

835-RICR-10-00-1

## TITLE 835 – NARRAGANSETT BAY COMMISSION

### CHAPTER 10 – GENERAL ADMINISTRATION

#### SUBCHAPTER 00 - N/A

#### PART 1 – Public Hearings

### 1.1 Purpose

To establish a defined set of procedures for the conduct of public hearings for the Narragansett Bay Commission (NBC).

### 1.2 Authority

This regulation is promulgated pursuant to the authority granted in R.I. Gen. Laws § 42-35-2(a)(4).

### 1.3 Definitions

- A. "Commission" means the Narragansett Bay Commission or, when the context permits, its individual members, committees, its staff, agents or employees.
- B. "Commission office" means the offices of the Commission, One Service Road, Providence, Rhode Island or any such address as may from time to time be the location of the principal office of the Commission.
- C. "Contested cases" means a proceeding in which the Commission under its enabling legislation is required to determine the legal rights, duties or privileges of a party to said proceeding after an opportunity for a hearing. Pursuant to R.I. Gen. Laws § 39-1-1 *et seq.*, promulgation of sewer user fees by the Commission is subject to approval by the Public Utilities Commission.
  - 1. When the Commission is authorized to determine the legal rights, duties or privileges of parties after an opportunity for a hearing in this definition, any such proceeding before the Commission shall be considered a contested case when formal written objection and/or request for hearing is received by the Commission from any interested party. Further, any such proceeding before the Commission shall be considered a contested case upon the request for hearing by any member of the Commission.

- D. "Parties" means a person, agency or organization is a party to a proceeding before the Commission if:
1. he, she or it is entitled to the status of a party under Rhode Island Administrative Procedures Act (APA), R.I. Gen. Laws § 42-35-1, or any other provision of law; or
  2. upon application for leave to intervene in a matter which is considered a contested case by the APA or by the Commission, provided that said intervenor is allowed intervention on the following grounds:
    - a. such applicant is entitled by law to the status of a party;
    - b. such applicant could have been a complainant in such proceeding; or
    - c. such applicant has a complaint or defense that has a question of law or fact in common with the main proceeding, provided that an application by an applicant described in §§ 1.3(D)(2)(a) or (b) of this Part shall be subject to the discretion of the Commission.
- E. "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.
- F. "Rule" shall have the same meaning as set forth in R.I. Gen. Laws § 42-35-1.

#### **1.4 Notice of Contested Cases**

- A. Notice of public hearings considered contested cases under these regulations shall be provided as set forth in R.I. Gen. Laws § 42-35-1 *et seq.* or as otherwise provided by law.
- B. All parties shall be afforded an opportunity for hearing after reasonable notice. Such notice in cases arising under the Commission's rules and regulations governing sewer use shall be in accordance with § 20-00-1.10(E) of this Title. In all other cases, notice shall be as follows:
1. Notice shall include:
    - a. a statement of the time, place and nature of the hearing;
    - b. a statement of the legal authority and jurisdiction under which the hearing is held;

- c. a reference to the particular sections of statutes and rules involved; a short and plain statement of the matters asserted.
2. If the Commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and a detailed statement shall be furnished thereafter.

## **1.5 Hearing Procedures**

### **A. Hearings, Record and Disposition:**

1. In the event a matter pending before the Commission becomes a contested case as defined herein, the Commission shall then schedule a public hearing before a duly authorized and appointed hearing committee or hearing officer who is not involved in the enforcement action.
2. The record in a contested case shall include: all pleadings, motions, intermediate rulings; evidence received or considered; a statement of matters officially noticed; questions and offers of proof and thereon; proposed findings and exceptions; any decision, opinion or report by the officer or officers presiding at the hearing; all state memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.
3. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
4. The Executive Director can appoint a hearing officer to hear any case arising under these rules and regulations, as well as any other contested cases, when authorized to do so by the Commission. A hearing officer may hear any contested case arising under the Commission's rules and regulations governing sewer use, in accordance with § 20-00-1.10 of this Title.

### **B. Hearings**

1. Hearings required or permitted shall be conducted in accordance with R.I. Gen. Laws § 42-35-1 *et seq.*, and appropriate rules of law and all those rules and regulations of the Commission. Hearings regarding matters arising under R.I. Gen. Laws § 46-25-27 or otherwise arising under the Commission's rules and regulations governing sewer use shall be conducted by a hearing officer appointed in accordance with those rules. All other hearings, including those under the Commission's rules and regulations governing sewer use, may be before a duly appointed hearing

officer or hearing committee, as designated by the Commission. Where a hearing committee is duly appointed, the Executive Director shall appoint one of the committee members to be hearing chairman and to act as presiding hearing officer over said proceedings. All cases other than those arising under the Commission's rules and regulations governing sewer use, shall be conducted as described in §§ 1.5(B)(2) through (5) of this Part.

2. In the case of hearings before a duly appointed hearing committee, the full hearing shall be before such committee. A record shall be kept as provided herein. The committee shall then report its recommendations to the full Commission. The record shall be available to the full Commission and all parties of record. After the committee recommendation is formally submitted to the full Commission, parties may request to be heard before the full Commission. Said requests shall be in writing at least seven (7) days prior to the full Commission meeting, setting forth the reasons why the interested party feels they should be heard before the Commission and a brief description of the type of evidence and/or matters to be covered by the interested party.
3. Upon hearing all of the facts and reviewing the record in its entirety, the Commission shall render its decision in accordance with R.I. Gen. Laws § 42-35-1 *et seq.*
4. In any contested case, all parties shall be served with such notice as may be provided for by law, or in the absence of such provision, as may be ordered by the Commission.
5. In the event formal withdrawal of pending written objection(s) to a contested matter is received and/or requested by the objector(s) and/or interested party or representative, it shall be within the sole discretion of the Commission to withdraw the matter of contested case.

#### C. Pleadings

1. Forms. All pleadings (including complaints, answers, motions, petitions) shall be on white paper 8 1/2" X 11" in size.
2. Filing. Whenever a pleading or other document or paper is to be filed with the Commission, it shall be filed in the original.
3. Pleadings. Any person filing a pleading, complaint or other documents shall adhere to the following form for such purpose:

- a. At the top of the page shall appear the wording "Before the Narragansett Bay Commission." On the left side of the page below the foregoing shall be set out: "In the matter of (name of applicant)." Opposite the foregoing shall appear the type of pleading offered or other properly labeled title.
- b. The body of the pleading or other document shall be set out in numbered paragraphs that:
  - (1) identify the parties by name and address; and
  - (2) concisely state the facts that form the basis for the pleading or documentation.
- c. All pleadings shall be in writing.
- d. The hearing officer, hearing committee or the entire Commission as appropriate shall have the authority to waive the technical format for pleadings as set forth in this section for good cause shown, provided the rights of all parties to said proceedings are not abridged by said waiver.

D. Consolidation; Separate Hearings

- 1. When matters involving a common question of law or fact are pending before the Commission, hearing committee or hearing officer (hereinafter "hearing body"), such hearing body may order a joint hearing on any or all matters at issue in the proceedings; it may order all the proceedings consolidated; and make such orders concerning proceedings therein as may tend to avoid unnecessary delay.
- 2. The hearing body, in furtherance of convenience or to avoid prejudice, may order a separate hearing of any matters or allegation against any person or of any separate issue.

E. Pre-Hearing Conference Rule

- 1. In any proceeding the hearing body, upon its own motion or upon the motion of one of the parties or their qualified representatives, may in its discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:
  - a. the simplification of the issues;
  - b. the necessity of amendments to the pleadings;

- c. the possibility of obtaining stipulations, admissions of facts and documents;
  - d. the limitation of the number of expert witnesses; and
  - e. such other matters as may aid in the disposition of the proceedings.
2. The hearing body shall make an order or statement that recites the action taken at the conference, the amendments allowed to the pleadings or application and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, limiting the issues for hearing to those not disposed of by admissions or agreements; and such order or proceeding unless modified for good cause by subsequent order.

F. Submission of Documentary Evidence in Advance

1. When practicable, the hearing body may require:
  - a. That all documentary evidence, which is to be offered during taking of evidence, be submitted to the hearing body and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence.
  - b. That documentary evidence not submitted in advance, as may be required by § 1.5(F)(1)(a) of this Part, may not be received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner.
  - c. That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless objection thereto is filed prior to or at the time of the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such objection.

G. Excerpts from Documentary Evidence

1. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing body and to the other parties. Only the excerpts so prepared and submitted shall be received in the record. However, the whole and the original

document shall be made available for examination and for use by all parties to the proceeding.

#### H. Continuances

1. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts required such continuances come to his or her knowledge, notify the hearing committee or the entire Commission in the event there is no hearing committee of said desire stating in detail the reasons why such continuance is necessary. The hearing body in passing upon a request for continuance shall consider whether such request was promptly and timely made. For good cause shown, the hearing body may grant such a continuance and may at any time order a continuance upon its own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the Commission may in its discretion continue the hearing or presentation of arguments. Such oral notice shall constitute final notice of such continued hearing.

#### I. Rules of Evidence - Official Notice

1. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior court of this State shall be followed; but, when necessary to ascertain facts not reasonably susceptible of proof under the rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is a type commonly relied upon by affairs. The hearing body shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, where a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.
2. Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Said documentary evidence must be received in accordance with the procedures of the Commission as set forth in §§ 1.5(F) and (G) of this Part.
3. A party may conduct cross-examinations required for a full and true disclosure of the facts.
4. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within this

agency's specialized knowledge; but, the parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

5. Subject to the provisions of law and to the other provisions of these rules, all relevant evidence is admissible that, in the opinion of the hearing body, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.
6. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The hearing body may in its discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

J. Re-Opening of Hearing

1. At any time after a hearing has been closed, but prior to filing of any decision, the hearing body may, on its own initiative or upon motion by any party, reopen the proceeding to receive further evidence and/or to hear further argument.

K. Testimony

1. All testimony given at all public hearings shall be under oath and transcribed.

L. Transcripts

1. Transcripts of testimony shall be required at all hearings of the Commission. Transcripts of testimony shall be available at the Commission's office for examination by any party to the proceeding until expiration of the time during which any appeal or petition for judicial review authorized by law may be filed. Thereafter, such a transcript shall be available for examination by any person upon written request to the Commission. If any party files proceedings for judicial review, the Commission shall, upon request by any party, supply to such party a copy or copies of the transcripts of the proceedings before it at such reasonable charge as the Commission shall establish.

M. Proposed Findings of Fact



1. Any party may, before the conclusion of a hearing or within such later time as may be fixed by the hearing body, submit to the hearing body proposed findings of facts, copies thereof to be served upon each party to the proceeding. Findings of fact of this hearing body shall be based exclusively on the evidence and matters officially noted.

## **1.6 Practice Before the Commission**

- A. Any person may appear before any hearing body of the Commission on his or her own behalf. Any person or party who has an interest in any matter before the Commission may appoint an attorney to represent him or her before the hearing body.
- B. All persons appearing in proceedings before a Commission hearing body in representative capacity shall conform to the standards of conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the hearing body may decline to permit such person to appear in a representative capacity in any such proceeding.

## **1.7 Preliminary Investigations**

- A. Whenever authorized by law, the Commission may conduct preliminary investigations into matters under its jurisdiction. Upon the completion of such investigations:
  1. if the Commission shall make a determination that a violation probably has not been or is not being engaged in, the Commission shall proceed no further;
  2. if the Commission shall make a determination that a violation probably has been or is being engaged in, the Commission shall proceed as provided by law.
- B. Investigations of possible violations arising under the Commission's rules and regulations governing sewer use are more particularly described in § 20-00-1.7 of this Title.

## **1.8 Final Decision of the Hearing Body**

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party, in accordance with agency

rules, submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision shall be delivered or mailed forthwith to each party and to his or her attorney of record.

## **1.9 Service of Process**

- A. Notice will be deemed properly served upon a person if a copy thereof is served upon him or her personally, sent by registered mail, return receipt requested, or such person is served with notice by any other method of service now or hereafter authorized in a civil action under the laws of this State.
- B. Any hearing officer duly appointed hereunder shall have the right to administer oaths and issue subpoenas to compel the appearance of witnesses and/or the production of any books, records, or other documents as provided under R.I. Gen. Laws § 46-25-28.
- C. Filing with the Commission. Papers required to be filed with the Commission shall be deemed filed upon actual receipt by the Commission at the Commission's office.

## **1.10 Judicial Review of Contested Cases**

Any person who has exhausted all administrative remedies available to him or her within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under R.I. Gen. Laws § 42-35-15.

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PART 1 - Rules and Regulations for Public Hearings (835-RICR-10-00-1)

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