

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	CASE NO. IPC-E-19-34
COMPANY'S APPLICATION TO FUND ITS)	
CONTINUED PARTICIPATION IN THE)	
NORTHWEST ENERGY EFFICIENCY)	ORDER NO. 34556
ALLIANCE THROUGH THE ENERGY)	
EFFICIENCY RIDER FOR 2020-2024)	
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On October 21, 2019, Idaho Power Company ("Idaho Power" or "Company") applied to the Commission for an order authorizing the Company to participate in the Northwest Energy Efficiency Alliance ("NEEA") from 2020-2024 and confirming that such participation will be funded through the Idaho Energy Efficiency Rider ("Rider"). The Company requests the Application be processed by Modified Procedure. *Application* at 7.

On November 8, 2019, the Commission issued its Notice of Application, Notice of Modified Procedure and Order. Order No. 34478. The Commission's Staff ("Staff") and the Idaho Conservation League ("ICL") submitted the only comments and supported the Company's Application. The Company did not reply.

Having reviewed the record, the Commission enters this Order approving the Company's Application on the conditions discussed below.

APPLICATION

In its Application, Idaho Power characterizes NEEA as a non-profit organization whose purpose is to maximize energy efficiency in the Northwest by accelerating and adopting energy-efficient products, services, and practices through market transformation. *Id.* at 1-2. Idaho Power states NEEA is funded by utilities in the Northwest United States, including Idaho Power, the Energy Trust of Oregon and the Bonneville Power Administration. *Id.* at 2.

Idaho Power began participating in NEEA in 1997. *Id.* The Company asserts from 1997-2018, NEEA delivered 1,740 average megawatts ("aMW") of total regional energy savings, 582 aMW of which are Net Market Effects energy savings. *Id.*¹ During this period, the Company's allocated portion of NEEA's savings was 371,527 megawatt-hours or 42.41 aMW. *Id.*

¹ Idaho Power states Net Market Effects are savings associated with market change and not counted as locally incented savings or baseline savings. *Id.* at footnote 2.

Idaho Power participates in every NEEA committee and workgroup and is represented on the NEEA Board of Directors.² *Direct Testimony of Adam J. Richins* at p. 3, ll. 16-18. Idaho Power asserts this involvement enables it to leverage its market-transformation investment by building on NEEA's pooled resources, suppliers, market research and program design in Washington, Oregon, Montana and Idaho. *Application* at 2; *see also Richins* at p. 4, ll. 22-24. Further, this involvement enables Idaho Power to influence NEEA's activities for the benefit of the Company's customers. *Id.*

Idaho Power asserts NEEA's 2020-2024 Strategic and Business Plans ("Plans") have two strategic goals:

- (1) transformation - sustain a portfolio of initiatives and support functions that enable more cost-effective efficiency to occur sooner, in larger amounts and/or at a lower cost than otherwise expected, and (2) operations - continuously improve organizational culture and performance efficacy, ensure accountability and transparency, and strive for innovation in service to the benefit of all stakeholders.

Application at 3. Idaho Power states that, related to its transformation goal, NEEA is pursuing market development initiatives for Heat Pump Hot Water Heaters, Retail Product Portfolio, Super-Efficient Dryers, Luminaire Level Lighting Controls, and Codes and Standards. *Id.*

The Company represents NEEA's Plan intends to deliver 360-500 aMW of total regional energy savings using approximately \$159.4 million invested by regional stakeholders. *Id.* at 4. Based on its customer counts and energy sales relative to the region, Idaho Power represents its funding share is about \$14.7 million during 2020-2024 or 9.2% of NEEA's total budget compared to \$13,450,835 in funding it provided to NEEA or 8% of NEEA's total budget during 2015-2019. *Id.* at 4-5; *see also Richins* at p. 7, Table 1 and *Attachment 3 to the Application*. Idaho Power asserts its funding for NEEA, relative to that from other funders, has increased for 2020-2024 because, 1) two utilities that participated during 2015-2019 no longer contribute funds, and, 2) the Company's customer counts and energy sales have increased by more than all but one of the other current funders. *Richins* at p. 8, ll. 3-10. Idaho Power asserts the proposed Funding Agreement is effective on January 1, 2020, and will expire on August 1, 2025. *Application* at 5.

Idaho Power states that since 2002, the Commission has authorized the Company to recover its costs for Demand-Side Management ("DSM") programs and NEEA participation from

² For example, an Idaho Power representative participates in the Cost-Effectiveness and Evaluation Advisory Committee of NEEA. *Richins* at p. 3, ll. 20-21.

the Rider. *Application* at 3. The Company represents its yearly DSM Report to the Commission will document NEEA funding amounts and annual savings resulting from Idaho Power's participation in NEEA. *Richins* at p. 11, ll. 13-16.

Idaho Power asserts it evaluated the cost-effectiveness of NEEA's Plans because the Company must show its customers sufficiently benefitted from NEEA before the Commission can find the Company's participation in NEEA was a prudent use of Rider funds. *Application* at 4. Accordingly, the Company had Peter Pengilly, Idaho Power's Customer Research & Analysis Leader, analyze NEEA's claimed energy savings considering:

- (1) the amount of NEEA savings attributed to codes and standards,
- (2) allocation methodology of NEEA savings to Idaho Power customers, and
- (3) cost-effectiveness impacts of declining avoided costs.

Id. at 5. Mr. Pengilly also evaluated if claimed savings from NEEA's 2018 initiatives would be cost-effective under Idaho Power's standard cost-effective analysis for programs it administers directly. *Id.* His assessment identified potential concerns regarding the amount of savings attributed to codes and standards, allocation of savings to Idaho Power customers, and cost-effectiveness impacts of declining avoided costs. *Id;* see also *Direct Testimony of Peter Pengilly* at pp. 2-14. Due to these concerns, the proposed Northwest Energy Efficiency Alliance Funding Agreement ("Funding Agreement") contains provisions in § 2 that would allow the Company to stop funding NEEA if cost-effectiveness issues affecting regulatory approval occur. *Application* at 5; see also *Richins* at p. 10, 11. 5-10 and *Funding Agreement* at pp. 1-2, § 2.

Idaho Power asserts going forward, there are other opportunities for the Company to validate customer benefits from its funding of NEEA. *Richins* at p. 10, ll. 11-19. For example, "the Company believes soliciting a third-party evaluation of NEEA savings similar to how it performs impact evaluations on its own [DSM] programs every 2-3 years to assess program effectiveness in achieving its claimed savings would be beneficial." *Id.*

The Company states "it is committed to the pursuit of all cost-effective energy efficiency and it believes energy savings are occurring for its customers based on NEEA's efforts in the Northwest region." *Application* at 8; see also *Richins* at pp. 10-11. Further, Idaho Power believes using Rider funds for the 2020-2024 time period is a prudent use of customer funds, and the newly negotiated safeguards included in the contract helps ensure the Company can terminate funding for the remainder of this time period if further concerns regarding cost-effectiveness

materialize. *Id.* Accordingly, Idaho Power asks the Commission to authorize the Company to continue participating in NEEA from 2020-2024, and to confirm that the Company's participation will be funded by the Rider. *Application* at 8.

COMMENTS

1. Staff

Staff stated the Company's Funding Agreement with NEEA would enable Idaho Power to supply about \$2.9 million annually to NEEA for five years, which is about 7% of Idaho Power's annual DSM expenses. *Staff Comments* at 3.

Staff still believes NEEA provides cost-effective energy efficiency through market transformation for customers in Idaho Power's service territory. *Id.* Staff recognizes NEEA's main value is its leverage as a regional organization with large retailers, manufacturers, and federal agencies that individual utilities or their contractors would not have. *Id.* Staff asserts NEEA can offer financial incentives across a four-state market, and sometimes in coordination with California, that retailers and manufacturers are likely to respond to by producing, stocking and selling more energy-efficient appliances. *Id.* As a result, customers in the region can find and buy higher efficiency appliance options without local utilities incurring greater expenses to engage and incent individual customers. *Id.*

Staff notes NEEA can influentially work with federal agencies on efficiency codes and standards as a regional voice representing 13 million customers. *Id.* Staff believes enacting efficiency in Codes and Standards is a positive long-term outcome of a utility program – meaning that efficient technology is so well-understood and available that it becomes the minimum requirement, which means utilities no longer need to offer financial incentives in order to acquire those savings. *Id.* at 4.

Staff also acknowledges that, while regional coordination on market transformation can significantly benefit customers, aligning the preferences and practices of a disparate group of funders can be challenging. *Id.* For example, it can be difficult for NEEA to allocate costs and benefits in market transformation across funders with the same precision that Idaho Power can assign costs and benefits to the Company's own programs. *Id.* Although not ideal, Staff believes NEEA's leverage and pooling regional resources mitigate risks for critical work in emerging technologies that generally provide benefits exceeding costs. *Id.*

Although NEEA's market-transformation work has many benefits, Staff asserts it still must be cost-effective. *Id.* Staff appreciates the Company's additional cost-effectiveness analysis on NEEA savings. *Id.* However, Staff notes the Company only analyzed the costs and benefits of energy-efficient appliances sold in a single year and not the costs and benefits of energy-efficient appliances forecasted to be sold over the program's 20-year life. *Id.* Staff states the savings from appliances sold in the future because of market transformation are critical to the value that distinguishes NEEA's work from local utility efficiency programs. *Id.* Staff represents it will continue to monitor the cost-effectiveness of NEEA's initiatives in Idaho Power's service territory and is thus not opposed to the Company independently evaluating, verifying, and measuring NEEA's initiatives as it does for its local programs. *Id.*

Staff also notes the NEEA Funding Agreement includes several new provisions that could allow Idaho Power to terminate its funding obligations if circumstances change. *Id.* Staff believes these provisions are reasonable and help safeguard customer funds. *Id.*

Based on the foregoing, Staff recommends the Commission authorize Idaho Power's continued participation in NEEA for the 2020-2024 time period, and that the Company's participation be funded by the Rider. *Id.* at 3.

2. ICL

ICL recommends the Commission approve Idaho Power's request to continue participating in NEEA. *ICL Comments* at 1. Being informed by its participation in NEEA, and consistent with the Commission's position, ICL asserts utilities should pursue all cost-effective conservation measures. *Id.* ICL states Idaho Power's collaboration through NEEA is an essential part of this pursuit. *Id.* ICL asserts NEEA's national influence over product makers, distributors, and service providers ensure Idahoans have easy and affordable access to energy-efficient products and services. *Id.* ICL believes NEEA's work in testing and improving consumer marketing practices, in close coordination with local utilities, leverages Idaho Power's other conservation efforts. *Id.*

ICL asserts NEEA's expertise and impact in improving Idaho's building and energy codes are unmatched in Idaho. *Id.* ICL claims NEEA's development of new conservation measures, improvement of consumer uptake, and instilling conservation into codes can accomplish cost-effective energy savings that a single utility could never achieve alone. *Id.*

ICL states because NEEA focuses upstream of the end use consumer to influence other parts of the product and service supply chain, the energy-saving results will always differ from results from consumer-focused programs. *Id.* at 2. ICL asserts the essence of market transformation, NEEA's goal for the past 20 years, is to “fill the pipeline” with new products and services that will deliver future energy savings. *Id.* ICL alleges NEEA programs succeed when a new product or service is mature enough for local utilities to implement consumer facing incentives and programs. *Id.* ICL believes NEEA's focus on upstream actors combines with local utilities' focus on downstream programs to appropriately balance the risks and rewards of innovation for the benefit of end consumers. *Id.* ICL represents it is focused on cost-effective energy conservation. *Id.* Accordingly, ICL recommends the Commission approve the Company's continued participation in NEEA. *Id.* ICL also states the annual DSM review process helps ensure the ongoing cost-effectiveness of all Idaho Power funded conservation activities. *Id.*

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-501, 61-502, and 61-503. The Commission is vested with the power to “supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the [Public Utilities Law].” *Idaho Code* § 61-501. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503.

The Commission has reviewed the Application, attachments, and the comments of Staff and ICL. Based upon our review, we find it reasonable to approve Idaho Power's continued participation in NEEA as requested.

In Order No. 27045, Case No. IPC-E-96-26, the Commission first considered Idaho Power's proposed participation in NEEA and found:

NEEA's role in achieving greater efficiencies in the use of electricity has been advanced by the Comprehensive Review of the Northwest Energy System after a year-long public debate regarding the future of energy markets in the Northwest.

The Commission has been supportive of investments made by its regulated utilities in conservation programs so long as those programs are prudent for ratepayers. Prudent conservation makes sense from both a societal and an economic perspective. We believe that it is one of the responsibilities of this

Commission to encourage and facilitate the investment by the utilities we regulate in such programs.

Order No. 27045 at p. 5 (emphasis added). Consistent with those findings, the Commission continues to encourage Idaho Power to fund cost-effective DSM and energy efficiency programs. These findings and the forecasted energy savings and cost-effectiveness of the Plans going forward also enable us to find it reasonable to approve Idaho Power's continued, Rider-funded participation in NEEA from 2020-2024. *See* Order Nos. 33210, 32953, 31080, 29784, 27877 and 27045.

As always, our approval of Idaho Power's continued participation in NEEA, and the use of Rider funds to pay for such participation, is not a determination of prudence. *See* Order No. 31080 at 7; *see also* 33210 at 6. To obtain a future determination that the Company's use of Rider funds was prudent, the Company must demonstrate that customers sufficiently benefit from the Company's participation in NEEA.

Our approval is not granted without some lingering reservations. Idaho Power's concerns about the continued cost-effectiveness of its participation in NEEA are well-taken. We expect—and find it reasonable to require—Idaho Power to continually monitor whether its funding of NEEA is cost-effective, prudent and in the best interest of ratepayers. We appreciate Idaho Power's inclusion of new terms in the Funding Agreement to help protect ratepayers if it appears the Company's participation in NEEA is no longer cost-effective, prudent and in the best interest of ratepayers. We further find merit in Staff's recommendation that the Company also analyze the costs and benefits of energy-efficient appliances that are forecasted to be sold in future years, particularly from 2020-2024, in addition to those sold in a single year. We encourage the Company to include this expanded analysis when examining whether participating in NEEA remains cost-effective, prudent and in the best interests of ratepayers. Should Idaho Power later conclude NEEA is not a cost-effective resource, or if the Company decides to decrease or discontinue NEEA funding for some other justified reason, the Company must notify the Commission as soon as possible.

Besides concerns related to the cost-effectiveness and prudence of Idaho Power participating in NEEA, we also are concerned about the Funding Agreement's new choice of law and forum selection provisions. Section 11 states that Oregon law governs the Funding Agreement. *See Funding Agreement* at 10, § 11. Section 11 also provides that “[a]ny controversy or claim related to this Agreement which cannot be settled amicably without court action shall be

litigated in Multnomah County, Oregon.” *Id.* These provisions were not in the Commission-approved funding agreement for 2015-2019. *See* Application, Attachment 3 Case No. IPC-E-14-18. We question why they were inserted now, and how they further the public interest.³ Notwithstanding these provisions, Idaho Power is a public utility and the Commission will continue to have jurisdiction over it and its practices and contracts to determine whether its participation in NEEA is in the public interest. *See* Idaho Code § 61-503 (Commission shall have the power to investigate a public utility’s contract and practices and to establish new contracts or practices in lieu thereof); *Bunker Hill Co. v Washington Water Power Co.*, 98 Idaho 249, 253 (1977) (A regulated utility cannot contract away the state’s right to enforce the utility’s obligation to serve the public interest); *see also generally* Idaho Code §§ 61-501 & 61-502.

We understand that, in the give and take of contractual negotiations, each party will seek to add terms that favor it while agreeing to other terms that do not. However, when a contract like the Funding Agreement could ultimately affect Idaho ratepayers, we are uncomfortable with a provision that purports to force the parties to resolve their disputes through another state’s laws and courts. The Commission does not reject the proposed Funding Agreement because of these terms at this time because, as noted above, the Funding Agreement appears to have additional terms that mitigate harm to Idaho customers. However, we caution the parties to scrutinize foreign, forum selection and choice of law clauses in the future and determine whether such clauses further the public interest of Idaho ratepayers.

ORDER

IT IS HEREBY ORDERED that Idaho Power’s Application is granted. Idaho Power may continue its participation in NEEA from 2020-2024, with such participation to be funded through the Rider and subject to a prudency review.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

³ In this regard, we note *Idaho Code* § 29-110(1) states: “Every stipulation or condition in a contract, by which any party . . . is restricted from enforcing his rights under the contract in Idaho tribunals . . . , is void as it is against the public policy of Idaho.”

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of *20th*
February 2020.



PAUL KJELLANDER, PRESIDENT

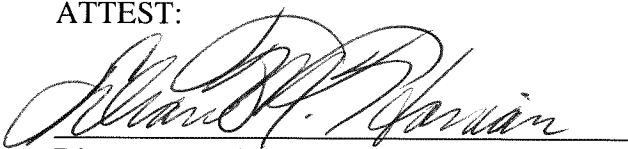


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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