

DIVISION 15

**PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF ENERGY PROCEEDINGS, INCLUDING
SITE CERTIFICATE HEARINGS**

345-015-0014

Contested Case Notices

(1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001.

(a) Contested case notices regarding proposed orders for site certificate applications shall include:

(A) A date by which persons must request party or limited party status.

(B) The date of the pre-hearing conference.

(C) The time and place of the hearing.

(b) Contested case notices regarding proposed orders for site certificate amendments shall include:

(A) The date of the pre-hearing conference.

(B) The time and place of the hearing.

(C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-0071.

(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under OAR 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.

(3) The Department shall send a contested case notice by registered or certified mail to the following persons:

(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who commented in person or in writing on the record of the public hearing described in OAR 345-015-0220.

(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing on the record of the public hearing on the proposed order described in OAR 345-015-0320.

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0071 or OAR 345-027-0090, to the certificate holder and to the parties the Council granted contested case party status to.

(d) For Council contested case proceedings described under OAR 345-029-0070, OAR 345-029-0100 or OAR 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.

(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).

345-015-0016

Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate

(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding shall submit a petition to the hearing officer by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.

1 (2) Persons who have an interest in the outcome of the Council's contested case proceeding or who
2 represent a public interest in such result may request to participate as parties or limited parties.

3 (3) Except as described in section (4), only those persons who have commented in person or in
4 writing on the record of the public hearing described in OAR 345-015-0220 may request to
5 participate as a party or limited party in a contested case proceeding. To raise an issue in a
6 contested case proceeding, the issue must be within the jurisdiction of the Council, and the person
7 must have raised the issue in person or in writing on the record of the public hearing, unless the
8 Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action
9 recommended in the proposed order described in OAR 345-015-230, including any recommended
10 conditions of approval, differs materially from the action recommended in the draft proposed
11 order, in which case the person may raise only new issues within the jurisdiction of the Council that
12 are related to such differences. If a person has not raised an issue at the public hearing with
13 sufficient specificity to afford the decision maker an opportunity to respond to the issue, the
14 hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue
15 with sufficient specificity, the person must have presented facts at the public hearing that support
16 the person's position on the issue.

17 (4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only
18 those persons who have commented in person or in writing on the record of the public hearing
19 described in OAR 345-015-0320 may request to participate as a party or limited party in a contested
20 case proceeding on an application for a site certificate. To raise an issue in a contested case
21 proceeding, the issue must be within the jurisdiction of the Council, and the person must have
22 raised the issue in person or in writing on the record of the public hearing. If a person has not raised
23 an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity
24 to respond to the issue, the hearing officer shall not consider the issue in the contested case
25 proceeding. To have raised an issue with sufficient specificity, the person must have presented facts
26 at the public hearing that support the person's position on the issue.

27 (5) In a petition to request party or limited party status, the person requesting such status shall
28 include:

29 (a) The information required under OAR 137-003-0005(3).

30 (b) A short and plain statement of the issue or issues that the person desires to raise in the
31 contested case proceeding.

32 (c) A reference to the person's comments at the public hearing showing that the person raised the
33 issue or issues at the public hearing.

34 (d) A detailed description of the person's interest in the contested case proceeding and how that
35 interest may be affected by the outcome of the proceeding.

36 (6) The hearing officer's determination on a request to participate as a party or limited party is final
37 unless the requesting person submits an appeal to the Council within seven days after the date of
38 service of the hearing officer's determination.

39 **345-015-0080**

40 **Participation by Government Agencies**

41 (1) Any state or local government agency other than the Department of Energy may request
42 participation in a contested case as a party, limited party or interested agency, subject to the
43 limitations described in OAR 345-015-0016. For a contested case on a site certificate application, the
44 agency shall submit the request to the hearing officer in writing by the date specified in the
45 Department of Energy's contested case notice issued under OAR 345-015-0014. For a contested
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1 case on a site certificate amendment, the agency shall submit the request to the Department by the
2 date specified in the notice of the opportunity to request a contested case issued under OAR 345-
3 027-0071.

4 (2) The Department of Energy shall participate in all contested case proceedings conducted by the
5 Council and shall have all the rights of a party.

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7 **345-015-0083**

8 **Prehearing Conference and Prehearing Order**

9 (1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.

10 (2) The hearing officer may conduct one or more prehearing conferences for the purposes and in
11 the manner described in OAR 137-003-0035. At the conclusion of the conference(s), the hearing
12 officer shall issue a prehearing order stating the issues to be addressed in the contested case
13 hearing and, in a contested case on an application for a site certificate, limiting parties to those
14 issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing
15 officer shall not receive evidence or hear legal argument on issues not identified in the prehearing
16 order.

17 (3) Failure to raise an issue in the prehearing conference(s) for the contested case hearing on an
18 application for a site certificate constitutes a waiver of that issue.