RULES
OF
THE HEALTH SERVICES AND DEVELOPMENT AGENCY

CHAPTER 0720-13
RULES OF PROCEDURE FOR HEARING CONTESTED CASES

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0720-13-.01 GENERAL PROCEDURES FOR CONTESTED CASES.

(1) Except as otherwise provided herein, all contested cases before the Agency will be conducted in accordance with T.C.A. §§ 4-5-301 et seq., 68-11-1610, with these Rules, and with the Rules of the Secretary of State Chapter 1360-04-01.

(2) Eligibility to appeal. Any person with legal standing, and who meets the requirements of T.C.A. § 68-11-1610 may petition the Agency for a contested case hearing to appeal the grant or denial of a certificate of need.

(3) Filing of petitions. Petitions for contested case hearings must be filed with the Agency pursuant to Rule 0720-08-.01 of the Health Services and Development Agency, and must be filed with the Agency within fifteen (15) days of the date of the Agency's meeting at which the action which is the subject of the petition took place. Simultaneous with filing, the petitioner shall serve copies of the petition on all other parties in the matter. The petitioner shall have the burden of proving, by a preponderance of the evidence, that a certificate of need should be granted or should be denied.

(4) Intervention. Any person with legal standing and who meets the requirements of T.C.A. § 4-5-310 may file a petition for intervention in a contested case.

Authority: *T.C.A. §§ 4-5-202, 4-5-223, 4-5-310, 4-5-314, 68-11-1605, and 68-11-1610.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005. Emergency rules filed September 28, 2021; effective through March 27, 2022. Amendments filed December 27, 2021; effective March 27, 2022.*

0720-13-.02 CONTESTED CASES BEFORE ADMINISTRATIVE JUDGES SITTING ALONE.

(1) With the exception of declaratory orders referenced below, all petitions for a contested case hearing shall routinely be referred to the Administrative Procedures Division, Department of State for hearing by an Administrative Judge sitting alone on behalf of the Agency. The Agency retains the right, however, to hear any particular contested case on its own behalf.

(2) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the petitioner and other parties with the exception of the Agency shall bear the cost for all court reporters and transcriptions, and charges billed to the Agency for the Administrative Judge's work/time; in a contested case where the petition is dismissed, whether voluntarily or involuntarily, the petitioning party or parties shall be considered a "losing party" under T.C.A. § 68-11-1610. The original transcript and one copy of the transcript for each member of the Agency shall be provided to the Agency by the other parties, if the case is to be reviewed by the full Agency.

(3) Unless agreed otherwise by the parties, at the beginning of all contested case hearings, Agency counsel shall provide a summary of what the case is about, description of the project,

(Rule 0720-13-.02, continued)

and introduce into evidence the application, the reviewing agency's report (for applications considered by the Agency prior to October 1, 2021) or staff report (for applications submitted on or after October 1, 2021), the staff summary, and the minutes of the Agency reflecting the action that was taken before the Agency. In no event shall this provision mean that the Agency is a neutral party in contested cases, or that its counsel represents the interests of any party other than the Agency.

(4) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

Authority: *T.C.A. §§ 4-5-202, 4-5-223, 4-5-310, 4-5-314, 68-11-1605, 68-11-1609, and 68-11-1610; 2016 Tenn. Pub. Acts Ch. 1043; and 2021 Tenn. Pub. Acts Ch. 557.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005. Emergency rule filed July 1, 2016; effective through December 28, 2016. The emergency rule expired on December 29, 2016 and reverted to its previous status. Amendments filed November 15, 2016; effective February 13, 2017. Emergency rules filed September 28, 2021; effective through March 27, 2022. Amendments filed December 27, 2021; effective March 27, 2022.*

0720-13-.03 AGENCY REVIEW OF INITIAL ORDERS.

(1) An Initial Order issued by an Administrative Judge, sitting alone, may be reviewed by the Agency pursuant to T.C.A §§ 4-5-301, et seq., these Rules, and the Rules of the Secretary of State Chapter 1360-04-01. Such review shall be limited to legal conclusions contained in the Initial Order. The Agency may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Judge, in which event the Initial Order issued by an Administrative Judge shall become a Final Order as provided by the Administrative Procedures Act.

(2) In such a review proceeding, the Agency's review is strictly limited to the record which was developed before the Administrative Judge. No additional evidence is to be received or considered by the Agency.

(3) Such a review proceeding is in the nature of appellate review. Each party will be given the opportunity to file a brief which should specify what action the party maintains the Agency should take on the Initial Order. The Agency may place reasonable page limitations on such briefs.

(4) In such a review proceeding, each party will normally be limited to oral argument of thirty (30) minutes in length, including rebuttal.

(5) At the conclusion of the review proceeding the Agency may decide that the Initial Order should be adopted in its entirety, or it may make such modifications to the Initial Order as it deems appropriate.

(a) Alternatively, the Agency may take the matter under advisement, and subsequently reconvene, after reasonable notice to the parties, to hold its public deliberations and to render a Final Order.

Authority: *T.C.A. §§ 4-5-202, 4-5-223, 4-5-310, 4-5-314, 68-11-1605, and 68-11-1610; and 2021 Tenn. Pub. Acts Ch. 557.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005. Emergency rules filed September 28, 2021; effective through March 27, 2022. Amendments filed December 27, 2021; effective March 27, 2022.*

0720-13-.04 DECLARATORY ORDERS.

(1) Any affected person may petition the Agency for a declaratory order, as provided in T.C.A. § 4-5-223, as to the interpretation, validity, or applicability of a statute or rule within the primary jurisdiction of the Agency. Such petition shall be filed with the Agency in triplicate, and must specifically identify the statute or rule at issue, and the nature of the ruling sought.

(2) A petition for declaratory order is viewed as primarily involving questions of law and statutory or rule interpretation. The parties should strive to limit the amount of evidence presented, and to stipulate the facts to the extent possible.

(3) In the event the petition for declaratory order arises out of the Agency's action on a specific project or issue, the petition for declaratory order shall be filed within thirty (30) days of the date of the Agency meeting at which the action at issue was taken.

(4) No person may file a petition for declaratory order as to any action or issue which is the subject of a pending or completed contested case proceeding involving the same person.

Authority: *T.C.A. §§ 4-5-202, 4-5-223, 4-5-310, 4-5-314, 68-11-1605, and 68-11-1610.* ***Administrative History:*** *Original rule filed August 31, 2005; effective November 14, 2005.*