

04 NCAC 08 .0404 DECLARATORY RULINGS

(a) Any person aggrieved by a statute administered by a rule of the Authority may request a declaratory ruling for the following reasons:

- (1) to determine the validity of a rule;
- (2) to determine the applicability to a given set of facts of a statute, rule or order administered by the agency; or
- (3) to resolve a conflict or inconsistency within the agency regarding interpretation of a law of rule adopted by the agency.

(b) All requests for declaratory rulings shall be written and mailed to: Administrator, North Carolina Rural Electrification Authority, 4321 Mail Service Center, Raleigh, North Carolina 27699-4321.

(c) All requests for a declaratory ruling must include the following information:

- (1) the name and address of petitioner;
- (2) the statute, rule or order to which the petition relates;
- (3) the concise statement of the manner in which petitioner is aggrieved by the statute, rule or order or its potential application to him or her;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing; and
- (5) the date.

(d) The Authority shall respond to a request for a declaratory ruling as follows:

- (1) within 30 days of receipt of the request for a declaratory ruling, the Authority shall make a written decision to grant or deny the request. If the Authority fails to make a written decision to grant or deny the request within 30 days, the failure shall be deemed a decision to deny the request.
- (2) If the Authority denies the request, the decision is immediately subject to judicial review in accordance with Article 4 of this Chapter.
- (3) If the Authority grants the request, the Authority shall issue a written ruling on the merits within 45 days of the decision to grant the request. A declaratory ruling is subject to judicial review in accordance with Article 4 of G.S. 150B.
- (4) If the Authority fails to issue a declaratory ruling within 45 days, the failure shall be deemed a denial on the merits and the person aggrieved may seek judicial review pursuant to Article 4 of G.S. 150B. Upon review of the Authority's failure to issue a declaratory ruling, the court shall not consider any basis for the denial that was not presented in writing to the person aggrieved.

(e) The Board shall refuse to issue a declaratory ruling under the following circumstances:

- (1) when the Board has already made a controlling decision on substantially similar facts in a contested case;
- (2) when the facts underlying the request for a ruling were specifically considered at the time of the adoption of the rule in question; or
- (3) when the subject matter of the request is involved in pending litigation in North Carolina.

*History Note: Authority G.S. 117-2(12); 150B-4;
Eff. February 1, 1976;
Amended Eff. March 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*