

## Department of Energy

## § 590.311

in part, by the Assistant Secretary or presiding official.

### § 590.308 Admissions of facts.

(a) At any time prior to the end of a trial-type hearing, or, if there is no trial-type hearing, prior to the issuance of a final opinion and order under § 590.404, any party, the Assistant Secretary, or the presiding official may serve on any party a written request for admission of the truth of any matters at issue in the proceeding that relate to statements or opinions of fact or of the application of law to fact.

(b) A matter shall be considered admitted and conclusively established for the purposes of any proceeding in which a request for admission is served unless, within fifteen (15) days of such time limit established by the Assistant Secretary or presiding official, the party to whom the request is directed answers or objects to the request. Any answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the answering party states that, after reasonable inquiry, the answering party has been unable to obtain sufficient information to admit or deny. If an objection is made, the answering party shall state the reasons for the objection.

(c) If the Assistant Secretary or presiding official determines that an answer to a request for admission does not comply with the requirements of this section, the Assistant Secretary or presiding official may order either that the matter is admitted or that an amended answer be served.

(d) A copy of all requests for admission and answers thereto shall be filed with FE in accordance with § 590.103. Copies of any documents referenced in the request shall be served with the request unless they are known to be in the possession of the other parties.

(e) The Assistant Secretary or presiding official may limit the number of requests for admission of facts in order to expedite a proceeding through elimination of duplicative requests.

### § 590.309 Settlements.

The parties may conduct settlement negotiations. If settlement negotiations are conducted during a conference, at the request of one of the parties, the Assistant Secretary or presiding official may order that the discussions be off-the-record with no transcript of such settlement negotiations being prepared for inclusion in the official record of the proceeding. No offer of settlement, comment or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

### § 590.310 Opportunity for additional procedures.

Any party may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatories or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held. The motion shall describe what type of procedure is requested and include the information required by §§ 590.311, 590.312 and 590.313, as appropriate. Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Assistant Secretary for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final opinion and order. At any time during a proceeding, the Assistant Secretary or presiding official may on his or her own initiative determine to provide additional procedures.

[54 FR 53531, Dec. 29, 1989; 55 FR 14916, Apr. 19, 1990]

### § 590.311 Conferences.

(a) Upon motion by a party, a conference of the parties may be convened to adjust or settle the proceedings, set schedules, delineate issues, stipulate certain issues of fact or law, set procedures, and consider other relevant matters where it appears that a conference

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will materially advance the proceeding. The Assistant Secretary or presiding official may delineate the issues which are to be considered and may place appropriate limitations on the number of intervenors who may participate, if two or more intervenors have substantially like interests.

(b) A motion by a party for a conference shall include a specific showing why a conference will materially advance the proceeding.

(c) Conferences shall be recorded, unless otherwise ordered by the Assistant Secretary or presiding official, and the transcript shall be made a part of the official record of the proceeding and available to the public.

**§ 590.312 Oral presentations.**

(a) Any party may file a motion requesting an opportunity to make an oral presentation of views, arguments, including arguments of counsel, and data on any aspect of the proceeding. The motion shall identify the substantial question of fact, law or policy at issue and demonstrate that it is material and relevant to the merits of the proceeding. The party may submit material supporting the existence of substantial issues. The Assistant Secretary or presiding official ordinarily will grant a party's motion for an oral presentation, if the Assistant Secretary or presiding official determines that a substantial question of fact, law, or policy is at issue in the proceeding and illumination of that question will be aided materially by such an oral presentation.

(b) The Assistant Secretary or presiding official may require parties making oral presentations to file briefs or other documents prior to the oral presentation. The Assistant Secretary or presiding official also may delineate the issues that are to be considered at the oral presentation and place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(c) Oral presentations shall be conducted in an informal manner with the Assistant Secretary or the presiding official and other decisional employees presiding as a panel. The panel may question those parties making an oral

presentation. Cross-examination by the parties and other more formal procedures used in trial-type hearings will not be available in oral presentations. The oral presentation may be, but need not be, made by legal counsel.

(d) Oral presentations shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

**§ 590.313 Trial-type hearings.**

(a) Any party may file a motion for a trial-type hearing for the purpose of taking evidence on relevant and material issues of fact genuinely in dispute in the proceeding. The motion shall identify the factual issues in dispute and the evidence that will be presented. The party must demonstrate that the issues are genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. The Assistant Secretary or presiding official shall grant a party's motion for a trial-type hearing, if the Assistant Secretary or presiding official determines that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

(b) In trial-type hearings, the parties shall have the right to be represented by counsel, to request discovery, to present the direct and rebuttal testimony of witnesses, to cross-examine witnesses under oath, and to present documentary evidence.

(c) The Assistant Secretary or presiding official upon his or her own initiative or upon the motion of any party may consolidate any proceedings involving common questions of fact in whole or in part for a trial-type hearing. The Assistant Secretary or presiding official may also place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(d) The Assistant Secretary or presiding official may make such rulings for trial-type hearings, including delimitation of the issues and limitation of cross-examination of a witness, as are