

**From:** [Ratcliffe Jesse D](#)  
**Sent:** Thursday, November 5, 2020 9:48 AM  
**To:** [Karl Anuta](#); 'Irene Gilbert'; [OED\\_OAH\\_REFERRAL \\* OED](#); [CORNETT Todd \\* ODOE](#); [BENNER Janine \\* ODOE](#)  
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**Subject:** RE: Procedural Information Concerning Hearing Officer's Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

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Mr. Anuta,

The scope of the Council's authority on the appeal of party status and issues is ultimately for the Council to decide. The best I can do is to point you to ODOE staff's interpretation of OAR 345-015-0016(6), as provided in staff's Request for Clarification Regarding Contested Case Procedure, filed with the Hearing Officer on October 6, 2020: "[T]he Department interprets the appeal under OAR 345-015-0016(6) to include appeal of the hearing officer determinations on party status *and issues*." (Emphasis added). This interpretation is consistent with ORS 345-015-0016(6), which authorizes appeals to the Council of the "hearing officer's determination on a request to participate as a party or limited party," because the requests to participate identify the issues the

person is seeking to have addressed in the contested case and the hearing officer's ruling addresses those issue requests. Further, this interpretation, if adopted by the Council, provides an opportunity for the Council to hear appeals of the Hearing Officer's issue determinations now, rather than waiting until the Council's final decision on the site certificate.

Sincerely,

## Jesse Ratcliffe

Sr. Assistant Attorney General | Natural Resources Section | General Counsel  
Division  
Oregon Department of Justice  
1162 Court St. NE, Salem, OR 97301-4096  
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**From:** Karl Anuta <kg@integra.net>

**Sent:** Tuesday, November 3, 2020 12:46 PM

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**Subject:** RE: Procedural Information Concerning Hearing Officer's Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

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Ms. Ratcliffe – As you may recall, this office represents the STOP B2H Coalition. I read your email. Please clarify something for me.

The OAR that you cite - OAR 345-015-0016(6) - does indeed provide for appeals to the Council of a Hearings Officer ruling **on whether a person is given party status, or limited party status, or denied party status**. However, the Rule says nothing about appeals of a Hearings Officer ruling on what issues a party can, or cannot, address. It would appear then, that such a ruling cannot be appealed to the Council at this time as other forms of interlocutory appeal – other than an appeal on party vs limited party status – are forbidden by the rules.

Nonetheless, your email below suggests that parties must appeal **not only** the ruling on their party status, but also the separate rulings on what issues are “in” or “out” for each party or each limited party. That imposes an enormous additional burden, on mostly Pro Se appellants, in a very short time frame. It would also seem to directly contravene the “no interlocutory appeals” rule.

Please promptly advise on this issue.

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**From:** Ratcliffe Jesse D <[jesse.d.ratcliffe@doj.state.or.us](mailto:jesse.d.ratcliffe@doj.state.or.us)>  
**Sent:** Tuesday, November 3, 2020 12:20 PM  
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**Subject:** RE: Procedural Information Concerning Hearing Officer's Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

Irene,

It has been awhile since I worked on an EFSC application that you are involved with. I hope you are well.

I apologize for the confusion. I hope this will help clear things up. (Please note that, even though you know this already, I'm required to point out that I represent only the Council in this proceeding. My response therefore reflects my role as a representative of the Council, and does not constitute legal advice to you or anyone else on the service list. If you believe you need legal advice on this matter, I suggest you consult an attorney. Also, Jeff Seeley is my assistant. Documents sent by him are sent at my direction).

The appeals are to be sent to the Hearing Officer for two reasons. First, the Hearing Officer is responsible for managing the contested case. Ordinarily, information that is to be provided to the Council gets sent to the Council Secretary, Todd Cornett, and then he is responsible for providing it to the Council. In a contested case, however, this is part of the Hearing Officer's responsibilities. Second, it is important for the Hearing Officer to have a complete record of the contested case proceeding, including the appeal documents. However, the method of getting the appeals to the Council does not change the fact that the Council will consider and decide on the appeals.

You also note that there are differences between the process for appeal of a party status decision in a contested case, and the process for requesting reconsideration of the denial of a contested case request in an amendment proceeding. It is true that the processes are different. The deadline for submitting an appeal of a party status decision for an application for site certificate is governed by OAR 345-015-0016(6). In this case, the decision was issued on October 29<sup>th</sup>, so the deadline for submitting an appeal is, as described in my letter, Friday, November 6, at 4:30 p.m. An opportunity for ODOE staff and the applicant to respond to the appeals is provided because the party status decision is made by the independent Hearing Officer, and not ODOE staff. This opportunity is not unusual. It is typical of appeals in contested case processes and in court proceedings. This is also the way that appeals of party status decisions were handled in the South Dunes Power Plant contested case, for example.

Finally, the appeal should contain your argument as to why you believe the Hearing Officer's decision on your party status or issue request is incorrect. For example, if the Hearing Officer decided that an issue was being denied because it was not raised with sufficient specificity, the appeal should explain why you believe that it was raised with sufficient specificity. This is both consistent with OAR 345-015-0016(6) and with the way that prior appeals of Hearing Officers' party status decisions have been handled.

Sincerely,

**Jesse Ratcliffe**

Sr. Assistant Attorney General | Natural Resources Section | General Counsel  
Division

Oregon Department of Justice

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**From:** Irene Gilbert <[ott.irene@frontier.com](mailto:ott.irene@frontier.com)>  
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**Subject:** Re: Procedural Information Concerning Hearing Officer's Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case in the matter of the Application for Site Certificate for the Boardman to Hemingway Transmission Line

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Janine and Todd:

Please see that council is provided a copy of this email. I hope they will provide some direction regarding what is being required since the rules and statutes place this process under their authority.

Jeffery Seeley:

I am very confused. In the past, requests for appeal to the council were submitted directly to the council, not to the ALJ. The OAR referenced does not apply to appeals to the council. OAR 345-0150016(6) applies to appeals to council. Those requests are to be submitted directly to the council. In addition, there was no opportunity for argument from the department or applicant. It was purely an argument made to the council directly and in person. Can you tell me why this

procedure is being used which is not consistent with past practices? I have filed appeals for reconsideration previously and it has never been done this way. Appears strange to me to have these go through the ALJ since it is entirely a Council decision according to any statutes or rules I am able to find and the hearings officer has never been involved with appeals to the council, receiving the requests, nor was it handled in a formal process such as you are describing. The only requirement was a line or two stating that the person wanted to have an appeal to the council regarding the decision which was sent to the council. Please explain. This procedure appears to start requiring individuals to include their arguments with their requests and since all requests are to be heard by council it does not seem appropriate to make such a requirement given the 7 day appeal period which is being used. Why is this change being made? The rules regarding motions on the contested case were never before applied to appeals to council. What exactly is being expected other than a person saying they want council review of the determination which is what I have been told was necessary in past appeals?

On Friday, October 30, 2020, 05:25:55 PM PDT, Seeley Jeffery <[jeff.seeley@doj.state.or.us](mailto:jeff.seeley@doj.state.or.us)> wrote:

The attached document was electronically mailed to Senior Administrative Law Judge Alison Greene Webster today.

**Jeffery R. Seeley**

Legal Secretary

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*Please note: I am checking voicemail and returning calls while teleworking, but e-mail is the fastest way to reach me.*

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