

#### **15A NCAC 05H .0402 DISPOSITION OF PETITION**

- (a) The Chair of the Commission shall make a determination on the completeness of the request for declaratory ruling based on Rule .0401 of this Section.
- (b) The Chair of the Commission shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.
- (c) Before deciding the merits of the request, and upon consideration of the complete request for a declaratory ruling, the Commission shall determine if additional information or presentation(s) are needed and if so:
- (1) request additional written submissions from the petitioner(s);
  - (2) request a written response from Division staff or any other person; and
  - (3) hear oral arguments from the petitioner(s), intervenors, and Division staff or their legal counsel.
- (d) The Commission shall decline to issue a declaratory ruling if it finds any of the following:
- (1) that there has been a similar determination in a previous contested case or declaratory ruling;
  - (2) that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
  - (3) that no genuine controversy exists as to the application of a statute, order, or rule to the specific factual situation presented; or
  - (4) that the factual situation presented as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.
- (e) The Commission shall keep a record of each request for declaratory ruling, which shall include the following items:
- (1) the request for a ruling;
  - (2) any written submission by a party;
  - (3) the facts on which the ruling was based;
  - (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
  - (5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Commission in making its decision; and
  - (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the reasons therefore.
- (f) The Commission shall notify the petitioner in writing of the Commission's decision on the request for declaratory ruling, including the basis for the Commission's decision.
- (g) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
  - (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule that is the subject of the declaratory ruling to be irreconcilable with the declaratory ruling; or
  - (3) any court sets aside the declaratory ruling in litigation between the Commission or the Department and the party requesting the ruling.
- (h) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The request shall be made to the Chair of the Commission within five days of receipt of notice of the request for a declaratory ruling.
- (i) Upon written request, the petitioner(s), intervenors, and the Division each shall be allowed to present oral arguments to the Commission. No party shall offer testimony or conduct cross-examination before the Commission.
- (j) The petitioner may agree to allow the Commission to issue a written ruling to grant or deny consideration of the request beyond 30 days of receipt of the request and may agree to allow the Commission to issue a written ruling on the merits of the request beyond the 45 days allowed by G.S. 150B-4.
- (k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S. 150B-4(a1).

*History Note:* Authority G.S. 113-391(a)(14); 113-391(a4); 150B-4;  
Eff. March 17, 2015.