile electric markets and coal availability make plant dispatch difficult to forecast.

Based on our limited review, we see no evidence of unreasonable bias in the rate setting process. One area for potential further investigation would be into the nature of fixed fuel costs, exploring whether any element of those costs would more appropriately be categorized (and billed) in the variable cost rate.

9 Interview with Greg Huynh, LADWP, July 24, 2023.

iv. How are various entities impacted by mismatches between power rates set through the IPA's budget process and final reconciled charges, after surplus credits, based on actual costs?

A detailed review of the reconciliation mechanism was not part of our final scope. We understand that participants with retained entitlement shares are assessed a true-up charge or (more commonly) credit by October of the following fiscal year, a lag of only a few months. There is no cross-subsidization in the reconciliation – in the event that retained entitlement shares change year-over-year, the true-up charge or credit is applied to the entitlement share paying the power rates originally.

For California Purchasers, the impact is likely minimal, primarily to cash flow. Any impact should be easily manageable.

For Utah Purchasers, anticipation of one set of rates could cause a suboptimal recall decision under the Excess Power Sales Agreement if actual costs end up varying significantly. For the period we reviewed, budgeted rates were slightly higher than actual rates (both on a dollar basis for non-fuel fixed items and on a dollar per MWh basis for fuel and variable cost items), but not by enough to likely have a major impact on the recall decision. For the one year with comparison data, Utah Purchasers had better options that they would have chosen even had they known what actual rates would be.

If options exist that make the recall decision a closer call, expected rate variance will be one of many uncertainties to navigate and make a decision based on the individual utility's own judgment of risks and alternatives. We have found no evidence that IPA's slightly conservative budgeting over the 2013-14 to 2019-20 time period led to any regretted decisions by Utah purchasers.

Agency Response

Intermountain Power Agency

Intermountain Power Agency

October 2, 2023

Kade R. Minchey
Legislative Auditor General
House Building, State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Minchey:

The undersigned Vice Chair and General Manager of Intermountain Power Agency (“IPA”) appreciate the opportunity to respond to the exposure draft of Report No. 2023-13, “A Performance Audit of Intermountain Power Agency” prepared by the Office of Legislative Auditor General (the “Report”). IPA appreciates the time and effort made by the legislative auditors to review thousands of documents and conduct hours of interviews to help the Legislature better understand IPA’s historic context, current situation and future direction.

The IPA Vice Chair and General Manager have studied the findings and recommendations in the Report and will continue to review the Report for the purpose of recommending action by the IPA Board of Directors consistent with the best practices outlined in the Report. IPA notes that most of the recommendations are addressed to the Legislature. IPA would like the opportunity to work with the Legislature in connection with the Legislature’s consideration of potential action impacting IPA and the Intermountain Power Project (“IPP”).

To that end, IPA has provided the attached Appendix A with commitments and supplemental information related to the recommendations in the Report. IPA hopes that the information is received in the spirit of cooperative collaboration toward the end of maximizing the benefit that IPP represents to IPA’s members, other local communities and the state.

IPA commits to pursuing improvement consistent with the best practices identified in the Report. IPA desires that IPP continue to be a significant source of benefit to the state and local communities and will seek to communicate with the Legislature and interested communities to that end. Thank you for your consideration of the attached.

Sincerely,

Nick Tatton
Vice Chair, Board of Directors

Cameron Cowan
General Manager

Appendix A

IPA Commitments and Supplemental Information

Delivery of Records. Before responding to the Report's specific recommendations, IPA acknowledges that IPA did take more time than customary to provide some of the records requested by the legislative auditors. IPA commits to improving its record management practices and to responding to future record requests in any legislative audit in a timelier manner.

Recommendations to Legislature. IPA desires to work cooperatively with legislators in the Legislature's consideration of potential action based on the following recommendations addressed to the Legislature. IPA understands the Legislature's prerogative to reflect state policy through legislative enactments and does not presume to dictate what such policy should be. IPA would appreciate the opportunity to provide supplemental information to legislators as they consider actions that could have significant long-term impacts on IPA, the nearly completed repowering of IPP ("IPP Renewed") and the Utah municipalities that have been central to IPA's purposes since the inception of IPP.

The following summarizes supplemental information that IPA believes is relevant to the recommendations provided in the Report:

Recommendations 1.1 (relating to the benefits of the state and local communities from IPP) and **1.2** (relating to IPA's status as a political subdivision):

- Transition from Coal is Regrettable but Necessary.
    - IPA regrets the impact that the transition from coal will have on local communities. IPA has taken very seriously the role it has had in supporting Utah coal communities for decades. Even after Governor Leavitt released IPA from its "handshake agreement" with Governor Matheson to purchase Utah coal exclusively, IPA continued to source its fuel from Utah mines (Utah coal has represented 96% of the fuel consumed at IPP, even after giving effect to the severe shortage of Utah coal over the last 18 months).
    - IPA spent years working with interested parties, including current project participants, IPP employees, mining industry representatives and state leadership to identify a way to maintain the coal units in operation. No viable option to keeping the coal units operational post-2025 was available when IPA had to commit to remove the coal units from service to comply with federal and state regulatory requirements. IPA was not able to sell what no one was interested in buying.
    - Since 2015, pursuing the continued operation of the coal units has been fraught with regulatory peril and would require the expenditure of billions of dollars. We understand that a preliminary draft of a report commissioned by the Office of Energy Development has come to the same conclusion.

- Though sourcing natural gas exclusively from Utah is not a practical option, IPP Renewed represents significant additional investment in Utah, including licensing fees that benefit Utah schools (see below). Even if it were possible to find a source for purchasing exclusively Utah-produced natural gas at volumes sufficient for IPP Renewed, the arrangement would increase the price of natural gas for other consumers. Utah is already a net importer of natural gas.

- IPP Renewed is the Alternative with the Highest Benefits to the State and Local Communities.

  - As soon as it became apparent that the purchasers of the largest portion of IPP power would not be able to purchase coal-fueled power after 2027, IPA and its purchasers explored multiple alternatives. The IPA Board of Directors' primary objective alongside maintaining the benefits of IPP for the Utah municipalities was preserving as much of the historical economic benefit to the state and local communities from IPP as possible, in particular, jobs at the plant and the continued operation of the coal units. After years of exploring alternatives, the IPA Board of Directors concluded that the alternative to IPP Renewed was no generation and no jobs at the IPP site.

  - While IPA was not able to find a viable use for the coal units, continued economic benefits for the state and local communities, including IPA's member municipalities, from IPP Renewed include the following:

    - over $2 billion of capital investment in new generation and updated transmission facilities in Millard County and the associated fee and tax revenues to local communities and the state;

    - even more billions of dollars in capital investment in Utah resulting from hydrogen production and storage services for which IPA has contracted;

    - a minimum of $24 million (subject to the volume of hydrogen ultimately utilized) expected to be paid in licensing fees to the Utah Trust Lands Administration in respect of their interest in lands being developed for hydrogen storage (which funds are for the direct benefit of Utah schools);

    - the continued involvement of Los Angeles Department of Water and Power ("LADWP") in the project, as requested by state leadership in connection with legislation enacted to facilitate IPP Renewed (inducing LADWP to commit substantial resources to develop IPP Renewed facilities at a scale that the Utah municipalities involved in IPP would not have been capable of developing on their own);

- the continued option for Utah purchasers to sell excess power to California purchasers with the option to recall power when needed with the Utah purchasers paying only the cost of the power they take (saving the Utah municipalities more than $6 million during the summer of 2022);

- preserving IPP Renewed as a key part of the energy hub that has promoted capital investment in Utah for exporting power to California;

- the reduction of air pollution in the state; and

- IPA's continued role as a shareholder in irrigation companies to support needed capital improvements to water infrastructure in the area.

- IPP Renewed Reflects Legislative Policy. IPA relied on policy established by the Legislature in 2012 and subsequent years to plan, contract for and issue nearly $2 billion in bonds to fund development of IPP Renewed. Terms of those contracts include IPA's status as a political subdivision, governance of IPA by its members, delegation of responsibilities and authority to LADWP, development of IPP Renewed as a natural gas-fueled facility, and the transition away from coal. IPA understands that prior Legislatures do not bind the current Legislature from enacting statute to reflect its own policy determinations. IPA would appreciate the Legislature taking into account the contractual, regulatory and constitutional constraints applicable to IPP as it considers the recommendations in the Report.

Recommendations 2.1 (relating to out-of-state influence on IPA), **2.3** (relating to measuring and public reporting of IPA's success), and **2.5** (oversight requirements applicable to IPA):

- IPA is Committed to Measuring and Reporting. IPA believes that the IPA Board of Directors would support any reporting requirements that are consistent with the reporting requirements for other taxed interlocal entities. In addition to publicly reporting on their finances and operations to the municipal bond market, IPA has provided its audited financials to the Office of the State Auditor and to the Project Entity Oversight Committee (the committee created by the Legislature in 2022 specifically to report to the Legislature information on IPP received from IPA and other interested parties).

- Out-of-State Influence Has Benefitted the State and Local Communities. The influence of out-of-state purchasers of IPP power began in the early 1980s as a condition to their participation in the project. The out-of-state purchasers have funded nearly all of the billions of dollars of investment in the state resulting in hundreds of millions of dollars in fees and taxes. The out-of-state purchasers have provided the commitments needed to continue electric power generation at IPP. Reductions in cost at IPP have also benefitted the Utah municipal purchasers when they have recalled power.

- Utah Influence Has Furthered the Interests of the State and Local Communities. Utah influence at IPP means that material project decisions are made only with the Utah municipalities' approval (as represented by the IPA Board of Directors). One of the key terms of the IPP contracts that will continue through 2077 is that action cannot be taken with respect to IPP without approval of purchasers holding 80% of the voting rights on the IPP Coordinating Committee. With Utah purchasers collectively holding over 20% of the IPP voting rights, the California purchasers do not have the ability to unilaterally determine the course of IPP. Given the protections for the Utah municipalities on the IPP Coordinating Committee, the IPA Board of Directors has not needed to withhold approval of any material action approved by the IPP Coordinating Committee in order to further the IPA Board's interests in preserving benefits to the state and local communities.

- IPA is Committed to Long-Term Planning Reflecting Needs of Members. Other Local Communities and the State. IPA has always been thoughtful in determining the long-term direction of IPP to benefit its members and other local communities and the state. IPA will formalize more of that planning beyond the direction established by the IPP contracts that will govern the project through 2077.

- IPA Engages Professional Expertise as Needed. IPA has engaged professional staff as needed to perform the functions it has retained under the IPP contracts. IPA's member representatives and, consequently, its Board of Directors consist of individuals with significant involvement in their municipal power systems. Four of the members of the IPA Board are the full-time managers of their municipal power systems. These individuals understand their municipalities' needs and communicate those as need to protect their interests.

- Accomplishing the Mission of IPP Renewed Furthers IPA's Mission. IPA's written mission and values statements are broad in nature and consistent with IPA's purposes under state law. To further IPA's mission and values, IPA has elected to proceed with IPP Renewed. In turn, the IPP Renewed team, with the specific focus of constructing the IPP Renewed assets has identified a mission that focuses on their specific function within IPA's broader mission and values. If the IPP Renewed team successfully accomplishes its mission, IPA's mission and values will also be furthered.

- Development at IPP Balances Interests Consistent with Law. Given that purchasers from neither Utah nor California unilaterally control direction of the project, IPP development reflects the direction that accommodates the needs of all parties to the project in light of legal constraints. The third unit that was proposed to be constructed around 2006 failed to obtain the needed approval to proceed to completion. LADWP reimbursed the interested parties for the costs of pursuing the third unit. Transmission assets are governed, though, by federal regulation and IPA has determined that it is required by regulation to allow interconnections to the IPP transmission system by qualified projects, including the Milford Wind Project.

Recommendations 3.1 (relating to IPA's communications with and reporting to the Legislature) and **3.2** (relating to transparency and accountability of taxed interlocal entities for their operations):

- IPA is Committed to Communications and Reporting. IPA has been willing to provide reporting consistent with law. IPA will continue to be committed to legally compliant reporting.

- IPA is Committed to Transparency and Accountability. IPA will provide the reporting required by the Legislature.

- The Utah Legislature Created Unique Status for Taxed Interlocal Entities. IPA does have a unique status as a taxed interlocal entity that was recognized by the Legislature over several legislative sessions. Because IPA does not, as a practical matter, receive any public funds (and, in fact, has paid over $720 million in taxes and fees in lieu of taxes over the life of IPP), sponsors of governmental transparency and accountability legislation, legislative leadership and the Office of the State Auditor agreed that it was not consistent with public policy to include IPA in such legislation. At the request of legislative leadership, IPA participated in drafting legislation that created the designation of taxed interlocal entity and excluded those entities from provisions of law directed at creating oversight and accountability for public funds.

Recommendations 4.1 (relating to balancing the interests of a project entity and a host county under state tax law) and **4.2** (relating to balancing the interests of a project entity and host county with respect to impact alleviation payments):

- IPA Desires Resolution of Tax Issues. IPA is committed to working with the Legislature and Millard County to find a balanced approach to addressing state taxes and fees in lieu of property taxes. IPA on September 28, 2023, received notice from Millard County that IPA's latest offer to settle all outstanding tax appeals is acceptable. IPA has long advocated entering into a long-term arrangement with the county regarding valuation of IPP assets, subject to the County's agreement.

- IPA Pays Impact Alleviation Payments with Limited or no Offset. Historically, through tax payments to Millard County, IPA has funded 88% of the credits it has received for impact alleviation payments. IPA has agreed with Millard County that the impact alleviation payments to the county for facilities permitted in the most recent amendment to IPA's conditional use permit will not be offset by tax credits. I

Recommendations to IPA Board of Directors. IPA intends to act on the following recommendations addressed to the IPA Board of Directors:

Recommendation 2.2 (relating to IPA's long-term strategic planning)

- IPA Staff Commits to Recommending Formalizing More of IPA's Long-term Strategic Planning to the IPA Board of Directors. IPA does not object to formalizing more of IPA's long-term strategic planning. IPA staff will develop recommendations for the IPA Board of Directors and present those at the earliest opportunity at a meeting of the Board. IPA staff plans to include recommendations to confer with IPA members on a more regular basis regarding the members' strategic plans and resource planning, continue to confer with Millard County officials regarding local community needs, and to explore possibilities for economic development at the IPP site.

Recommendation 2.4 (relating to IPA's Utah governance and relation to IPP Coordinating Committee):

- IPA Commits to Providing Additional Information Regarding the IPA Board's Relation to the IPP Coordinating Committee. IPA will develop guidance for an upcoming meeting of the IPA Board of Directors to describe how the IPA Board's decision making relates to the IPP Coordinating Committee and to address the other issues in the Report relating to Recommendation 2.4.

Millard County

Courthouse - Fillmore
50 South Main
Fillmore, UT 84631-5504
Fax: (435) 743-8019
Commission Secretary:
(435) 743-6223
Fax: (435) 743-6923

Millard County Commission

www.millardcounty.org

Satellite Offices – Delta
71 South 200 West ◦ P.O. Box 854
Delta, UT 84624
Phone: (435) 864-1400
Fax: (435) 864-1404

Kade R. Minchey
CIA, CFE Auditor General
Office of Legislative General
Po Box 145315
Salt Lake City, UT 84114-5315
mboone@le.utah.gov

September 27, 2023

Re: Audit of IPA

Millard County has looked forward to and thanks the office of Legislative Auditor General for their independent opinion.
Government operations should provide equal opportunities, equal privileges and equal responsibilities for every residential and business taxpayer.
The audit has highlighted areas of concern and gives us a road map to move forward to improve relationships between IPP, IPA, the State of Utah, and Millard County.
Millard County looks forward to a bright future and will welcome any industrial business that wants to be partners in the development of our assets for the benefit of all the citizens of the State and Millard County.

Sincerely,

Bill Wright

Bill Wright
Millard County Commission Chair

Commissioner Trevor Johnson
435-864-1414

Commissioner Bill Wright
435-743-4703

Commissioner Vicki Lyman
435-864-1413