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Sequence Number: 10-09-14
 Rule ID(s): 5015
 File Date: 10/12/14
 Effective Date: 1/2/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

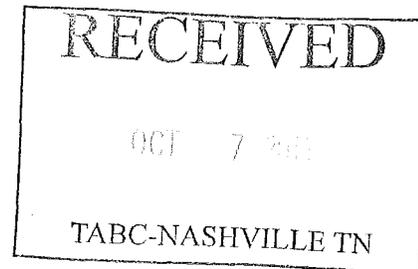
Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	E. Keith Bell
Address:	Davy Crockett Tower; 500 James Robertson Parkway, 3rd Floor; Nashville, TN 37243
Phone:	615.741.1602
Email:	Keith.Bell@TN.GOV

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0100-04	Rules of Procedure for Hearing Contested Cases
Rule Number	Rule Title
0100-04-.01	General Procedures for Contested Cases
0100-04-.02	Contested Cases Before Administrative Law Judges of TABC Hearing Officers Sitting Alone
0100-04-.03	Commission Review of Initial Orders
0100-04-.04	Declaratory Orders



Substance of Rules

Chapter 0100-04 Rules of procedure for hearing contested cases, is amended by deleting the chapter in its entirety and by substituting instead the following language:

0100-04-.01 GENERAL PROCEDURES FOR CONTESTED CASES.

- (1) Except as otherwise provided herein, all contested matters before the Commission will be conducted in accordance with T.C.A. §§ 4-5-301 et seq., applicable provisions of Title 57 of the Tennessee Code, 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 Title 57 of the Tennessee Code as a licensee/permittee may petition the Commission for a contested matter hearing to appeal an Initial Order of revocation, suspension or civil penalty imposed upon the licensee/permittee by an Administrative Law Judge or TABC Hearing Officer sitting alone. All other appeals and/or review of actions of the Commission shall be conducted pursuant to the applicable provisions of Title 57 of the Tennessee Code.

Authority: T.C.A. §§ 4-5-217, 4-5-219, 57-1-102

Administrative History: Original rule filed; effective

0100-04-.02 CONTESTED CASES BEFORE ADMINISTRATIVE LAW JUDGES OR TABC HEARING OFFICERS SITTING ALONE.

- (1) With the exception of declaratory orders referenced below, all petitions for a contested matter hearing shall be routinely referred to the Administrative Procedures Division, Department of State for hearing before an Administrative Law Judge sitting alone on behalf of the Commission. However, the Commission retains the right to hear any particular contested matter on its own behalf, or before a properly designated TABC Hearing Officer.
- (2) In all matters held in accordance with the contested matter provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3 of the Tennessee Code, and in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Commission, whether heard by an Administrative Law Judge or a properly designated TABC Hearing Officer sitting alone, or by the full Agency, the petitioner and other parties, with the exception of the Commission, shall bear the actual and reasonable costs associated with the contested matter including, but not limited to, Secretary of State Administrative Procedures Division, docketing, filing, judges and other costs, cost for all depositions, court reporters, transcriptions, costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and any other persons involved in the investigation, prosecution and hearing of the action. If an Initial Order of an Administrative Law Judge or properly designated TABC Hearing Officer is to be reviewed by the full Commission, whether such review is requested by the party/licensee/permittee or the TABC staff, the original transcript and one copy of the transcript for each member of the Commission shall be provided to the Commission by the other parties/licensees/permittees which cost shall be borne by said party/licensee/permittee and not by the Commission. Other costs of the proceeding, including the Administrative Law Judge's or TABC Hearing Officer's costs shall be assessed by the Commission against the other party/licensee/permittee in accordance with T.C.A. § 57-1-213.
- (3) Whenever it is necessary to determine the actual and reasonable costs associated with the contested matter, the TABC director, assistant director or staff attorney shall file a sworn affidavit with the Administrative Law Judge or TABC Hearing Officer setting forth an itemized statement of the services rendered, including, but not limited to, the costs associated with the Secretary of State Administrative Procedures Division for docketing, filing, judges and other costs; cost for all depositions, court reporters and transcriptions; costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and such other persons involved in the investigation, prosecution and hearing of the contested matter as well as the time rendered for each service. The TABC shall make a suggestion of the fee to be awarded along with such other statement(s) of other pertinent facts including but not limited to that required by Tenn. Sup. Ct. R. 8, RPC 1.5, applicable case law, and such other information as may be requested by the Administrative Law Judge or TABC Hearing Officer. The Administrative Law Judge or TABC Hearing Officer shall then award the actual and reasonable costs associated with the contested matter based on the then prevailing rate imposed by the Secretary of State Administrative Procedures Division and the actual costs for all

depositions, court reporters, transcriptions and such other persons, (including prosecutors, investigators, and expert witnesses) involved in the investigation, prosecution and hearing of the contested matter.

- (4) Unless otherwise agreed by the parties, at the beginning of all contested matter hearings, Commission counsel shall provide a summary of what the case is about, and introduce into evidence the application and/or Tennessee Alcoholic Beverage Commission license/permit. In no event shall this provision mean that the Commission is a neutral party in contested matters, or that its counsel represents the interests of any party other than the Tennessee Alcoholic Beverage Commission.
- (5) In all matters, whether heard by an Administrative Judge or properly designated TABC Hearing Officer sitting alone, or by the full Commission, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

Authority: T.C.A. §§ 4-5-202, 4-5-310, 4-5-314, 57-1-102, 57-1-213, 57-3-214, 57-4-201(a)(4)

Administrative History: Original rule filed; effective

0100-04-.03 COMMISSION REVIEW OF INITIAL ORDERS.

- (1) An Initial Order issued by an Administrative Law Judge or TABC Hearing Officer, sitting alone, may be reviewed by the Commission pursuant to T.C.A §§ 4-5-301, et seq., these Rules, and the Rules of the Secretary of State Chapter 1360-04-01. The Commission may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Law Judge or TABC Hearing Officer, in which event the Initial Order issued by an Administrative Law Judge or TABC Hearing Officer shall become a Final Order as provided by the Uniform Administrative Procedures Act.
- (2) In such a review proceeding, the Commission's review is strictly limited to the record which was developed before the Administrative Law Judge or TABC Hearing Officer. No additional evidence is to be received or considered by the Commission.
- (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 Commission should take on the Initial Order. The Commission may place reasonable page limitations on such briefs to be determined on a case by case basis depending on the number and complexity of the issues to be reviewed.
- (4) In such a review proceeding, each party will normally be limited to oral argument of fifteen (15) 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. Alternatively, the Agency may take the case 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, 4-5-217, 4-5-310, 4-5-314, 57-1-102

Administrative History: Original rule filed; effective .

0100-04-.04 DECLARATORY ORDERS.

- (1) Any affected person may petition the Commission 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 Commission. Such petition shall be filed with the Commission in duplicate, 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 fullest extent possible.
- (3) In the event the petition for declaratory order arises out of the Commission'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 Commission 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, 4-5-217, 4-5-223, 57-1-102

Administrative History:

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mary McDaniel					<i>Mary McDaniel</i>
John Jones					<i>John a Jones</i>
Bryan Kaegi					<i>Bryan Kaegi</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Alcoholic Beverage Commission on 07/22/14, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 1/04/2004~~3~~ 2013^{EKB}

Rulemaking Hearing(s) Conducted on: (add more dates). 02/27/2013

Date: 9-23-14

Signature: *S. Keith Bell*

Name of Officer: Keith Bell

Title of Officer: Director of Alcoholic Beverage Commission

Subscribed and sworn to before me on: 9/23/14

Notary Public Signature: *Joyce B. Cathey*

My commission expires on: 7/6/15



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
9-30-14
 Date

Department of State Use Only

Filed with the Department of State on: 10/11/14

Effective on: 1/12/15

Tre Hargett
 Tre Hargett
 Secretary of State

2014 OCT 14 PM 12:24
 SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no public comments on these rules.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Economic Impact Statement

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

Any small business licensed by the commission would be affected by the proposed rules.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of the proposed rules, except that 0100-04-.02, pursuant to T.C.A. § 57-1-213, may increase a small business's administrative costs through the assessment of costs to said small business in contested cases.

3. A statement of the probable effect on impacted small businesses and consumers:

The proposed rules were drafted to facilitate the hearing of contested cases, commission review of initial orders, and the petition for and issuance of declaratory orders and to provide clarity to all persons and entities licensed by the commission regarding such cases.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

As these proposed rules present no foreseeable costs to small businesses, except as provided by T.C.A. § 57-1-213, there is no alternative method to propose.

5. A comparison of the proposed rule with any federal or state counterparts:

The proposed rules are written pursuant to T.C.A. §§ 57-1-213, 4-5-223, 4-5-310, and 4-5-314. Except as otherwise specified in the proposed rules, the rules and regulations of the Tennessee Department of State regarding contested cases would apply to contested cases of the commission.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

An exemption of small businesses would create a disparate and unfair impact on the persons and entities licensed by the commission and would negatively impact the commission by increasing administrative burdens and costs.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Under previous rules regarding contested cases, the rules of the Secretary of State regarding contested cases applied. These rules add regulations that would apply specifically to contested cases regarding the commission, including regulations that provide for the assessment of costs by the commission when a civil penalty is assessed pursuant to T.C.A. § 57-4-213; that regulate the review of initial orders by the commission; and that regulate the petitioning of declaratory orders pursuant to T.C.A. § 4-5-223. Except as provided in such rules, the rules of the Secretary of State regarding contested cases would still apply to contested cases of the commission.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Proposed Rule 0100-04-02 was drafted pursuant to T.C.A. § 57-1-213 which authorizes the commission to assess costs in contested cases in which a civil penalty is imposed.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons or entities who may apply for, may receive or have received a license from the commission. The commission has not received any input, either for or against the proposed rules, from any affected person or entity.

- (D)** Identification of any opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule;

None.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact is estimated to be minimal. The largest fiscal impact of the proposed rules would come from Rule 0100-04-.02 regarding the assessments of costs pursuant to TCA § 57-1-213. The fiscal note of the bill creating the assessment of costs (SB1493 of the 107th General Assembly) projected an increase of state revenue of \$12,600 and a decrease of state expenditures of \$1,875 from the adoption of the cost assessment portion of the bill. The proposed rule does not increase or decrease any state revenue or expenditure beyond the requirements of TCA § 57-1-213, and the above fiscal note is deemed to still be an accurate estimate of the increase or decrease of any state revenue or expenditure associated with the cost assessments.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

E. Keith Bell, Director of The Alcoholic Beverage Commission and Joshua Stepp, Staff Attorney for The Alcoholic Beverage Commission.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

E. Keith Bell, Director of The Alcoholic Beverage Commission and Joshua Stepp, Staff Attorney for The Alcoholic Beverage Commission.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

E. Keith Bell
Director
The Alcoholic Beverage Commission
3rd Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville 37243
615.741.1602
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Joshua Stepp
Staff Attorney
The Alcoholic Beverage Commission
3rd Floor, Davy Crockett Tower
500 James Robertson Parkway
Nashville 37243
615.741.8916
Keith.Bell@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No such request received to date.

'REDLINE' DEPICTION OF RULES AS AMENDED, PER TCA 4-5-226(i)

**RULES
OF
THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION
CHAPTER 0100-4
RULES OF PROCEDURE FOR HEARING CONTESTED CASES**

For 0100-04-.01 GENERAL PROCEDURES FOR CONTESTED CASES.

(1) Except as otherwise provided herein, all contested cases before the Commission will be conducted in accordance with T.C.A. §§ 4-5-301 et seq., applicable provisions of Title 57 of the Tennessee Code, with these Rules of Procedure for Hearing Contested Cases see, and with the Rules of the Secretary of State, Chapter 1360-1-7-04-01.

(2) Eligibility to appeal. Any person with legal standing, and who meets the requirements of Title 57 of the Tennessee Code as a licensee/permittee may petition the Commission for a contested case hearing to appeal an Initial Order of revocation, suspension or civil penalty imposed upon the licensee/permittee by an Administrative Law Judge or TABC Hearing Officer sitting alone. All other appeals and/or review of actions of the Commission shall be conducted pursuant to the applicable provisions of Title 57 of the Tennessee Code.

Authority: T.C.A. §§ 4-5-217, 4-5-219, 57-1-102

Administrative History: Original rule filed; effective

0100-04-.02 CONTESTED CASES BEFORE ADMINISTRATIVE LAW JUDGES OR TABC HEARING OFFICERS SITTING ALONE.

(1) With the exception of declaratory orders referenced below, all petitions for a contested case hearing shall be routinely referred to the Administrative Procedures Division, Department of State for hearing before an Administrative Law Judge sitting alone on behalf of the Commission. However, the Commission retains the right to hear any particular contested case on its own behalf, or before a properly designated TABC Hearing Officer.

(2) In all cases held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3 of the Tennessee Code, and in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Commission, whether heard by an Administrative Law Judge or a properly designated TABC Hearing Officer sitting alone, or by the full Agency, the petitioner and other parties, with the exception of the Commission, shall bear the actual and reasonable costs associated with the contested case including, but not limited to, Secretary of State Administrative Procedures Division, docketing, filing, judges and other costs, cost for all depositions, court reporters, transcriptions, costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and any other persons involved in the investigation, prosecution and hearing of the action. If an Initial Order of an Administrative Law Judge or properly designated TABC Hearing Officer is to be reviewed by the full Commission, whether such review is requested by the party/licensee/permittee or the TABC staff, the original transcript and one copy of the transcript for each member of the Commission shall be provided to the Commission by the other parties/licensees/permittees which cost shall be borne by said party/licensee/permittee and not by the Commission. Other costs of the proceeding, including the Administrative Law Judge's or TABC Hearing Officer's costs shall be assessed by the Commission against the other party/licensee/permittee in accordance with T.C.A § 57-1-213.

(3) Whenever it is necessary to determine the actual and reasonable costs associated with the contested case, the TABC director, assistant director or staff attorney shall file a sworn affidavit with the Administrative Law Judge or TABC Hearing Officer setting forth an itemized statement of the services rendered, including, but not limited to, the costs associated with the Secretary of State Administrative Procedures Division for docketing, filing, judges and other costs, cost for all depositions, court reporters and transcriptions, costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and such other persons involved in the investigation, prosecution and hearing of the contested case as well as the time rendered for each service. The TABC director, assistant director or staff attorney shall make a suggestion of the fee

to be awarded along with such other statement(s) of other pertinent facts including but not limited to that required by Tenn. Sup. Ct. R. 8, RPC 1.5, applicable case law, and such other information as may be requested by the Administrative Law Judge or TABC Hearing Officer. The Administrative Law Judge or TABC Hearing Officer shall then award the actual and reasonable costs associated with the contested case based on the then prevailing rate imposed by the Secretary of State Administrative Procedures Division and the actual costs for all depositions, court reporters, transcriptions and such other persons, (including prosecutors, investigators, and expert witnesses) involved in the investigation, prosecution and hearing of the contested case.

(4) Unless otherwise agreed by the parties, at the beginning of all contested case hearings, Commission counsel shall provide a summary of what the case is about, and introduce into evidence the application and/or Tennessee Alcoholic Beverage Commission license/permit. In no event shall this provision mean that the Commission is a neutral party in contested cases, or that its counsel represents the interests of any party other than the Tennessee Alcoholic Beverage Commission.

(5) In all cases, whether heard by an Administrative Judge or properly designated TABC Hearing Officer sitting alone, or by the full Commission, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

Authority: T.C.A. §§ 4-5-202, 4-5-310, 4-5-314, 57-1-102, 57-1-213, 57-3-214, 57-4-201(a)(4)

Administrative History: Original rule filed; effective

0100-04-.03 COMMISSION REVIEW OF INITIAL ORDERS.

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

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

(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 Commission should take on the Initial Order. The Commission may place reasonable page limitations on such briefs to be determined on a case by case basis depending on the number and complexity of the issues to be reviewed.

(4) In such a review proceeding, each party will normally be limited to oral argument of fifteen (15) 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. Alternatively, the Agency may take the case 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, 4-5-217, 4-5-310, 4-5-314, 57-1-102

Administrative History: Original rule filed; effective.

0100-04-.04 DECLARATORY ORDERS.

(1) Any affected person may petition the Commission 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 Commission. Such petition shall be filed with the Commission in duplicate, 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 fullest extent possible.

(3) In the event the petition for declaratory order arises out of the Commission'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 Commission 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, 4-5-217, 4-5-223, 57-1-102

Administrative History: