



# Oregon

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**To:** Oregon Energy Siting Council

**From:** Sarah Esterson, Senior Policy Advisor

**Date:** November 6, 2020

**Subject:** Agenda Item G (Hearing/Action Item):  
Boardman to Hemingway Transmission Line Project, Council Review of Appeals on Hearing Officer Order on Party Status, Authorized Representatives and Issues for Contested Case for the November 19-20, 2020 EFSC Meeting

**Attachments:** Attachment A: Hearing Officer Order on Petitions for Party Status, Authorized Representative and Issues for Contested Case (Order on Party Status)  
Attachment B: October 30, 2020 EFSC DOJ Letter Procedural Info Re: Hearing Officer Order on Party Status Appeals to EFSC 2020-10-30, Email per Petitioner Request for Clarification Re EFSC Appeals, and Council DOJ Response  
Attachment C: Appellant/Party Appeals\*  
Attachment D: Appellant/Party Responses to Appeals\*  
[\*Attachments C and D to be Provided in Supplemental Council Packet Materials Prior to November 19-20, 2020 Council Meeting]

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## HEARING OFFICER ORDER ON PARTY STATUS

Hearing Officer Senior Administrative Law Judge from the Oregon Office of Administrative Hearings, Alison Greene Webster issued an *Order on Petitions for Party Status, Authorized Representatives and Issues for Contested Case* (Order on Party Status) for the contested case proceeding on the Proposed Order on the Application for Site Certificate for the Boardman to Hemingway Transmission Line (Proposed Order) on October 29, 2020.<sup>1</sup> The Hearing Officer's

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<sup>1</sup> On October 29, 2020, in response to Department request for clarification, Hearing Officer issued a Response to Request for Clarification Regarding Contested Case Procedure and Interim Order, under the heading "Conclusion of Conference/Next Steps" Hearing officer states; " 5. Following Council's consideration and determination on timely November 19-20, 2020

Order on Party Status is included as Attachment A to this staff report. Of the 53 Petitions for Party Status received, the Hearing Officer granted limited party status to 35 and denied party status to 18 individuals or organizations. Idaho Power Company (applicant) and the Oregon Department of Energy (Department) are parties to all issues.<sup>2</sup>

In the Hearing Officer's Order on Party Status, 134 discrete issues were identified as being raised in Petitions for Party Status. Of the 134 discrete issues, the Hearing Officer identified 87 properly raised contested case issues and 47 issues as not properly raised. Of the 87 properly raised issues, there were 17 issues raised by multiple petitioners (i.e., two or more petitioners properly raised the same issue), resulting in 70 total discrete issues properly raised for evaluation in the contested case proceeding.<sup>3</sup>

### **OPPORTUNITY FOR APPEALS TO EFSC OF ORDER ON PARTY STATUS**

As indicated in the Hearing Officer's Order on Party Status, Council rules establish two appeal processes applicable to the Hearing Officer's Order on Party Status. Pursuant to OAR 345-015-0016(6), the determination on requests to participate as a party or limited party, as stated in Hearing Officer's Order on Party Status, is final unless the petitioner submits an appeal to the Council within seven (7) days after the date of service of the Hearing Officer's determination. Pursuant to OAR 345-015-0057(1), except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the Hearing Officer unless such ruling would terminate that party's right to participate in the contested case proceeding. Thus, the appeal process under OAR 345-015-0057 is specific to appeals of a ruling resulting in termination of a petitioners' rights to participate in contested case proceeding.

On October 30, 2020, as a courtesy and on behalf of the Council, Department of Justice Senior Assistant Attorney General Jesse Ratcliffe, who is legal counsel to the Council in this contested case,<sup>4</sup> served a letter to petitioners to inform of appeal deadlines, consistent with appeal information provided in Hearing Officer's Order on Party Status, and Council review of appeals

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appeals under OAR 345-015-0016(6), Council will notify the Hearing Officer of its determination(s). If necessary, the Hearing Officer will issue and serve an Amended Order on Party Status."

<sup>2</sup> Applicant is a party to the contested case pursuant to ORS 469.370(5); the Department shall have the right to participate in the contested case with all of the rights granted to a party pursuant to OAR 345-015-0080(2).

<sup>3</sup> Pursuant to ORS 469.370(5) and OAR 345-015-0016, to properly raise a contested case issue, petitioner must have met the following criteria: Commented either in writing or in person on the record of the draft proposed order (DPO) public hearing, specifically, during the period of May 22, 2019 through August 22, 2019; submit a written petition for party or limited party status by the specified deadline, in this case, August 27, 2020 at 5:00 p.m.; demonstrate in the written petition for party or limited party status a personal interest in the outcome of the proceeding or demonstrate representation of a public interest in the outcome of the proceeding; and raise, in the written petition for party or limited party status, at least one issue that is within the Council's jurisdiction with sufficient specificity afford the Council, and Applicant, an adequate opportunity to respond.

<sup>4</sup> Department of Justice Senior Assistant Attorney General Patrick Rowe is legal counsel to the Department for the contested case proceeding.

anticipated to occur as an agenda item of the November 19-20, 2020 Council meeting. As noted in this letter, the deadline to submit appeals of the Hearing Officer's Order on Petitions for Party Status to Council is Friday November 6, 2020 at 4:30 p.m. Some petitioners filed responses to Mr. Ratcliffe's October 30, 2020 letter posing questions regarding interpretation of appeals to EFSC, procedures for filing, and the content of appeals, to which Mr. Ratcliffe responded. The October 30, 2020 letter, party responses and questions, and EFSC DOJ responses are included as Attachment B of this staff report. The deadline for the applicant and Department to file responses to appeals is November 13, 2020 at 4:30 p.m. All appeals of the Hearing Officer Order on Party Status, applicant and Department responses, if any, will be provided to Council as Attachments C and D in supplemental Council materials provided prior to the November 19-20, 2020 Council Meeting.

To date, 7 appeals have been filed. The Department's evaluation and recommendations regarding the substance of appeals will be included in the Department's Response to Appeals, which will be filed by Department of Justice Counsel to the Department, Patrick Rowe on the Department's behalf and provided to Council in supplemental materials prior to the November 19-20, 2020 meeting.

#### **APPEAL HEARING FORMAT**

Department of Justice Counsel to Council Jesse Ratcliffe in consultation with Council Chair will provisionally determine the format for the Council meeting to review appeals. Council rules do not establish procedural requirements for the format of Council review of appeals. Council may accept oral argument from appellants; and may establish time limits for oral argument. The Council will have the opportunity to adjust this format at the beginning of the meeting to review appeals. The preliminary format for the meeting to review appeals to the Hearing Officer's Order on Party Status that will be conferred by Counsel to Council and Council Chair of the appeals to Council will be provided in the November Council Meeting Agenda issued at a later date.

#### **Attachments:**

- Attachment A: Attachment A: Hearing Officer Order on Petitions for Party Status, Authorized Representative and Issues for Contested Case (Order on Party Status)
- Attachment B: October 30, 2020 EFSC DOJ Letter Procedural Info Re Hearing Officer Order on Party Status Appeals to EFSC 2020-10-30, Email per Petitioner Request for Clarification Re EFSC Appeals, and Council DOJ Response
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