



# Fact Sheet

October 2012

## What's a rate case?

In November, BPA will kick off two rate cases — the BP-14 and the OS-14.

Which prompts two questions:

- What is a rate case?
- What do BP-14 and OS-14 mean?

### A rate case

BPA is a federal agency, but, unlike most others, it does not receive any appropriated dollars from Congress. In fact, BPA's statutes require that the agency recover its costs with the revenues it earns from selling the products and services provided by the power and transmission systems.

A rate case is a process through which the agency determines how much to charge for what it sells in order to cover its costs of producing and selling those products and services.

Further, a rate case is a semi-legal proceeding conducted under the scrutiny of a hearing officer and following rules laid out in Section 7(i) of the Northwest Power Act of 1980 and BPA's procedures established in a rulemaking process under the Administrative Procedures Act. When people around the agency refer to a 7(i) process, this is what they are talking about.

The presiding official is a hearing officer rather than an administrative law judge because the hearing officer does not write his or her own opinion on the issues of the case. Rather, the hearing officer is tasked with compiling a record of the proceeding that he or she then presents to the BPA administrator, who is the decision maker.

It is important to remember that the rate case is not so much about the costs the agency must recover (its revenue requirement) as it is about who pays for those costs and whether the rates set recover the appropriate costs. Most of the revenue requirement, the level of program costs, is, to the surprise of some people, covered in another process – the Integrated Program Review – that precedes the formal rate case.

### BP-14 and OS-14

BP-14 is the docket number for the Bonneville Power 2014 rate case in which the agency will set rates for both its power and its transmission products and services for the 2014 and 2015 fiscal years, which cover Oct. 1, 2013, through Sept. 30, 2015.

OS-14 is the docket number for the Oversupply 2014 rate case. The OS-14 docket is limited to the recovery of the costs BPA incurs while implementing its oversupply management protocol. In essence, the case will determine how the cost BPA incurs paying wind generators for the income they lose when the agency curtails their output during periods of oversupply should be allocated between and collected from wind generators and BPA's public power customers.

BPA is using separate BP-14 and OS-14 dockets in order to keep the issues and records separate from each other to make the appeal of disputed decisions easier after BPA's cases have been concluded. What happens after BPA's rate case is discussed more below.



## Before a rate case

Because of the narrow focus of a rate case, much work needs to be done before it begins so that everyone who cares has a chance to, for example, discuss the costs of doing business that must be recovered.

We began preparing for the BP-14 rate case in January 2012 with a public meeting. This discussion was high level and strategic, and included an overview of programs, future costs and rates. The focus of this early discussion was not on the “numbers” but on the drivers leading up to this fall’s initial rate proposal. Because BPA’s customers pay all of BPA’s costs, the customers generally have a high degree of interest in how BPA is spending their money.

In March and April, BPA held the Capital Investment Review, a process designed to provide an opportunity for those who were interested to review and comment on BPA’s long-term capital forecasts and draft asset strategies. The primary issue discussed was how BPA could get access to more capital sources when the normal source, borrowing from the U.S. Treasury, is closed off because BPA’s maximum federal borrowing has reached its limit. Capital expenditures eventually show up in rates in the form of debt service that must be paid.

The 2012 Integrated Program Review kicked off in June and provided an opportunity to review BPA’s proposed expenses for the 2014 and 2015 fiscal years. The numbers that come out of the review inform BPA’s rate levels.

In addition to the IPR, during the summer BPA held technical workshops so interested people could review and discuss with BPA staff the assumptions and information involved in the many “studies” that support the information presented in the rate case. The goal was for everyone to understand the technical aspects of the rate calculations and to seek alternatives.

## Players in a rate case

People and organizations who want to be part of a rate case are divided into two groups: participants and parties.

Almost any person or group may be a **participant** in a rate case. A participant may provide comments,

information and opinions, or ask questions either in person at a field hearing or via regular or email during the comment period.

A **party** participates in the rate case at a much more demanding level. Parties must be customers or organizations that have a specific stake in the outcome of the rate case. They have the opportunity to be involved in all phases of the formal hearing. A party generally is a customer or an organization that has legal representation and invests a significant amount of time and effort in the process. Parties must file a petition to intervene, notifying BPA in writing of their intention to be involved in the rate case. A party is responsible for the costs required to support this involvement. Parties file testimony and provide studies just as BPA does.

The two groups are exclusive; no one who is a party can be a participant. Generally, groups or individuals with limited resources find that the participant level is sufficient. All participant comments submitted during the official comment period are included in the record and considered by the administrator in making a final decision.

## Parts of a rate case

**Federal Register notice.** On Nov. 8, BPA expects to announce the beginning of the official 7(i) process and present a summary of the initial rate proposal along with information on how to become a formal party to the rate case.

**Ex parte.** Publication of the Federal Register notice also initiates ex parte restrictions. Under ex parte any communications regarding the merits of any issue in BPA’s rate case by BPA or other Department of Energy personnel with other executive branch agencies, Congress, existing or potential BPA customers, and nonprofit or public interest groups are considered outside communications subject to the ex parte rule. To ensure a fair process, such communications must occur at an open meeting that has been noticed to all parties. Ex parte remains in effect until the administrator issues his or her final decisions in July 2013.

**Prehearing conference and initial proposal.** At the Nov. 14 prehearing conference, BPA will release its initial

proposal for transmission, power and oversupply rates. The hearing officer will establish a final schedule for the formal rate hearings. The initial proposal consists of studies that explain how BPA establishes its rates, written testimony that explains why BPA is approaching an issue in a particular way and technical supporting documents that give more detailed data and calculations of the rates.

**Field hearing.** Field hearings were public meetings for participants to come to hear about BPA's rate proposal and make comments on the record. Field hearings are no longer used due to their high cost and minimal attendance, as well as improved means of electronic communication.

**Formal hearings.** A hearing officer presides over the formal hearings and conducts them according to a process specified in the BPA Rules of Procedure Governing Rate Hearings. In the formal hearings process, BPA files an initial proposal; parties then file direct cases that respond to BPA's initial proposal and describe how they think BPA should develop its rates; and BPA and other parties then file rebuttals, which means that they respond to each other's proposals. Discovery takes place after each of the above steps. In discovery, BPA and the parties ask clarifying questions about each other's testimony and may submit written data requests to gain information that helps them prepare their responses. Next comes cross-examination in which the parties and BPA have the opportunity to orally cross-examine each other's witnesses under oath on specific points in the direct and rebuttal cases. Only those designated as parties to the rate case may take part in the formal hearings, although the public may attend.

**Close of comment.** Feb. 15, 2013, is the deadline for participants to submit written comments to be included in the official record.

**Final record of decision.** On or about July 22, 2013, BPA will issue the final record of decision. The administrator reviews the official record and makes a decision on the proposed rates. The official record comprises testimony, exhibits, hearing transcriptions, letters and other documents filed during the rate case. The record of decision includes BPA's evaluation of the issues raised

by the parties in their direct testimony during the formal hearings and summarizes comments from participants. There may also be oral arguments before the BPA administrator or his designee before the record of decision is finalized. Participants, as opposed to parties, do not review or comment on any of these documents. Legal arguments, as opposed to technical arguments, are presented in briefs.

## After a rate case

### Rates filed with the Federal Energy Regulatory Commission

After the BPA administrator makes a decision on the proposed rates, the rates are submitted to the Federal Energy Regulatory Commission for confirmation and approval. FERC must grant approval before BPA can begin charging the rates. This approval usually takes the form of interim approval, wherein BPA can charge the rates, subject to refund if FERC finds a problem. Granting interim approval gives FERC additional time to review the rates. Final FERC approval is based on its assessment of whether the proposed rates are sufficient to cover BPA's costs and are based on BPA's total system costs. Getting final approval generally takes about one year.

Rates take effect on or around Oct. 1, 2013.

### Appeal to the Ninth Circuit Court of Appeals

If any party takes exception to a BPA decision, they may appeal that decision to the Ninth Circuit. The Ninth Circuit is the court of original jurisdiction, meaning that the party does not have to go to U.S. District Court first. In essence, the administrator becomes a surrogate for the District Court so the appeals court hears appeals of his decisions. The parties have to file an appeal within 90 days of FERC's final approval. Appeals filed before final approval are almost always dismissed, and appeals after 90 days are barred by statute. If the court finds that BPA made a wrong decision, the court will remand the rates back to BPA to get it right.