

# Attachment 4

To: Tom Jackman, Rules Coordinator

From: Irene Gilbert, RAC Member representing the public

Subject: Comments, Concerns and objections to the rule revisions.

1. I support changing the order to the rules to follow the actions occurring during the process. I have serious concerns with the proposed changes for a number of reasons as noted below. I am listing the comments by Page number to assist in identifying the areas I am making comment on.

Page 2

--OAR 345-015-0014

This rule language fails to comply with ORS 183.415(2) requiring notice to those who commented be provided in person or by registered or certified mail and that it includes the items required by ORS 183.415(3)(c) and (d) including a plain statements of the issues asserted and the statutes and rules involved.

The addition of Item 1 is questionable. Any decision regarding whether or not a petitioner should be afforded full party or limited party status should be based upon a specific set of criteria and made by the hearings officer.

Council previously appeared to support including criteria in the rules.

There appears to be no set of criteria in these proposed rules. There is no question that the department and the developer will want all parties to be limited parties regardless of the scope of interests of their members or the members of the organizations. Decisions to restrict the opportunity for non-profit organizations or individuals representing a group of citizens to represent those interests should be based upon objective criteria. Absent inclusion of such criteria, the timeframe for public comment and requests for contested cases should be extended by an additional 30 days to provide opportunity for representatives of multiple citizens to obtain and compile the comments and contested cases that their constituents want presented.

Notices to those requesting contested cases are required to include a plain statement of the issues asserted and the statutes and rules involved. The



department, the applicant and the parties requesting contested cases must all be provided a deadline for submitting their responses to the statements of issues and rules involved issued by the Hearings Officer.

Given the fact that hearings officers are allowed to combine similar issues from more than one petitioner and make a single statement reflecting those issues, require one petitioner to present arguments when an issue is submitted by more than one petitioner, restate contested case issues which may result in misinterpreting the issue presented by the petitioner, there should be an opportunity prior to the start of the contested case or prehearing conferences to identify concerns, conflicts or decisions that lack compliance with the rules of the council or correctly state the issue in contested case requests.

Addressing this prior to the pre-hearing conference would streamline the contested case process and allow the hearings officer to focus on obtaining concurrence from the petitioners that the issue statements actually reflect the hearing requests.

Page 3

--OAR 345-015-0405(I) In the event the council uses a "council member, an employee of the Department of Energy, or other person as it sees fit" there needs to be a specific set of requirements for this assignment. Given the fact that the use of these parties makes the opportunity for a "fair and impartial" hearing subject to challenge. Additional language recommended would be: "Petitioners and the applicant would be provided an opportunity to challenge the individual's experience, training and/or ability to manage a "fair and impartial" hearing or perform the functions of a hearings officer outlined in OAR 345-015-0405."

--OAR 345-015-0023(3) should not be removed from the rules. The Council rules should stand alone and not require participants to go to Division 3 to figure out what is required. In addition, prior to the start of the contested case hearing, all participants need to know what issues are going to be heard and at that there is at least one statute that addresses the contested case issue. Since this statement is included in ORS 183.417(5) as required as it currently reads, removing it does not seem prudent.

2 Comments on Red Line Amendment of Contested Case Rules

--OAR 345-015-0405 Object to the inclusion of the Statement “A complete and current record does not include miscellaneous communications or documents that fail to assist in providing a more complete understanding of the related contested case proceedings.” This statement will allow hearings officers to subjectively remove material that the petitioner finds significant. Since these records are reviewed by the Oregon Supreme Court in the event of an appeal, it needs to be up to the higher court to determine if material is important including disagreeing with a hearings officer’s decision that an item should be excluded from consideration.. ORS 183.417(5) states that all material is to be included in the record. Parties are provided the option of objecting to the consideration of material, but that does not allow the material to be removed from the record. Given the detailed list of items included in ORS 183.417(9) required to be contained in the case record, in the event that hearings officers are given the authority to selectively remove material from the record, the list of mandatory items should be included in the rule, and the hearings officer needs to be required to explain the basis for their decision to exclude material based upon this list in sufficient detail to allow a higher court to determine if the exclusion is justified.

Page 4

--ORS 3456-015-0405(4)(g) Confusing: Recommended language after first sentence: “The hearings officer must limit the issues of the contested case on an application or an amendment to a site certificate to those issues that have been raised with sufficient specificity in the public hearing.”

Page 5

--OAR 345-0215-0410(2)—Waiving requirements for parties no longer actively participating in the proceeding could inadvertently remove notice of material impacting their rights. Parties denied standing or denied the opportunity to participate in a contested case on an issue should receive all material provided in the hearing including notices, decisions, until such time as an Order denying them standing in the contested case is issued. Selectively sending material to limited parties based upon their limited interest could result in a failure to provide them with material impacting

their interests. This section opens the hearings officer and the council to challenges regarding whether or not these parties received timely notices impacting their rights.

-- OAR 345-015-0415(l) One of the significant issues with hearings requests that have been discussed by council and participants is the lack of specific criteria that must be evaluated when a party asks for full party status, but the hearings officer only authorizes limited party standing. The issue is critical to the handling of a "fair and impartial" hearing due to issues such as, but not limited to:

- a. The limited timeframe provided for parties to review and comment on draft proposed orders makes a full review of the details of the orders difficult to evaluate and provide comments which meet the council requirements.
- b. The limited timeframes provided between the time that Proposed orders are issued and parties must submit their requests for contested cases limits the number of issues that can reasonably be developed in requests for contested cases.
- c. If parties representing a large group of citizens and their interests must comment and request contested cases on each interest of their population of citizens, the process should include adequate time for the representatives to identify all interests of their members prior to the comments phase of the process and prior to the timeframe for submitting contested case requests.
- d. As noted in the B2H contested case proceedings, changes to the Proposed Order can occur during the contested case process which participants are not aware of until after the contested case proceeding begins. For example, the applicant submitted requests for Summary Determination to remove requirements from the Proposed Site Certificate that the parties to the Contested Case were not made aware of prior to submitting their comments on the Draft Proposed Order or when they identified their hearings issues. Limited parties were not allowed to object to these changes which included such things as removing pre-construction surveys for bat species and removing target pre-construction surveys for some Threatened and Endangered species. In addition, the hearings officer

may select a single party to submit an issue that is important to a group of citizens, some of which may have also requested contested cases on the issue..

To address the multiple issues as noted above and others related to the limited party role, the rules should include

- 1) The specific items that must be evaluated to change a request for full party standing to limited party standing. This list should include a requirement that a change of status to limited party status is only allowed when a party is requesting a contested case as an individual, as opposed to representing themselves and additional parties.
- 2) An opportunity for those having their standing changed to submit additional requests for contested cases on issues they were intending to submit testimony on which other parties were submitting the requests for.
- 3) Allow all parties to submit comments on the scope of the issues being heard. Again, in the B2H contested case, several requests were combined into one issue statement which did not necessarily reflect the actual language of some of the submitted requests for contested cases.
- 4) Allow all parties to submit testimony on all issues that are the subject of Summary Determinations. This would avoid the “surprise” of requests for Summary Determinations which address issues not commented on. In the B2H contested case, the Petitioners were allowed Summary Determinations to remove bats from the pre-construction surveys required in the Proposed order and remove species specific pre-construction surveys for other species. None of the petitioners were allowed to object to these requests for Summary Determination.

-- OAR 345-015-0415(2) This section needs to describe the differences between a limited party and a full party role;

Second Sentence: This sentence should start “For a limited party to raise .....

“For a full party to raise an issue, one of the parties to the contested case must have raised.....

Bottom of Page 5 and top of Page 6

Object to the description of “sufficient specificity”.

This definition has no place in a “quasi-legal” proceeding. It far exceeds a reasonable expectation that can be placed upon a private citizen as the initial action to base any further requests for a contested case and would mandate that all citizens retain an attorney in order to participate in the proceedings. In addition, the courts have addressed the issue of “Raise it or Waive it” to state among other things that the comments are only required to identify the “issue”, not the types of facts required by this rule change. The Department needs to review the multiple Court Decisions for both the LCDC and other agencies regarding the requirements for “Raise it or Waive It” and assure that their interpretation of what is required complies with Oregon Statutes and Court Decisions. This issue has had a substantial number of legal decisions and precedents established. This member of the RAC is requesting that the RAC be provided a list of court actions regarding the definition of what is required and assure that any interpretations in the rules do not exceed required legal limitations. I am attaching a document listing some of the court decisions pertaining to the issue of “Raise it or Waive It”.

Page 6,

--OAR 345-015-0415

The information being identified as meeting the requirement for sufficient specificity far exceeds any statute, rule or court decisions regarding what is required to meet this requirement. I am including with this document a 21 page attachment regarding hearings decisions made regarding “Raise it or Waive it” for just one agency. They support the fact that the rule language proposed is not consistent with the use of “Raisse it or Waive It” in quasi-legal agency proceedings. These are not the only resources regarding this issue,

but it does provide a starting point. Please make note of the following descriptions:

Items 4, 5 and 6 on page 7 which relate to the fact that issues must be raised, but not specific arguments regarding those issues.

Item 5 on page 8 of the document stating that “sufficient” is met when it informs decision makers an opportunity to respond. The requirements that are proposed in the amended rule language far exceed what is required to provide the opportunity to respond.

Item 6 on Page 16 states that when the notice of hearing fails to include relevant standards in the notice of hearing, the petitioner can still identify additional standards which apply.

Item 7 on page 17 indicates that petitioners cannot be required to have provided arguments identical to those presented in their petition during the public hearing, the arguments just had to provide information necessary for a response.

The information on Page 6 is very confusing. It is a repeat of the information in Item 3. It could be made clearer by separating requests from parties requesting “limited Party” status from those requesting “full party” Status.

--OAR 345-015-0415 Item 4(b) would be clearer if it stated “A short and plain statement for each issue that the person desires to raise in the contested case proceeding and the location and date that the party commented on the issue in the record for the draft proposed order.”

--OAR 345-015-0415 Item (5) There should be no need for the applicant or the department to respond or recommend changes to the hearings officer’s determination of limited party v. full party status or the statements of the contested case issues. There were multiple objections in the B2H contested case hearing when the hearings officer used the restated issues proposed by ODOE rather than the statements of the petitioners to define what the issues were. Much time was spent unnecessarily, and the issues that petitioners were required to argue often were not the ones they had requested contested cases on. If the criteria is clear and the decision is delegated to the hearings officer, any objection to the decision

should be directed to the Council for a determination. This section of the rule should provide the opportunity for the Department, the applicant or the parties to submit a request to Council when there is disagreement with the decision of the hearings officer regarding the issue statements, issues included in the contested cases and whether parties should be limited or full parties. The final decision should be finalized prior to the start of a Contested Case Process to avoid having to hold a separate contested cases after the proposed order is presented to the council.

A limited party or full party should be allowed to propose site certificate conditions so long as they identify a rule or statute which requires a new or changed condition.

Page 7

--OAR 345-015-0018 should not be removed. The reference to OAR 137-003-0555 in Section (l) defines "Authorized Representative" related to agencies. OAR 137-003-0555(2) states that an individual can only be represented by an "authorized representative" when the agency has provided in rule that an authorized representative may appear in the contested case hearings. The model rules including OAR 137-003-0575(3) reference the appearance of "persons authorized to represent the party or agency". This change limits contested case hearings to private parties able to obtain an attorney to represent them in the event that they lack the experience or ability to meet the requirements and procedural barriers that are implicit in the rules being promulgated by this agency. ORS 183.457 precludes the State Department of Energy and the Energy Facility Siting Council from adopting rules that have the effect of precluding lay representation.

--OAR 345-015-0420(2)

Any Oregon Citizen who has met the qualifications for public medical, cash or food benefits should meet the definition of "indigent". I worked as a Case Worker, Financial Worker and Supervisor for Oregon Public Assistance Programs including Food Stamps, Medicaid, Cash

Assistance and the Jobs Programs for Families, Disabled and Elderly Oregon Citizens for over 20 years prior to going to work for the Workers' Compensation Department and Oregon OSHA. This rule sets the financial restriction for claiming "indigent" status as at or below 100% of the federal income standard and requires the liquidation of any resources that could be used to pay for the contested case.

The language added defining Indigent Status is more restrictive than any other Oregon Poverty program I am aware of other than the basic rate for Medicaid of \$943 per month which only applies to a portion of the applicants. The Oregon income standard for food assistance is 185% of the federal income standard and does not require the liquidation of resources as required by this rule. A hearings officer should not be making the determination regarding poverty that is already being made by staff in Public Agencies who are trained and required to make these decisions. The only time a hearings officer should be making such a decision is when no other agency has done so and then the standard should be limited to considering an income standard that is no more restrictive than the state standards for assistance. The evaluation of other resources is a complicated and time consuming process that requires obtaining and evaluating a variety of legal documents which are often hard for a citizen to obtain, hard for experienced financial workers to evaluate and which would unnecessarily extend the decision process for completion of a contested case process.

Page 8

--OAR 345-015-0425

Counties and other public agencies are required to provide comments which meet and exceed the requirements to comment during public hearings as part of their review and comments during the completion of the application process. Requiring them to resubmit their comments under OAR 345-015-0016 during the "comment period" is overkill and a waste of public funding of the agencies employees. Public agencies should be allowed to submit



requests for contested cases on site certificates or amendments under OAR 345-027-0372(4) by referencing their submissions which are requested and required during the evaluation of the Application and development of the Draft Proposed Order. Given the fact that the agencies must absorb the costs of participating in the contested case process, they should not be required to provide their comments in two different timeframes as this creates a financial and staff burden on them.

--ORS 345-015-0430 (I)

A prehearing conference regarding party or limited party status and issues should be limited to evaluating and requesting clarification and responding to questions from the hearings officer regarding the submissions provided requesting specific issues and party status. It should not involve multiple submissions, responses from other groups, clarifications, resubmissions, restatements of issues by opposing parties as was the case in the B2H Contested Case.

Consolidation of issues should only occur when those submitting the issues concur that the issues are substantially the same and that a single party can present the issue in a manner that assures a full, fair, and impartial hearing. When issues were combined in the B2H Contested Cases, often the combination of issues included items which were not included in one individual's request and they were unable to effectively argue, or the combination precluded some arguments which only one of the parties wanted made but the other one was not prepared to document or in some cases understand. I can provide specific examples from the B2H Contested Case Hearing if that will help clarify this concern.

--OAR 345-015-0430(2), An additional item should be added to the section on Prehearing Conferences that states that individuals cannot be required to attend or participate in Pre-hearing conferences.

--OAR 137-003-0575(6) states that in the event a party or agency fails to appear at a pre-hearing conference does not mean that an order can not be issued by the hearings officer on matters identified. This should be the statement rather than making attendance mandatory to participate in the contested case hearing.

--OAR 345-015-0430(4) Denying parties the right to appeal to the council the hearings officer decision regarding Party status or limited party status unless the decision would terminate the parties opportunity to participate in the Contested Case presents multiple sticky wickets that can result in future problems. For example: 1) If a party were to later prevail in objecting to the statement of the contested case issue, it would appear that another Contested Case process would have to be held to resolve the actual issue or 2) if two participants issues were combined and one of the parties won a challenge that their issue was not adequately presented by the other party, it would seem that a contested case would be required to address the issue that was not fully vetted or 3) if a party was not provided full party status, but was later provided that, there would be an issue of how to allow them to participate fully in a contested case process that had already concluded. In the B2H process, the council changed the hearings officer decisions in several instances where her denial had resulted in denying party status to individuals. There were multiple other issues which the hearings officer threw out and where the petitioners disagreed with her statement of the issues for a variety of reasons which were not heard by council since they did not eliminate the participants from being included in the Contested Case process. Any of those issues could have been appealed at the end of the Contested Case Process, and winning them would have required another Contested Case be held to address the issue(s). The decisions regarding standing and the descriptions of the issues being heard must be established prior to the start of a contested case proceeding including appeal to the council when there is disagreement regarding what is to be heard or there can be no "fair and impartial hearing". The failure to provide notice at the point a decision is made, but implementing the decision at that point appears to establish that an Order of Denial has been issued and parties subject to this decision must be provided an Order of Denial including requirements to provide the information supporting that decision and hearings rights.

Page 9

--ORS 345-015-0430(7)

Top of the page shows (7) language with previous language removed and statement that this change precludes the requirement to reraise all issues in the prehearing conference.

Then, the renumbered item (7) below the deleted material states that a failure to raise an issue in a prehearing conference constitutes a waiver of that issue. The renumbered item (7) should be removed.

Page 10

--OAR 345-015-0445(1)

The requirement under item (1) should be limited to the qualifications of the witness, the topic whether the witness is presenting evidence supporting or objecting to the issue and any documents the petitioner or respondent is aware that the witness intends to reference. It is not reasonable to suggest that witnesses will provide a script of their testimony, nor that they will provide the petitioner or respondent with a listing of all exhibits that they will be using prior to appearing or submitting their testimony.

--OAR 345-015-0445(2) This change removes a right currently included in agency rules which provide the opportunity for those participating in a contested case hearing to propose amendments to address any statute or rule which is not being met by the existing site certificate conditions. Removing rights afforded the members of the public who have taken the initiative to attempt to navigate through the rules and barriers to participation in contested cases should not be done absent clear and convincing evidence that it is necessary.

--OAR 345-015-445(3) Any party or limited party to a contested case should be allowed to respond to any proposed site certificate conditions proposed during the contested case. Changes to site certificate conditions occurring during the contested case proceedings are not provided a full public review and evaluation as required in the issuance of a Draft Proposed Order or Proposed Order. At a minimum, those individuals who are involved to the

extent that they have met the requirements to participate in a contested case hearing should be provided an opportunity to respond to new or changes to site certificate conditions which are proposed during the Contested Case Process.

In the alternative, the proposed changes in conditions or new conditions should be made available for full public comment and objection during a subsequent contested case proceeding.

--ORS 345-015-0445(4) This item needs to include a statement that this does not restrict the scope of evidence, references to statutes or legal arguments that pertain to the issue.

Page 11

--OAR 345-015-0460

Limiting the opportunity for an Interlocutory Appeal to Council for decisions regarding standing when the decision would terminate the party's right to participate in the proceeding is not consistent with the provision of a fair and impartial hearing process or requirements of ORS 183.470. When hearings officers deny the opportunity to have an issue heard, the petitioner must be provided a timely notice of the decision and the available legal remedies. Failing to provide a Final Order until months later when a site certificate is issued denies petitioners timely access to due process. In the B2H Contested cases, multiple issues were denied hearings both during the initial review of requests as well as resulting from multiple Summary Judgement approvals. These cases included documents and information which was critical to other cases which proceeded through contested cases, but petitioners were denied the opportunity to reference the material submitted with the denied issues. Those denied access to contested cases who had other issues being heard were provided no opportunity to request an Interlocutory Appeal, reconsideration of the decision or access to an appeal until months later after the contested case process was completed and the final order on the site certificate was issued. OAR 345-015-0460 provides for a continuation of a process that conflicts with Oregon Statutes as listed above. EFSC rules must provide for a final order denying the

contested cases including the information required by ORS 183.470 as noted in the Annotation to this rule stating: “Orders denying hearing request is a final order requiring findings of fact and conclusions of law Harwick v AFSD, 7 Or App 104, 698, P2d 59 (1985)

Any petitioner denied the opportunity to have a hearings request heard in a Contested case should have the opportunity to request Council review of decisions regarding the denial of the request. In the B2H contested cases, only those who were denied any standing in the proceeding were allowed to request council review of the decision on their contested case requests. Several decisions of the hearings officer were overturned by council. Of the issues which council allowed to continue to be heard, several were then thrown out due to Summary Determinations which the petitioners were not allowed to refer to council, request reconsideration or appeal until months later when a final order and site certificate were issued even though the denials were implemented immediately by the hearings officer. The process which is related to the rule regarding Interlocutory Appeals and the Revisions of the Contested Case Rules failure to address the rights of individuals denied access to contested cases at the time the decision is implemented fails to comply with Oregon Statutes which provide for due process in agency contested case proceedings. Decisions which terminate a petitioners right to access a contested case on an issue require notice under ORS 183.470 Notes on decisions regarding this rule included in the statute state that “Orders denying hearing request is final order requiring findings of fact and conclusions of law. Hartwick v. AFSD, 73 Or App 104, 698 P2d 59 (1985)” Failing to provide an Order providing for the right to request reconsideration or appeal of decisions resulting in the denial of a contested case proceeding until after the contested case process is complete and a Site Certificate is issued denies petitioners timely access to due process or a legal remedy.

Page 12

OAR 345-015-0475(1)

Objection to removal of this rule. Those participating in contested cases are required by these rules to research and evaluate the plain language and intent of the Oregon Statutes and rules regarding the requirements to comply with agency rules. This means that those participating will have a working knowledge of the Oregon Statutes and Rules the council must comply with that exceeds the knowledge of a typical citizen. These individuals are in the unique position of being able to identify areas where there is a failure to comply with statutes and rules much broader than their accepted Contested Case issues cover. Removing this rule will deny council the benefit of considering where orders conflict with laws the council is to apply. It provides for identifying areas where the recommendations of the department in the Proposed Order are inadequate.

--OAR 345-015-0475(2)

This section needs to be retained. All requests for contested cases provide the opportunity for those arguing an issue to propose site certificate conditions. These conditions are proposed during a contested case process and are not subject to public review and comment in the manner that the Proposed Site Certificate is. The broadest opportunity for comment during the proceeding needs to be provided during the contested case process including all full and limited parties to the contested case proceeding. Limiting comments to only those with full party status means that it is possible, and perhaps likely that the only parties able to comment on the conditions would be the department and the developer. In the event that this limitation is retained, in order to provide for a fair and impartial review of the proposed site certificate conditions or changes, the council must provide opportunity for the general public to provide comment and/or objections to the proposed site certificate conditions.

OAR 345-015-0475(4) which is renumbered to (2) adding the word proposed "contested case" to the language is not supported by Statutes or rules which provide for the issuance of an order in a

contested case as well as orders in other than contested cases. Multiple decisions made during the period prior to the commencement of a contested case procedure, including the denial of requests for access to a contested case are not “contested case” orders. This rule should be retained as written.

Page 13

--OAR 345-015-0475(5) should not be added to the Contested Case Rules. This limitation to currently available rights of parties is not supported by any statute or rule that I can find. Including such a limitation would need to be supported by a statute which addresses the limitation on rights of parties to a contested case.

--OAR 345-015-0475(6) Is unnecessary and repetitive. The council review of the proposed contested case order will include the decisions regarding exceptions to the order.

The changes in sections (6) and (7) are not written in language that is understandable to this commenter who is college educated including completion of coursework required for a Master’s Degree. As I understand the process, the Council is to review the Contested Case Proposed Order and the Department’s Proposed Order and adopt, modify or reject these proposed orders.

The language between “(5) The filings described.....and ending with (7), the Council shall either approve or deny the application” should be replaced with the language highlighted in yellow above to provide clarity for the public.

Page 16

--ORS 345-015-0220(3)(I) This expanded definition of the requirements to raise an issue with sufficient specificity is completely unreasonable to require during the comment period for a Draft Proposed Order. It is not supported by any court decisions I can find. In fact, the courts have determined that in order to comply with “Raise it or Waive it”, a participant is only required to identify the issue. Some statutes and rules require the individual to cite a rule or statute and some require identification of facts supporting the request.

Page 17

--ORS 345-015-0230(3)(f) I previously made extensive comments regarding this issue which apply to this change.

#### ADDITIONAL COMMENTS REGARDING CONTESTED CASE REQUIREMENTS

Please review these rules in relation to SB 1560 Notice Requirements. These rules do not appear to comply with the requirements for notices contained in ORS 183.335

ORS 183.335(2)(b)(E) requires the statement of fiscal impact to include fiscal impacts to the public and an estimate of the impact. The RAC needs to include in their discussions of fiscal impacts the impacts to the public due to changes in these rules and an estimate of the costs.

Under this rule, it appears that there should also be a statement of the impact of requiring counties and state agencies to participate in the public hearings by submitting comments in order to participate in contested cases as opposed to relying upon their comments required during the review of the Application..



Jim Kreider's Comments  
On  
Draft Proposed Contested Case Rules

**OAR CHAPTER 345 – OREGON ENERGY FACILITY SITING COUNCIL  
RULES EFFECTIVE AUG. 29, 2023**

**DIVISION 1 - GENERAL PROVISIONS**

345-001-0005 - Uniform and Model Rules

**DIVISION 15 - PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF ENERGY PROCEEDINGS, INCLUDING  
SITE CERTIFICATE HEARINGS**

345-015-0001 - Purpose and Authority

345-015-0014 - Contested Case Notices

*Procedures for the Conduct of Contested Cases.....*

345-015-0401 – Governing Provisions – NEW RULE

345-015-0405 – Appointment and Duties of Hearing Officer

345-015-0410 - Filing and Service

345-015-0415 - Requests for Party or Limited Party Status

345-015-0420 - Petition for Indigent Status

345-015-0425 - Participation by Government Agencies

345-015-0430 - Prehearing Conference and Prehearing Order

345-015-0435 - Suspension of Hearing and Exclusion of a Party

345-015-0440 - Burden of Presenting Evidence (NEW RULE)

345-015-0445 – Submission of Evidence

345-015-0450 – Official Notice of Evidence

345-015-0455 - Motions

345-015-0460 – Interlocutory Appeals to Council

345-015-0465 - Stays

345-015-0470 - Reopening Record Prior to Decision

345-015-0475- Hearing Officer's Proposed Contested Case Order

345-015-0220 - Public Hearing and Notice on the Draft Proposed Order

345-015-0230 - Council Review and the Department of Energy's Proposed Order

345-015-0240 - The Decision-Making Record

**DIVISION 21 - APPLICATION FOR SITE CERTIFICATE**

**OAR CHAPTER 345 – OREGON ENERGY FACILITY SITING COUNCIL  
RULES EFFECTIVE AUG. 29, 2023**

**DIVISION 1 - GENERAL PROVISIONS**

**345-001-0005 - Uniform and Model Rules**

(1) Except as described in this rule, the Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (~~January-December 2012-23~~): OAR 137-001-0005 through 137-001-0100, 137-002-0010 through 137-002-0060, ~~137-003-0001 through 137-003-0092~~ 137-003-0501 through 137-003-0700, and 137-005-0010 through 137-005-0070.

(2) Notwithstanding the provisions of OAR 137-003-~~0055~~0660(1), following the issuance of notice of a contested case, the Department of Energy shall enter into the record the substance of any significant contact between a Council member and any Department staff from that point forward, concerning facts in the record.

(3) In any conflict between the model rules and Council rules, the Council shall apply its own rules.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.490

**Commented [1]:** NOTE – The comments throughout this proposed redline indicate the reason for the proposed change, but they also have a number that corresponds with the five categories of changes discussed in the accompanying memo.

**Commented [2]:** agree with Tom

**Commented [3]:** The most recent rule that I can find was updated Feb 2016 (137-003-0640), but there is no reason to not just include the current date as we are adopting the rules as they stand today.

**Commented [4]:** #2 OAH Rule

**Commented [5]:** Can we do a cross-walk on where these land in the new version?

what is wrong with 137-003-0001 through 137-003-0092? Some seem critical so where are they replaced and how? ie. 137-003-0002 Rights of Parties in Contested Cases, 137-003-0005 Participation as Party or Limited Party, 137-003-0025 Discovery in Contested Cases Hearing

<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=93>

**Commented [6]:** Updated reference due to move to OAH model rules.

**Commented [7]:** #2 OAH Rule

**Commented [8]:** The full set of rules:  
<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=93>

**Commented [9]:** Needs discussion as they do different things. 0055 is 137-003-0055 Ex Parte Communications (Applies during the pendency of the proceeding) and 0660 is 137-003-0660 Ex Parte Communications to Agency during Review of Contested Case (review of the contested case). Why not use both as they deal with different parts of the process.

In summary (AI), both rules deal with ex parte communications in the context of contested cases, but \*\*OAR 137-003-0055\*\* applies more broadly to any point during the pendency of the proceeding, while \*\*OAR 137-003-0660\*\* specifically addresses communications during the agency's review of the contested case.

Comparison of the 2 from our AI friends ...  
<https://docs.google.com/document/d/1Wd8wB1th6tC-B7odl3xmaxO4JQ6AG7g1WrUbxmbafY/edit?usp=sharing>

**Commented [10]:** Updated reference due to move to OAH model rules.

**Commented [11]:** #2 OAH Rule

**Commented [12]:** why have the 2 sets. still need to understand that.

ORAR CHAPTER 345 – OREGON ENERGY FACILITY SITING COUNCIL  
RULES EFFECTIVE AUG. 29, 2023

DIVISION 15 - PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF  
ENERGY PROCEEDINGS, INCLUDING SITE CERTIFICATE HEARINGS

345-015-0001 - Purpose and Authority

The rules in this division, authorized by ORS 469.040, 469.470 and 469.440, establish procedures governing Department of Energy and Council review processes, including contested case hearings proceedings. The Council shall apply the Attorney General's Uniform and Model Rules, as specified in OAR 345-001-0005, for contested case proceedings and collaborative dispute resolution.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.310 to 183.550, ORS 469.040, ORS 469.370, ORS 469.405, ORS 469.440

345-015-0012 Filing and Service of Documents in a Contested Case

345-015-0014 - Contested Case Notices

(1) The Department must issue contested case notices for Council contested case proceedings as provided in OAR 137-003-0004-0505. The notices, at a minimum, must include:

- (a) A caption with the name of the person or agency to whom the notice is issued;
- (b) A short and plain statement of the issues to be considered under OAR 345-015-0016, and a reference to the particular sections of the statute and rules involved;
- (c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;
- (d) A statement of the party's rights to participate in the hearing as a party or limited party;
- (e) A statement of the agency's authority and jurisdiction to hold a hearing on the issues; and
- (f) A statement of the time and place of the hearing; and must also include:

(1) The deadline for the Department and applicant or certificate holder to respond to petitions for party or limited party status; and

(2) (g) A statement that active-duty active-duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act as described in ORS 183.415(3)(g); and

(2) The Department must send a contested case notice by registered or certified mail to the applicant or certificate holder, and to each party or limited party to the contested case.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415

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**Commented [13]:** Energy Facility Siting Council (EFSC) - full name would be better

**Commented [14]:** Changing "hearings" to "proceedings" whenever the entire contested case process is being referred to as opposed to the more narrow "hearing" where evidence is presented to the hearing officer.

**Commented [15]:** #3 Consistency

**Commented [16]:** Agree with Tom and prefer the "proceedings" language too.

**Commented [17]:** Removed as 345-015-401 now contains the language about the adopted rules governing the contested case proceeding.

**Commented [18]:** #1 Reorganize

**Commented [19]:** numbering incorrect. Index 345-015-0401 – Governing Provisions – NEW RULE and body 345-015-0400 – Governing Provisions – NEW RULE

**Commented [20]:** this should be discussed as there is no docket system and emailing huge files with files names so long that many machines cannot download them. Plus ISP cut customers off because of large volume mailing.

**Commented [21]:** 137-003-0001 Contested Case Notice 137-003-0505 Contested Case Notice See ... <https://docs.google.com/document/d/1VHdxsU4sPTp5GQFMwTdGfoyzxr5K6IHAg5XDv3XourA/edit?usp=sharing> 137-003-0001 Purpose: This rule outlines the content and format of a contested case notice issued by an agency initiating a contested case proceeding. 137-003-0505 Purpose: This rule specifies the requirements for contested case notices issued by the Office of Administrative Hearings (OAH) when an administrative law judge (ALJ) conducts the hearing.

How will these be addressed?  
(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;  
(h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide

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**Commented [22]:** where did all these go? cross walk?

**Commented [23]:** Is this new? I remember that ODOE and IPC responded and tried to "help" the ALJ by organizing the

**Commented [24]:** but probably not worth objecting too. If it is known in advance that developer and ODOE will do this,

**Commented [25]:** Where are a-f above landing? Where is the deadline for the public to respond? Needs discussion

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**Commented [26]:** not a part of original rule. are there other groups that have the same status to have a stay? Peace

**Commented [27]:** Removed existing list as unnecessary given the proposed adoption of OAR 137-003-0505, which

**Commented [28]:** #2 OAH Rules

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**Procedures for the Conduct of Contested Cases**

**345-015-0400 – Governing Provisions – NEW RULE**

(1) All contested case proceedings before the Council shall be conducted in accordance with OAR 137-003-0501 through 137-003-0700 (as of December 31, 2023), referred to herein as the Office of Administrative Hearing rules.

(2) The rules in this Division addressing contested cases (OAR 345-015-0401 through 345-015-0475) are intended to supplement the Office of Administrative Hearing rules by providing additional procedures governing requests for and the conduct of Energy Facility Siting Council contested cases.

(3) In any conflict between the Office of Administrative Hearing rules and Council rules, the Council shall apply its own rules.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440

**Commented [29]:** New rule to clarify governing provisions for the contested case process.

**Commented [30]:** #4 Clarity

**Commented [31]:** new rules (effective date). Need to show flow from date in 1 above

**Commented [32]:** How and when is this decided. Why does ODOE want 2 sets of rules. If ODOE rules are chosen, is the party being punished? Or case to complicated for "normal" legal rules. Why special?

**Commented [33]:** need to be changed to date approved

**Commented [34]:** Administrative Law Judge

**Commented [35]:** shall

**Commented [36]:** really? never knew this? the council member and staff seems a bit to close, ethically speaking. conflict of interest? Todd would say its not a conflict of interest because unless there was a financial incentive. But, I think peer pressures and professional status' are also things that put people (operating as supposed impartial, independent entity) in conflicted situation.

Delete these.

And get internal language consistent – this is an ALJ, not a hearing officer!

**Commented [37]:** need to eliminate. this would be highly suspect of ...

**Commented [38]:** Needs discussion to justify and specify justifications.

**Commented [39]:** Removed as duplicative of OAR 137-003-0600(3).

**Commented [40]:** #2 OAH Rules

**Commented [41]:** [https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID\\_OARD=wWtdkP7VJSDvQd-1c1uU2fZx8dVU9KZyUTwNugKaMtb8vCvLHQQ!1961848273?ruleVrsnRsn=10149](https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=wWtdkP7VJSDvQd-1c1uU2fZx8dVU9KZyUTwNugKaMtb8vCvLHQQ!1961848273?ruleVrsnRsn=10149)

**Commented [42]:** organized and accessible on line docket system

**Commented [43]:** Here's a big suggestions to help everyone engaged in the case! !!! This record needs to be accessible to all (whether via One Drive or a docketed system.) It will greatly improve efficiency!

**Commented [44]:** Clarifying what is and is not part of a complete and current record.

**Commented [45]:** #4 Clarity

**Commented [46]:** Who makes this decision? If submitted to the docket, it needs to be included. If a clarifying email from parties to staff or other parties, that's ok. unless email correspondence is used as evidence as an exhibit.

**345-015-0405 – Appointment and Duties of Hearing Officer**

(1) The Council shall appoint a hearing officer to conduct a contested case proceeding on behalf of the Council or to compile the record and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may refer a contested case to the Office of Administrative Hearings for appointment of a hearing officer, or Council may appoint a Council member, an employee of the Department of Energy, or some other person or persons as it sees fit.

(2) A hearing officer shall take all necessary action to:

- (a) Ensure a full, fair and impartial hearing;
- (b) Facilitate presentation of evidence;
- (c) Comply with statutory time limits on Council decisions;
- (d) Maintain order; and
- (e) Assist the Council in making its decision.

(3) At the commencement of a contested case hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. A complete and current record does not include miscellaneous communications or documents that fail to assist in providing a more complete understanding of the related contested case proceedings. The hearing officer shall keep the Council informed regularly on the status of the contested case.

(5) The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:

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(a) Administer oaths and affirmations;

(b) Rule on offers of proof and receive evidence pursuant to the hearing officer's established schedule;

(c) Consider petitions for, authorize, and limit depositions, as provided in OAR 137-003-0572 Order depositions and other discovery to be taken and to issue subpoenas;

(d) Order and control discovery, as provided in OAR 137-003-00250568, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;

(e) Dispose of procedural matters and rule on motions;

(f) Call and examine witnesses;

(g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-00305755, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case and including, for a contested case proceeding on an application for a site certificate or for an amendment to a site certificate, determinings shall limit these issues that have been raised with sufficient specificity in the public hearing;

(h) Continue the hearing contested case proceeding from time to time;

(i) Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.

(j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-00620470, and with reasonable notice to all parties, reopen the hearing for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;

(k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;

(l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and

(m) Take any other action consistent with the Council's governing statutes and the Council's rules.

~~(6) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of contested case, the hearing officer shall enter into the record the substance of any significant contact with Department staff or the parties from that point forward concerning facts in the record.~~

~~(75) The Council may, on its own motion or upon the motion of a party or limited party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.~~

Stat. Authority: ORS 469.470

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**Commented [47]:** where do we talk about the rules for naming conventions and standards for submitting documents?

**Commented [48]:** Making it clear that evidence submitted by parties must be part of the scheduled established by the HO

**Commented [49]:** #4 Clarity

**Commented [50]:** I think this should be: "Rule on" not "consider." but its just style. I just say this because all the other items, the hearing officer rules, orders, disposes, administers,... more firm words.

**Commented [51]:** OAR 137-003-0568 explains how the issuance of subpoenas will work.

**Commented [52]:** #2 OAH Rules

**Commented [53]:** Reflecting adoption of OAH rules as proposed.

**Commented [54]:** #2 OAH Rules

**Commented [55]:** These need a clear outline of what will be done in the conferences. ALJ's have rephrased parties statements to not reflect what was actually the case the party was raising. How to objection to the ALJ's rephrasing should be indicated. Let's walk through some scenarios for examples.

**Commented [56]:** clarify what this does that 0575 doesn't and insert that.  
[https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID\\_OARD=wWidKP7VJSDvQd-1c1uU2fZX8dVU9KZyUTwNugKaMtb8VCvLHQQ!1961848273?ruleVrsnRsn=9974](https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=wWidKP7VJSDvQd-1c1uU2fZX8dVU9KZyUTwNugKaMtb8VCvLHQQ!1961848273?ruleVrsnRsn=9974)

**Commented [57]:** Reflecting adoption of OAH rules as proposed.

**Commented [58]:** #2 OAH Rules

**Commented [59]:** 0575-  
[https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID\\_OARD=wWidKP7VJSDvQd-1c1uU2fZX8dVU9KZyUTwNugKaMtb8VCvLHQQ!1961848273?ruleVrsnRsn=10129](https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=wWidKP7VJSDvQd-1c1uU2fZX8dVU9KZyUTwNugKaMtb8VCvLHQQ!1961848273?ruleVrsnRsn=10129)

**Commented [60]:** Should read without sufficient specificity or may. What is mean by limit items that have been raised with sufficient specificity? If issue has been accepted, why limit. And if limited, where is recourse by party? Discussion.

**Commented [61]:** #4 Clarity

**Commented [62]:** #3 Consistency

**Commented [63]:** #1 Reorganize

**Commented [64]:** true covered under exparte (0625)

**Commented [65]:** Removing this language, given that OAR 137-003-0625 ("Ex Parte Communications with Administrative Law Judge") covers this topic thoroughly.

**Commented [66]:** #2 OAH Rules

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Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-~~0012-0410~~ - Filing and Service of Documents in a Contested Case**

(1) The hearing officer shall specify permissible means of filing and service of any pleading or document. The methods of filing with the Council or its hearing officer and service upon any party or limited party, may include, but are not limited to: personal delivery, first class or certified mail (properly addressed with postage prepaid), facsimile, or other electronic means ~~mail~~.

~~(2) A party or limited party shall file a pleading or document with the Council accompanied by as many copies as required by the Council or its hearing officer and a certificate of service stating the names and addresses of the persons upon whom a true copy of the document was served and the date of service.~~

~~(2)~~ Upon motion by any party or limited party, the hearing officer may waive requirements for serving parties who are no longer actively participating in the proceeding and may modify the requirements for serving a limited party consistent with such party's limited interest.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440

**345-015-~~0016-0415~~ - Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate**

(1) Notwithstanding OAR 137-003-~~0005(2)~~ 0535(2) and (3), a person requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer ~~and provide copies to the agency and the site certificate applicant~~ by the date specified in the Department's notice issued under OAR 345-015-0230 and OAR 345-015-0014. Petitions received after the deadline will not be considered unless the hearing officer determines that good cause has been shown for failure to submit the petition by the required date.

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

~~(2)~~ Except as described in section ~~(4)~~ of this rule, only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing,

unless the Department did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the Council, the Department and the applicant ~~decision maker~~ an adequate opportunity to

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**Commented [67]:** #4 Clarity

**Commented [68]:** There needs to be a web based docket system. other states agencies have them.

**Commented [69]:** Good to drop. But this also has me wondering if there should be some requirements about formats, files sizes, naming conventions, bates stamping, etc... Maybe that's something to add to the ALJ's duties: to decide these/make an order, and enforce.

**Commented [70]:** Removing (2) to remove wasted time and effort by participants. The only docs that should be filed with Council are those it must take action on.

**Commented [71]:** #5 Efficiency

**Commented [72]:** <https://docs.google.com/document/d/1NtvdTTr2UqH6wqA6iJ0OKQYH9dYzbyQe9F1pbfJ7zHc/edit?usp=sharing>

**Commented [73]:** Updating to reflect adoption of OAH rules. Note that this is in here because unlike what is specified in the model rules / OAH model rules, in EFSC contested cases all petitions go to the hearing officer (not the agency) and by the deadline established in the notice (not 21 days before the hearing).

**Commented [74]:** See OAR 137-003-0535(2), which states that petitions to participate in a contested case should be submitted to the agency and 137-003-0535(3), which states that petitions are to be filed 21 days before the hearing unless the agency by rule has set a different deadline.

**Commented [75]:** #2 OAH rules

**Commented [76]:** add: and all other parties that have requested to participate or be on service list

**Commented [77]:** <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=304074>

**Commented [78]:** <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266717>

**Commented [79]:** Removing as duplicative of proposed adoption of OAR 137-003-0535(2).

**Commented [80]:** "Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties. Unless otherwise provided by law, a person requesting to participate as a party or limited party shall file a petition with the agency and shall include a sufficient number of copies of the petition for service on all parties."

**Commented [81]:** #2 OAH Rules

**Commented [82]:** <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=303985>

**Commented [83]:** earlier this was changed I believe? not just the hearing but "commented on the record by deadline"

**Commented [84]:** how or why wouldn't they follow this? Isn't an ORS a law and not a rule? Can the department ignore a (...)

**Commented [85]:** This section needs to be broken down. How many different interpretations can we get from this. (...)

**Commented [86]:** Revised to be consistent with ORS 469.370(3), which states that "... issues shall be raised with (...)

**Commented [87]:** #3 Consistency

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respond to the issue, the hearing officer may not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object, specified the Council standard or other applicable state and local requirements on which their objection is based, and presented facts or statements supporting that objection on the record of the draft proposed order at the public hearing that support the person's position on the issue.

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

(3) The requirements in (2) also apply to a Council decision to grant a contested case proceeding under OAR 345-015-0310 (Request for Expedited Review of Special Criteria Facilities), with the exception that a person must have commented in person or on the record of the public hearing described in OAR 345-015-320 as opposed to the public hearing described in OAR 345-015-0220.

(45) In a petition to request party or limited party status, the person requesting such status must include:

- (a) The information required under OAR 137-003-00050535(34);
- (b) A short and plain statement of the for each issue or issues that the person desires to raise in the contested case proceeding; the statement itself must identify the issue the person wishes to raise, it is not permissible to identify an issue a person wishes to raise only by referencing comments the person made on the record of the draft proposed order; and
- (c) A reference to the person's comments on the record of the draft proposed order at the public hearing showing that the person raised the issue or issues at the public hearing on the record of the draft proposed order.

(5) The applicant, the Department, or the certificate holder may submit written responses to petitions to request party or limited party status to the hearing officer by the date specified for such responses in the Department's notice issued under OAR 345-015-0230, providing copies to one another and the person who submitted the petition for party or limited party status.

(6) A limited party is a person to whom the hearing officer grants standing to participate in one or more, but not all the issues to be addressed in the contested case, as established in a prehearing order on party status and issues described in OAR 345-015-0430. A limited party may participate in the contested

**Commented [88]:** are we going to use the form as a model?

**Commented [89]:** wow, this seems like a really high bar!! How would someone know all of this at the beginning of the case-or during the DPO comment period? HOWEVER, as I examine it more, its really not so different? for example: --"identified" the rec of fact, conclusion of law, or other, that you object to. Well those are spelled out in the end of each section of the DPO. --specify the standard, laws, etc... --present facts! this is the tough one for folks --and it needs to be presented IN their DPO comment.

**Commented [90]:** Clarifying what it means to present an issue at the DPO hearing with sufficient specificity.

**Commented [91]:** #4 Clarity

**Commented [92]:** Cleaning up what was (4) and is now (3) to reduce complexity. The standard is the same even during a expedited review of special criteria facilities so no need to spell it out twice.

**Commented [93]:** #1 Reorganize

**Commented [94]:** Updated to reflect adoption of OAH model rules

**Commented [95]:** #2 OAH rules

**Commented [96]:** To simplify and speed up resolution of issues. Separate statements for each issue makes it easier for a hearing officer and the parties to address each issue.

**Commented [97]:** #5 Efficiency

**Commented [98]:** Added to ensure a swifter and easier resolution by the hearing officer. The drafter of the statement is the expert on their own claims, it should not be up to the hearing officer and/or applicant to decipher what is being claimed.

**Commented [99]:** #5 Efficiency

**Commented [100]:** this is new in a way. I like that it implies you create your own issue statement. However, I'm not certain of that. I think the ALJ will stiff re-state it in his/her terms (not certain). It also might be that thru discovery you learn more and therefore, you'll need the issue to be able to cover it all. I can see folks being frustrated with themselves (just like they were with the ALJ) when the issue statement becomes very narrow and limits them greatly. Not sure exactly how to remedy this?

WHAT about the new template will there be prompts for this to be a thorough as needed?

**Commented [101]:** The comments don't have to occur at the actual hearing, but can be any time during the public comment period.

**Commented [102]:** #3 Consistency

**Commented [103]:** this is more clear. good.

**Commented [104]:** why not place this in the record? This should be part of the record--not just distributed to those ...

**Commented [105]:** Adding clarity as to how responses to petitioner requests by department and applicant should take ...

**Commented [106]:** Going to need to edit 15-230 to update reference to this rule.

**Commented [107]:** #4 Clarity



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case on the issues, including proposed site certificate conditions, for which the hearing officer has granted them standing to participate but may not participate on issues, including proposed site certificate conditions, for which the hearing officer has not granted them standing to participate.

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

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.370, 469.440, 469.605, 469.615 & 469.992

**~~345-015-0018~~ Authorized Representative**

An authorized representative may represent a party or limited party, other than a state agency, participating in a contested case proceeding before the Council as provided in OAR 137-003-0008. An authorized representative may represent a state agency participating in a contested case as a party, limited party or interested agency subject to the requirements of ORS 183.450(7) and (8).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**~~345-015-0022-0420~~ - Petition for Indigent Status**

(1) By petition to the hearing officer in a contested case submitted before the time of the prehearing conference, a party or limited party may request to be treated as an indigent. In the petition, the petitioner shall state in detail the facts demonstrating that the petitioner is indigent in the context of the financial burdens associated with full participation as a party or limited party in the contested case and the reasons why the petitioner would be prejudiced if indigent status were not granted.

(2) "Indigent" means the person has an income level at or below 100 percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services for the person's household/family size, unless the hearing officer makes a determination as to the person's ability to pay for the cost to participate in the pending case based on other factors. In making the determination as to a person's ability to pay costs to participate in the case, the hearing officer shall consider not only the person's income, but also the availability of any assets, including, but not limited to, cash, stocks, bonds, and any other property that may be applied to the satisfaction of judgments, other financial obligations the person bears, and the nature and complexity of the case.

(3) The hearing officer shall issue a determination on a petition for indigent status in writing and shall state the grounds for the determination. The hearing officer's determination is final unless the petitioner submits an appeal to the Council within seven days after the date of service of the determination.

(4) The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel

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**Commented [108]:** This added sub-section (6) is a BIG problem for the public and I do not believe lends itself to good decisions and process in the end. As mentioned in intro letter comments:

This is not helpful and limits good ideas from coming forward. 1) The person that already has standing and participates in the CC is knowledgeable of the development. And while they might be a limited party and focused specifically on one issue in the CC that doesn't mean that they wouldn't have excellent input for a site "condition." As a matter of fact, they might have the best ideas on conditions because so many issues are interconnected and become apparent throughout the case. By not allowing that limited party to propose another condition(s), is not the way to protect Oregon's resources. 2) By adopting this you will encourage some CC petitioners to get standing on more issues (spagetti), just so that they can propose Conditions on them! Whereas, they might have only taken one issue to the CC, but now they have to get standing on all issues to simply propose conditions. Does this make sense?

**Commented [109]:** Defining what it means to be a limited party in order to remove as much confusion as possible regarding this issue.

**Commented [110]:** #4 Clarity

**Commented [111]:** See proposed 345-015-0430(4).

**Commented [112]:** #1 Reorganize / #3 Consistency

**Commented [113]:** Removing this language as unnecessary given OAR 137-003-0555, which states that a party or limited party may be represented by an authorized representative, defines "authorized representative" and establishes the scope of their participation in the case. See also ORS 183.452(2), which states that an agency may be represented at contested case hearings by an officer or employee of the agency.

**Commented [114]:** #2 OAH Rules

**Commented [115]:** Discussion to move this into an Environmental Justice framework and intervener funding.

**Commented [116]:** Defining what indigent means.

**Commented [117]:** #4 Clarity

**Commented [118]:** This should be linked to state OHA or some state agency. Many of these assets are no longer counted in eligibility.

**Commented [119]:** that was a while ago. Link to? <https://www.healthcare.gov/glossary/federal-poverty-level-fpl/>

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expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0080425 - Participation by Government Agencies**

(1) Any state or local government agency other than the Department may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. For a contested case on a site certificate application, the agency must submit the request to the hearing officer in writing by the date specified in the Department's public notice issued under OAR 345-015-0230(3).

For a contested case on a site certificate amendment, the agency must submit the request to the Department by the date specified in the notice of the opportunity to request a contested case issued under OAR 345-027-0371(4).

(2) The Department must participate in all contested case proceedings conducted by the Council with all the rights of a party.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.370, 469.405, 469.440, 469.605, 469.615 & 469.992

**345-015-0083430 - Prehearing Conference and Prehearing Order**

(1) The hearing officer may hold a prehearing conference to address petitions for party or limited party status and issues. The hearing officer shall consider whether the person has standing to participate in the contested case as a party or limited party and each issue in which the person may participate by considering the applicable provisions in OAR 345-015-0415 and OAR 137-003-0535(8). The hearing officer shall consolidate one or more issues raised by the same or multiple parties if the hearing officer determines the issues raised are substantially similar to one another and consolidation would expedite the hearing while still ensuring a full, fair, and impartial hearing.

(2) The hearing officer may also conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0575.

(3) At the conclusion of the conference(s) described in (1) and (2), the hearing officer must issue a prehearing order or orders stating the issues to be addressed in the contested case hearing, the persons with standing on each issue and whether they have been granted standing to participate as a party or limited party, the contested case procedures, and the schedule.

(4) The hearing officer's order on a request to participate as a party or limited party is final and may not be appealed to Council unless the ruling would terminate the petitioner's ability to participate in the contested case proceeding.

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

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**Commented [120]:** this reminds me of Intervenor funding concept!

**Commented [121]:** 345-015-0016 Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate  
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266718>

**Commented [122]:** is the rest needed?

**Commented [123]:** why is this an opportunity? isn't it a right?

**Commented [124]:** 345-015-0083-sez more  
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=266720>

**Commented [125]:** what is the criteria that this will be decided upon?

**Commented [126]:** this is against the APA - but its also what Karl argued in the supreme ct and lost ;-(

**Commented [127]:** this is about the agency not the ALJ

(8) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

[https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID\\_OARD=wWtdKP7VJSDvQd-1c1uU2fZx8dVU9KZyUTwNugKaMtb8VCvLHQQ!1961848273?ruleVrsnRsn=10085](https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=wWtdKP7VJSDvQd-1c1uU2fZx8dVU9KZyUTwNugKaMtb8VCvLHQQ!1961848273?ruleVrsnRsn=10085)

**Commented [128]:** 1) break this into two. I think addressing the issues should be separated from party status. They are distinctly separate from each other. (less complicated)

2) This idea is so unfair and even more unrealistic in terms of individuals who are not already associated (like in the same organization). MUST OBJECT. Disperse people/parties ...

**Commented [129]:** Clarifying that that party status is set after the prehearing conference(s).

**Commented [130]:** #4 Clarity

**Commented [131]:** Adding language to better describe how the prehearing conference works. Note that 137-003-0575 cited in (2) outlines all the acceptable reasons for holding a ...

**Commented [132]:** #1 OAH Rules / #4 Clarity

**Commented [133]:** Discuss McCallister confusion and how to avoid

**Commented [134]:** at who's request? any party?

**Commented [135]:** put this subsection, last.

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(6) If an appeal to Council of a hearing officer's ruling on party status described in subsection (1) results in the granting of party status, the hearing officer shall issue an amended order.

**Commented [136]:** Making it clear that an amended order is required if party status is granted as the result of an appeal of party status.

(7) Failure to raise an objection regarding suggested procedures to be followed in the contested case or a proposed description of an issue during the prehearing conference when such procedures and issues are being discussed and established by the hearing officer constitutes waiver of that issue.

**Commented [137]:** This sub section (6) should go immediately after (4).

**Commented [138]:** Making it clear how waiver of an issue occurs. Previous language implies parties have to reraise every issue to maintain standing.

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

**Commented [139]:** see my comment

**Commented [140]:** This needs more clarity! Are you certain that the actual language of issues (proposed description of an issue) will be known before the preconference hearing? Meaning, how will a party be able to discuss and raise the issue of if they do not have advanced notice of what exactly the ALJ is proposing! The pre-conference is verbal and often things are not clear. In writing is best--need to know the ALJ's "suggested procedures and issue descriptions" before the prehearing conference in order for the party to be prepared.

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

**Commented [141]:** This is language is removed as duplicative. The threshold for participation is established in 345-015-0415(2) and the hearing officer's allowing only issues that were raised on the record of the DPO hearing is covered in 315-015-0405(4)(g).

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

**345-015-0435024 - Suspension of Hearing and Exclusion of a Party**

**Commented [142]:** #1 Reorganize / #2 OAH Rules

(1) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a contested case proceeding or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. Conduct that interferes with the hearing officer's duties includes, but is not limited to, conduct impeding discovery, hearing schedules or the conduct of the contested case hearing.

**Commented [143]:** is this really necessary? Failure to petition for CC would also waive rights. This almost implies that you can raise issues at the prehearing conference. But, in fact, you would have had to already raise the issue in your petition.

(2) If the hearing officer issues an order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven calendar days of service of the order.

**Commented [144]:** or proceeding?

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

~~**345-015-0038 - Separate Hearings**~~

~~The Council or its hearing officer may order separate hearings on particular matters at issue in a contested case to conduct the entire proceeding expeditiously.~~

**Commented [145]:** Removing as duplicative of OAR 137-003-0525(c), which gives the hearing officer the authority to bifurcate hearings.

**Commented [146]:** #2 OAH Rules

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0440 - Burden of Presenting Evidence (NEW RULE)**

**Commented [147]:** Adding to reflect ORS 183.450(2), which states: "The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position."

In a contested case regarding an application for a site certificate or amendment to a site certificate, each party or limited party bears the burden of presenting evidence in support of

**Commented [148]:** Note – adopting this change should include the removal of OAR 345-021-0100, which has the added benefit of removing a contested case rule from Division 21 and putting it in Division 15 with the rest of the Contested Case rules, in line with the goal of simplification.

**Commented [149]:** #3 Consistency

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facts that party or limited party alleges and/or positions they take on any issue for which the hearing officer grants them standing to participate.

Stat. Authority: ORS 183.341, ORS 183.417, ORS 469.470

Stat. Implemented: ORS 183.450

**345-015-~~0043~~-0445 – Submission of Evidence and Proposed Site Certificate Conditions-  
Testimony Submitted in Writing**

(1) A hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness. Parties and limited parties shall send to all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule.

(2) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions related to issues for which they have been granted standing to participate in the contested case and to present evidence related to any such conditions. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer, which shall occur no later than the deadline for the submission of direct evidence.

(3) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may respond to any other party's proposed site certificate conditions related to issues for which the responding party or limited party has been granted standing according to a schedule set by the hearing officer.

(4) The hearing officer may not receive evidence or hear legal argument on issues not identified in the prehearing order.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-~~0046~~-0450 – Official Notice of Evidence-Official Notice**

(1) In a contested case proceeding, the hearing officer may take official notice of the following:

- (a) All facts of which the courts of the State of Oregon may take judicial notice;
- (b) Administrative rulings and reports of the Council and other governmental agencies;
- (c) Facts contained in permits and licenses issued by the Council or any other government agency;
- (d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and
- (e) General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy.

**Commented [150]:** this mainly talks about witnesses and site conditions. What about direct testimony that is in writing? and what about cross exhibits? etc... need to address:  
-form of submission (formats, electronic, etc)  
-citations & affidavits, declarations  
-hearsay (or parameters for that)

-presume that filing and service lists are covered; albeit, I hope this can move to a docket.

**Commented [151]:** Again, this is so "old school"! Not to mention complete hassles when there are large files and/or many people in the case/on the list! There's got to be a more efficient way!

**Commented [152]:** This should NOT be limited like this! Any limited party should be able to propose conditions! Remember, this is "to propose." It is not like they will be arguing a full cc case on these conditions. But it sounds like that is what is being expected? It's confusing and might need another detailed look, because there are times when the developer proposes site conditions as part of their application, or the department has proposed a number of them already in the DPO/PO... In this case, I suppose it would make sense for a full CC, if a party took issue with it. My point is, that MANY site conditions do not emerge until issues are challenges and deal with in the case.

**Commented [153]:** this is pre-mature!!! Site conditions could be proposed here if the department wants; but it is much better at the end AFTER all the rest of the case is heard because of all the inter-related issues have surfaced and are heard by all. It is not uncommon to "discover" solutions or site conditions after most of the case is heard. If, the department wants these earlier, there should still be a final opportunity for parties to make proposals for conditions at the end!

**Commented [154]:** Moved from 345-015-0475 as they are a better fit for this rule.

**Commented [155]:** #1 Reorganize

**Commented [156]:** see my comments

**Commented [157]:** why bother with this, seems redundant? But, if you want to keep it, why not add it to the NEW one you created above 0440?

**Commented [158]:** Moving this language to better suit subject of rule language (submission of evidence).

**Commented [159]:** This was part of what was 345-015-0083(2), which is now gone.

**Commented [160]:** #1 Reorganize

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(2) The hearing officer shall notify parties of facts officially noticed and shall allow parties an opportunity to contest the facts so noticed.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**~~345-015-0051 – Evidence: Resolutions of Cities, Counties and Tribes~~**

~~Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.~~

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0054-0455 - Motions**

~~(1)~~ All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. All motions are subject to OAR 137-003-0630 and the following requirements:

(a) Unless a motion is made orally on the record during a contested case hearing proceeding, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited parties to the contested case.

(2b) Within seven calendar days after the date of service of a written motion, or such other period as the hearing officer may prescribe, a party or limited party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the hearing officer.

(c3) The parties shall not have oral argument on a motion unless permitted by the hearing officer. The hearing officer shall dispose of motions by written order served on all parties and limited parties or read into the hearing record.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**~~345-015-0057-0460 – Prohibitions on Interlocutory Appeals to Council~~**

~~(1)~~ ~~Except as otherwise specifically provided for in the rules of this division, a~~ 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.

**Commented [161]:** is it really facts at this phase? Isn't it about what evidence the ALJ is allowing to be entered into the record? Could be all the facts too—but I think of that as when ALJ issues its own final order (or proposed order)?

Where does it say: this is the evidentiary record. Or, here is the list of accepted evidence into the record. Something like this....

**Commented [162]:** Removing as under 137-003-0610 as any evidence – including the evidence discussed here – would be admissible as long as it is not irrelevant, immaterial, or unduly repetitious. So this does not really add anything.

**Commented [163]:** #2 OAH Rules

**Commented [164]:** Making clear that newly adopted OAH model rules apply here.

**Commented [165]:** #2 OAH Rules / #4 Clarity

**Commented [166]:** Removing as it is not otherwise permitted by the rules.

**Commented [167]:** #3 Consistency

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(2) A party or limited party shall submit an appeal involving that party's right to participate in a contested case proceeding, with supporting arguments and documents, to the Council within seven calendar days after the date of the ruling of the hearing officer.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0059-0465 - Prohibitions on Stays**

(1) The hearing officer has the power to stay a proceeding.

(2) Unless otherwise ordered by the hearing officer, neither the filing of a motion nor the certification of a question to the Council stays a contested case proceeding or extends the time for the performance of any act.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0062-0470 - Reopening Record Prior to Decision**

The Council or its hearing officer, on its own motion or for good cause shown, may reopen the hearing record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party or limited party shall show that:

- (1) The evidence is material to the proceeding; or
- (2) The evidence would substantially affect the outcome of the proceeding.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0085-0475 - Hearing Officer's Proposed Contested Case Order**

(1) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.

(2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present evidence relating to the appropriateness, scope or wording of any other party's proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.

(13) After the completion of a hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed contested case order on all parties and limited parties. In the proposed contested case order,

**Commented [168]:** all these 7 day things are quick! 14 would be better – especially something a hefty as an Interlocutory appeal to the Council. Also these 7 days, need some accommodation or clarification for people that are using the USPS and not electronic. What will be there deadlines and dates?

Maybe a solution to that could be: if a party is not capable of electronic filing and use of the docket system (lol) - then the ALJ will determine reasonable accommodations and set customized deadlines and timeframes as necessary.

**Commented [169]:** Existing language could be more clear as to the power of a hearing officer to stay a proceeding.

**Commented [170]:** #4 Clarity

**Commented [171]:** never had this experience, so don't know if this is fair or what???

**Commented [172]:** Moved (1) and (2) to 345-015-0445 to better fit subject matter of heading (submission of materials to HO).

**Commented [173]:** #1 Reorganize

**Commented [174]:** OK, in terms of location. but see comments on 0445 above.

**Commented [175]:** #3 Consistency

**Commented [176]:** #3 Consistency

**Commented [177]:** when and if the department gets a docket system – all of these references to "serving everyone" will need to be edited to something like: must be posted to the service list docket... or whatever.

**Commented [178]:** #3 Consistency

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the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision-making record for the application but are not part of the Council's order unless adopted by Council.

**Commented [179]:** Updating to match how term is used in OAR 345-015-0240.

**Commented [180]:** #3 Consistency

(42) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed contested case order on all parties and limited parties.

**Commented [181]:** Clarifying that the Council is the final say as to the content of the Council's order on an application for a site certificate.

**Commented [182]:** #4 Clarity

**Commented [183]:** good.

(35) Parties and limited parties may file exceptions to the proposed contested case order within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.

**Commented [184]:** #3 Consistency

**Commented [185]:** #3 Consistency

**Commented [186]:** #3 Consistency

(64) Parties and limited parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.

**Commented [187]:** I understand the desire to expedite but it seems that the ALJ can decide timeframes based on the complexities of the case and exceptions.

Above too, although many things are 30 days, so might be ok?

(5) The filings described in (3) and (4) are only allowed to the extent they relate to issues on which parties have been granted standing by the hearing officer.

**Commented [188]:** Adding language to describe who is allowed to file responses to exceptions.

**Commented [189]:** #4 Clarity

(67) The Council shall evaluate the exceptions described in (3) and then:

**Commented [190]:** don't have issues with that.

(57) After the period for filing responses to exceptions, the Council shall issue a final order. (a) The Council shall review the hearing officer's proposed contested case order and may adopt, modify, or reject the hearing officer's proposed contested case order; and

(b) The Council shall review the Department's proposed order and may adopt, modify, or reject the Department's proposed order. After the period for filing responses to exceptions, the Council shall issue a final order. The Council may adopt, modify or reject the hearing officer's proposed order.

**Commented [191]:** Adding language to clarify how the Council uses the exceptions and the hearing officer's proposed contested case order when issuing its own final order.

**Commented [192]:** #4 Clarity

(78) Following a contested case proceeding on an application for a site certificate, the Council, in its final order, the Council shall either grant approve or deny issuance of a site certificate the application. If the Council grants issuance of a site certificate approves the application, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

**Commented [193]:** Modified phrasing to be more consistent with statute.

(79) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate. The amended site certificate becomes effective upon execution by the Council and by the applicant.

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However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.]

(~~108~~) The Council shall issue a site certificate or amended site certificate in duplicate counterpart originals and each counterpart, upon signing, will have the same effect.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**END OF CONTESTED CASE RULES – The changes made as indicated in redline below are additional edits made to ensure conformity with the proposed revised contested case rules.**

**345-015-0200 - Notice to Agencies that the Application is Complete**

(1) After receiving notification from the Department that the application is complete, the applicant must prepare an application supplement that includes all amendments to the preliminary application and all additional information requested by the Department before the determination of completeness.

(2) The applicant must submit to the Department, two printed copies of the application supplement, and an electronic version of the application supplement in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the application supplement to the Department upon request.

(3) After receiving the application supplement, the Department must determine a distribution date and prepare a distribution list that includes, but is not limited to, the reviewing agencies for the application.

(4) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant must mail or email an electronic copy of the application supplement to each person on the distribution list provided by the Department on or before the distribution date. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request.

(5) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under sections (2) and (4) of this rule.

(6) After the date of filing, the Department must prepare a notice for distribution. In the notice, the Department must:

(a) State the date of filing;

(b) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in ~~OAR 345-015-0016~~OAR 345-015-00160415;

**Commented [194]:** this flow is still not completely clear.

missing or helpful for clarity:

--are the parties filing the exception to the Council now? or still to the ALJ? I think it shifted to Council. (3)

--If the Council, why is the ALJ saying the timeframe? I also think its better to leave these times open to the ALJ or Council to set. 15 days is very quick turnaround depending on complexity of case. (4)

--(5) fine

--(6)(b) – why have the middle sentence? its confusing and seems to counter (a). Isn't the Council NOT reviewing the proposed cc order of the ALJ until after the exceptions have been filed? Aren't they looking at the full package of cc proposed order AND the exceptions! I think this is what (a) says? Then, (b) only has to refer to the Department's PO.

--(6)(b) but also in this one it makes a switch to the hearing officer/ALJ's "proposed order." Where did this come from? In other words, is there a step AFTER "exceptions" that the ALJ files thier own final PO to the Council?

Finally, I would take the date of execution stuff and make it its own subsection (7) and (7) – ooops catch that.

**Commented [195]:** #1 Reorganize



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- (c) State a date by which the Department and the applicant must receive the reports described in sections (d) through (f) below;
- (d) Request an agency report containing the following information:
  - (A) The agency’s recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility;
  - (B) Issues significant to the agency;
  - (C) The agency’s conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency;
  - (D) A list of site certificate conditions recommended by the agency; and
  - (E) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.
- (e) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).
- (f) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).
- (g) Explain that the reports described in sections (d) through (f) above are part of the decision record for the application for a site certificate.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.350

**345-015-0220 - Public Hearing and Notice on the Draft Proposed Order**

- (1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer must conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing. If there is more than one public hearing, the “close of the record of the public hearing” means the close of the record of the final public hearing.
- (2) The Department must, at least 20 days before the hearing:
  - (a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and
  - (b) Send notice of the hearing by mail or email to:
    - (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;
    - (B) Persons on any special mailing list set up for the proposed project; and
    - (C) The property owners listed in Exhibit F of the application, as updated by the applicant upon the request of the Department.

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(D) The land management agency or organization with jurisdiction over the protected areas identified in the application.

(3) In the notices described in subsections (2)(a) and (2)(b), the Department must include:

- (a) The date, time and location of the public hearing;
- (b) A description of the facility and the facility's general location;
- (c) The name, address, email address, and telephone number of the Department's representative to contact for additional information;
- (d) The addresses of locations where the public may inspect copies of the complete application and the website where the application may be found;
- (e) The website where the draft proposed order may be found;
- (f) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department;
- (g) A statement that to raise an issue on the record of the public hearing, a person must raise the issue in person at the public hearing or in a written comment submitted after the date of the notice and received by the Department before the deadline;
- (h) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case;
- (i) A statement that to raise an issue with sufficient specificity, the person must have identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object, specified the Council standard or other applicable state and local requirements on which their objection is based, and presented facts or statements supporting that objection on the record of the draft proposed order ~~a person must present facts that support the person's position on the issue;~~  
and
- (j) A statement that the Council will not accept or consider any further public comment on the site certificate application or on the draft proposed order after the close of the record of the public hearing.

(4) During the public hearing, the Department must explain the application process, including the means and opportunities for the general public to participate in the process. The Department may provide this explanation by a written handout.

(5) At the commencement of the public hearing, the presiding officer must state that:

- (a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department before the deadline stated in the notice of the public hearing; and

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**Commented [196]:** #3 Consistency with the changes made above.

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(b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department, and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

(6) At the public hearing, any person may present information regarding the pending application without administration of an oath. The presiding officer must record all presentations made during the public hearing. The presentations are part of the decision record for the application and may be rebutted in the contested case proceeding.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.370

**345-015-0230 - Council Review and the Department of Energy's Proposed Order**

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Council must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council may not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.

(2) Following the Council's meeting to review the draft proposed order, the Department must issue a proposed order in accordance with ORS 469.370(4), taking into consideration the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. In the proposed order, the Department must recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.

(3) Following issuance of the proposed order, the Department must issue a public notice of the proposed order, subject to the following:

(a) The public notice of the proposed order must include:

- (A) A description of the facility and the facility's general location;
- (B) A summary of the recommendations included in the Proposed Order;
- (C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under ~~OAR 345-015-00160415~~;
- (D) The date of the prehearing conference, if any; ~~and~~
- (E) The date of the hearing; and
- (F) The deadline for the Department and the applicant or certificate holder to respond to petitions for party status; and

Commented [197]: #1 Reorganize

Commented [198]: #4 Clarity

(b) The Department must send the notice by mail or email to:

- (A) All persons on the Council's general mailing list;

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- (B) All persons on any special mailing list set up for the proposed project;
- (C) All persons who commented in person or in writing on the record of the public hearing conducted under OAR 345-015-0220; and
- (D) The property owners listed in Exhibit F of the site certificate application, as updated by the applicant upon the request of the Department.
- (E) The land management agency or organizations with jurisdiction over the protected areas identified in the proposed order.

(4) On the same date as notice is issued under section (3) of this rule, the Department must notify the applicant that the applicant must notify the hearing officer and the Department of any issues the applicant intends to raise in the contested case proceedings by the date established in paragraph (3)(a)(C) of this rule.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.370

**345-015-0240 - The Decision-Making Record**

The decision-making record on an application for a site certificate includes the decision record for the Department of Energy’s proposed order and the record of the contested case proceeding.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.370

**DIVISION 21 - APPLICATION FOR SITE CERTIFICATE**

~~**345-021-0100 - Contested Case Proceeding on the Application -- Burden of Proof**~~

~~(1) After the issuance of a notice of contested case as described in OAR 345-015-0230, the hearing officer shall conduct a contested case proceeding on the application according to the provisions of OAR chapter 345, division 15.~~

~~(2) The applicant has the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.~~

~~Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.370~~

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Commented [199]: Removed, see proposed OAR 345-015-0440, which deals with the burden of proof.  
Commented [200]: #1 Reorganize

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Jim Kreider's Comments

On

OAH's Contested Case Model Rule Comparison

# Comparing Contested Case Model Rules with OAH Rules

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
<b>Contested Case Notices</b>	345-015-0014	137-003-0001	137-003-0505	No significant differences between Model and OAH Rule. The Council rule does not conflict with OAH Rule, but directly references Model Rule.
<b>Referral to OAH/ Appointment of Hearing Officer</b>	345-015-0220	No Comparable Rules	137-003-0515	<p>The OAH Rules contemplate that a contested case will be referred to OAH at the commencement of the contested case proceeding.</p> <p>Under the Council rules, a Hearing Officer is appointed before this point to conduct the Public Hearings on the DPO, and delegates certain agency actions, such as making rulings on petitions for party status and hearing requests to the Hearing Officer.</p> <p>OAH Rules allow the agency to delegate authority to the hearing officer, so this is not a conflict, but some clarification may be needed if the OAH Rules were adopted for use by the Council.</p>
<b>Rights of Parties</b>		137-003-0002	137-003-0510; 137-003-0505(1)(h); 137-003-0550;	<p>The rights of parties in contested cases are substantively the same under both the Model Rules and the OAH Rules.</p> <p>While the statement that a party that is not a natural person is required to be represented by an attorney is not required under the Model Rules, the requirement is provided in OAH Rules OAR 137-003-0505(1)(h) and 137-003-0550.</p>
<b>Filing and</b>	345-015-0012	No	137-003-0520	The OAH Rule describes filing and service requirements

**Commented [jk1]:** So this doesn't have the ALJ conducting the public hearings that start the process? How is it handled?

**Commented [jk2]:** What does this mean? This needs to be changed for CBO's to operate w/o an attorney.

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
<b>Service of Documents</b>		Comparable Rules		<p>for documents that are not included in the Council rule, but since the Council rule delegates authority to specify the means and requirements for filing to the Hearing Officer there does not appear to be a conflict.</p> <p>The Council rule includes a specific provision for motions to amend the service list to remove limited parties who are no longer participating in the contested case. While this is not included in the OAH Rule, this procedure could potentially be contemplated under OAH Rule OAR 137-003-0630.</p>
<b>Date of Receipt</b>		No Comparable Rules	137-003-0520(9)	<p>For documents that are mailed, the OAH Rules rely on the postmark date to establish the date of filing. While the Council rules delegate the establishment of filing requirements for the contested case proceeding to the Hearing Officer, the Council often rely on the date of receipt to allow the Council to make timely decisions during Council meetings.</p> <p>For hearing requests, the OAH Rules allow agencies to adopt rules exempting themselves from the postmark rule based on operational conflicts. If the OAH Rules were adopted, the Council could adopt such a rule, or could consider requesting an exemption from the requirement from the Attorney General.</p>
<b>Late Filings / Late Hearing Request</b>	No Applicable Rules	137-003-0003	137-003-0528 137-003-0530  See also 137-003-0501(7)	<p>Under OAH Rules, the decision to allow a late request is based on whether the requestor showed “good cause” – defined in OAR 137-003-0501(7) as existing when the late filing arose from “an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural</p>

**Commented [jk3]:** Bad idea. If the OAH describes filing and service requirements for documents then it should be adapted here for consistency throughout ODOE dockets.

**Commented [jk4]:** Why-they still have a vested interest in the outcome. This list should be open to anyone that asks, like OPUC service lists.

**Commented [jk5]:** This are very different  
1) For documents that are mailed, the OAH Rules rely on the postmark date to establish the date of filing.

**Commented [jk6]:** 2) the Council often rely on the date of receipt to allow the Council to make timely decisions during Council meetings.

**Commented [jk7]:** Use postmake date as seems to be most commentWhy would we want to do this?



Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.”</p> <p>This standard is broader than the standards used in the Model Rules which generally only allow a late filing to be considered if the delay was outside of the reasonable control of the filing party. See 137-003-0003(2)(a).</p> <p>Provisions for service of late hearing requests and the option to require an affidavit or other written explanation are the same in the Model and OAH Rules.</p> <p>The Model Rules allow the agency to choose whether other parties will have the opportunity to respond to a late hearing request. OAH Rules require that other parties be given a chance to respond.</p> <p>The OAH Rules contain additional procedures for resolving disputes related to decision to allow or deny a late hearing request.</p>
<b>Limited Parties</b>	345-015-0016	137-003-0005	137-003-0535	<p>The OAH Rule specifically includes language allowing an agency to differentiate between parties and limited parties by rule.</p> <p>Both the Model Rules and OAH Rules set 21 days before the hearing date as the default deadline for a petition for party status. The OAH Rules specifically authorize an agency to adopt rules setting a different deadline, which the Council has done under OAR 345-015-0016(1).</p>
<b>Authorized</b>	345-015-0018	137-003-0008	137-003-0555	Both the Model Rules and the OAH Rules allow agencies

**Commented [jk8]:** Keep this wording and allow other parties to object to lateness with proof that they will be harmed if allowed.

**Commented [jk9]:** How is this done? What are the criteria ... allowing an agency to differentiate between parties and limited parties by rule.

**Commented [jk10]:** This should be set based on the starting point of the process not working backwards

Rules set 21 days before the hearing date as the default deadline for a petition for party status.

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
<b>Representatives</b>				to allow use of authorized representatives by rule. The Council has adopted such a rule under OAR 345-015-0018.
<b>Indigent Status</b>	345-015-0022	No Comparable Rules	No Comparable Rules	The Council's rules allow a party or limited party to submit a petition for indigent status. There is no similar provision in either the Model Rules or the OAH Rules, and it is not clear if this procedure would be allowed if the Council chose to have its contested cases conducted under the OAH Rules.
<b>Collaborative Dispute Resolution</b>	345-001-0005	137-003-0015	137-003-0565	The procedures for use of collaborative dispute resolution in the Model Rules and the OAH Rules are generally the same.  While the Council rules do not specifically mention collaborative dispute resolution processes, the Council has adopted the Attorney General's Model Rules for Collaborative Dispute Resolution under OAR 345-001-0005.
<b>Discovery</b>	345-015-0023(5)	137-003-0025	137-003-0566 137-003-0567 137-003-0568 137-003-0569 137-003-0572 137-003-0567	The Council's Rules delegate control over discovery to the Hearing Officer under OAR 345-015-0023(5), which specifically references the Model Rule.  While the procedures for discovery provided in the OAH Rules are more robust than in the Model Rules, the standards and methods allowed and requirements for discovery requests are generally the same.  The OAH Rules provide a maximum number of requests for admission and interrogatories that can be submitted without authorization from the ALJ. The Model Rules

**Commented [jk11]:** Clarify Both the Model Rules and the OAH Rules allow agencies to allow use of authorized representatives by rule.

**Commented [jk12]:** How defined ...  
... indigent status.

**Commented [jk13]:** Need to look at Collaborative Dispute Resolution

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>don't establish any such caps.</p> <p>The methods listed in the OAH Rule are currently allowed in Council proceedings, but if the Council found that one or more methods was inappropriate, the OAH Rules allow an agency to adopt rules limiting discovery methods.</p> <p>The OAH Rules provide an opportunity for a party to request the Chief ALJ to review a discovery order. This is unique to OAH proceedings.</p> <p>The Model Rules and OAH Rules for enforcement of a discovery order contain similar provisions, although the OAH Rules provide additional detail on what occurs if a party fails to respond to a request for admission.</p>
<b>Pre-hearing Conference</b>	345-015-0083	137-003-0035	137-003-0575	<p>Prehearing Conferences are optional under all three sets of rules, although ORS 469.370(4) does imply that the prehearing conference is a mandatory step in a contested case proceeding on an Application for Site Certificate. The procedures are generally the same, although OAH Rules expand on the procedures for the conduct of prehearing conferences to include a prehearing conference notice and requirements for participation.</p> <p>The Council rule states that failure to raise an issue in the prehearing conference in a contested case on an application is a waiver of that issue. It is not clear whether the rule is meant to require persons to reiterate the issues raised in their petition for party status, or if the rule is meant to apply only to procedural</p>

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				issues related to the conduct of the contested case. The OAH Rule provides a different standard, stating that failure to appear at the prehearing conference does not preclude judgement on issues already identified by the hearing officer.
<b>Motion for Summary Determination</b>		No Comparable Rules	137-003-0580	<p>A motion for summary determination is a motion requesting a ruling in favor of the agency or moving party on any or all legal issues in the contested case.</p> <p>Neither the Council nor Model Rules contain a specific provision for Summary Judgement, although Hearing Officers have allowed use of the procedure in Council contested case proceedings, relying on Council's rule addressing motions (OAR 345-015-0054).</p>
<b>Subpoenas</b>		137-003-0025	137-003-0585	<p>Subpoenas are allowed under the Model Rules and OAH Rules, but specific procedures are not provided in the former.</p> <p>The Model Rule states that the agency may apply to circuit court to compel obedience to a subpoena, while the OAH Rule states the agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena.</p> <p>The OAH Rules allow a party to file a motion to quash a subpoena. There is no specific provision for such a procedure under the Model Rules.</p>
<b>Conduct of Hearing</b>	345-015-0023	137-003-0040	137-003-0600	The procedures for the conduct of the hearing, the maintenance of the record, and the questioning of witnesses are largely the same in the Model Rules and the OAH Rules. The Council's rules require the Hearing

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>Officer to provide updates to the Council on the status of the case, and while there does not appear to be a similar provision in the OAH Rules, this is not a direct conflict.</p> <p>The Council has delegated several responsibilities to the Hearing Officer. While most of these responsibilities would be carried out by the ALJ under the OAH Rules, some responsibilities may be expected to be performed by the Agency, as noted throughout this document.</p> <p>While the OAH Rules allow delegation of most agency responsibilities, it may be appropriate to revise Council's delegated list if the Council chooses to have the OAH Rules apply to its proceedings.</p>
<b>Interlocutory Appeal</b>	345-015-0057	No Comparable Rules	No Comparable Rules	<p>The Model Rules and OAH Rules don't address interlocutory appeals. If Council were to adopt the OAH Rules and wanted to maintain this or another interlocutory appeal rule, it would be necessary to obtain authorization from the Attorney General (per OAR 137-003-0501(2)).</p>