



# Fact Sheet

June 2014

## BPA and new public utilities

While public utilities are common in the Northwest, the formation of a new publicly owned utility is rare. In fact, by 1949, there were more than 120 such utilities being served by the Bonneville Power Administration and there have been only eight more since. However, increases in electric utility costs have recently prompted grass-roots organizations to begin investigating the possibility of creating new publicly owned utilities.

In theory, these new utilities would acquire inexpensive power from BPA, a nonprofit federal power marketing administration that sells wholesale electricity, and be able to provide their customers with power that is less expensive than is currently available.

As a result, interest in BPA's policy on the creation of new utilities has increased. It is important to understand that BPA is absolutely neutral on whether new public utilities form or where they form.

In 2008, BPA completed a multiyear process to define how and under what conditions BPA will supply power to regional utilities under new long-term contracts that went into effect Oct. 1, 2011. Considering how long it takes to form a new utility, interested parties are well advised to consider BPA's Long-Term Regional Dialogue Policy and what it says about new utilities.



*BPA's newest publicly owned utility customer, Jefferson County PUD, began receiving BPA power April 1, 2013.*

BPA's Regional Dialogue Policy for serving newly formed public utilities is designed to strike a balance between providing new publics significant access to BPA's lowest-cost power and setting a limit on the costs that would dilute benefits to existing purchasers at BPA's lowest-cost rates.

Since the new policy was adopted, one new publicly-owned utility has formed. Jefferson County PUD, located in the northwest corner of Washington state, began receiving power April 1, 2013. The PUD purchases 46 average megawatts to serve about 18,000 customers.

### What constitutes a "new public" utility?

To be eligible to purchase power from BPA on a preference and priority basis, an applicant must meet three fundamental requirements. First, the prospective applicant must meet the statutory definition of the terms "public body" or "cooperative." The Bonneville



Project Act defines “public body” or “public bodies” to mean “States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof.” It also defines “cooperative” or “cooperatives” to mean “any form of nonprofit-making organization or organization of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost.”

The second requirement is that a public body or cooperative applicant be in the public business of selling and distributing the federal power to be purchased from BPA. If not currently in business, the Act directs BPA to afford the prospective customer a reasonable time, as determined by the administrator, to allow it to get into the public business of selling and distributing power.

The third requirement is that the prospective new utility be within the BPA service territory — Oregon, Washington, Idaho and western Montana.

## Can BPA deny a request for service from a public entity that meets the legal definitions above?

The Northwest Power Act requires that BPA offer a contract for service to a public body or cooperative utility whenever requested for its net requirements load, even if it means BPA must acquire power to serve a new request.

BPA may only deny such a request if the applicant has failed after a “reasonable time” has passed to obtain necessary financing to get itself into the business of selling and distributing electric energy.

Determining a reasonable time period is at the BPA administrator’s discretion.

## Why are applicants allowed a “reasonable” period to set up their business?

The parties are to be given reasonable opportunity and time to hold any elections or to take any other necessary action to create a public body or cooperative. Once created, the public body or cooperative is to be afforded reasonable time and opportunity to authorize and issue

bonds, or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities and to become in all other respects a qualified purchaser and distributor of federal power.

## How does a customer become eligible to purchase federal power from BPA?

In addition to the standards outlined above, the applicant must meet BPA’s “Standards for Service” as revised in January 2000.

## What are BPA’s standards for service?

BPA requires that the applicant:

- be legally formed in accordance with local, state, tribal or federal laws;
- own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time;
- have a general utility responsibility within the service area;
- have the financial ability to pay BPA for the federal power it purchases;
- have adequate utility operations and structure; and
- be able to purchase power in wholesale amounts.

In addition, the standards for service address matters related to the configuration and operation of electrical facilities, including the need to have an electrical plan of service and the ability to operate electrical facilities in a safe and reliable manner.

## How does a new public apply for service under a Regional Dialogue contract?

A new public utility that qualifies for BPA service must request service from BPA through a three-year binding notice before it may buy federal power at BPA’s Tier 1 rate (expected to be its lowest rate). The notice may be made at any point after the new public meets the standards for service. The contract high water mark — the contract right used to determine eligibility to buy

Tier 1 power — for a new public will be set at the customer’s net requirement level in the year deliveries begin. There is the potential for a slight reduction or increase so that the new public’s load has similar access to lowest-cost rates as that of existing publics.

## What led to BPA’s approach to new publics in the Regional Dialogue?

BPA has earmarked 250 average megawatts of high water marks for service to the net requirement loads of new public customers in order to make federal power at the Tier 1 rate more widely available while providing planning certainty for the amount of power that BPA may need to acquire to serve load in the future.

One of BPA’s rate-setting requirements is to encourage the widest possible diversified use of electric power. BPA believes that excluding new publics from an opportunity to obtain power at the Tier 1 rate would place them in an unfavorable position and would not promote the widest possible use of federal power. However, BPA also wishes to ensure that utilities receive price signals that more directly represent the true incremental costs of load growth. The 250 aMW is intended to strike a reasonable balance in achieving these objectives.

## What is a contract high water mark?

BPA is limiting its sale of wholesale power at a Tier 1 rate to the output of the federal system, plus a limited amount of augmentation. Each utility’s “contract high water mark,” or CHWM, sets the contract right used to determine eligibility for Tier 1 power.

## Tier 1 power will be sold consistent with the amount of power available from the federal system with limited augmentation. What “augmentation” is included in Tier 1 rates?

Some features in the Regional Dialogue Policy leave Tier 1 rates and costs somewhat higher than they otherwise would be. These include the proposals for resource removal, up to 250 aMW of power for new publics and

up to 300 aMW of augmentation for existing publics. BPA believes that these limited cost and rate impacts are reasonable in light of the other key interests they would serve.

BPA will most likely have to augment to meet any new public’s request, but it isn’t a given. There is a chance, albeit small, that there would be enough power in the existing Federal Base System to serve some of the 250 aMW of new public requests.

## What happens if total eligible high water mark requests exceed the limit for the rate period?

When the total eligible high water mark requests exceed the 50 aMW limit in a two year rate period, individual HWM amounts of new publics will be prorated down to meet the limit. Amounts not provided to any new public due to the 50 aMW limit will automatically be added to eligible amounts in the next rate period.

## How will BPA prevent larger new publics from using up the available Tier 1 allotment?

During the first year of eligibility for a high water mark, all utilities would be eligible for the lesser of their load or 10 average megawatts. To ensure that access to the 250 aMW is spread broadly and not used solely by one large new public utility, utilities larger than 10 aMW would have their HWM amounts over 10 aMW phased in two-year increments if there is more than one new public formed and their requests exceed the 50 aMW yearly cap. The phasing-in would be 33.3 percent for the next 24 aMW of HWM and 20 percent for any remaining HWM amount after that. It is worth noting that Jefferson County PUD has a 46-megawatt high water mark, leaving a little over 200 aMW for service to the net requirement loads of new public customers at Tier 1 rates.

## What are the exceptions to the 50 aMW rate-period limit?

**Small Utility Exception.** Because this type of pro rata reduction could inordinately impact a small customer, BPA proposes that the first five new publics smaller than 10 aMW that would otherwise be affected by the

50 aMW limit will receive their full HWM without reduction. Since this will only happen when rate-period limits are exceeded and is limited to five customers, BPA believes this accommodation for small publics still meets the region's interests while taking care of the special needs of these customers.

**Tribal Utility Exception.** BPA has earmarked 40 aMW for additions of contract high water marks for the load growth and annexed loads of tribal utilities. These additions will potentially add to the 50 aMW limit for the rate period.

## What happens if a new public is formed from an existing public?

New public customers that form out of an existing public utility will receive a percentage of the existing public utility's CHWM equal to their proportion of the existing utility's total retail load. If the utilities involved agree on the CHWM split, we will use their numbers. If not, BPA will take into account information received from the involved utilities about the characteristics of the load when we determine the high water mark.

## What happens if a new public is formed from an investor-owned utility?

New publics that form out of an existing IOU will be eligible for CHWMs within the new publics limits discussed above.

## Are tribes eligible to form new public utilities?

A federally recognized tribe that forms a cooperative utility pursuant to its tribal constitution and laws would be eligible for preference status. However, a tribe could not create a cooperative inconsistent with state law for service to nontribal members or outside the tribe's jurisdiction.

## What happens if a new large single load is embedded in a request for service by a newly formed public utility?

BPA's New Large Single Load (NLSL) Policy applies to consumer load within a new public's proposed service territory or expansion. Such load will be treated like any new large single load if it is 10 aMW or more at the time the new public is formed, regardless of when the load started taking service from the existing supplier.

## How are new publics treated with regard to the Residential Exchange Program?

A new public customer that chooses to sign a contract with a CHWM would have the same access to the Residential Exchange Program as an existing public customer that signs a CHWM contract.

## What does BPA expect in terms of new publics forming?

BPA believes new public customers, in addition to Jefferson County PUD, are likely to form and request service during the term of the Regional Dialogue contracts, which extend into 2028. However, such formations are not likely to involve large amounts of load. Over the past 25 years, a little over 300 average megawatts of new publics have formed and taken PF service. For the 20-year term of the Regional Dialogue contracts, BPA will earmark 250 aMW that, adjusted for the five-year time difference and the potential for additional amounts for small utilities, provides an amount of power for new publics that is approximately equivalent to this recent history.