

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

345-015-0014

Contested Case Notices

(1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001, ~~and shall include in the notices:~~

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

- (A) A date by which persons must request party or limited party status.
- (B) The date of the pre-hearing conference.
- (C) The time and place of the hearing.

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

- (A) The date of the pre-hearing conference.
- (B) The time and place of the hearing.
- (C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-000J or -00JJ.

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

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

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

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

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-000J70, ~~OAR 345-027-0080~~ or OAR 345-027-0090, to the certificate holder and to the parties the Council granted contested case party status to. ~~all persons who requested a contested case proceeding as described in OAR 345-027-0070(6) or OAR 345-027-0080(5).~~

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

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

4 **345-015-0016**

5 **Requests for Party or Limited Party Status in Site Certificate Application**
6 **Contested Cases**

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

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

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

30 (4) Following a Council decision to grant a contested case hearing under OAR 345-
31 015-0310, only those persons who have commented in person or in writing on the
32 record of the public hearing described in OAR 345-015-0320 may request to
33 participate as a party or limited party in a contested case proceeding on an application
34 for a site certificate. To raise an issue in a contested case proceeding, the issue must be
35 within the jurisdiction of the Council, and the person must have raised the issue in
36 person or in writing on the record of the public hearing. If a person has not raised an
37 issue at the public hearing with sufficient specificity to afford the decision maker an
38 opportunity to respond to the issue, the hearing officer shall not consider the issue in
39 the contested case proceeding. To have raised an issue with sufficient specificity, the
40 person must have presented facts at the public hearing that support the person's
41 position on the issue.

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

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

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

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

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

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

10 Stat. Authority: ORS 469.373, ORS 469.470

11 Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS
12 469.992

13 **345-015-0080**

14 **Participation by Government Agencies**

15 (1) Any state or local government agency other than the Department of Energy may
16 request participation in a contested case as a party, limited party or interested agency,
17 subject to the limitations described in OAR 345-015-0016. For a contested case on a
18 site certificate application, the agency shall submit the request to the hearing officer
19 in writing by the date specified in the Department of Energy's contested case notice
20 issued under OAR 345-015-0014. For a contested case on a site certificate amendment,
21 the agency shall submit the request to the Department by the date specified in the
22 notice of the opportunity to request a contested case issued under OAR 345-027-000J
23 or -00JJ.

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

26 Stat. Authority: ORS 469.470

27 Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS
28 469.992

29 **345-015-0083**

30 **Prehearing Conference and Prehearing Order**

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

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

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

42 Stat. Authority: ORS 469.470

43 Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS
44 469.992