

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

345-015-0001

Purpose and Authority

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

Stat. Authority: ORS 469.470

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

Procedures for the Conduct of Contested Cases

345-015-0012

Filing and Service of Documents in a Contested Case

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

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

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

Stat. Authority: ORS 469.470

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

345-015-0014

Contested Case Notices

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

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

(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council

decision to grant a contested case hearing under OAR 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.

(3) The Department shall send a contested case notice to the following persons:

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

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

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0070, OAR 345-027-0080 or OAR 345-027-0090, to the certificate holder and to all persons who commented on the Department's proposed order on the amendment as described in OAR 345-027-0070(5) or OAR 345-027-0080(5) or who requested a contested case proceeding as described in OAR 345-027-0070(6) or OAR 345-027-0080(5).

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

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

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.085, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

345-015-0016

Requests for Party or Limited Party Status

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

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

(3) Except as described in section (4), only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a

contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

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

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

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

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

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

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

(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.

Stat. Authority: ORS 469.373, ORS 469.470

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

345-015-0018

Authorized Representative

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

Stat. Authority: ORS 469.470

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

345-015-0022

Petition for Indigent Status

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

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

(3) The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case.

Stat. Authority: ORS 469.470

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

345-015-0023

Duties of Hearing Officer

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

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

- (a) Ensure a full, fair and impartial hearing;
- (b) Facilitate presentation of evidence;
- (c) Comply with statutory time limits on Council decisions;

- (d) Maintain order; and
- (e) Assist the Council in making its decision.

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

(4) The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. The hearing officer shall keep the Council informed regularly on the status of the contested case.

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

- (a) Administer oaths and affirmations;
- (b) Rule on offers of proof and receive evidence;
- (c) Order depositions and other discovery to be taken and to issue subpoenas;
- (d) Order and control discovery, as provided in OAR 137-003-0025, and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;
- (e) Dispose of procedural matters and rule on motions;
- (f) Call and examine witnesses;
- (g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including, for a contested case proceeding on an application for a site certificate, determining those issues that have been raised with sufficient specificity in the public hearing;
- (h) Continue the hearing from time to time;
- (i) Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.
- (j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;
- (k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;
- (l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and
- (m) Take any other action consistent with the Council's governing statutes and the Council's rules.

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

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

Stat. Authority: ORS 469.470

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

345-015-0024

Suspension of Hearing and Exclusion of a Party

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

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

Stat. Authority: ORS 469.470

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

345-015-0038

Separate Hearings

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

Stat. Authority: ORS 469.470

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

345-015-0043

Evidence: Testimony Submitted in Writing

A hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness.

Parties and limited parties shall send to all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule.

Stat. Authority: ORS 469.470

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

345-015-0046

Evidence: Official Notice

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

(a) All facts of which the courts of the State of Oregon may take judicial notice;

(b) Administrative rulings and reports of the Council and other governmental agencies;

(c) Facts contained in permits and licenses issued by the Council or any other government agency;

(d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and

(e) General, technical or scientific facts within the specialized knowledge of the Council or the Department of Energy.

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

Stat. Authority: ORS 469.470

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

345-015-0051

Evidence: Resolutions of Cities, Counties and Tribes

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

Stat. Authority: ORS 469.470

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

345-015-0054

Motions

(1) All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. Unless a motion is made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state

with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited parties to the contested case.

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

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

Stat. Authority: ORS 469.470

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

345-015-0057

Prohibitions on Interlocutory Appeals to Council

(1) Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.

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

Stat. Authority: ORS 469.470

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

345-015-0059

Prohibitions on Stays

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

Stat. Authority: ORS 469.470

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

345-015-0062

Reopening Record Prior to Decision

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

(1) The evidence is material to the proceeding; or

(2) The evidence would substantially affect the outcome of the proceeding.

Stat. Authority: ORS 469.470

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

345-015-0080

Participation by Government Agencies

(1) Any state or local government agency other than the Department of Energy may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. The agency shall submit the request to the hearing officer in writing by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.

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

Stat. Authority: ORS 469.470

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

345-015-0083

Prehearing Conference and Prehearing Order

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

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

(3) Failure to raise an issue in the prehearing conference(s) for the contested case hearing constitutes a waiver of that issue.

Stat. Authority: ORS 469.470

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

345-015-0085

Hearing Officer's Proposed Contested Case Order

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

(2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may present

evidence relating to the appropriateness, scope or wording of any other party's proposed site certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.

(3) After the hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed order on all parties and limited parties. In the proposed order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision record for the application but are not part of the Council's order.

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

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

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

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

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

(9) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate. The amended site

certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

Stat. Authority: ORS 469.470

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

Procedures for Council and Department of Energy Review of an Application for a Site Certificate

345-015-0110

Public Notice of a Notice of Intent

(1) After receiving a notice of intent (NOI), the Department of Energy shall issue a public notice of the NOI by:

(a) Mailing notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed project;

(b) Mailing notice to the owners of property whose names and addresses the applicant has supplied as required by OAR 345-020-0011;

(c) Except as provided in subsection (d), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and

(d) If the energy facility is a transmission line or a pipeline or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, publishing notice in one or, if possible, two newspapers of general circulation in the vicinity of the proposed facility.

(2) In the public notice of the NOI, the Department shall include the following information:

(a) A description of the proposed facility.

(b) The location of the site of the proposed facility.

(c) The date when the applicant expects to submit an application for a site certificate.

(d) A brief description of the Council's review process, including an explanation of the difference between the informational meetings described in OAR 345-015-0130 and OAR 345-015-0190(10) and the public hearing described in OAR 345-015-0220.

(e) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that, if the applicant chooses to obtain local land use approval, any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete.

(f) The date, time and location of any informational meeting on the NOI that the Department has scheduled or an explanation of how interested persons may request an informational meeting.

(g) The final date for submission of written comments on the NOI to the Department.

(h) For persons wanting more information about the NOI, the address of the Department.

(i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by OAR 345-020-0011(1)(d):

(A) An explanation that the corridor proposed by the applicant in the NOI is subject to change and that the applicant may propose adjustments to the proposed corridor(s) in the application;

(B) An explanation that the applicant may present adjustments to the proposed corridor(s) at the informational meeting; and

(C) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant shall consider public comments on the corridor(s) proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.

(3) It is Council policy to encourage public participation in local land use decisions on energy facilities. To that end, the Council encourages the Department to send notice to the Council's mailing list if the Department learns that an applicant has applied for local land use approval.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.330

345-015-0120

Memorandum on a Notice of Intent

The Department of Energy shall prepare a memorandum to accompany the copies of the notice of intent (NOI) distributed by the applicant to the reviewing agencies as defined in OAR 345-001-0010. In the memorandum, the Department shall:

(1) Request comments from the reviewing agency by a specified date.

(2) Request the following information:

(a) The name, address and telephone number of the agency contact person assigned to review the application.

(b) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the reviewing agency.

(c) Recommendations regarding the size and location of analysis area(s).

(d) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures.

(e) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by OAR 345-020-0011(1)(d), a discussion of the relative merits of the corridors described in the NOI and recommendations, if any, on the selection of a corridor.

(f) A list of statutes, administrative rules and local government ordinances administered by the agency that might apply to construction or operation of the

proposed facility and a description of any information needed for determining compliance.

(g) A list of any permits administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for reviewing a permit application.

(h) For tribes affected by the proposed facility, a list of tribal codes that the tribe recommends to the Council for its review of the application and specific information regarding the proposed facility or study areas described in the NOI that is necessary for determining compliance with those tribal codes.

(3) State the date, location, agenda and purpose of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.330

345-015-0130

Informational Meeting on a Notice of Intent

(1) After issuing the public notice described in OAR 345-015-0110, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.

(2) If the Department holds an informational meeting, the Department shall present an explanation of the notice of intent (NOI) process and the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between the informational meetings described in OAR 345-015-0130 and OAR 345-015-0190(10) and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written handout.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.330

345-015-0140

Review by the Department of Energy

The Department of Energy shall review the notice of intent (NOI) and the comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110 and in the memorandum described in OAR 345-015-0120. The Department shall send copies of any written comments or recommendations to the applicant.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.330

345-015-0160

Project Order

(1) Following the review and any meeting described in OAR 345-015-0140, or, in the case of an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, following receipt of an application for a site certificate, the

Department of Energy shall send a project order to the applicant establishing the following:

(a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of Divisions 22, 23 and 24 of this chapter.

(b) All local government ordinances applicable to the Council's decision on the proposed facility.

(c) All application requirements in OAR 345-021-0010 applicable to the proposed facility.

(d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits.

(e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances.

(f) The analysis area(s) for the proposed facility.

(g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received.

(h) If the applicant has identified one or more proposed corridors in Exhibit D of the notice of intent as required by OAR 345-020-0011(1)(d), any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in OAR 345-021-0010(1)(b).

(i) If the applicant chooses to demonstrate need for a proposed electric transmission line, natural gas pipeline, or liquefied natural gas storage facility under the economically reasonable rules, OAR 345-023-0030 and OAR 345-023-0040, the alternatives the applicant must evaluate in the application for a site certificate in lieu of construction and operation of the proposed facility in addition to the alternatives described in OAR 345-021-0010(1)(n)(E) or (F), if any.

(j) Except in the case of an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the expiration date of the notice of intent, according to OAR 345-020-0060(1).

(2) In determining the application and study requirements to be included in the project order, the Department shall consider the size and type of proposed facility and significant potential impacts of the proposed facility. In the project order, the Department shall note and give the reason for any application or study requirements that the Department has waived or modified under OAR 345-015-0140(3).

(3) The Council or the Department may amend the project order at any time.

(4) The project order is not a final order.

(5) Except in the case of an expedited review granted under OAR 345-015-0300 or OAR 345-015-0310, the Department shall, to the extent practicable, issue the project order within 140 days following the date of submission of the notice of intent.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.330, ORS 469.370

345-015-0180

Agency Memorandum on a Site Certificate Application

The Department of Energy shall prepare a memorandum to accompany the copies of the preliminary application distributed by the applicant as described in OAR 345-021-0050. In the memorandum, the Department shall:

(1) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the Department by a specified date;

(2) Describe the matters to be covered in the comments or recommendations as set forth in OAR 345-021-0050(2) and (4);

(3) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(4) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision; and

(5) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350, ORS 469.504

345-015-0190

Determination of Completeness

(1) Until the Department determines the application to be complete, it is a preliminary application. Within 60 days after receipt of an application for a site certificate, the Department of Energy shall notify the applicant whether the application is complete. In the notification, the Department shall:

(a) State that the application is complete and state the date of filing;

(b) State that the application is incomplete, describe any information needed to complete the application, to the extent known to the Department at the time of the notification, ask the applicant to submit the needed information by the deadline described in section (4) and estimate the additional time the Department will need to make a determination of completeness; or

(c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness.

(2) If the Department does not notify the applicant as described in section (1), the application is deemed complete and filed 60 days after receipt of the application. Otherwise, the application is complete as determined under section (5) and the date of filing is the date determined under section (6).

(3) If the Department finds that the applicant did not give adequate consideration to public concerns about the corridors the applicant identified in Exhibit D of the notice of intent or corridor adjustments presented at the informational hearing described in OAR 345-015-0130, the Department may find the application incomplete and notify the applicant as described under section (1)(b).

(4) The Department may specify a date by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(5) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and OAR 345-021-0010. The Department shall notify the applicant when the Department finds that the application is complete and, if needed, shall request the application supplement described in OAR 345-021-0055.

(6) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

(7) The Department shall inform the public that the application is complete by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. In addition, the Department shall mail notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed facility and to the property owners listed in Exhibit F of the application.

(8) In notices described in section (7), the Department shall include the following information:

- (a) A description of the proposed facility.
- (b) The location of the site of the proposed facility
- (c) The date of filing.

(d) A description of the procedure for review of the application, including the date, time and location of any informational meeting that has been scheduled on the application and an explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220.

(e) Addresses of locations where the public may review copies of the application.

(f) The name, address and telephone number of the Department of Energy project officer to contact for more information.

(g) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination.

(h) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the applicant's proposed means of compliance with the applicable carbon dioxide emissions standard.

(9) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

345-015-0200

Notice to Agencies that the Application is Complete

After the date of filing, the Department of Energy shall provide to the applicant the notice described in this rule and a mailing list of persons, including but not limited to those agencies listed in ORS 469.350, to whom the applicant shall send the notice and the application supplement described in OAR 345-021-0055. In the notice, the Department shall:

(1) State the date of filing.

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

(3) State a date by which the Department and the applicant must receive the reports described in sections (4) through (6) below.

(4) Request an agency report containing the following information:

(a) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility.

(b) Issues significant to the agency.

(c) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency.

(d) A list of site certificate conditions recommended by the agency.

(e) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.

(5) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).

(6) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).

(7) Explain that the reports described in sections (4) through (6) above are part of the decision record for the application for a site certificate.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

345-015-0210

Draft Proposed Order

(1) Following the deadline for its receipt of agency reports and final land use decisions stated under OAR 345-015-0200, the Department of Energy shall issue a draft proposed order on the application that includes its recommendation to grant with conditions or deny a site certificate for the proposed facility and a discussion of the reasons for that recommendation. The draft proposed order may include, but is not limited to:

(a) Draft proposed findings of fact and conclusions of law concerning the proposed facility's compliance with all state statutes and administrative rules and ordinances applicable to the issuance of a site certificate for the proposed facility;

(b) Draft proposed conditions for inclusion in the site certificate;

(c) Draft proposed monitoring plans to ensure the proposed facility's continued compliance with applicable state statutes and administrative rules and ordinances; and

(d) A description of the status of other applications for state permits and local government land use permits for the proposed facility.

(2) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(a), the Department shall include in the draft proposed order the local government's land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions.

(3) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(b), the Department shall include in the draft proposed order the Department's proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS 469.504(2).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

345-015-0220

Public Hearing on the Draft Proposed Order

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer shall conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing.

(2) The Department of Energy shall, at least 20 days before the hearing:

(a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility.

(b) Mail notice to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application as updated by the applicant upon the request of the Department.

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

(a) The date, time and location of the public hearing(s).

(b) A description of the facility and the facility's general location.

(c) The name, address and telephone number of the Department's project officer to contact for additional information.

(d) A statement that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost.

(e) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department's project officer.

(f) A statement that to raise an issue on the record of the public hearing, a person must raise the issue in person at the public hearing or in a written comment submitted after the date of the notice and received by the Department before the deadline.

(g) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.

(h) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

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

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

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written

comment submitted to the Department of Energy before the deadline stated in the notice of the public hearing.

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

345-015-0230

Council Review and the Department of Energy's Proposed Order

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

(2) Following the Council's meeting to review of the draft proposed order, the Department of Energy shall issue a proposed order, taking into consideration the comments of the Council, testimony at the public hearing, written comments received by the hearing officer before the close of record at or following the final public hearing on the draft proposed order and agency consultation. In the proposed order, the Department shall recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.

(3) Following issuance of the proposed order, the Department shall issue a notice of a contested case on the proposed order, as described in OAR 345-015-0014.

(4) After the conclusion of the contested case proceeding, the Council will take final action on the site certificate application, as described in OAR 345-015-0085.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

345-015-0240

The Decision-Making Record

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

Procedures for Expedited Review of Certain Energy Facilities

345-015-0300

Request for Expedited Review of Small Capacity Facilities

(1) In accordance with ORS 469.370(10), any person proposing to construct and operate an energy facility with an average electric generating capacity of less than 100 megawatts who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (2) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. If the proposed energy facility has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, the proposed energy facility is not eligible for expedited review.

(2) In the request for expedited review, the applicant shall include:

- (a) A description of the facility and the proposed site;
- (b) The applicant's name and address;
- (c) A schedule stating when the applicant expects to submit an application for a site certificate;
- (d) A list of all statutes, rules and ordinances applicable to the facility;
- (e) A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval pursuant to ORS 469.504(1)(a) or by seeking a Council determination pursuant to ORS 469.504(1)(b); and
- (f) The reason and justification for any request for exception to an analysis area as provided under section (3).

(3) In an expedited review granted under this rule, the Department shall issue a project order following the applicant's submission of an application for a site certificate. For the purposes of submitting the application, the analysis areas are the study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the request for expedited review and the Department approves the exception. The Department may, in the project order, modify the analysis areas. The Department may request additional information from the applicant, as provided in OAR 345-015-0190, before determining the application complete. Submission of the site certificate application and the Department's review of the application in all other respects are the same for expedited review as for other site certificate applications.

(4) The Council hereby grants any request for expedited review from an applicant proposing a facility meeting the definition in section (1) if the Department determines that the request satisfies the requirements of section (2). The Department shall notify the applicant of its determination.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370

345-015-0310

Request for Expedited Review of Special Criteria Facilities

(1) Any person who proposes to construct and operate a special criteria facility, as defined in section (2), and who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (3) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) "Special criteria facility" means a facility that meets the criteria stated in ORS 469.373(1).

(3) In the request for expedited review, the applicant shall provide documentation that the proposed facility is a special criteria facility, as defined in section (2), and:

(a) A description of the facility and the proposed site.

(b) The applicant's name and address.

(c) A schedule stating when the applicant expects to submit an application for a site certificate.

(d) A list of all statutes, rules and ordinances applicable to the facility.

(4) Within 14 days after receiving the request for expedited review, the Department shall determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and shall notify the applicant. The Department may decide, on a preliminary, non-binding basis, that the proposed location of associated transmission lines or new natural gas pipelines outside of existing rights of way imposes no significant impact. The Department shall provide to the applicant a mailing list of persons including but not limited to the agencies listed in ORS 469.373(4).

(5) After the Department has made the determination described in section (4), the applicant may submit an application for a site certificate, as described in OAR 345-021-0000 and 345-021-0010. The applicant shall submit an original and ten copies of the application to the Department. In addition to the printed copies, the applicant shall submit the text (including appendices and graphical information to the extent practical) of the application in a non-copy-protected electronic format acceptable to the Department. The applicant shall send a copy of the application to persons on the mailing list described in section (4). The applicant shall provide additional copies of the application to the Department upon request and copies or access to copies to any person requesting copies.

(6) Within 30 days after receiving an application for a site certificate, the Department shall issue a project order. In the project order, the Department may make changes to the analysis areas. The project order is not a final order. The Council or the Department may amend the project order at any time.

(7) Within 30 days after receiving an application for a site certificate, the Department shall either:

(a) Notify the applicant that the application is complete or

(b) Notify the applicant that the application is not complete and describe the information needed to complete the application, to the extent known to the Department at the time of the notification.

(8) If additional information is needed to complete the application, the applicant shall submit the information to the Department. The Department may specify a date by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(9) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and OAR 345-021-0010. The Department shall notify the applicant when the Department finds that the application is complete and, if needed, shall request the application supplement described in OAR 345-021-0055.

(10) The date of filing is the date the Department receives the application supplement described in OAR 345-021-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

(11) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

(12) In the notification to the applicant that the application is complete, as described in section (7)(a) or (9), the Department shall instruct the applicant send a copy of the notice described in section (13) and a copy of the application supplement, if any, to specified persons including but not limited to the agencies listed in ORS 469.373(4).

(13) The Department shall prepare a notice that:

- (a) States that the application is complete and specifies the date of filing,
- (b) Requests the agency reports as described in OAR 345-015-0200,
- (c) Includes the statements required by ORS 469.373(4)(a) and (b).

(14) At the time specified in section (15), the Department shall issue a public notice, including but not limited to:

- (a) A description of the proposed facility and the general location of the energy facility,
- (b) The date, time and location of a public informational meeting on the application,
- (c) A statement that the application has been filed,

(d) Addresses of locations where the public may review copies of the application, and

(e) The name of a Department of Energy representative to contact and the telephone number at which people may obtain additional information.

(15) At least 14 days before the meeting described in section (16), the Department shall:

(a) Submit the notice described in section (14) for publication in a newspaper of general circulation available in the vicinity of the proposed facility, and

(b) Mail the notice described in section (14) to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.

(16) The Department shall hold a public informational meeting on the application.

(17) Within 90 days after the date of filing, the Department shall issue a draft proposed order including, but not limited to:

(a) A description of the proposed facility,

(b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed facility,

(c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed facility, and

(d) Proposed findings regarding compliance with the applicable standards and criteria for approval of a site certificate and specifying conditions that are required for the facility to comply.

(18) The Council shall review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council does not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.

(19) After the Council's review as described in section (18), the Department shall issue a proposed order.

(20) At the time specified in section (21), the Department shall issue a public notice, including but not limited to:

(a) A description of the facility and its general location.

(b) The name of a Department of Energy representative to contact and the telephone number at which people may obtain additional information.

(c) A statement that the Department has issued a proposed order and that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost.

(d) The date, time and location of a public hearing on the proposed order.

(e) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.

(f) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

(g) A statement that the hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(21) At least 20 days before the hearing described in section (22), the Department shall:

(a) Submit the notice described in section (20) for publication in a newspaper of general circulation available in the vicinity of the proposed facility, and

(b) Mail the notice described in section (20) to persons on the Council's general mailing list as defined in OAR 345-011-0020 and to any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application.

(22) The Council shall hold at least one public hearing on the proposed order in the area affected by the proposed facility according to the procedures described in OAR 345-015-0320.

(23) Before the conclusion of the hearing described in section (22), the applicant may either:

(a) Request an opportunity to present additional written evidence, arguments or testimony regarding the application, or

(b) Request a contested case hearing on the application. Not later than 7 days after making a request in the public hearing, the applicant shall submit the request to the Council in writing, including evidence sufficient to show good cause for the contested case hearing.

(24) Except as described in section (27), following the close of the record of the public hearing, the Department shall issue a draft final order for the Council. In preparing the draft final order, the Department shall take into account the entire record, including the summary prepared by the hearing officer described in OAR 345-015-0320.

(25) Except as described in section (27), within six months after the date of filing, the Council shall make its decision on the record and the draft final order. The Council shall:

(a) Grant the site certificate,

(b) Grant the site certificate with conditions,

(c) Deny the site certificate, or

(d) Determine that the proposed facility is not a special criteria facility as defined in section (2) and is not eligible for expedited review under this rule.

(26) The Council shall issue a site certificate for the proposed facility if the Council determines that the proposed facility, with any required conditions to the site certificate, will comply with:

(a) The requirements for expedited review as specified in this rule.

(b) The standards adopted by the Council pursuant to ORS 469.501(1)(a), (c) to (e), (g), (h) and (L) to (o).

(c) The requirements of ORS 469.503(3).

(d) The requirements of ORS 469.504(1)(b).

(27) If the applicant requests a contested case hearing as described in section (23)(b), the Council, after considering the request in a public meeting, may grant the request if the Council finds that the applicant has shown good cause for a contested case hearing.

(28) If the Council grants the request for a contested case hearing, the Department shall issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council shall then consider the application under the same contested case procedures used for a nonexpedited application for a site certificate.

(29) If, as described in section (25), the Council determines that the proposed facility is not a special criteria facility and is not eligible for expedited review under this rule, then the Council shall consider the application under the same review procedures used for a nonexpedited application from the point of the applicant's submission of an application. The Department shall treat the application before the Council at the time of the determination as a preliminary application for the purpose of review under OAR 345-015-0190, except that within 30 days after the Council's determination, the Department shall determine whether the application is complete. The Department shall notify the applicant as described in OAR 345-015-0190(1) and the Department shall issue an amended project order that includes the Council standards that were not applicable under expedited review. For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council shall apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

(30) The applicant may withdraw its request for expedited review under this rule at any time and request that the Council consider its application under the same review procedures used for a nonexpedited application. After such a request, the Department shall treat the application as a preliminary application for the purpose of review under OAR 345-015-0190 as described in section (29). For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council shall apply the applicable substantive criteria in effect on the date the application

was originally submitted under section (5).

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.370

345-015-0320

Public Hearing Procedures for Special Criteria Facilities

(1) The Council shall appoint a hearing officer to conduct the public hearing described in OAR 345-015-0310(22). The Council may appoint a Council member, an employee of the Department of Energy or other person.

(2) The duties of the hearing officer are to:

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

(f) Prepare a summary of the evidence presented on the record of the public hearing addressing the factual and legal issues raised in the hearing, including findings related to the credibility of witnesses, as necessary. The hearing officer shall submit the summary and the record of the hearing to the Council within 7 days after the close of the record.

(3) During the public hearing, the Department shall present the following information either orally or by written handout:

- (a) A description of the proposed facility.
- (b) A description of the Council standards, including those standards on which the Council may base site certificate conditions.
- (c) An explanation of the application process, including the means and opportunities for the general public to participate in the process.

(4) At the commencement of the public hearing, the hearing officer shall state that:

(a) The record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.

(b) To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

(c) The hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(5) Any person may present information regarding the pending application without administration of an oath.

(6) The hearing officer shall record all presentations made during the public hearing, and the presentations are part of the decision record for the application. The hearing officer shall maintain a record of all exhibits received and any rulings made during the course of the hearing.

(7) If the applicant requests an opportunity to present written evidence, arguments or testimony as described in OAR 345-015-0310, the hearing officer shall leave the record open for that purpose only for a specified period not to exceed 14 days after the date of the hearing or any continuance.

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

(a) Adopting special rules of procedure to govern the proceeding.

(b) Setting reasonable time limits for oral presentations.

(c) Receiving evidence and ruling on offers of proof.

(d) Requiring persons to submit written testimony in lieu of oral testimony if the hearing officer determines that a reasonable opportunity for oral presentation has been provided.

(e) Asking questions of commenters.

(f) Requiring expert witnesses to submit a statement of qualifications in writing

(g) Continuing the hearing during a period not exceeding 7 days from the commencement of the hearing. Notwithstanding this time limit, the hearing officer shall leave the record open for the purpose described in section (7).

(h) Continuing the hearing beyond any continuance allowed under subsection (g) for the limited purpose of allowing the applicant reasonable time to review written material submitted to the record before making the request described in section (7).

(i) Taking any other action consistent with the statutes governing expedited review of special criteria facilities and the applicable Council's rules.

(9) A request by the applicant for a contested case as provided in OAR 345-015-0310(23)(b) does not suspend the public hearing, and the hearing officer shall continue to accept evidence from interested persons until the close of the hearing.

(10) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of the public hearing, the hearing officer shall enter into the record the substance of any significant contact with the applicant, the Department of Energy staff or a commenter from that point forward concerning facts in the record.

(11) The Council may remove a hearing officer if it determines that the hearing officer is not competent, is biased or is otherwise unable to conduct the proceeding.

(12) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a public hearing or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such

person excluded from the hearing temporarily or permanently. If the hearing officer issues an order permanently excluding a person from further participation in a public hearing, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven days after the date of the order.

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

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.370

Exemptions from Council Jurisdiction

345-015-0350

Council Determination of Exemption

The Council shall, upon request, determine whether a proposed facility or proposed expansion of a facility is exempt from the requirement to obtain a site certificate. A site certificate is not required for:

(1) A facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if the site is not enlarged and:

(a) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993; or

(b) The facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(2) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory commission or successor agency.

(3) A high efficiency cogeneration facility, as defined in OAR 345-001-0010.

(4) A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant with an average

electric generating capacity of 35 megawatts or more, as described in OAR 345-001-0210(3).

(5) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of ORS 469.320(2)(f).

(6) A standby generation facility as defined under ORS 469.320.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

345-015-0360

Contents of Request for Exemption

(1) Any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Department of Energy before beginning construction. A person shall not construct or expand a facility as defined in OAR 345-001-0010 unless the Council has granted an exemption as described in OAR 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.

(2) In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993, the person shall provide the following information in support of the request:

- (a) A detailed description of the proposed upgrade or expansion;
- (b) The proposed and current facility fuel use;
- (c) The proposed and current nominal electric generating capacity;
- (d) The proposed and current related or supporting facilities and site boundary;
- (e) The proposed and current heat rate; and
- (f) Verification that the facility had operable electric generating equipment on August 2, 1993.

(3) In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, the person shall provide the following information in support of the request:

- (a) The information described in subsections (2)(a) through (f) of this rule;
- (b) Identification and discussion of the portion of the short-term plan of action of an energy resource plan that calls for the facility expansion; and
- (c) The Public Utility Commission of Oregon Order acknowledging the plan described in subsection (b).

(4) In a request for an exemption under OAR 345-015-0350(2) for construction or expansion of an interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the

continuing regulation of the Federal Energy Regulatory Commission, the person shall provide a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission for the proposed pipeline or associated underground natural gas storage facility, or other comparable evidence that the proposed pipeline or storage facility is within that agency's jurisdiction.

(5) In a request for an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), the person shall provide the following information in support of the request:

(a) Detailed information on proposed fuel use, power plant design, steam or heat output to the thermal host and proposed electric output;

(b) Detailed information on the current facility, including fuel to be displaced, current steam or heat use and current electric output if any;

(c) A detailed engineering assessment of fuel efficiency, showing that the proposed facility is a high efficiency cogeneration facility under the definition in OAR 345-001-0010. The person shall provide calculations in sufficient detail to facilitate independent review by the Department. The person shall state the underlying assumptions necessary to support the calculation including assumptions concerning the energy content of fuel displaced; and

(d) A description of the facility, including the thermal host, the proposed energy facility, the location by address as well as township and range and any associated linear equipment needed.

(6) In a request for an exemption of a small generating plant or expansion of a small generating plant, as defined in OAR 345-001-0210, the person shall include the following information:

(a) A description of the proposed small generating plant or proposed expansion to a small generating plant and a description of related or supporting facilities;

(b) Identification of the person or persons who will construct, operate and own the plant;

(c) An analysis of the factors described in OAR 345-001-0210(3); and

(d) Any other information the Department of Energy determines the Council needs to make the finding described in OAR 345-001-0210(3).

(7) In a request for an exemption under OAR 345-015-0350(5) for a plant that converts biomass to a liquid fuel, the person shall include the following information:

(a) A description of the proposed plant, including, but not limited to, the location, acreage and annual production capacity of the proposed plant and the type of liquid fuel the plant will produce;

(b) A description of the feedstock verifying that the facility will use only the types of feedstock described in ORS 469.320(2)(f);

(c) The identity of the affected local government that has given land use approval under the applicable acknowledged comprehensive plan and land use

regulations and copies of all land use approval documents the local government has issued;

(d) The statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility and evidence to support a finding by the Council that the facility complies with those goals and rules;

(e) A description of the expected electrical loads and fuel needs of the facility and a statement verifying that the facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and

(f) A statement verifying that the plant will produce synthetic fuel, at least 90 percent of which will be used in an industrial or refueling facility located within one mile of the facility or will be transported from the facility by rail or barge and evidence that adequate rail and barge facilities are available to serve the proposed site.

(8) In a request for an exemption under OAR 345-015-0350(7) for a standby generation facility, the person shall include the following information:

(a) A description of the proposed standby generation facility.

(b) Identification of the person or persons who will construct, operate and own the plant.

(c) Verification that the facility has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and that the facility complies with all statewide planning goals and applicable rules of the Land Conservation and Development Commission.

(d) Verification, as described in ORS 469.320(2), that the standby generators have been approved by the Department of Environmental Quality as having complied with all applicable air and water quality requirements.

(e) Verification, as described in ORS 469.320(2), that the standby generators are electrically incapable of being interconnected to the transmission grid.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

345-015-0370

Consideration of Request for Exemption

(1) Except as described in section (2), within 45 days after receipt of a request for exemption, the Department of Energy shall review the request for exemption for completeness and provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Department finds the submitted request for exemption is complete, the Department shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.

(2) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Council.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320, ORS 469.421, ORS 469.441

345-015-0380

Loss of Exemption

(1) In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a site certificate within 12 months of the loss.

(2) Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a) must submit an application for a site certificate.

(3) Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 or OAR 345-015-0310 if the average electric generating capacity of the energy facility is less than 100 megawatts.

(4) Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the requirements of ORS 469.320(2)(f).

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.320

Confidentiality and Inadmissibility of Mediation Communications

345-015-0500

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation;

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule; or

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a

confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 345-015-0500(7) and this agreement. This agreement relates to the following mediation:

- a) _____
(Identify the mediation to which this agreement applies)
- b) To the extent authorized by OAR 345-015-0500(7), mediation communications in this mediation are: (check one or more)
- ___ confidential and may not be disclosed to any other person
- ___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding
- ___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding
- c) _____
Name of Agency
- _____
Signature of Agency's authorized representative (when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)
- _____
Date
- d) _____
Name of party to the mediation
- _____
Signature of party's authorized representative
- _____
Date
- e) _____
Name of party to the mediation
- _____
Signature of party's authorized representative
- _____
Date

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a

subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(L) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the chair of the Council determines that disclosure of the communication is necessary to prevent or mitigate a

serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, ORS 36.228, ORS 36.230, ORS 36.232