

**15A NCAC 02I .0603 DISPOSITION OF REQUEST**

- (a) The Chair of the Commission shall make a determination on the completeness of the request for declaratory ruling based on the requirements of this Section.
- (b) Before the Commission decides the merits of the request, the Chair of the Commission may:
- (1) request additional written submissions from the petitioner(s);
  - (2) request a written response from the Department or any other person;
  - (3) allow the petitioner to file a reply to the response submitted in Subparagraph (2) of this Paragraph;  
or
  - (4) request oral arguments from the petitioner(s) and Department staff or their legal counsel.
- (c) The Commission shall make a decision to grant or deny the request according to G.S. 150B-4.
- (d) The Commission shall deny the request upon making any of the following findings:
- (1) the request is not complete;
  - (2) the petitioner is not a person aggrieved;
  - (3) there has been a similar determination in a previous contested case or declaratory ruling;
  - (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
  - (5) no genuine controversy exists as to the application of a statute, order, or rule to the factual situation presented;
  - (6) the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
  - (7) the information provided by the petitioner, the Department, or any interveners does not support a determination that a rule is invalid; or
  - (8) there is no material conflict or inconsistency within the Commission or Department regarding the law or rule identified by the petitioner.
- (e) The Commission shall keep a record of each declaratory ruling, which shall include the following items:
- (1) the request for a ruling;
  - (2) any written submission by a party;
  - (3) the given state of facts on which the ruling was based;
  - (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
  - (5) any other matter considered by the Commission in making the decision; and
  - (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.
- (f) 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- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;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 which is the subject of the declaratory ruling in a manner that is irreconcilable with the declaratory ruling;
  - (3) the Commission changes the declaratory ruling prospectively; or,
  - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department and the party requesting the ruling.

*History Note: Authority G.S. 143B-282; 150B-4;  
Eff. August 1, 2004;  
Readopted Eff. February 1, 2021.*