

Department of Energy

§ 590.306

(e) Any party may file an answer to a motion to intervene, but such answer shall be made within fifteen (15) days after the motion to intervene was filed, unless a later date is permitted by the Assistant Secretary for good cause shown. Answers shall be in writing. Answers shall detail each material allegation of the motion to intervene being answered and state clearly and concisely the facts and legal authorities relied upon. Failure to answer is deemed a waiver of any objection to the intervention. This paragraph does not prevent the Assistant Secretary from ruling on a motion to intervene and issuing a final opinion and order in accordance with § 590.316 prior to the expiration of the fifteen (15) days in which a party has to answer a motion to intervene.

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely filed, then the movant becomes a party only after the motion to intervene is expressly granted.

(g) If no answer in opposition to a motion to intervene is filed within the period of time prescribed in paragraph (e) of this section, the motion to intervene shall be deemed to be granted, unless the Assistant Secretary denies the motion in whole or in part or otherwise limits the intervention prior to the expiration of the time allowed in paragraph (e) for filing an answer to the motion to intervene. Where the motion to intervene is deemed granted, the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene, and the admission of such intervenor to party status shall not be construed as recognition by FE that the intervenor might be aggrieved because of any order issued.

(h) In the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention.

§ 590.304 Protests and answers.

(a) Any person objecting to an application filed under § 590.201 of this part or to any action taken by FE under this part may file a protest. No par-

ticular form is required. The protest shall identify the person filing the protest, the application or action being objected to, and provide a concise statement of the reasons for the protest.

(b) The filing of a protest, without also filing a motion to intervene or a notice of intervention, shall not make the person filing the protest a party to the proceeding.

(c) A protest shall be made part of the official FE docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

(d) Protests shall be served on the applicant and all parties by the person filing the protest. If the person filing the protest is unable to provide service on any person identified as a party to the proceeding after a good faith effort, then FE shall effect service. However, when the parties are not known, service requirements may be met by serving a copy on the applicant and on FE as provided in § 590.107(b).

(e) Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown.

(f) Any party may file an answer to a protest but such answer must be filed within fifteen (15) days after the protest was filed, unless a later date is permitted by the Assistant Secretary for good cause shown.

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

§ 590.305 Informal discovery.

The parties to a proceeding may conduct discovery through use of procedures such as written interrogatories or production of documents. In response to a motion by a party, the Assistant Secretary or presiding official may determine the procedures to be utilized for discovery if the parties cannot agree on such procedures.

§ 590.306 Subpoenas.

(a) Subpoenas for the attendance of witnesses at a trial-type hearing or for

§ 590.307

the production of documentary evidence may be issued upon the initiative of the Assistant Secretary or presiding official, or upon written motion of a party or oral motion of a party during a conference, oral presentation, or trial-type hearing, if the Assistant Secretary or presiding official determines that the evidence sought is relevant and material.

(b) Motions for the issuance of a subpoena shall specify the relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification to the extent possible of the documents sought and the facts to be proven by them, the issues to which they relate, and why the information or evidence was not obtainable through discovery procedures agreed upon by the parties.

(c) If service of a subpoena is made by a United States Marshal or a Deputy United States Marshal, service shall be evidenced by their return. If made by another person, that person shall affirm that service has occurred and file an affidavit to that effect with the original subpoena. A witness who is subpoenaed shall be entitled to witness fees as provided in § 590.315(c).

§ 590.307 Depositions.

(a) Upon motion filed by a party, the Assistant Secretary or presiding official may authorize the taking of testimony of any witness by deposition. Unless otherwise directed in the authorization issued, a witness being deposed may be examined regarding any matter which is relevant to the issues involved in the pending proceeding.

(b) Parties authorized to take a deposition shall provide written notice to the witness and all other parties at least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the parties.

(c) The requesting motion and notice shall state the name and mailing address of the witness, delineate the subject matters on which the witness is expected to testify, state the reason why the deposition should be taken, indicate the time and place of the deposition, and provide the name and mailing

10 CFR Ch. II (1–1–11 Edition)

address of the person taking the deposition.

(d) A witness whose testimony is taken by deposition shall be sworn in or shall affirm concerning the matter about which the witness has been called to testify before any questions are asked or testimony given. A witness deposed shall be entitled to witness fees as provided in § 590.315(c).

(e) The moving party shall file the entire deposition with FE after it has been subscribed and certified. No portion of the deposition shall constitute a part of the record in the proceedings unless received in evidence, in whole or 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