

**RULES AND REGULATIONS**  
**FOR PUBLIC HEARINGS**  
**FOR THE NARRAGANSETT BAY COMMISSION**

**1.0    DEFINITIONS**

**1.1    Contested Cases:** 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 RIGL §39-1-1 et seq., promulgation of sewer user fees by the Commission is subject to approval by the Public Utilities Commission.

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.

**1.2    Parties:** 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 §42-35-1 of the General Laws 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 Administrative Procedures Act 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 which has a question of law or fact in common with the main proceeding, provided that an application by an applicant described in (a) or (b) shall be subject to the discretion of the Commission.

**1.3    Person:** any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

**1.4    Rule:** each agency statement of general applicability that implements, interprets, or prescribes law or policy that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include (1) statements concerning only the internal management of any agency and not affecting private rule issued pursuant to §42-35-8 and these rules and regulations, or (3) intra-agency memoranda.

**1.5    Commission:** the Narragansett Bay Commission or, when the context permits, its individual members, committees, its staff, agents or employees.

**1.6    Commission Office:** 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.

## **2.0    NOTICE OF OTHER CONTESTED CASES NOT FOR THE PURPOSE OF HEARINGS**

Notice of public hearings considered contested cases under these regulations shall be provided as set forth in Title 42, Chapter 35 of the General Laws of the State of Rhode Island or as otherwise provided by law.

**2.1** 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, amended on August 19, 1985, and as may be thereafter be amended, shall be in accordance with Article 10, Paragraph 10.5 of those regulations. In all other cases, notice shall be as follows: Notice shall include a statement of the time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is held; a reference to the particular sections of statutes and rules involved; a short and plain statement of the matters asserted. 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.

## **3.0 HEARING PROCEDURES**

### **3.1    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 Article 10 of those regulations.

### **3.2 Hearings**

- (1) Hearings required or permitted shall be conducted in accordance with Title 42, Chapter 35 of the General Laws of Rhode Island, and appropriate rules of law and all those rules and regulations of the Commission. Hearings regarding matters arising under §46-25/6 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 Chairman of the Commission shall appoint 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 Section 4.2, Paragraphs 205 of these rules and regulations.
- (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 Chapter 42-35 of the General Laws.
- (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.

### **3.3 Pleadings**

- (1) Forms. All pleadings (including complaints, answers, motions, petitions) shall be on white paper 8 ½" 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 original plus seventeen (17) copies, except for cases arising under the Commission's rules and regulations governing sewer use, which shall be filed in the original plus seven (7) copies.
- (3) Pleadings. Any person filing a pleading, complaint or other documents shall adhere to the following form for such purpose:

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.

The body of the pleading or other document shall be set out in numbered paragraphs which (1) identify the parties by name and address; and (2) concisely state the facts which form the basis for the pleading or documentation.

All pleadings shall be in writing.

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.

### **3.4 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.

### **3.5 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 which 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.

### **3.6 Submission of Documentary Evidence in Advance**

When practicable, the hearing body may require:

- (1) 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.

- (2) That documentary evidence not submitted in advance, as may be required by subdivision (1), 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.
- (3) 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.

### **3.7 Excerpts from Documentary Evidence**

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.

### **3.8 Continuances**

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.

### **3.9 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 Paragraphs 4.6 and 4.7 of these rules.
- (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 which 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.

### **3.10 Re-Opening of Hearing**

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.

### **3.11 Testimony**

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

### **3.12 Transcripts**

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.

### **3.13 Proposed Findings of Fact**

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 page to the proceeding. Findings of fact of this hearing body shall be based exclusively on the evidence and matters officially noted.

## **4.0 PRACTICE BEFORE THE COMMISSION**

**4.1** Any person may appear before any hearing body of the Commission in 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.

**4.2** 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.

## **5.0 PRELIMINARY INVESTIGATIONS**

**5.1** 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.



- (3) Investigations of possible violations arising under the Commission's rules and regulations governing sewer use are more particularly described in Article 7 of those regulations.

## **6.0 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.

## **7.0 SERVICE OF PROCESS**

**7.1** 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.

**7.2** 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.G.L. §46-25-28.

**7.3** **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.

## **8.0 DECLARATORY RULINGS**

As prescribed by R.I.G.L. §42-35-8, as amended, any interested person may petition the Commission for a declaratory ruling. Within a reasonable time, and at the discretion of the Commission, the Commission shall:

- (1) issue a binding declaratory rule; or
- (2) issue a non-binding declaratory ruling; or
- (3) notify the petitioner and interested parties of record that no declaratory ruling is to be issued.

## **9.0 JUDICIAL REVIEW OF CONTESTED CASES**

**9.1** Any person who has exhausted all administrative remedies available to him within the agency, and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization or for the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. Any preliminary, procedural or intermediate agency act or ruling is immediately reviewable in any case in which review of the final agency decision would not provide an adequate remedy.

**9.2** Proceedings for review are instituted by filing a complaint in the Superior Court of the appropriate county within thirty (30) days after mailing notice of a final decision of the agency or, if a rehearing is requested, within thirty (30) days after the decision thereon. Copies of the complaint shall be served upon the agency and all other parties of the record in the manner prescribed by applicable procedural rules.

**9.3** The filing of the complaint does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

**9.4** Within thirty (30) days after the service of the complaint, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened.

## **10.0 ADOPTION OF REGULATIONS**

**10.1** Adoption of regulations and rule making shall be in accordance with the Administrative Procedures Act of the State of Rhode Island as set forth in Title 42, Chapter 35 of the General Laws of the State of Rhode Island.

**10.2** Prior to the adoption, amendment, or repeal of any rule, the Commission shall:

- (1) give at least twenty (20) days notice of its intended action. The notice shall include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the Commission for advance notice of its rulemaking proceedings, and published in a newspaper or newspapers having aggregate general circulation throughout the State, provided however, that if said action is limited in its applicability to a particular area, then said publication may be in a newspaper having general circulation in said area.

- (2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearings must be granted if requested by twenty-five (25) members. The Commission shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Commission, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

**10.3** In the event oral hearing is granted by the Commission pursuant to Section 11.2, the Commission or a duly appointed hearing committee shall afford all interested persons a reasonable opportunity to submit data, views or arguments. The Commission or the hearing committee shall not comment upon any data, views or arguments so submitted at said public hearing, but shall thereafter review these submissions as set forth above.

**10.4** If the Commission finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon less than twenty (20) days notice, and states in writing prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, adopt an emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding ninety (90) days.

#### **10.5 Filing and Taking Effect of Rules**

- (1) The Commission shall file forthwith in the office of the Secretary of State a certified copy of each rule adopted by it. The Secretary of State shall keep a permanent register of the rules open to public inspection.
- (2) Each rule hereafter adopted is effective twenty (20) days after filing, except that:
  - (a) if a later date is required by statute or specified in the rule, the later date is the effective date;
- (3) subject to applicable constitutional or statutory provisions, an emergency rule may become effective immediately upon filing with the Secretary of State, or at a stated date less than twenty (20) days thereafter, if the Commission finds that this effective date is necessary because of imminent perils to the public health, safety or welfare. The Commission's findings and a brief statement of the reasons therefor shall be filed with the rule in the office of the Secretary of State. The Commission shall take

appropriate measures to make emergency rules known to the persons who may be affected by them.

#### **10.6 Petition for Adoption of Rules**

Any interested person may petition the Commission requesting the promulgation, amendment or repeal of any rule. The Commission shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Upon submission of a petition, the Commission shall within thirty (30) days either deny the petition in writing (stating the reasons for the denials) or initiate rule-making proceedings.

#### **10.7 Procedures for Hearings on Orders Under 46-25-31 R.I.G.L.**

The provisions contained herein, unless otherwise provided, shall be applicable to all hearings and decisions under Title 46, Chapter 25, Section 31 of the General Laws of the State of Rhode Island.

**ADOPTED ON:     September 14, 1981**

**AMENDED ON:     August 19, 1985**

**AMENDED ON:     August 15, 1988**