ATTACHMENT 2

Contested Case Rulemaking Comments_Stop B2H Coalition

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2024-07-22_Revised CC RulemakingComment_Stop B2H Coalition.pdf;

Tom,

Please find attached the Comments from the Stop B2H Coalition regarding the Contested Case Rulemaking (version 2). Please let me know when you receive this and if you have any questions, feel free to reach out at any time.

Thank you,
Fuji Kreider, Secretary/Treasurer
On behalf of the Stop B2H Coalition

STOP B2H Coalition

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July 22, 2024

Stop B2H Coalition respectfully submits this second public comment on the Contested Case Rulemaking. We appreciate the efforts of the rulemaking staff and are grateful for a number of clarifying improvements. This is/has been a complex rulemaking with a lot to unpack (and re-pack), especially given the changing of rule numbers (in various drafts.) Considering the heavy weight of importance these rules have on siting energy facilities and protecting Oregon's resources, they deserve this tough review by Council.

We appreciate the improved notice and re-opening of the process as suggested by Friends of the Columbia Gorge ("Friends"). However, we are disappointed that ODOE's revised notice only emphasized this one change (re: Interlocutory Appeals) when there are many changes in the rules. Therefore, we re-submit our comments of April 12, 2024 as Attachment 1. We urge the Council to take another look at our sections (particularly those noted below) as they are not meeting the intended goals of this rulemaking:

- (STOP's 1.) Division 1 General Provisions, 345-001-0005 - Uniform and Model Rules. Does not add full consistency with the intended goal #2 -OHA Rules. All 3 exparte rules (as we suggested) need to be referenced since **exparte communications could occur with other decision makers** (i.e.: the Council, the ALJ) not just with "the agency" (ODOE).
- (STOP's 3.) Notice, 345-015-~~0014~~ 0403. You have received input at your 7/19 meeting about Notice contents. Nonetheless, we reiterate, in the spirit of your intended goals: #3 consistency, #4 clarity/enhanced definitions, and #5 efficiency, please assure **the Notice—and the contents it requires of petitioners—is in alignment with 345-015-0415** The Requests for Party or Limited Party Status.
- (STOP's 4. and 5.) The Filing & Serving of documents and the ALJ's Duties. The list of what is to be maintained in the record is an improvement and enhances "clarity" (goal #4); however, we are concerned that it does not explicitly say that **this record is open/accessible to the public** – or even the parties who need access to the record -- **throughout the duration of the case**. This is grossly inefficient (intended goal #5), **denies the public equal access to material content**; and is inconsistent with other Oregon rules and our values of transparency (intended goal #3). We also remain disappointed in the lack of investment in a docketed system, or requiring that an ALJ utilize one.

- (STOP's 9.) Prehearing Conference and Prehearing Order 345-015-0~~083~~430. Subsection 7 talks about raising an objection during the pre-hearing conference, however, if the "order" is unacceptable, the petitioner should be allowed to appeal to the Council (e.g.: issues, procedures, or other). It is not clear in the proposed rule what is to be allowed to be appealed to the Council, only that an appeal on party status is not allowed. Proposed sub-section 6 could be more inclusive; but as written it only applies to "party status" not "issues" or other procedural matters: "*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."*

  We suggest that more clarity be provided regarding what can be appealed to the Council, unless this will be thoroughly covered under the next topic: interlocutory appeals. Or, omit all mention of appeals under the "Prehearing Conference and Order" and include appeals under the Interlocutory Appeal subsection/rule.

Interlocutory Appeals 345-015-~~0057~~ 0460:

We concur with Friends that administrative Interlocutory Appeals must be retained. It is fair and much more efficient. Friends say it best in their comment of April 12th: *"it is far more efficient to allow these threshold procedural questions to be raised and resolved at the outset, before the contested case is fully underway, rather than forcing interested persons to potentially have to wait until the entire contested case is finished, then appeal to the courts, only to then obtain a remand back to the Council for a new contested case with the participation of the appellant on the requested issue(s)."*

STOP believes that this rule is problematic based on the **inefficiencies** it creates, and simple **fairness**. Just because a petitioner may have standing on one issue should not preclude them from being able to bring a timely appeal before the Council if they feel they have been harmed. As one of the duties of the hearing officer in the proposed rule: 345-015-0405 -– Appointment and Duties of Hearing Officer (2) states: "(2) A hearing officer shall take all necessary action to: (a) Ensure a **full, fair, and impartial, and efficient** ~~hearing~~ proceeding; …" By removing – or limiting -- Interlocutory Appeals in a contested case proceeding, an ALJ/hearing officer would not be able to ensure fullness, fairness, or impartiality. This is an untenable situation and a complete disservice to Oregonians, the parties, and the public. Procedural mis-steps or objections must be heard in a timely manner to ensure efficiency and due process. To delay any appeal or rulings until the end of the case is disruptive and denies people their due process rights; impacts that are inconsistent with the goals of this rulemaking.

Therefore, at a minimum, rule narratives related to Interlocutory appeals must be brought back into these rules, so they are all aligned again, for example: the first sentence under **345-015-~~0057~~ 0460(1)** which is crossed out in the proposed rules, as shown here, **must be retained**:

~~*(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 Energy Facility Siting Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.

Also: **345-015-0415(6)** The Requests for Party or Limited Party Status, which is proposed to be removed subsection 6: *"(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*" **must be retained.**

It is dis-heartening that these proposed rules are taking away the public's due process rights that have existed for a long time, rather than adding to, or widening them, by allowing interlocutory appeals on any procedural matter. If public participation is an Oregon value for decision making, then these rules, particularly those related to interlocutory appeals are inefficient and unjust; Council must not approve without further improvements.

Thank you for your consideration,

C. Fuji Kreider
Secretary/Treasurer

ATTACHMENT 1

Stop B2H Coalition Comments on Contested Case Rulemaking

April 12, 2024

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April 12, 2024

Thank you for the opportunity to comment on the proposed rules for Contested Cases under the Energy Facilities Siting Council (EFSC). As mentioned during oral comments last month, the Stop B2H Coalition and many of its members, experienced a full and lengthy contested case process under the old rules which also included the blended Model DoJ and OHA rules. From what we've been told, this was one of the largest and most complex contested cases in a very long time.

As "guinea pigs" in a way, we can speak with first-hand knowledge about living through a contested case, mainly as "pro se" petitioners. We hope that these comments and our experience will be taken under serious consideration. The public is depending on the Council to adopt rules that not only site clean energy facilities but also protect Oregonians, our public health and safety, and our precious natural and cultural resources.

Our comments (below) are organized to align with the chronological order of the redlined version of the proposed rules. They are NOT organized by importance or priority.

1. Division 1 General Provisions – Ex Parte Communications.

Location in Redline: Under Division 1 General Provisions, 345-001-0005 – Uniform Model Rules Subsection "(2) Notwithstanding the provisions of OAR 137-003-~~0055~~ 0660(1), following…"

Recommendation: Do not omit this Subsection "-0055," and include two additional provisions: OAR 137-003-0625 and -0660. The latter is proposed in the staff redline version.

Rationale: There are three rules addressing ex parte communications. These three provisions deal with different parts of the process: 137-003-0055 Ex Parte Communications, applies during the pendency of the proceeding; OAR 137-003-0625 addresses Ex Parte Communications with an Administrative Law Judge; and 137-003-0660 is about Ex Parte Communications to Agency during Review of Contested Case (review of the contested case). They all apply and should be retained in these rules.
Since they are all the OAH's rules and you can't change them, our advice is to just cite them all under your changes to: 345-001-0005(2), because ex parte can take many shapes and forms: to the ALJ, to ODOE, or EFSC, or even in another proceeding; therefore, it is better to include them all.

We share this example from our experience with ex parte communications during our contested case. Interestingly, it occurred during a rulemaking process – it was not directly within the contested case proceeding. However, the outcome of the rulemaking was going to impact some petitioners' contested case. Idaho Power testified and advocated at the rulemaking directly to EFSC. The ALJ in our contested case (and to her credit) found out and ruled that ex parte had occurred by IPC's attorney and that petitioners in the case could submit a response (7 petitioners did so.) This example shows that one never knows where and when an ex parte could occur.

2. Division 15 (i.e.: the EFSC specific rules) - Overall Comments.

- STOP endorses the use of the word "proceedings" rather than "hearings" for contested cases, since there are many types of hearings (e.g.: public comment hearings, cross-examination hearings, exceptions hearings) within a contested case proceeding.
- For the most part, STOP likes the re-arrangement of Division 15; having the order of sub-sections match as close as possible to the flow of contested case proceedings. However, we do not understand why "Notice" (345-015-0014) is not part of the 400 series (new rules and/or numbering for the EFSC contested case rules.)
- We suggest the use the full name of the Energy Facility Siting Council (EFSC) in all rules and only use the shortened vernacular: "the Council" in subsequent sentences within the same rule. It is confusing for people new to EFSC otherwise.
- The use of a Naming Convention or numbering system for all documents and evidence needs to be conveyed from the start. This could occur under: 5. Filing and Service of Documents; or 9. Prehearing Conference and Prehearing Order; or 12. Submission of Evidence.
- The descriptions of "specific specificity" such as in 345-015-0220, is greatly improved, and warrants a special call-out.

3. Notice.

Location in Redline: Under Division 15: 345-015-0014.

Recommendations:

1) In keeping in line with the rulemaking goals of "consistency" and "efficiency," STOP recommends that "Notice" (OAR 345-015-0014) and "Requests for Party or Limited Party Status" (OAR 345-015-~~0016~~ 0415) contain the same required information AND that you adopt the more detailed requirements, if you will be holding people to the higher standard. If the "short and plain statement" and/or the use of the Template would suffice, then STOP believes that it (the template) would be much more user-friendly and palatable to the general public.

Rationale and Comment:

The proposed language states: "The Department must issue contested case notices for Council contested case proceedings **as provided in OAR 137-003-0505**. The notices 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) A statement that 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)." **Emphasis added.**

Under OAR 137-003-0505, subsection (2) states: "A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;" We believe that this is reasonable. The template that staff had developed as a tool, will also be good. The problem that we see is that, "plain statements" even with OARs cited, often do not meet the high bar of "specific specificity" that seems to be a criteria for all ODOE/EFSC decisions. Under: 345-015-~~0016~~ 0415 - Requests for Party or Limited Party Status (discussed more below) has much more specific language regarding petitioning for a contested case.

> (4~~5~~) 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-~~0005~~0535(~~3~~4);
>
> (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.

2) Nonprofit organizations or associations should not be required to have legal representation to participate in a contested case, per OAR 137-003-0505 (1)(h), which would be adopted under this blended rule.

Rationale: Nonprofit organizations should be encouraged to have an attorney representing them considering the complexity and high bar that is involved in a contested case. However, it should not be a mandatory requirement because it conflicts with ORS 183.457(1) "…The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation."

We believe that EFSC and the values of the State are to strive for more inclusiveness and participation, not less. In our case, the need for an attorney nearly bankrupted our organization, and we even received reduced rates. Meanwhile, another nonprofit, was allowed to participate in the case without an attorney. We did not call-out this bias because we knew that they couldn't afford attorneys either, and we were happy that they, a member organization of the Stop B2H Coalition, was actively participating. We feared that they would have been denied participation if we raised the issue.

4. Appointment and Duties of Hearing Officer.

Location in Redline: 345-015-0~~023~~405
Recommendations:

1) See Recommendations under “Filing and Service of Documents in a Contested Case” (below). If the Council chooses to adopt our recommendation, then duties will need to be added here, such as maintaining the docket.
2) Under Redlined Subsection “(3) The hearing officer shall maintain a complete and current record of all motions…”-- or as a stand-alone Subsection-- STOP recommends ADDING that the record be maintained and available for all to access - throughout the duration of the case.

Rationale: One of the worst parts of the entire contested case experience, for all petitioners in our case, was the lack of a transparent record! Everyone had to share and keep their own files, as well as other petitioners’ files (if they chose) – on their own; using their own hard drives, with attachments and emails. Many files posted by ODOE or the developer used names so long that personal computers couldn’t save the files without changing the name. What a mess. The point is that there was not a transparent or publicly available site where a petitioner or member of the public could go and see what was filed, by whom, including exhibits.

Comment: Alignment with the OAH’s rules is helpful here, particularly since EFSC contemplates predominately using Administrative Law Judges from the OAH.

5. Filing and Service of Documents in a Contested Case

Location in Redline: Under Division 15: 345-015-0~~012~~410

Recommendations:

1) STOP strongly recommends that the Department acquire and use a fully-docketed system for contested cases. This type of a system supports Filing and Service of Documents in a legal way, provides more efficient and effective record keeping throughout the contested case, enables transparency, and reduces confusion.

2) If the Department is unable to purchase or acquire such system on its own, our recommendation is to add a condition (i.e.: utilization and maintenance of a docket system for the case) to the terms of the contract with the Department of Justice (DoJ) or any other entity contracted with for the purpose of conducting a contested case for EFSC.

3) The naming conventions or other marking of documents in the record should be explained thoroughly. This could occur under this subsection or under another. We recommend that be clarified here under this subsection.

4) Finally, we have no recommendation specific to the rule language. The rule currently reads:
   (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. **[Emphasis added.]**
   With the wording “but are not limited to,” we feel that would cover any new electronic docket system.

Rationale: See above under "Appointment and Duties of Hearing Officer"

Comment and Concerns: The new ODOE portal is being promoted for public comment filings (in ODOE's Public Guide and recent notices). This is fine, but it is not a substitute for a docketed system for contested cases. The new portal system is not being used very well; and it appears to only be for public comments – not for a contested case docket where it is expected to have the ability to upload large attachments, like maps and other evidence. This is a big concern and we cannot urge the Department and Council enough, that you MUST get a better system (a full docketed system).

6. <u>Requests for Party or Limited Party Status</u>

Location in Redline: Under Division 15: 345-015-~~0016~~415

Recommendations and Rationale:

1) The section begins with the removal of the OAH model rule 137-003-0005(2) and substituting various EFSC and other OAH rules. However, that model rule in full: OAR 137-003-0005 covers the topic of Party or Limited Party very well and should simply be adopted, rather than the convoluted combination and omission of clauses.

   Rationale: It is apparent, that these proposed rules are intended to make everyone a limited party unless they are the sole petitioner in opposition for the case. We even heard as much during RAC meetings, and it is a complete disservice to the public. Just because the B2H case started with 51 petitioners is not fair to people or organizations going forward. The number of requests or petitions for party status should not prescribe the type of party status. Criteria should apply to the decision and petitioners should be formally notified of the decision/order on party status by the ALJ, as stated in the full model rule 137-003-0005.

   The Oregon Supreme Court decision in the Final Order for the Stop B2H Coalition's appeal of the B2H Site Certificate identifies the specific criteria stated in OAR 137-003-0005 and determined that the hearings officer reviewed the criteria prior to deciding to make petitioners "limited parties." We have grave concerns that the new rules, removing these criteria, give the Department and an ALJ too much discretion without having to justify the decision to limit someone's status, when they have requested full party status.

2) We urge the Council, to better protect the resources of the state, to amend proposed Subsection (6) which states: "…but may not participate on issues, including proposed site certificate conditions, for which the hearing officer has not granted them standing to participate." We understand limited party status parameters around specific and narrow issues as proposed; however, we firmly object to limiting any parties' recommendations on site conditions. (This is also discussed below under "12. Submission of Evidence and Site Conditions.")

   Rationale: We have learned that over the course of a contested case, so much is learned. It is iterative in many ways: discovery processes, overlapping issues reveal new evidence, and protective measures that cross-disciplines or resources, can and should be heard, and considered. We believe that better decisions are made when broader perspectives are considered, rather than silo-ed decision making that occurs when input is limited by strictly prescribing recommendations.

Take for example: a petitioner has a contested case regarding something about fish and wildlife habitat (e.g.: fish surveys, fish plans or passages); but when it comes to recommending mitigation measures (site conditions) under Roads, or Weed Control/Vegetation Management, or Public Services, this fish petitioner may have a lot to contribute. However, this fish petitioner chose not to go through a whole contested case on roads and weeds—only on fish. When it comes to recommending site conditions, there should never be a limitation on who can contribute. This fish petitioner may have a lot to share.

The dedicated people/petitioners that already have standing of some kind, and have participated through the whole process, should be able to make final recommendations on the Site Conditions. Therefore, STOP recommends that there not be any limitations placed on parties in terms of their recommendations on Site Conditions.

3) There needs to be a final Subsection addressing Appeal Rights for Parties.

   Rationale: If a petitioner is denied access to a contested case or there are procedural disputes, parties need to be informed of their appeal rights. This is particularly important given recent court precedence set in Union County, i.e.: that appeals may be heard in the local jurisdiction. Only final orders on site certificates or amendments are appealed to the Supreme Court.

   Example on impacts: During our contested case, we had an unfortunate experience with: the lack of the ability to appeal procedural issues or party status on an issue. One of the petitioners was told that since he still had another issue pending in the case—but not his primary issue--he could not appeal. Rather, he had to wait until the entire contested case was over and then he could appeal to the Supreme Court (that was 2 years later!) This was a complete disregard for the public's due process. The delay not only jeopardized the whole case, it was a set-up for a Supreme Court ruling for mootness since the case had already occurred. A terrible disservice to rule of law and the rights of due process.

7. Petition for Indigent Status

Location in Redline: Under Division 15: 345-015-~~0022~~420

Recommendation: Under proposed Subsection (2) the definition of indigent, should not be used.

Rationale: 100% of poverty is rarely used these days, and especially not in Oregon. STOP recommends that ODOE use a definition more aligned with its other energy programs. Or, at least be consistent with another state agency, OHA (for Oregon Health Plan); DHS (for SNAP); etc.

8. Participation by Government Agencies

Location in Redline: Under Division 15: 345-015-~~0080~~425

Recommendation: Omit.

Rationale: We do not see that there is anything different for government agencies than there is for the public. Why have this Section? Unless there is something new for SAGs, we think this can be omitted.

9. <u>Prehearing Conference and Prehearing Order</u>

Location in Redline: 345-015-0~~083~~430

Recommendations and Rationale:

1) Keeping within a logical flow and order, we suggest re-arranging the order of some of the clauses within this subsection:

    a) Switching/reverse the order of (1) and (2).

    Rationale: Subsection (2) as proposed, is the big picture and cites the OAH rule governing. It describes the manner in which the pre-conference hearings are conducted, including noticing and purposes. This should be number/subsection (1). Then, what is proposed in redline as (1) should become (2) because it is a deeper clarification and more of a subset.

    b) Inserting both (7) the drafted new redlined clause, and newly numbered (7) (confusing-due to misnumbering), BEFORE subsection (3).

    Rationale: The point being that these subsections: 'failure to raise the issues' or 'object to procedures' has to happen at this pre-hearing conference. Again, the importance of this "hearing" cannot be stressed enough. We recommend that these two clauses be moved here, before the discussion of the ALJ finally issuing "The Order" (which is in subsection (3)). This would improve the "flow" or order of the clauses under this Subsection.

2) Then, assuming these are re-ordered, under (2), it should begin with: "At the first (or series of first) pre-conference hearings, the ALJ will be making decisions on standing, party status, issues and issue statements. "

    Rationale: This would emphasize the important of this first "hearing." In our experience as pro se's, we were completely blind-sided by the importance of that pre-hearing conference (the name "pre-hearing" even implies lesser weight). Petitioners were not at all prepared for presenting or defending their status and issues. When they answered questions of the ALJ, they did not realize the issue statements would become their case.

3) STOP also recommends additional clarity under this re-ordered subsection (2), for example: is attendance at pre conference mandatory? What rights are in jeopardy by non-attending? If these procedures are discretionary for the ALJ, or if they are mandatory, it must be noticed as such.

4) Finally, STOP objects to the last sentence as proposed in the re-ordered, subsection (2). It states:

    "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."

    Rather, STOP recommends the following: a) make this a separate subsection from the rest of the clause; and b) omit the word "shall" and make this optional, and ONLY if the parties agree with the ALJ regarding the co-joining of the parties and/or issues.

    Suggested edits in **bold**: "The hearing officer **may** consolidate one or more issues raised by the same or multiple parties if the **parties agree to the consolidation and 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."

Rationale: This co-joining or consolidation of issues & parties should only be allowed if the parties agree to it, or request it. While it may sound efficient for the Department or ALJ, it completely disregards the rights of public. Consider that most petitioners either: do not know each other, or if they do, it's not like they've worked together in one organization or team. Can you imagine getting pushed into a case with someone: who you don't know, who may not bring value to your case, who has different motivations or frameworks (eg: hunter vs bird-watcher), or who takes up more precious time (for better or worse) because of the necessary coordination. This does NOT create efficiency!

In our case, the ALJ attempted to co-join a number of cases, but it became so obvious to the ALJ's credit, that there wasn't a way she could do this fairly. Some people lived hundreds of miles away from each other, some had good internet and some don't; some put a ton of work into their case already and needed to be heard but their co-petitioner was louder, and some had a related issue, but with a slight twist, and on and on…

It wasted more time trying to co-join, then objecting, and then finalizing some. We had one issue that was co-joined because it was with another Stop B2H member. However, we are all volunteers; we never worked together before and we started from very different knowledge levels. It took time to learn from each other and try to coordinate tasks. In the end, it was added stress, a lot of wasted time, and was not more efficient.

10. Suspension of Hearing and Exclusion of a Party

Location in Redline: Under Division 15: 345-015-0~~024~~435
No comments

11. Burden of Presenting Evidence (NEW RULE)

Location in Redline: Under Division 15: 345-015-0440

Recommendation: STOP has no disagreement with this new rule. However, in the spirit of clarity and reducing confusion, we recommend that an additional subsection clarify this "burden of proof." The reality is that the burden is iterative throughout the process; in other words, the burden goes back and forth in the contested case depending on the phase of the case and/or which party is making the motion against the other.

Rationale: In our experience, the burden of proof was continually going back and forth because the developer was relentless in filing intervening motions (e.g.: motion to dismiss, motion to object, motion to omit, etc.) after every step in the process (or so it felt that way for the pro se's). Therefore, rather than working on presenting their evidence for the next phase, parties were forced to respond in seven days to the objectionable motions. This was a huge distraction; creating confusion and complications for many.

12. <u>Submission of Evidence and Proposed Site Certificate Conditions</u>

Location in Redline: Under Division 15: 345-015-0~~043~~445

Recommendations and Rationale:

1) At the very end of subsection (1) ADD: "per the schedule and means set forth by the ALJ."
Rationale: This helps to reduce confusion. It can include explanations such as: is it allowable to use a link to a storage device for excessively large documents, what needs to be copied/shared in full or if excerpts of documents are allowable, and more. This could also be a place for naming/marking conventions – if not covered already (see above under 2. Overall comments and 5. Filing of Documents…).

2) STOP strongly opposes the newly proposed subsections (2) and (3) with regard to who can propose Site Conditions and when in the proceedings. We suggest two possible resolutions to this:

2a) Strike-out the sentences as shown below:

(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.

Rationale: Similar to above, "6. Requests for Party or Limited Party Status," we object to limitations being applied to the limited parties in these proposed rules regarding Site Conditions.

These limitations (under (2) and (3) and under 345-015-0~~016~~415) are new statements and clearly benefit the Department and developer to expedite proceedings and limit parties' contributions to Site Conditions. Those being the protective mitigation and/or other conditions designed to assure protections to Oregonians and our precious resources.

We have learned that over the course of a contested case, much is learned, clarified and disposed of. It is iterative in many ways, and the final recommendations for site conditions should be the "capstone" or final step in concluding the case. Ideally, the "Submission of Evidence and Proposed Site Certificate Conditions" would be separate rules. In the latter, the procedure would include the time and manner for recommendations to site conditions and if response briefs will be accepted.

Or,

2b) Peel away the Site Conditions from this Rule and make a unique Rule for Site Conditions. We recommend the new rule could include language such as: "notwithstanding any draft site conditions

that are the subject of a contested case by a party, the ALJ will allow recommendations on any site condition by any party or limited party before the conclusion of the case (or before the draft proposed contested case order is issued by the ALJ.)"

Rationale: The point being is that after the all the facts, evidence, and lessons learned, all participants in the case have gained new insights and should be afforded the opportunity to recommend conditions. They should be provided with evidence, per the rules and means that the ALJ sets out, for the ALJ's consideration (and those of the other parties), near the end of the case as a stand-alone step (preferable) or as part of closing briefs. One response brief could also be provided, if fairness was assured.

13. <u>Official Notice of Evidence</u>

Location in Redline: Under Division 15: 345-015-0~~046~~450

Recommendation: Unless "officially noticed" is defined somewhere else, it may be helpful to define it or insert (see Bold) under: "(2) The hearing officer shall notify parties of facts officially noticed **and entered into the record,** and shall allow parties an opportunity to contest the facts so noticed."

Rationale: More clarity of legal terms is helpful to the public.

14. <u>Motions</u>

Location in Redline: 345-015-0~~054~~455

Comment: There may be confusion regarding timeframes, since the OAH rules mention 14 days, not 7. Albeit, the ALJ has discretion on longer or shorter timeframes.

15. <u>Interlocutory Appeals to Council</u>

Location in Redline: 345-015-0~~057~~460

Recommendation: STOP recommends that appeals be allowed regardless of status in the pending contested case. And, that all Council decisions be formally issued as an Order of Denial/Approval of the Appeal.

Rationale: At face value this proposed rule seems very reasonable. But in practice we experienced differently. The "wrongs" that many public pro se petitioners felt had to do with procedural mis-steps or perceived improprieties. The inability to appeal their grievance to Council thwarted cases (e.g.: Soil protection issue evidence), and worse, where an issue never got heard (as described above under Party and Limited Party Status.

In that case it was suspicious that the weakest of the petitioner's issues was given standing, maintaining his participation as a limited party. He felt railroaded by this decision but could not appeal (i.e.: take the issue to court) to seek resolution on his issue—until two years later. But by that point the issue was

moot. The site certificate was granted. The primary issue never got a full hearing due to this rule on interlocutory Appeals.

Therefore, STOP believes that this rule is problematic based on simple fairness. Just because a petitioner may have standing on one issue should not preclude them from being able to bring a timely appeal before the Council if they feel they have been harmed.

16. Stays - 345-015-0465

No comments.

17. Reopening Record Prior to Decision - 345-015-0470

No comments.

18. Hearing Officer's Proposed Contested Case Order

Location in Redline: 345-015-0~~085~~475

Recommendations:

1) Consider breaking into two rules: one with the Exceptions phase and the Actions of the ALJ; and the other addressing the Council's decisions and Final Order. Or alternatively, change the title to incorporate everything within.

2) Appeal rights should be included in the Final Order rule as well.

Rationale: Greater clarity of title to contents. This rule goes beyond the Hearing Officer's actions and moves into the actions/decisions of the Council. Appeal rights at the conclusion is an important due process step.

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

No comments; or See Above under 3. Notice. Use the same language everywhere.

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

No comments.

21. The Decision-Making Record

Location in Redline: 345-015-0~~085~~475

Recommendation:

1) This should include "who" maintains and is the keeper of the record; and how the record will be accessible to the parties, and the public.

Rationale: Is it the ODOE or is it the DOJ during the contested case? Often in our case, STOP and other parties were asking ODOE staff for documents and the answer was that it was the DoJ

responsibility to maintain the case record. The problem was that the DoJ did not have a transparent system, and there was no way to access the records/files in the case from the steps prior unless you kept your own records.

2) Do not remove case files or other materials from the ODOE project website; or archive them in the One Drive but allow access.

Rationale: Plain and simple this has been another unnecessary hassle and barrier for the public and parties involved in the case. The older files get removed and those were the ones that we may have been citing in the past or we want to compare and contrast something we remembered from earlier, and more. People go to where they have gone before only to find it inaccessible. This removes the transparent record that we believe EFSC is striving to achieve.

Conclusion and Final Recommendation

At the end of the B2H contested case, the idea of Intervenor Funding was raised and some Council members wanted to learn more as it sounded like a way to level the playing field—at least somewhat—for nonprofit petitioners and possibly individuals. In particular, if attorneys are being required, some kind of intervenor funding or pro bono program is essential for contested case petitioners and ensuring a fair proceeding. The Oregon Public Utility Commission administers an intervenor program, so models exist.

Stop B2H Coalition has many concerns about these proposed rules as detailed above, and we urge the Council not to approve them. The draft should go back to staff and the RAC for more work. The convoluted combination of rules is not reaching the goal of simplifying and clarifying the procedures for the public, or for the parties involved. Worse, we believe these rules are a smoke screen of confusion when in reality they are reducing the rights of the petitioners.

It may be prudent to simply adopt the model rules, contract the ALJ's from the OAHs, and be done. Attorneys in Oregon are more versed in the procedures used by the OAH and other state agencies; therefore, it could facilitate smoother proceedings as well.

If you have any questions, we would be more than happy to answer them or discuss based on our experiences. Fairness within these rules is essential for leveling the playing field among developers, the public and the Department.

Thank you for your attention to this important rulemaking.

Sincerely,

C. Fuji Kreider
Secretary/Treasurer
On behalf of the Stop B2H Coalition Board of Directors

HOOD RIVER | PORTLAND | WASHOUGAL

GORGEFRIENDS.ORG

SUBMITTED VIA E-MAIL ONLY

July 22, 2024

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
Via email to EFSC.rulemaking@oregon.gov and EFSC.rulemaking@energy.oregon.gov

Re: Comments on Proposed Amendments to EFSC's Contested Case Rules

Dear Chair Howe and Council Members:

Friends of the Columbia Gorge ("Friends") submits the following comments regarding the proposed amendments to EFSC's contested case rules. Friends is a nonprofit organization with approximately 5,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge, and with strong interests in responsible energy generation and the proper implementation of state law governing the approval, construction, and modification of large energy facilities in Oregon.

The Council's current rules at OAR 345-015-0083 are unlawful in that they require the prehearing order for a contested case to "limit[] parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220." This language, currently in the Council's rules, is unlawful in that it applies to all parties, and not just limited parties. This language violates the Oregon Administrative Procedures Act ("APA") for the same reasons as explained by the Oregon Supreme Court for a different set of rules in *Friends of the Columbia Gorge v. EFSC*, 368 Or 123, 127–33 (2021). In that case, the Oregon Supreme Court held that the Council's rules must not limit full parties to participate only on certain issues, and that any Council rule that purports to do so, without differentiating between full parties and limited parties, is unlawful. The above-quoted language in OAR 345-015-0083 cannot apply to full parties.

The Proposed Rules would compound the unlawful nature of the above-discussed language in the current rules at OAR 345-015-0083 by replacing that language with new language requiring a hearing officer within the prehearing order or orders to "stat[e] the issues to be addressed in the contested case hearing [and] *the parties* or limited parties *who may participate on each issue*." Proposed Rule 345-015-0430(3) (emphasis added). As with the above-quoted language in the existing rules at OAR 345-015-0083, this language in Proposed Rule 345-015-0430(4) fails to differentiate between full parties and limited parties, and therefore would unlawfully limit the participation of full parties in a contested case.

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The APA itself differentiates between a full "party" and a "limited party." *See, e.g.*, ORS 183.310(7)(c). As discussed above, "parties" may participate on all issues, while "limited parties," may participate only on certain issues. Yet the Proposed Rule language at Proposed Rule 345-015-0430(3) would apply the requirements for the hearing officer to determine "who may participate on each issue" not just to limited parties, but also to full parties.

The Council lacks the statutory authority to adopt such a rule, which would violate the APA and the Oregon Supreme Court's holding in *Friends of the Columbia Gorge*. The Council should instead specify in Proposed Rule 345-015-0430(3) that the required prehearing order or orders must state that *parties* may participate on all issues in the contested case hearing, and must state which issues in the contested case hearing any *limited parties* may participate on.

The Proposed Rules would further exacerbate the above-discussed problems by stripping from participating persons their current rights to file interlocutory appeals to the Council challenging hearing officer rulings on petitions for party status or limited party status, unless such rulings would completely terminate their participation in a contested case. Currently, the Rules authorize such interlocutory appeals: "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." OAR 345-015-0016(6). This provision allows, for example, a limited party to file an interlocutory appeal of a hearing officer ruling that the limited party may not participate on certain issues. Elsewhere, the current rules recognize these appeal rights established in OAR 345-015-0016(6): "*Except as otherwise specifically provided for in the rules of this division*, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding." OAR 345-015-0057(1) (emphasis added). The bottom line is that currently, persons may interlocutorily appeal to the Council determinations of which issues the person may participate on.

The Proposed Rules would change that current rule by repealing OAR 345-015-0016(6) and expressly forbidding such interlocutory appeals unless the person is being denied any opportunity to participate in a contested case: "The hearing officer's order on a request to participate as a party or limited party is final and may not be appealed to [the] Council unless the ruling would terminate the petitioner's ability to participate in the contested case proceeding." Proposed Rule 345-015-0430(4); *see also* Proposed Rule 345-015-0460(1) (similar language). The exception proviso at the beginning of OAR 345-015-0057(1) and the exception language itself in OAR 345-015-0016(6) would be repealed from the rules entirely, thus stripping rights that the public currently enjoy.

Friends opposes these proposed changes to strip from the public their current rights to file interlocutory appeals of rulings determining which issues they may participate on. These rules have been in place for decades, and have been working well. The Council should retain these current rules allowing administrative interlocutory appeals to the Council on which issues a person may participate on in the contested case because it is far more efficient to allow these threshold procedural questions to be raised and resolved at the outset, before the contested case is

fully underway, rather than forcing interested persons to potentially have to wait until the entire contested case is finished, then appeal to the courts, only to then obtain a remand back to the Council for a new contested case with the participation of the appellant on the requested issue(s). In other words, the approach recommended in the Proposed Rules could result in an entire contested case starting over from scratch, long after the Council's final order in the matter is issues. Indeed, such a result is likely, given the statement in the APA that "[t]he agency's determination [on a request to participate before the agency as a party or in a limited party status" is subject to judicial review in the manner provided by ORS 183.482 *after* the agency has issued its final order in the proceedings." ORS 183.310(7)(c) (emphasis added).

In the event that a hearing officer errs in determining which limited parties may participate on which issues in the contested case, it is far more efficient to allow the Council to quickly fix such an error as part of the administrative process, rather than kicking the can down the road (as proposed in the Proposed Rules), thus deferring the resolution of the error until after the entire decision-making process is concluded.

Compounding the potential legal quagmires posed by the Proposed Rules further, there will likely be complicated legal questions as to whether the hearing officer should be treated as an "agency" for purposes of the APA and other applicable law, whether such rulings can be appealed to Circuit Court (as opposed to the Oregon Supreme Court), and/or whether the hearing officer's rulings on limited parties' participation will be implicitly or expressly embedded within the Council's final orders, such that these rulings can be challenged in an appeal of the Council's final order to the Oregon Supreme Court.

Moreover, in the event that none of these remedies are available to a limited party who is denied participation in a contested case proceeding on one or more specific issues, there also remains the possibility of such a limited party seeking a writ, such as a writ of mandamaus or writ of review, from the Circuit Court. *See* ORS 34.010–.240. Such a case, which would, functionally speaking, be an interlocutory appeal filed *in court* (as opposed to the *administrative* interlocutory appeals currently authorized by the Council's Rules) could be extremely disruptive to the Council's administrative procedures and result in significant litigation costs for the Council, its hearing officers, and persons and organizations participating in the Council's contested cases.

In response to Friends' prior comments on this issue, ODOE staff have asserted that hearing officers are professionals who rarely make mistakes. But ODOE and EFSC have not always had complete confidence in the hearing officers who render decisions in EFSC matters. For example, following is an excerpt of a filing made by ODOE in 2015 in the Saddle Butte Wind Park matter, which ultimately resulted in the Council removing the particular hearing officer objected to from that contested case:

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At this time, the Department has identified three potential procedural paths to correct the fundamental flaws in the burden of proof applied to the existing Proposed Contested Case Order and the other procedural issues identified above. The first option is to grant the relief requested in the Motion for a remand to the existing hearing officer. The second option is to appoint a new hearings officer and direct the replacement hearing officer to issue a proposed contested case order after review and consideration of the existing contested case record. The third option is to proceed with review of the existing Proposed Contested Case Order, the exceptions to that order, and responses to the exceptions, if any.[2] However, because of the flaws in the burden of proof statement, if this option is selected, the Department would recommend that the Council reject the existing Proposed Contested Case Order in its entirety. If the Council were to follow that

Rather than taking away existing rights enjoyed by persons interested in energy projects, the Council should preserve its current rules governing the limited situations under which administrative interlocutory appeals may be quickly (within seven days) filed and resolved. (If anything, these rules should be clarified to expressly state that a limited party may file an administrative interlocutory appeal of the hearing officer's determination of which issues that party may participate on, thus leaving no room for doubt as to whether this is currently the law.) Retaining these current rules will promote judicial economy and foster public participation.

Failure to make the above-requested changes to the Proposed Rules will violate the Oregon Constitution, the Oregon Administrative Procedures Act, and precedent of the Oregon appellate courts, including the cases cited above.

In conclusion, Friends objects to the specific rule changes discussed above and requests that the Council instead make the following changes to the Proposed Rules:

- Modify the language in Proposed Rule 345-015-0430(4) to state that only *limited parties* (not full "parties") are limited in the contested case hearing to the issues they have properly raised in their petitions for limited party status.
- Retain the current Council Rules that authorize interlocutory appeals of a hearing officer's determination on a request to participate as a party or limited party, and clarify these rules to expressly state that a limited party may file with the Council an administrative interlocutory appeal of the hearing officer's determination of which issues that party may participate on.

Thank you for the opportunity to comment on this proposed rulemaking. Friends of the Columbia Gorge hopes that our comments and recommendations will be useful to the Council

and ODOE in resolving and remedying the questions and concerns we have identified, and in complying with applicable law and the stated goals of this important rulemaking endeavor. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Nathan Baker
Senior Staff Attorney

HOOD RIVER | PORTLAND | WASHOUGAL

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SUBMITTED VIA E-MAIL ONLY

July 22, 2024

Oregon Energy Facility Siting Council
c/o EFSC Rules Coordinator
Via email to EFSC.rulemaking@oregon.gov and EFSC.rulemaking@energy.oregon.gov

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Sincerely,

Nathan Baker
Senior Staff Attorney

EFSC Rulemaking regarding Division 15 changes to current rules

Irene Gilbert <ott.irene@frontier.com>

Mon 7/22/2024 3:17 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>;TARDAEWETHER Kellen * ODOE <Kellen.TARDAEWETHER@energy.oregon.gov>

4 attachments (109 KB)

COMMENTS Div. 15 jurisdiction contested case jurisdiction.docx; Kellen Tardaewether additional comments on party status.docx; COMMENTS ON Version 2 rule changes.docx; CONTESTED CASE RULE COMMENTS FOR MEETIG 3.docx;

Kellen:

I apologize if my comments are somewhat disorganized. I am currently at the hospital in Portland for a follow up regarding a previous medical procedure.

I have had to respond to a motion from Idaho Power, EFSC and ODOE regarding my request for reconsideration of an EFSC decision during the time for review of the Div. 15 rules.\

I have also received requests for Reconsideration of a previous Supreme Court decision in my favor from Idaho Power, ODOE, EFSC, PacifiCorp and Renewables Northwest asking the court to change their previous decision in my favor. I only have 7 days to respond to these documents so it has conflicted with efforts to organize and separate previous comments that have been addressed and new concerns. I have opted to err on the side of resubmitting some information and adding additional comments to some previous submissions to make sure nothing is overlooked.

In addition, I have read and agree with the Comments that were submitted from Friends of the Gorge and since they reflect my concerns in their entirety, I am including and incorporating them under my petitions as an individual and a representative of the Public Interest.

I also am incorporating comments from Stop B2H with my other comments for purposes of any future arguments on the final Div. 15 document. As co-chair of Stop B2H, this is a legitimate request.

To: Kellen Tardaewether Date: july 21, 2024

Regarding: COMMENT REGARDING THE DIVISION 15 CONTESTED CASE RULES CURRENTLY UNDER REVISION

Dear Kellen:

I am submitting this as a separate comment since the issue of jurisdiction for Contested and Non Contested Cases relating to EFSC decisions and orders has been elevated to such a degree and usurped a large amount of my time which I do not want to have wasted. I want to clearly state and support the need for EFSC and ODOE to comply with the court decisions, statutes and rules regarding the process for disagreements with EFSC decisions when processing Site Certificates.

The Oregon Department of Energy has on an ongoing basis included in rules and site certificates references to appeals of all issues involved in Site Certificate Evaluations as being appealed under ORS 469.403. The only times a decisions regarding a Site Certificates is appealable directly to the Oregon Supreme Court is when the Council has allowed a contested case to occur on the issue or the appeal is against the approval or denial of the final site certificate.

COMMENTS AND DOCUMENTATION REGARDING THE LIMITS THE STATUTES AND THE COURTS HAVE PLACED ON THE INTERPRETATION OF ORS 469.403

EFSC rules cannot waive the requirements of Oregon Statutes or overturn court decisions. The means of appealing EFSC decisions are required to be communicated to the public in EFSC orders. These comments are regarding the need for any and all rule language related to challenges to Site Certificate Conditions, decisions to exclude an individual from either applying for or being allowed to participate in a contested case, and other decisions with two exceptions. ORS 469.403 provides for direct appeal to the Oregon Supreme Court for decisions issued at the conclusion of a contested case process the individual was allowed to fully participate in or had the right to fully participate in. My comments reflect research I did when Motions were filed challenging the jurisdiction for my Reconsideration Request for the Denial of my Contested Case in the Amendment 1 of the Boardman to Hemingway Site Certificate as well as challenges to the procedures used to provide public notice of the right to participate and to deny contested case requests. The limits on the use of ORS 469.403 for Oregon Department of Energy and Energy

Facility Siting Council appeals have been established through court actions and orders previously issued by the Marion County Circuit Court, the Oregon Court of Appeals and the Oregon Supreme Court. There are now four more court decisions for motions filed against me representing the public interest establishing jurisdiction, all of which required written responses and two which required in person hearings. I prevailed in all four motions.

I am attaching my written arguments submitted in those four court cases as documentation regarding what the cases involved and because they provide references to the court decisions and statutes supporting my arguments.

The Amendments to Division 15, Division 27, or any other rules promulgated by EFSC and ODOE should not include language that conflicts with the clear language of the Oregon Statutes and Court interpretations regarding jurisdiction for appeals.

The council will recall that I was denied my request for a contested case regarding procedures used during the processing of the Amendment I Application for B2H and the public notices of the right to participate as well as the notices of denials of contested cases.

Unfortunately, Idaho Power, ODOE and EFSC motions have delayed the hearing of my request with challenges that all related to jurisdiction for cases that did not include a contested case. A second issue which was also included was the fact that simply including contested case denials which are not addressed by ORS 469.403 into a Site Certificate approval does not change the fact that only the appeal of the final approval or denial of the site certificate and the decisions resulting from completed contested case hearings on an issue are appealed under ORS 469.403.

TIMELINE FOR ACTIONS DOCUMENTING THE ABOVE COMMENTS

1. Notice of the denials of requests for a contested case regarding the failure of the public notices for Amendment 1 of the Boardman to Hemingway Transmission Line Site Certificate were incorporated into the Final Site Certificate for Amendment 1. The site certificate indicated that my appeal rights were provided under OAR 469.403. I was aware of the previous court decisions stating that the jurisdiction for appeal or reconsideration of cases which did not include a contested case hearing was with the Circuit Court under ORS 183.484.

2. I filed my motion for Reconsideration of the denial with the Union County Circuit Court.
3. The Oregon Department of Energy and Idaho Power wanted the case to go directly to the Oregon Supreme Court and filed a Motion to have it transferred there.
4. I objected to the transfer. (Copy of my response to the request is attachment (1)
5. A hearing was held including oral testimony in the Circuit Court regarding the issue of jurisdiction.
6. The circuit court judge issued a ruling in my favor stating the Circuit Court had jurisdiction to hear the case.
7. The Oregon Department of Energy/EFSC and Idaho Power filed a motion requesting the Oregon Supreme Court find that the circuit court decision was wrong and directing the judge to transfer the case to the Supreme Court.
8. I disagreed with their request. (My response is Attachment 2)
9. The Oregon Supreme Court denied the Mandamus Motion from the Oregon Department of Energy and Idaho Power and agreed with the Circuit Court decision regarding jurisdiction.
10. The next motion made to the Union County Circuit Court was a request to deny my contested case as being moot because too much time had elapsed to file it with the Oregon Supreme Court and since the Site Certificate for Amendment 1 was final, there was no opportunity to provide me with remediation.
11. I provided arguments against that request (Attachment 3)
12. The Circuit Court denied their request.
13. The same request was then made to the Oregon Supreme Court asking that they overrule the Circuit Court and throw my case out.
14. I argued against that Motion also (Attachment 4)
15. The Oregon Supreme Court decided in my favor.
16. The most recent request filed on July 18 of last week is asking that the Oregon Supreme Court Reconsider their denial and change their decision.

COMMENTS REGARDING THE IMPACT OF THIS ON EFSC RULE REVISIONS TO DIVISION 15 AND DIVISION 27

As a private party not represented by an attorney, it was not my intent to spend months arguing jurisdiction for non contested cases, especially since

the issue had already been heard several times and decided by the Marion County Circuit Court, the Oregon Court of Appeals and the Oregon Supreme Court. I ended up having to respond due to the motions which conflicted with the language of the statutes and other court decisions. Following the referenced four cases, it has been affirmed in four additional cases that the previous decisions have not changed. The jurisdiction for denied requests for contested cases including those challenging the inclusion, change or lack of including site certificate conditions which are not "entitled" to be heard in an agency held contested case hearing are not considered "contested cases" under Oregon Statutes.

EFSC rules already require notice of the right to appeal. They need to also identify the correct court in their notices to the public of how to access due process.

REFERENCES, RULES AND LEGAL DOCUMENTATION

OAR 137-003-0535(ll) : Agency ruling on petition to participate as a party or limited party shall be by written order served promptly on petitioner.

ORS 183.484 Jurisdiction for review of orders other than contested cases.

Cases are heard by the Circuit Court.

ORS 183.482 Jurisdiction for review of contested cases.

ORS 183.413 Notice to parties before hearing of rights and procedures. The statute requires Notice must state whether a record will be made of the proceedings and it's availability to the parties and with respect to any appeal from the determination or order of the agency.

ORS 183.480(2)

"Judicial review of **final orders** of agencies shall be solely as provided by ORS 183.482(Jurisdiction for review of contested cases) ORS 183.484 (Jurisdiction for review of orders other than contested cases), ORS 183.490 (Agency may be compelled to act)…."

ORS 183.310 (2)(a)

""Contested Case" means a proceeding before an agency:

(A) In which the individual legal rights duties or privileges of specific parties are required by statute or Constitution to be determined only

after a agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;”

(C).........

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415(Notice of Right to hearing), 183.417 (Procedure in contested case hearing), 183.425(Depositions or subpoena of material witness) 183.450 (Evidence in contested cases), 183.460 (Examination of evidence by agency) and 183.470 (Orders in contested cases)”

COURT DECISIONS SUPPORTING MY COMMENTS ABOVE

--Buena Dairy Associates v. State Dept of Agriculture, 25 Or App 381, 549 P2d 689 (1976) The circuit court has jurisdiction to hear a claim that the proceeding was proper for a contested case hearing but was not so conducted.

--Norden v. Water Resources Dept. 158 Or App 127, 973 P2d 910 (1999) aff d 329 Or 641, 996 P2d 958(2000); Cervantes v. Dept. of Human Services, 295 Or App 691, 435 P3d 831 (2019)

--Save Our Rural Or. V. EFSC 339 Or 353, 377, 121 P3d 1141 (2005) Regarding the review authority and referencing ORS 469.403(3) the order states that the Supreme Court’s review authority over EFSC project-related decisions “is limited to review of the council’s approval or rejection an application for a site certificate or amended site certificate.”

--Forlaws on Board v. EFSC, 311 Or 350, 358-60, 811 P2d 636 (1991) held that the Supreme Court lacked jurisdiction over an EFSC order denying a request for a contested case proceeding “because the order here involved is not an order approving or rejecting an application for an energy facility certificate.” and also rejected a proposed rule of law that “the court must treat any EFSC decision that relates to whether a site certification proceeding is required as if it were the functional equivalent of EFSC action on a site certificate application."

--Solomon v. State Land Board, 25 Or App 311, 548 P2d 1335 (1976) "Until an order is preceded by a contested case hearing, it is reviewed in circuit court, not the Court of Appeals."

--Friends of The Columbia Gorge v. Energy Facility Siting Council, 314 Or App 143 498 P3d 875 (2021) The original appeal request regarding orders on site certificate amendments denying contested cases was filed with the circuit court. It was then transferred to the Oregon Court of Appeals for a decision on Jurisdiction. The Oregon Court of appeals in the above order transferred it back to the Circuit Court as the court with jurisdiction to hear the case.

The Appeals Court decision states that orders reviewed by the Supreme Court are those where the petitioner is entitled to a contested case, not just ones where they have the opportunity to "request" a contested case.

--Irene Gilbert, On Behalf of The Public Interest and herself v. Oregon Department of Energy and Energy Facility Siting Council , & Idaho Power Motion to Transfer Decision of Union County Circuit Court establishing jurisdiction for "Request for Reconsideration of Energy Facility Siting Council Denial of Contested Case Request" is appropriately in the County Circuit Court. Union County Circuit Court Case No. 23 CC 47637

--Irene Gilbert, on behalf of the public interest and herself individual v. Oregon Department of Energy and Energy Facility Siting Council and Idaho Power Company, Intervenor, Oregon Supreme Court Denial of Mandamus Request to overturn decision of Union County Circuit Court regarding Circuit Court jurisdiction for request for reconsideration of EFSC denial of Request for Contested Case Hearing.

--Irene Gilbert, on behalf of the Public interest and herself v Oregon Department of Energy and Energy Facility Siting Council and Idaho Power Mandamus motion to Dismiss Reconsideration Request

--Marbet v. Portland General Electric 277 Or 447, 561 P2d 154 (1977)

An intervenor in an action under the energy facility siting statutes ORS 469.300 to 469.570 and 469.992 has standing to seek judicial review of the agency action on any issue presented, subject to the requirements of this section as long as he can show he was adversely affected or aggrieved.

SUMMARY

Given the multiple court decisions and hundreds of pages included in the cases I was involved with, there is little doubt but what the courts meant what they said in previous decisions and affirmed it in my cases.

Public comment repeal of OAR 345-015-0016(6)

Carol Macbeth <carol@colw.org>

Mon 7/22/2024 12:26 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

Public comment proposed repeal of OAR 345-015-0016(6).pdf;

You don't often get email from carol@colw.org. Learn why this is important

Attached please find Central Oregon LandWatch's comments on the proposed rule change to repeal OAR 345-015-0016(6). Please enter them into the record.
If you have any questions, please do not hesitate to call, 503.560.4874.

Best regards,
Carol Macbeth

--
Carol Macbeth
Staff Attorney
Central Oregon LandWatch
On the ceded homelands of the Wasq'u (Wasco)
and Tana'nma (Warm Springs) people

2843 NW Lolo Dr., Ste. 200 | Bend, OR 97703
Phone: (541) 647-2930
www.colw.org

July 18, 2024

Via email

Oregon Energy Facility Siting Council
Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301
Email: EFSC.rulemaking@energy.oregon.gov

Re: Energy Facility Siting Contested Case Rulemaking

Dear Chair Howe and Members of the Council:

Central Oregon LandWatch is a nonprofit organization dedicated to creating well-planned cities and protecting wild, open spaces across Central Oregon since 1986. LandWatch works to guide development in the region and to protect the land and water that sustains our communities and ecosystems.

LandWatch opposes the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). The proposed change would limit the rights of interested persons in an energy siting contested case to file an "interlocutory appeal" to the Council. The proposed rollback of this rule would unfairly and inappropriately limit public participation rights.

Without the opportunity for interlocutory administrative appeals to the Council the public's only recourse will be to the courts. The proposal would limit your authority and result in a waste of time and resources in the siting of energy facilities.

We respectfully urge the Council to reject this proposed rule change and to retain its authority to quickly fix any problems with proposals for large power plants, transmission lines, and other energy projects in Oregon when they are brought to the Council via an interlocutory appeal.

Respectfully submitted

/s/ *Carol Macbeth*

CAROL MACBETH
Staff Attorney
Central Oregon LandWatchproposed repeal of the Council’s current rules at OAR 345-015-0016(6) t OAR 345-015-0016(6)

Contested Case Rulemaking

Sheila Dooley <sdooley3300@yahoo.com>

Sun 7/21/2024 5:18 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

1 attachments (13 KB)

EFSC comments 7-21-24.docx;

You don't often get email from sdooley3300@yahoo.com. Learn why this is important

Dear EFSC Rules Coordinator,

Attached are my written comments regarding the proposed rule change.

Thank you,

Sheila Dooley

July 21, 2024

Dear Energy Facility Siting Council,

As a past participant in EFSC's energy siting process, I am writing in opposition to the proposed rule change that would limit public participation. The public needs the ability to participate and challenge harmful energy siting decisions.

As a resident of the Columbia Gorge who opposed the wind turbines proposed for The Dalles-Mosier area in 2007, I favor protections for scenery, wildlife, and other resources. If these rule changes are approved, parties denied participation in a contested case will be faced with costly and time-consuming litigation in court. This places an unfair burden on advocates who are seeking to protect the environment from harmful energy projects. In essence it will eliminate most public participation.

Public participation is a pillar of Oregon's land use planning system and needs to be protected.

Thank you for your consideration of my comments.

Sincerely,

Sheila Dooley
3300 Vensel Rd.
Mosier, Oregon 97040
Sdooley3300@yahoo.com

Comment on proposed amendments to EFSC contested case process rules found in OAR 345 Division 15

Gary Marlette <garymarlette@yahoo.com>

Mon 7/22/2024 4:13 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

1 attachments (33 KB)

It has come to my attention that the Oregon Energy Facility Siting Council.docx;

You don't often get email from garymarlette@yahoo.com. Learn why this is important

Please find attached, my comments in opposition to the proposed amendments to EFSC contested case process rules found in OAR 345 Division 15.

Thank you in advance for your courtesy and cooperation in this matter.

JoAnn Marlette
2031 Court #8
Baker City, OR 97814
(541) 518-5852

It has come to my attention that the Oregon Energy Facility Siting Council (EFSC) is considering a bad proposed RULE CHANGE that would limit the public's ability to challenge harmful energy siting decisions and would instead require individuals wishing to challenge a project to file litigation in court to be allowed to even participate in the siting process. Accordingly, scenic resources throughout the state of Oregon would be under threat by this proposed change to EFSC'S RULES.

For some odd and unknown reason, the staff of the Oregon Department of Energy (ODOE) wishes to strip the current rights that we all have to file interlocutory appeals to the Council when a hearing officer prohibits us from participating on specific issues in an EFSC contested case. These rights have been in place for decades and there is no sound reason to eliminate them**. Doing so will only result in more court litigation, which will place an unfair burden on advocates seeking to protect the environment from harmful energy projects, rather than allowing the Council to fix problems quickly and early in the process before the contested is underway.**

Please do the right thing and retain the language currently at OAR 345-015-0016(6) and OAR 345-015-0057(1). Keeping these rules will preserve the public's ability to file speedy interlocutory appeals to the Council, so that you may fairly and efficiently resolve these types of disputes

Simply put, these proposed rule changes are inefficient and unfair to the public. **This proposed rule change is not supported by Oregonians,**

Respectfully submitted,

JoAnn Marlette
2031 Court #8
Baker City, OR
(541) 518-5852

Comments, Proposed Amendments to EFSC Contested Case Rules

Mark Salvo <msalvo@onda.org>

Mon 7/22/2024 4:46 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>;EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>
Cc:Nathan Baker <Nathan@gorgefriends.org>;Andrew Mulkey <andrew@friends.org>

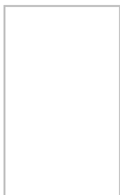
1 attachments (298 KB)

ONDA 1000 Friends Comment Contested Case Rulemaking (07-22-2024).pdf;

You don't often get email from msalvo@onda.org. Learn why this is important

Thank you for your consideration of the attached comment letter on the Energy Facility Siting Council's proposed revisions to the contested case rules.

--



Mark Salvo
(he/him)
Program
Director

(541) 330-2638,
ext. 308
Oregon Natural Desert
Association
50 SW Bond Street,
Suite 4
Bend, Oregon 97702

Join
ONDA, renew your membership or make a special gift.
Follow ONDA on
Facebook
and
Instagram.

Submitted via electronic mail to EFSC.rulemaking@oregon.gov and EFSC.rulemaking@energy.oregon.gov

July 22, 2024

EFSC Rules Coordinator
Energy Facility Siting Council
Oregon Department of Energy
550 Capitol Street NE
Salem, Oregon 97301

Re: Proposed Amendments to Contested Case Rules

Dear Chairman Howe and Council Members:

Oregon Natural Desert Association ("ONDA") and 1000 Friends of Oregon ("1000 Friends") concur with comments offered by Friends of the Columbia Gorge ("Friends") on the Energy Facility Siting Council's ("EFSC") proposed revisions to EFSC's current "contest case" rules.

ONDA is a public interest conservation organization with a mission to protect, defend, and restore Oregon's high desert for current and future generations. We are the only organization dedicated exclusively to conserving Oregon's native desert lands, waters and wildlife. ONDA represents more than 25,000 members and supporters in Oregon and across the United States who enjoy and depend upon Oregon's outback.

Since its founding in 1975, 1000 Friends has served Oregon by defending Oregon's land use system—a system of rules that creates livable communities, protects family farms and forestlands, and conserves the natural resources and scenic areas that make Oregon such an extraordinary place to live. 1000 Friends accomplishes this mission by monitoring local and statewide land use issues, enforcing state land use laws, and working with state agencies and the Legislature to uphold the integrity of the land use system.

It is important that EFSC contested case rules both comply with applicable law and support the broadest possible public participation in EFSC proceedings to produce the best possible decisions on energy siting in Oregon. Thank you for your consideration of Friends' submission on the proposed revisions to the contest case rules.

Sincerely,

Mark Salvo
Conservation Director
Oregon Natural Desert Association

Andrew Mulkey
Staff Attorney
1000 Friends of Oregon

Comment Date: 07-19-2024
From: Kyenne Williams
Email Address: kyennew@yahoo.com
Source: portal
Rule/Rule Section: ODOE proposal to eliminate the right to file an interlocutory appeal

Comment:
These proposed rule changes are inefficient and unfair to the public. For decades, EFSC's rules have allowed any person or organization who is denied participation on an issue the right to file an "interlocutory appeal" with EFSC, which allows for rapid correction of any errors made by hearing officers and keeps the cases on track. The proposal to strip these rights is wrong and if passed will require any parties who are denied participation on a contested case to file costly and time-consuming litigation in court, placing an unfair burden on advocates seeking to protect the environment from harmful energy projects.

Comment Date: 07-20-2024
From: Robbie Earon
Email Address: robbie4flowers@gmail.com
Source: portal
Rule/Rule Section: Public comment

Comment:
I oppose the limit on public comment on energy siting decisions. The public should have the right to make comments without incurring legal expenses and time consuming obstacles. Thank you for the opportunity to comment.

Comment Date: 07-21-2024
From: Brenda Jackson
Email Address: brendajackson12@gmail.com
Source: portal
Rule/Rule Section: EFSC rule changes

Comment:
I am asking you NOT to make any changes to the EFSC's current rules as Oregonians need to have an avenue for participation. This is our state and we need to have input into how our resources are used. EFSC's rules have allowed any person or organization who is denied participation on an issue the right to file an "interlocutory appeal" with EFSC, which allows for rapid correction of any errors made by hearing officers and keeps the cases on track. Thank you.

Comment Date: 07-21-2024
From: Gary Casady
Email Address: gary.casady@gmail.com
Source: portal
Rule/Rule Section: OAR 345-015-0012 - OAR 345-015-0085

Comment:
The free right to appeal the decisions of governments, governing bodies and power brokers is an inalienable right that helps protect the peoples, flora and fauna and the very earth itself. Every human is subject to the malady of myopia. A short step back into our history reveals that the myopia of a few unchecked individuals has led to decisions that have seriously harmed our earth and its inhabitants. Let us not further harm our fragile earth by allowing rule changes that may deny the due process of gaining as full knowledge as possible on matters. Often the very people who are in touch with the land - who live upon it, observe it, and love it are the ones who have the greatest knowledge of how to steward it well. These same people often lack the financial and positional power to speak into the decisions of powerful governing bodies. The outright repeal of much of the OAR 345-015-0012 through 345-015-0085 although intended to streamline and enhance the efficiency of the EFSC, may be denying some individuals access of the right to give valuable testimony through appeal. Please ensure the preservation of the interlocutory appeal right that is currently provided by the existing OAR. Thank you for your diligent work and for your kind attention to these comments. Respectfully, Gary Casady

Contested Case Rulemaking

Sue Craig - sueacraig@gmail.com <sueacraig@ujoin.co>

Thu 7/25/2024 2:22 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from sueacraig@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

As an Oregonian who cares deeply about the procedures and outcomes for how large energy projects are approved and constructed throughout the state, I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

Please do not repeal the ability for interlocutory administrative appeals to the Council. If you do, then when an interested person wishes to challenge a ruling barring them from participating on a specific issue in a contested case, their only recourse will be to file one or more court cases, which will be expensive, inefficient, slow, and potentially very disruptive to the Council's administrative siting processes.

It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court, which nobody wants.

I am counting on you to do the right thing and retain the language currently at OAR 345-015-0016(6) and OAR 345-015-0057(1). Keeping these rules will preserve the public's ability to file speedy interlocutory appeals to the Council, so that you may fairly and efficiently resolve these types of disputes.

Please protect Oregon's environment and energy future. Please retain these rights, which have been afforded to Oregonians for decades, in the Council's rules.

Thank you very much for your time and consideration.

Sincerely,

Sue Craig

Eugene, Oregon

Contested Case Rulemaking

Charles Gillis - charlie@gillis-law.com <charlie@ujoin.co>

Thu 7/25/2024 2:22 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from charlie@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

As a board member of Stop B2H, I have dealt with the Energy Facility Siting Council for over 10 years. The deck is already stacked in favor of energy developers and their toadies who make up the majority of the EFSC members. Making it more difficult for citizens to challenge for-profit energy development by limiting the public's capacity to initiate contested cases without first engaging in expensive litigation, robs the public of a right they have enjoyed for decades. It would be wrong and a shameful giveaway to already overly entitled interests.

Sincerely,

Charles Gillis

Pendleton, Oregon

Contested Case Rulemaking

David Michalek - edm_austin@yahoo.com <edm_austin@ujoin.co>

Mon 7/22/2024 7:28 AM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from edm_austin@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

Large energy projects need extra scrutiny before they are approved and constructed. The change proposed by staff of the Oregon Department of Energy in the current Contested Case Rulemaking should not be adopted.

Repealing the Council's current rules in OAR 345-015-0016(6) and related language at OAR 345-015-0057(1) is unacceptable. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court.

I am interested in protecting Oregon's environment and energy future. Strengthen the laws affording the public the right to increase these protections, do not take away these rights.

Thank you.

Sincerely,

David Michalek

Hood River, Oregon

Comment--Don't dilute public's ability to engage with energy siting

ellyy@comcast.net <ellyy@comcast.net>

Sat 7/20/2024 5:54 AM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from ellyy@comcast.net. Learn why this is important

Dear EFSEC,
I oppose your proposed rules on drastically limiting the public's ability to engage with energy facility sitings. This ill advised ruled will limit the public's ability to have a say in siting energy facilities in places like sensitive areas.

Having spent my career in the area of electric energy generation, transmission, and conservation I am aware of the long-term energy needs of Oregon and the challenges faced by the siting of new energy facilities. However the answer isn't to restrict the public from engaging and challenging.

Thank you,
Eleanor Adelman

Opposition to the proposed repeal of the Council's current rules

Jeff McMeekin <jsmcmeekin@gmail.com>

Fri 7/19/2024 7:08 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from jsmcmeekin@gmail.com. Learn why this is important

I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1).

regards

Jeff McMeekin

3876 NE Glisan St

Portland OR

Contested Case Rulemaking

Jonah Sandford - jonah@nedc.org <jonah@ujoin.co>

Mon 7/22/2024 10:09 AM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from jonah@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

On behalf of the Northwest Environmental Defense Center, I'm writing to express NEDC's complete support for Friends of the Columbia Gorge's comments submitted on this proposal. The Council should not act unlawfully and adopt the proposed rules.

Thank you,

Jonah Sandford
Executive Director
Northwest Environmental Defense Center

Sincerely,

Jonah Sandford

Portland, Oregon

Contested Case Rulemaking

Jonathan White - jondwhite418@gmail.com <jondwhite418@ujoin.co>

Mon 7/22/2024 2:07 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from jondwhite418@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

Sincerely,

Jonathan White

La Grande, Oregon

Contested Case Rulemaking

K Anderson <K.Anderson.1@outlook.com>

Mon 7/22/2024 11:32 AM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from k.anderson.1@outlook.com. Learn why this is important

Dear Chair Howe and Council Members:

It is unfair, unethical, inefficient, and expensive for DOE to consider repealing the ability of the public to participate in energy siting in an early stage that is not court litigation-based.

It is better for DOE to hear what people think and to raise issues BEFORE they are already entrenched. Requiring the public to take problems to court makes it more expensive for taxpayers (because we have to pay for the staff at Oregon DOE) and is inefficient. I think you are siding with big companies instead of doing what is good for the public.

Please do not change OAR 345-015-0016(6) and OAR 345-015-0057(1).

Please take care of the people of Oregon – don't make it easier for big energy companies to hurt the common good.

Thank you.

Kris Anderson

Do not kill the right of Oregonians to participate in the State's energy siting process

Norm Cimon <ncimon@oregontrail.net>

Sat 7/20/2024 3:08 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

1 attachments (454 bytes)

ncimon.vcf;

You don't often get email from ncimon@oregontrail.net. Learn why this is important

The proposal to limit comments to the Energy Facilities Siting Council to litigants is absurd and undemocratic on its face. The EFSC has proven itself to be incapable of seriously considering relevant criticism of its rubber stamp for industrial-scale energy. This at a time when digital controls will completely rework the grid and how it's powered. The bottom-up nature of the digital revolution is beyond the understanding and the expertise of the EFSC's historical decisions. To get a feel for what should happen, and what is not happening - thanks to the regulatory capture of the EFSC - please read this:

> If Your Electric Meter Is So Smart, Why Is the Power Grid So Dumb?

The refusal to develop a common data format owned by customers, is symptomatic of a much larger problem: the unwillingness of utilities big and small to release their customer base from the stovepipes created explicitly to keep them in tow. The EFSC has been a handmaiden in this process. Now you are proposing to isolate them further from a serious understanding of the freight train that's bearing down on them.

I am unalterably opposed to this restriction. The grid can be rebuilt bottom-up if we allow it to happen, with the monetary benefits going to residential, commercial, and industrial utility customers. Regulators must understand that digital transformation is inevitable. The only question is the pain that will be brought on by proposals such as this one.

Thank you for your time.

Norm Cimon
1208 First Street
La Grande, Oregon 97850

Contested Case Rulemaking

R.B. Garden <clubs900@gmail.com>

Mon 7/22/2024 6:47 AM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from clubs900@gmail.com. Learn why this is important

The Oregon Energy Facility Siting Council (EFSC) is considering a rule change that would limit the public's ability to challenge harmful energy siting decisions and would instead require individuals wishing to challenge a project to file litigation in court to be allowed to even participate in the siting process.

EFSC is the governing agency that reviews proposals for energy projects such as power plants and transmission lines through a "siting" process, by which EFSC either grants or denies a site certificate to allow a project to proceed. Each proposed project is reviewed through a process called a "contested case," which is presided over by a lawyer called a "hearing officer," who gives recommendations to EFSC to make the final decision. For each contested case, the hearing officer decides which issues will be considered, and which interested parties can participate on each issue. For decades, EFSC's rules have allowed any person or organization who is denied participation on an issue the right to file an "interlocutory appeal" with EFSC, which allows for rapid correction of any errors made by hearing officers and keeps the cases on track.

Unfortunately, the staff of the Oregon Department of Energy (ODOE) are proposing to strip these rights **that have long been enjoyed by the public from EFSC's rules**. If these changes are approved, any parties who are denied participation on a contested case will have to file costly and time-consuming litigation in court, **placing an unfair burden on advocates seeking to protect the environment from harmful energy projects**.

These proposed rule changes are inefficient and unfair to the public. Do not allow these changes to take place now or in the future. Public participation is an important component of a healthy democracy. Forcing the public to file litigation could slow down the process for years. As we have learned from Mr. Trump the courts came be put off for years, over any issue. The current rules allow rapid corrections thus allowing the case to move forward. Don't change a thing.

RB Garden

Springfield

Contested Case Rulemaking

Roberta Moller - berte@gorge.net <berte@ujoin.co>

Thu 7/25/2024 2:22 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from berte@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). These rules allowed the interested public, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases.

The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

Repealing the above-cited rules will only lead to more costly litigation in court, which nobody wants.

I urge you to retain these rights, which have been afforded to Oregonians for decades, in the Council's rules.

Thank you for your time and consideration.

Sincerely,

Roberta Moller

Hood River, Oregon

Contested Case Rulemaking

Brian Hanks - brianhanks@yahoo.com <brianhanks@ujoin.co>

Mon 7/22/2024 2:11 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from brianhanks@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

I am an Oregon resident, and I am opposed to a proposed rule change in the Contested Case Rulemaking process.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

Please do not repeal the ability for interlocutory administrative appeals to the Council. If you do, then when an interested person wishes to challenge a ruling barring them from participating on a specific issue in a contested case, their only recourse will be to file one or more court cases, which will be expensive, inefficient, slow, and potentially very disruptive to the Council's administrative siting processes.

It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court, which nobody wants.

I am counting on you to do the right thing and retain the language currently at OAR 345-015-0016(6) and OAR 345-015-0057(1). Keeping these rules will preserve the public's ability to file speedy interlocutory appeals to the Council, so that you may fairly and efficiently resolve these types of disputes.

Please protect Oregon's environment and energy future. Please retain these rights, which have been afforded to Oregonians for decades, in the Council's rules.

Thank you very much for your time and consideration.

Sincerely,

Brian Hanks

Portland, Oregon

Contested Case Rulemaking

Donna Steadman - dab1219@comcast.net <dab1219@ujoin.co>

Thu 7/25/2024 2:22 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from dab1219@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

Input from the public about projects which will affect the areas where they live, work & recreate is necessary to obtain the best possible outcome.

As an Oregonian who cares deeply about the procedures and outcomes for how large energy projects are approved and constructed throughout the state, I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

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It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court, which nobody wants.

I am counting on you to do the right thing and retain the language currently at OAR 345-015-0016(6) and OAR 345-015-0057(1). Keeping these rules will preserve the public's ability to file speedy interlocutory appeals to the Council, so that you may fairly and efficiently resolve these types of disputes.

Please protect Oregon's environment and energy future. Please retain these rights, which have been afforded to Oregonians for decades, in the Council's rules.

Thank you very much for your time and consideration.

Sincerely,

Donna Steadman

Tigard, Oregon

Contested Case Rulemaking

Evelyn Whitlock Md Mph - whitlockep@gmail.com <whitlockep@ujoin.co>
Thu 7/25/2024 2:22 PM
To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from whitlockep@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

Thank you for your work. We are at a critical junction in our state as we work to prioritize clean energy production to support climate change mitigation, while conserving natural resources and state assets such as wildlife and vistas. Our natural resources and environment are increasingly being viewed from the perspective of business and profit, particularly by those who are not Oregonians but are looking for market opportunities during the green transition. We must be wise and protect that which was carefully guarded by Tom McCall and others for future generations.

As an Oregonian who cares deeply about the procedures and outcomes for how large energy projects are approved and constructed throughout the state, I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public, particularly during this time of increased risk to our natural environment from competing and outside interests.

Please do not repeal the ability for interlocutory administrative appeals to the Council. If you do, then when an interested person wishes to challenge a ruling barring them from participating on a specific issue in a contested case, their only recourse will be to file one or more court cases, which will be expensive, inefficient, slow, and potentially very disruptive to the Council's administrative siting processes.

It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court AND DELAYS in the clean energy transition, which nobody wants.

I am counting on you to do the right thing and retain the language currently at OAR 345-015-0016(6) and OAR 345-015-0057(1). Keeping these rules will preserve the public's ability to file speedy interlocutory appeals to the Council, so that you may fairly and efficiently resolve these types of disputes.

Please protect Oregon’s environment and energy future. Please retain these rights, which have been afforded to Oregonians for decades, in the Council’s rules.

Thank you very much for your time and consideration.

Sincerely,

Evelyn Whitlock Md Mph

Portland, Oregon

Contested Case Rulemaking

Margaret L Mead - summersowwinterweave@gmail.com <summersowwinterweave@ujoin.co>

Mon 7/22/2024 2:25 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from summersowwinterweave@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

Cutting out the time and opportunities for the PUBIC to make comments on matters that make a huge difference for our state is NOT part of the democratic process. We live here, we pay taxes, we do much for our communities--and we have RIGHTS to participate. We care deeply about the environment and people's lives. We do NOT want corporations or other big monied outfits to say what will or won't happen. We want the people to have their say.

As an Oregonian who cares deeply about the procedures and outcomes for how large energy projects are approved and constructed throughout the state, I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

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It is far better for you to retain your authority to quickly fix any errors made by hearing officers before a contested case is underway. Repealing the above-cited rules will only lead to more costly litigation in court, which nobody wants.

I am counting on you to do the right thing and retain the language currently at OAR 345-015-0016(6) and OAR 345-015-0057(1). Keeping these rules will preserve the public's ability to file speedy interlocutory appeals to the Council, so that you may fairly and efficiently resolve these types of disputes.

Please protect Oregon's environment and energy future. Please retain these rights, which have been afforded to Oregonians for decades, in the Council's rules.

Thank you very much for your time and consideration.

Sincerely,

Margaret L Mead

La Grande, Oregon

Contested Case Rulemaking

Mary King - maryanddrew@comcast.net <maryanddrew@ujoin.co>

Thu 7/25/2024 2:22 PM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>

You don't often get email from maryanddrew@ujoin.co. Learn why this is important

Dear Chair Howe and Members of the Council:

I live in Hood River, Oregon within the Columbia Gorge National Scenic Area. Due to the fragility and uniqueness of this special place, I am extremely concerned about potential rule changes that could weaken the public's ability to challenge energy siting proposals.

As an Oregonian who cares deeply about the procedures and outcomes for how large energy projects are approved and constructed throughout the state, I am strongly opposed to one specific rule change proposed by the staff of the Oregon Department of Energy in the current Contested Case Rulemaking.

Specifically, I oppose the proposed repeal of the Council's current rules at OAR 345-015-0016(6) and related language at OAR 345-015-0057(1). For decades, these rules have allowed the interested public, when they seek to participate in an energy siting contested case, to file an "interlocutory appeal" to you, the Council, in order to quickly fix any mistakes made by the hearing officer in determining which parties may participate on which issues in contested cases. The rights afforded by these rules are appropriate, fair, and efficient, and they should continue to be available to the interested public.

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Please protect Oregon's environment and energy future. Please retain these rights, which have been afforded to Oregonians for decades, in the Council's rules.

Thank you very much for your time and consideration.

Sincerely,

Mary King

Hood River, Oregon

Interlocutory Appeals must stay in EFSC rules

Wendy King <wkingproshop@gmail.com>

Mon 7/22/2024 8:16 AM

To:EFSC Rulemaking * ODOE <EFSC.RULEMAKING@energy.oregon.gov>;sam myers <sam.myers84@gmail.com>;John Myers <john@myersfarmco.com>

You don't often get email from wkingproshop@gmail.com. Learn why this is important

Dear EFSC Council,

It saddens me that the ODOE is proposing a rule change that will do away with interlocutory appeals when a hearing officer prohibits citizens from participating on specific issues in EFSC contested cases. A hearing officer is a single person with a single understanding of a specific issue. If they make a judgement that favors a particular party, the decision would be very difficult to appeal without this important process and severely prejudice the opposite party.

It makes sense that the ODOE is asking to remove the interlocutory appeal because it is driven by processing and approving energy projects quickly and as we have seen in the many energy projects of Morrow County Oregon, the developer has an advocate in the Department while citizens have none other than their own paid attorney.

We appreciate the Council's desire to promote public participation and the interlocutory appeal remains an important piece of this engagement. Please reject the ODOE's contested case rulemaking proposal.

Sincerely,
Wendy King