

**RHODE ISLAND GOVERNMENT REGISTER  
PUBLIC NOTICE OF PROPOSED RULEMAKING**

**ENERGY FACILITY SITING BOARD**

**Title of Rule:** Energy Facility Siting Board Rules of Practice and Procedure

**Rule Identifier:** 445-RICR-00-00-1

**Rulemaking Action:** Proposed Amendment

**Important Dates:**

Date of Public Notice: 09/13/2018

Hearing Date: 09/26/2018

End of Public Comment: 10/13/2018

**Authority for this Rulemaking:**

R.I. Gen. Laws § 42-98-7(c)

**Summary of Rulemaking Action:**

Regulations and procedures to assist anyone who wishes to appear in a matter before the Energy Facility Siting Board.

The proposed amendments include: Section 1.1, creation of "Authority"; Section 1.2, incorporation by reference; Section 1.3, updated definitions; Section 1.4, deletion of entire section; Section 1.4.3 incorporation by reference; Section 1.5, amended required number of copies and deleted language; Section 1.6, incorporation by reference and deleted language; Section 1.7, deleted language and updated citation; Section 1.8, deleted language; Section 1.9, amended word; Section 1.11, deleted language, Section 1.12, correction to word, addition of word and updated citation; Section 1.13, amended word and deleted language; Section 1.14, amended word, updated citation and deleted language; Section 1.15 deleted language; Section 1.16 deleted language replaced with Judicial Review and incorporated by reference; Section 1.18, updated citation; Section 1.20, updated citation; Section 1.22, deleted word; Section 1.23, deleted and amended words; Section 1.30, amended number of required copies; Section 1.33, amended number of required copies and updated citation; Section 1.35, amended word.

**Additional Information and Comments:**

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until October 13, 2018 by contacting the appropriate party at the address listed below:

Kathleen Mignanelli

Energy Facility Siting Board  
89 Jefferson Boulevard  
Warwick, RI 02888  
Kathleen.mignanelli@puc.ri.gov

**Public Hearing:**

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on September 26, 2018 at 9:30 am at Public Utilities Commission , 89 Jefferson Boulevard, Hearing Room A, Warwick, RI 02888 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-780-2108 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**Regulatory Analysis Summary and Supporting Documentation:**

Ensure open and transparent proceedings for all parties appearing before the Energy Facility Siting Board. Also, compliance with the statutes.

For full regulatory analysis or supporting documentation see agency contact person above.

445-RICR-00-00-1

## TITLE 445 - ENERGY FACILITY SITING BOARD

### CHAPTER 00 – N/A

### SUBCHAPTER 00 - N/A

#### PART 1 - Rules of Practice and Procedure

### 1.1 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws § 42-98-7(c).

### 1.2 Energy Facility Siting Board

- ~~A. Description and Responsibilities – The Energy Facility Siting Board, established by Rhode Island General Laws 2-98-1 et seq., is a part of state government and consists of three (3) members, the Chairman of the Public Utilities Commission, the Director of the Department of Environmental Management and the Associate Director of Administration for Planning. The Chairman of the Public Utilities Commission serves as the chairman of the Energy Facility Siting Board. The Board is the licensing and permitting authority for all licenses, which under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in Rhode Island, except for licenses, issued by the Department of Environmental Management under the delegated authority of federal law of Chapter 2-1 of the Rhode Island General Laws, or licenses issued by the Coastal Resources Management Council under Chapter 46-23 of the Rhode Island General Laws~~
- ~~B. Offices – The principal office of the Board is located at the Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903. All communication to the Board should be sent to: Coordinator, Energy Facility Siting Board, 100 Orange Street, Providence, RI 02903, unless otherwise specifically directed.~~
- ~~C. Hours – The offices of the Board will be open from 8:30 a.m. to 4:00 p.m. of each day except Saturday, Sunday and legal holidays unless otherwise provided.~~
- ~~D. Quorum – Except as otherwise permitted by law, two (2) members shall constitute a quorum for the transaction of any business by the Board.~~
- ~~A. Action by Members or Representatives – To the extent permitted by law the Board may, by one or more of its members authorized by the Chairman, or by such other representatives as it may designate and authorize, conduct any~~

~~inquiry, investigation, hearing or other process necessary to its duties and functions.~~

~~B. Meetings and Hearings~~

~~1) Meetings of the Board may be held at any time or place upon call of the Chairman on his own initiative or at the request of any member after reasonable notice by mail or telephone or otherwise to the other members, and shall be held at such times and places as in the judgment of the Board will best serve the convenience of all parties in interest.~~

~~2)~~

~~G. A.~~ Meetings shall be conducted pursuant to the provisions of the Rhode Island Open Meetings Act., R.I. Gen. Laws § 42-46-1 *et seq.*

~~D. B.~~ Hearings shall be conducted pursuant to the provisions of the Energy Facility Siting Act, RI Gen. Laws Section 42-98-1 *et seq.*, and the Administrative Procedures Act. R.I. Gen. Laws §42-35-1 *et seq.*

~~E. C.~~ Public Information - Requests for information may be addressed to the Coordinator, Energy Facility Siting Board, ~~100 orange Street, Providence, Rhode Island 02903.~~ [89 Jefferson Boulevard, Warwick, R.I. 02888](http://www.riepuc.org/efsbc). Public records are available for public inspection and copying at the offices of the Board from 8:45 to 4:00 p.m. on regular business days. ~~The Coordinator with the approval of the Board may set reasonable fees for copying public records in the possession of the Board.~~ ~~The Board's website is <http://www.riepuc.org/efsbc/index.html>.~~

### 1.3 Definitions

A. As used in these rules, except as otherwise required by the context:

1. "Act" means the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-1 *et seq.* as amended.
2. "Advisory opinion" means the written opinion of a designated agency regarding issues by the Board for consideration by the designated agency. "Advisory opinion" shall also mean the written opinions as to need and socioeconomic impact that are rendered by the Statewide Planning Program, the Governor's Office of Energy ~~Assistance~~ [Resources](#) and Division for each major energy facility.
3. "Agency" means any agency, council, board or commission of the state of political subdivision of the state.
4. "Alteration" means a significant modification to a major energy facility which, as determined by the Board, will result in a significant impact on the environment or the public health, safety and welfare. Conversion from one fuel to another shall not be considered an "alteration". Maintenance,

repair or replacement of poles or transmission components by an electric utility to maintain the integrity of its transmission system shall not constitute an alteration, provided that such construction does not increase the normal carrying capacity of the transmission line. The construction, modification or relocation of a power line of 69 kV or more which are less than 1000 feet in length shall not be treated as an alteration; however, any additional extension shall constitute an alteration. The construction of a new power line which is more than 1,000 but less than 6000 feet in length or the modification or relocation of an existing power line shall not be an alteration unless the Board determines that the project may result in a significant impact on the environment or the public health, safety and welfare. As used herein "modification" includes reconductoring and rebuilding an existing power line.

5. "Applicant" means the person or persons making an application, or an application, or on whose behalf an application is made, to site, construct or alter a major energy facility in Rhode Island.
6. "Board" means the Energy Facility Siting Board.
7. "Board license" means any license issued by the Board to site, construct or alter a major energy facility.
8. "**Chairman**" "**Chairperson**" means the **Chairman** Chairperson of the Energy Facility Siting Board.
9. "Coordinator" means the duly appointed Coordinator of the Board or the designee of the Coordinator.
10. "CRMC" means the Coastal Resources Management Council.
11. "DEM" means the Department of Environmental Management.
12. "Designated agency" means an agency designated by the Board pursuant to R.I. Gen Laws § 42-98-9 as an agency which shall act at the direction of the Board for the purpose of rendering advisory opinions.
13. "Division" means the Division of Public Utilities and Carriers.
14. "Intervenor" means a person who intervenes in a pending matter or proceeding by statutory right, by right established by these Rules of Practice and Procedure or by order of the Board.
15. "License" means all licenses, permits, assents, variances, special exception and approvals of any kind which under any state statute or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the State of Rhode Island.

16. "Major energy facility" means any facility for the extraction, production, conversion and processing of coal; any facility for the generation of electricity capable of operating at a gross capacity of 40 megawatts or more; any transmission line with a design rating of 69 kV or over; facilities for the conversion, gasification, treatment, transfer or storage of liquefied natural and liquefied petroleum gases; any facility for the processing, enrichment, storage or disposal of nuclear fuels and nuclear byproducts; any facility for the refining of oil, gas or other petroleum products; any facility of 10 megawatts or greater capacity for the generation of electricity by water power; any facility associated with the transfer of oil, gas or coal via pipeline and any energy facility project of the Rhode Island Port Authority and Economic Development Corporation.
17. "Party" means the applicant and any person or agency who has, pursuant to these rules or Board order, intervened in Board proceedings.
18. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.
19. "Post licensing permits" means all state and local permits, inspections and approvals required for the construction or occupancy of a facility including, without limiting the generality of the foregoing, all building, construction, electrical, plumbing and occupancy permits and inspections.

#### **~~1.4 COORDINATOR~~**

- ~~A. Appointment—The Coordinator shall be appointed by majority vote of the Board. The Coordinator shall be an individual already in state service and may simultaneously hold and fulfill the responsibilities of Coordinator and any other position in state service.~~
- ~~B. Powers and Duties—The Coordinator shall have general responsibilities to maintain all official records of the Board, to distribute all official minutes, reports and documents of the Board and to accept filings made by applicants and intervenors. The Coordinator shall also serve as director of the Board staff.~~
- ~~C. Docket—The Coordinator shall maintain a docket of all proceedings and each proceeding as initiated shall be assigned an appropriate docket number. The docket shall be available for inspection and copying by the public during the office hours of the Board insofar as consistent with the proper discharge of the Board's duties.~~
- ~~D. Hearing Calendar—The Coordinator shall maintain a hearing calendar of all proceedings set for hearing.~~

~~E. Schedule—After consultation with the Board the Coordinator shall schedule and appropriately notice all hearings and open meetings.~~

## **1.4 Appearances and Practice Before the Board**

### **1.4.1 Appearances**

- A. All parties to a proceeding shall be represented by an attorney, unless otherwise ordered by the Board for good cause shown. Participants, other than parties, may appear in any proceeding in person or by an attorney.
- B. Any person testifying of making a statement before the Board or the presiding officer may, but shall not be required to be, accompanied, represented, and advised by an attorney.
- C. All persons appearing before the Board or the presiding officer must conform to the standards of ethical conduct required of practitioners before the courts of Rhode Island.
- D. Any person appearing before or transacting business with the Board in a representative capacity may be required by the Board or the presiding officer to file evidence of his authority to act in such a capacity.

### **1.4.2 Suspension**

- A. After hearing, the Board may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found:
  - 1. not to possess the requisite qualification to represent others, or
  - 2. to have engaged in unethical or improper professional conduct, or
  - 3. otherwise not to be qualified.
- B. Contumacious conduct at any hearing before the Board or a presiding officer shall be ground for exclusion of any person from such hearing and for summary suspension for the duration of the hearing by the Board or the presiding officer.

### **1.4.3 *Ex Parte* Communications**

~~A. Except as permitted below, no person who is a party to, or a participant in, any proceeding pending before the Board, or his counsel, employee, agent, or any other person acting on his behalf, shall submit *ex Parte*, off the record communications to any member of the Board or to any staff member of the Board regarding or in any way related to the proceeding, and no Board member or any other staff member of the Board shall request or entertain any such *ex Parte*, off the record communications.~~

~~B. The prohibitions contained above do not apply to a communication from a party or participant or his counsel, agent or other person acting on his behalf, if the communication relates solely to matters of procedure and is directed to any staff member in the presence of or with the prior approval of Board counsel or to the Coordinator of the Board.~~

Ex parte communications shall be governed by R.I. Gen. Laws § 42-35-13.

## 1.5 Filing Requirements

- A. Filing - The filing of all applications for a license to site, construct or alter a major energy facility in Rhode Island shall be made with the Coordinator.
- B. Contents - The application shall conform with all requirements of this Part.
- C. Other Filings - All other documents of any kind filed with the Board by any party regarding an application to site, construct or alter a major energy facility in Rhode Island shall be filed with the Coordinator and shall state the name and address and telephone number of the party filing the document.
- D. Certification - Any party filing documents with the Coordinator shall also file a copy of the document with each party. The filing shall contain a signed certification that a copy of the document was mailed postage prepaid to all parties.
- E. Number of Copies - The original and ~~fifteen (15)~~ seven (7) copies of applications and documents shall be filed with the Coordinator. ~~The Coordinator shall keep one copy of file at the Board's offices for review by the public.~~
- ~~F. Transmission to Board - Within five (5) business days after the filing of an application or document the Coordinator shall transmit a copy of the filing to each Board member and any other person designated by the Board.~~

## 1.6 Applications

- A. Statement - All applications shall be in writing and shall clearly state the nature of the activity for which a Board license is sought and a factual and legal basis for the Board's authority to grant a Board license.
- B. Contents - An application shall include the following:
  - 1. The exact legal name of the applicant, if the applicant is a corporation, trust, association or other organized group, the state or territory under the laws of which the applicant was created or organized, the location of the applicant's principal place of business, and the names of all states where the applicant is authorized to do business.



2. The name, title and post office address of one person to whom correspondence or communication in regard to the application is to be addressed. The Board will serve, where required, all notices, orders and other papers upon the person so named and such service shall be deemed to be service upon the applicant.
3. Identification of the proposed owner(s) of the facility, including identification of all affiliates of the proposed owners, as such term is defined in R.I. Gen. Laws § 39-3-27.
4. A detailed description of the proposed facility including its function and operating characteristics, and complete plans as to all structures, including, where applicable, underground construction, transmission facilities, cooling systems, pollution control systems and fuel storage facilities associated with the proposed location for the project.
5. Site plan for each proposed location for the project.
6. The total land area involved.
7. Project cost.
8. Proposed dates for beginning of construction, completion of construction and commencement of service.
9. Where applicable, estimated number of facility employees.
10. Proposed financing for construction and operation of the facility.
11. Where applicable, required support facilities, e.g. road, gas, electric, water, telephone, and an analysis of the availability of the facilities and/or resources to the project.
12. A detailed description and analysis of the impact, including cumulative impact for facilities other than transmission lines, of the proposed facility on the physical and social environment on and off site, together with a detailed description of all environmental characteristics of the proposed site and a summary of all studies prepared and relied upon in connection therewith. In the case of transmission facilities, such description and analysis shall include a review of the current independent scientific research pertaining to electromagnetic fields (EMF) and shall provide data on the anticipated levels of EMF exposure and potential health risks associated with this exposure.
13. All studies and forecasts, complete with information, data, methodology and assumptions of which they are based, on which the applicant intends to rely in showing the need for the proposed facility under the statewide master construction plan submitted annually.

14. Complete detail as to the estimated construction costs of the proposed facility, the projected maintenance and operation costs, the estimated unit cost of energy to be produced by the proposed facility, where applicable, and the expected methods of financing the facility. For transmission lines, the applicant shall also provide estimated costs to the community such as safety and public health issues, storm damage and power outages, and estimated costs to businesses and homeowners due to power outages.
15. A complete life-cycle management plan for the proposed facility, including measures for protecting the public health and safety and the environment during the facility's operations, including plans for the handling and disposal of wastes from the facility at the end of its useful life.
16. A study of the alternatives to the proposed facility, including alternatives as to energy sources, methods of energy production and transmission and sites for the facility, together with the reasons for the applicant's rejection of such alternatives. The study shall include estimates of facility costs and unit energy costs of alternatives considered.
17. Identification of Federal agencies which may exercise licensing authority over any aspect of the facility.
18. Identification of state and local government agencies which may exercise licensing authority over any aspect of the facility or which could exercise licensing authority over any aspect of the facility absent the Act.
19. Identification of foreign governmental agencies which must issue licenses that may affect any aspect of the facility.
20. All pertinent information regarding filings for licenses made with federal, state, local foreign governmental agencies including the nature of the license sought, copies of the applicable statutes or regulations, and copies of all documents filed in compliance with [42 U.S.C. § 4321](#), ~~the National Environmental Policy Act~~, the date of filing and the expected date of decision.
- ~~21. Where applicable, the applicant must provide evidence to show that the project conforms with the Rhode Island Energy Coordinating Council's policy statement entitled Rhode Island's Options for Electric Generation dated August, 1989, including any revisions or any successor to that document which may replace it as state policy.~~

- C. Notice of Intent to Construct or Relocate Power Lines of Less Than 1000 Feet - In the case of the construction or relocation of a power line of less than 1000 feet with a capacity of 69 kV or more, a notice of intent to construct such facility shall be filed with the Board and the councils of any town or city affected by said construction at least 60 days before commencing construction. The notice shall include the following:

1. Identification of the proposed owner(s) of the facility including identification of all affiliates of the proposed owners as that term is defined in R.I. Gen Laws § 39-3-27.
  2. Detailed description of the proposed facility including its length, route, function and operating characteristics, and complete plans as to all structures associated with the proposed facilities.
  3. A statement of reasons why the filing party believes that such project does not constitute a major energy facility nor the alteration of a major energy facility.
- D. The council of any town or city affected, and any other intervenor, may elect to file an objection with the Board within thirty days following the filing of the Notice of Intent to Construct and Relocate Power Lines of Less than 1000 feet.
- E. The Board shall act upon the notice, and any objection filed thereto, no later than forty-five days following the filing of the Notice of Intent to Construct. The utility, the council of any town or city affected by said construction, or any other intervenor may appeal the Board's action to the Rhode Island Supreme Court in accordance with R.I. Gen. Laws § 42-98-12.
- F. Notice of Intent to Construct a Power Line of More ~~That~~ Than 1000 Feet but Less Than 6000 Feet or to Modify or Relocate a Power Line - In the case of the construction of a power line of more than 1000 feet but less than 6000 feet in length with a capacity of 69 kV or more or the modification or relocation of a power line with a capacity of 69 kV or more, a notice of intent for such project shall be filed with the Board and the council of any town or city affected by said construction at least 90 days before commencing construction. The notice shall include the following:
1. Identification of the owner(s) of the facility including identification of all affiliates of the proposed owners as that term is defined in R.I. Gen Laws § 39-3-27.
  2. Detailed description of the proposed facility including its length, route, function and operating characteristics, and complete plans as to all structures associated with the proposed facilities.
  3. Detailed description and analysis of the impact of the project on the physical and social environment. The applicant shall also provide a review of the current independent scientific research pertaining to electromagnetic fields ("EMF") and shall provide data on the anticipated levels of EMF exposure and potential health risks associated with this exposure. To the extent the proposed project will have only negligible impact on any particular resource in the natural and social environment (~~e.g., geology, air quality or population~~) the applicant may so state and

need not provide a detailed analysis of the baseline conditions for that resource.

4. All studies and forecasts which demonstrate the need for the proposed facility under the statewide master construction plan submitted annually.
  5. A statement of reasons why the filing party believes that such project does not constitute a major energy facility or the alteration of a major energy facility.
- G. The Board shall hold a public hearing in one or more of the cities or towns affected by an application under § 1.16(F) of this Part, upon such public notice as the Board shall determine.
- H. Following such public hearing(s) and within sixty (60) days of the filing, the Board shall determine whether the project may result in a significant impact on the environment or the public health, safety and welfare and therefore shall be treated as an alteration. If the Board determines to treat the proposal as an alteration, it shall docket the application immediately and shall schedule a preliminary hearing for the project under § 1.7(H) of this Part. In its decision to treat a project as an alteration, the Board may limit the issues which it will consider in the proceedings on the project.
- I. Form - To the extent possible all documents shall be bound and shall be submitted on 8 1/2 inch by 11 inch standard size paper.
- J. Additional Information - The Board may at any time require the applicant, or the party responsible for filing a notice of intent as described above, to file additional information.

## 1.7 Docketing

- ~~A. Delegation - The Coordinator in consultation with the Board shall review every application to determine whether such application is in the form and addresses the matters required by the Act and these Rules of Practice and Procedure. The Coordinator shall conduct such review as soon as possible after the filing of an application and such review shall be completed within thirty (30) days of the filing.~~
- ~~B. Docketing - An application meeting the requirements of the Act and these Rules of Practice and Procedure shall be docketed. The Coordinator shall send written notice of the docketing date to the Board, the Applicant and to the chief executive officer of the City or Town in which the proposed facility is to be located.~~
- G.A. Return of Application - An application that does not meet the requirements of the Act and this Part shall not be docketed and shall be returned to the Applicant together with a concise and explicit written statement of the application's deficiencies. Such statement shall be forwarded to the Board.

**D.B.** Resubmission of Application - A resubmission of an application initially returned pursuant to § 1.7(A) of this Part shall be docketed within fifteen (15) days of the filing of the resubmission. The Coordinator shall send written notice of the docketing date to the Board and the Applicant together with specification of any continuing deficiencies.

## **1.8 Notice**

- A. Notice Required - The Board shall give, or shall require any party to give, notice of the commencement of a scheduled hearing in any pending matter to all parties and to such other persons as the Board designates. After commencement, a hearing may be adjourned to a subsequent day upon oral notice to those present at the time of adjournment.
- B. Form of Notice - Notice shall be by first class mail or personal service unless otherwise specified by the Board and shall be published in The Providence Journal-Bulletin and another newspaper of general circulation in the area in which the proposed facility is to be located. Nothing herein, however, shall limit the power of the Board to order notice by other means, including but not limited to notice by publication or notice in periodic bills sent to utility customers.
- C. Contents of Notice - Notice shall include:
1. A statement of the time, place and nature of the hearing,
  2. A statement of the legal authority and jurisdiction under which the hearing is held;
  3. A reference to the particular sections of any statutes and rules involved and;
  4. A short and plain statement of the matters involved. If at the time notice is given the Board or the party giving notice is unable to state the matters in detail which are to be the subject of the hearing, the initial notice may be limited to a statement of the issues involved and a detailed statement may be furnished at a later time.
- D. Length of Notice - Notice of a preliminary hearing shall be given at least forty-five (45) days prior to the beginning of the preliminary hearing. Notice of a final hearing shall be given at least thirty (30) days prior to the beginning of the final hearing. Notice of other hearings at which testimony and evidence shall be taken shall be given at least ten (10) days prior to the beginning of the hearing.
- E. Address - Unless written notice to the contrary has been received by the Board, notices shall be sufficient if mailed or delivered to each party at the address designated by the party on the application, the notice to intervene or the motion to intervene.

## ~~F.~~ Notice Regarding adoption of Rules

- ~~1.~~ Prior to the adoption, amendment, or repeal of any rule, the Board will:
  - ~~a.~~ give at least thirty (30) days notice of its intended action. The notice shall include a statement of either the terms or the 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 will be mailed to all persons who have made timely requests to the Board for advance notice of its rulemaking proceedings, and will be published in The Providence Journal-Bulletin, 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 the particular area.
  - ~~b.~~ afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing.
- ~~2.~~ If the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon less than twenty (30) days notice, and states in writing the reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) days, but the adoption of an identical rule subsection (1)(i) and (1)(ii) of this section is not precluded.

F.G. Notice - Upon receiving an application, the Board shall immediately notify in writing the councils of the towns and cities affected by said construction.

G.H. The board shall have at least one public hearing in each town or city affected prior to holding its own hearings and prior to taking final action on any application. All details of acceptance for filing in R.I. Gen Laws § 42-98-8(1) through (6) shall be presented at the town or city hearing for public comment.

H.I. Prior to the public hearing, the applicant shall give thirty days' public notice, through local newspapers, to the citizens in affected towns and cities.

I.J. Prior to the public hearing, the applicant shall give thirty days' individual notice, in writing, by certified mail, postage prepaid, to abutting land owners.

## **1.9 Preliminary Hearing**

A. Purpose - After the docketing of an application the board shall convene a preliminary hearing to determine the issues to be considered by the Board in evaluating application, to designate those agencies which shall act at the direction of the Board for the purpose of rendering advisory opinions, and to

identify those licenses required by the facility which are under the direct control of DEM and CRMC.

- B. Notice - Public notice of the date on which the preliminary hearing shall begin shall be published within fifteen (15) days of the docketing of the application. Preliminary hearings shall begin not sooner than forty-five (45) days after publication of the public notice and not later than sixty (60) days after the docketing of the application.
- C. Testimony - Within the discretion of the Board, testimony and evidence at the preliminary hearing may be limited to the identification of issues only. Presentation of substantive testimony and evidence regarding any issue may be limited to agency proceedings for the rendering of advisory opinions of the Board's final hearing.
- D. Preliminary Decision/Time - The Board shall render a preliminary decision within thirty (30) days of the conclusion of the preliminary hearing, but not later than forty-five (45) days after the beginning of the preliminary hearing.
- E. Preliminary Decision/Contents
  - 1. Mandatory Issues - The Board shall consider the ability of the proposed facility to meet the requirements of the laws, rules, regulations and ordinances under which, absent the Act, the applicant would be required to obtain a license.
  - 2. Discretionary Issues - The Board shall separately identify all issues of any type which in its discretion it finds should be considered in the Board's final hearing.
  - 3. DEM and Coastal Resources Management Council Licenses - The Board shall separately identify all licenses which the applicant will have to obtain and over which DEM and the CRMC retain primary authority pursuant to R.I. Gen. Laws § 42-98-7(a).
  - 4. Designation of Agencies and Issues - The Board shall designate each agency which shall act at the discretion of the Board for the purpose of rendering advisory opinions and the Board shall separately identify all licenses and other issues on which such agencies must render advisory opinions.
  - 5. Advisory Opinions/Time - The Board shall clearly state the time in which designated agencies and the Public Utilities Commission and the Statewide Planning Program must render advisory opinions. In no event shall an agency render the advisory opinion more than six months after issuance of the Board's preliminary decision.

6. DEM and CRMC Proceedings - The Board may request in its preliminary decision or by separate communication that DEM and CRMC give priority to licenses for energy facilities over which DEM or CRMC exercise licensing authority pursuant to delegated authority of federal law, state laws and regulations which implement such federal law or pursuant to R.I. Gen Laws Chapters 2-1 *et seq.* and 46-23 *et seq.*
- F. Later Designation of Agencies and Issues - The Board may at any time after the preliminary decision designate in writing additional agencies to render advisory opinions and additional issues to be considered by agencies or the Board.
- G. Service - The Coordinator shall serve by certified mail, return receipt, a true and complete copy of the preliminary decision ~~an~~ on the applicant, all parties to the preliminary hearing and the Chairperson ~~chairman~~, Director or Chief Executive Officer ~~or of~~ designated agencies, the Commissioner ~~Director~~ of the ~~Governor's~~ Office of Energy Resources Assistance and any other agency or person designated by the Board.
- H. Expedited Hearings - in the case on an application which covers only electric transmission lines, the applicant may file a request for an expedited hearing with its application. Such request shall include a draft preliminary order and shall be provided by the applicant to all intervenors. If the Board grants an expedited hearing, it shall provide in the notice of hearing that all intervenors and parties seeking to intervene shall file written comments on the applicant's draft preliminary order not less than ten days prior to the hearing.

## 1.10 Intervention

- A. Participation in a proceeding as an intervenor may be initiated as follows:
  1. By the filing of a notice of intervention by CRMC, DEM, the city or town in which the proposed facility is to be located or designated agencies.
  2. By order of the Board upon a motion to intervene
- B. Who May Intervene - Subject to the provisions of this Part, any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate may intervene in any proceeding before the Board. Such right or interest may be:
  1. A right conferred by statute.
  2. An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Board's action in the proceeding.
  3. Any other interest of such nature that petitioner's participation may be in the public interest.



- C. Form and Contents of Motion to Intervene - A motion to intervene shall set out clearly and concisely facts from which the nature of the movant's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the movant in the proceeding.
- D. Filing and Service of Motions to Intervene
1. A motion to intervene or notice of intervention in a preliminary hearing or a final hearing shall be filed not less than twenty (20) days before the date on which preliminary or final hearing begins.
  2. A notice to intervene in a preliminary hearing or an order granting intervention in a preliminary hearing shall confer intervenor status in the final hearing without additional notice of intervention or motion.
  3. For good cause shown the Board may authorize the filing of a late notice of intervention or motion to intervene.
  4. Intervention in Board hearings shall in no way affect the right of any party to intervene in proceedings and hearings conducted by DEM, CRMC and designated agencies.
  5. Service of a notice of intervention or motion to intervene shall be made in accordance with § 1.17 of this Part.

### **1.11 Advisory Opinions**

- A. Advisory Opinion - Each designated agency shall render its advisory opinion, to the extent possible, pursuant to procedures that would be followed absent Board designation of the agency. Where necessary an agency shall modify its procedures to conform to the requirements of the Act, these Rules of Practice and Procedure and the preliminary decision of the Board.
- B. Limitation of Agency Investigation - The Board shall limit the scope of any designated agency's investigation of any issue to be considered by the Board when it finds that more than one agency has jurisdiction over the issue in the hearing process. Such limitation shall be expressly stated in writing, shall identify the agency which shall address the issue in its advisory opinion and shall be based on the Board's consideration of the relative expertise and resources of the agencies having concurrent jurisdiction and any other pertinent matter.
- C. Form of Advisory Opinion - A designated agency's advisory opinion shall conform with the Rhode Island Administrative Procedures Act requirements regarding Decisions and Orders. The advisory opinion shall be clearly identified as an advisory opinion issued to the Board for consideration at the Board's final hearing.

- D. Time - An advisory opinion shall be rendered not more than six (6) months following the Board's designation of the agency or within such lesser time as the Board may in writing require.
- E. Forfeiture - A designated agency's right to issue an advisory opinion shall be forfeited to the Board if the designated agency does not render an advisory opinion within the time limits established ~~in paragraph (d)~~ above.

## 1.12 Final Hearings

- A. Purpose - After the time in which advisory opinions must be submitted, the Board shall convene a final hearing which shall provide the applicant, intervenors, the public and all other parties the opportunity to address in a ~~singe~~ single forum and from a consolidated statewide perspective, the issued reviewed and the recommendations made in the proceedings before designated agencies and DEM and CRMC.
- B. Notice - Public notice of the date on which the final hearing shall begin shall be published within fifteen (15) days of the date on which advisory opinions must be submitted. Final hearings must commence not later than forty-five (45) days after the date on which advisory opinions must be submitted.
- C. Testimony & Evidence - Not later than ten (10) days before the commencement date for the final hearing, each party shall file with the Coordinator all direct testimony in writing and copies of all documents and other evidence that the party proposes to introduce at the final hearing. Except for good cause shown, the Board will not receive direct testimony, documents or other evidence that has not been prefiled as required above. The Board may limit the presentation of repetitive or cumulative evidence and, except for good cause shown, shall not rehear evidence which was presented previously in proceedings before designated agencies and DEM and CRMC.
- D. Participation of the Parties in Agency Proceedings
  1. Notwithstanding the provisions of this ~~Part Section 1.12 or any other section of these Rules of Practice and Procedure~~, parties shall have the obligation to present all relevant testimony and evidence and to fully participate in designated agency proceedings held pursuant to a preliminary decision of the Board and in DEM and CRMC proceedings regarding licenses for energy facilities which are exercised pursuant to delegated authority of federal law, pursuant to state law and regulations which implement such federal or state laws. ~~or pursuant to Chapters 2-1 and 46-23 of the Rhode Island General Laws.~~
  2. The Board may limit or prohibit the presentation of testimony and evidence regarding issues addressed in a designated agency's advisory opinion or in a DEM or CRMC proceeding regarding licenses for energy facilities.

The Board shall consider the relevance of such testimony or evidence to the advisory opinion and grant or denial of a Board license, whether the testimony or evidence could have been presented by the party at the designated agency, DEM or CRMC proceeding, whether the rights participants in the designated agency, DEM or CRMC will be prejudiced by receipt of the testimony or evidence and any other factor deemed relevant by the Board.

- E. Cross Examination - The legal counsel of each party only shall be allowed to cross examine each witness testifying before the Board, unless otherwise ordered by the Board for good cause shown.
- F. Rebuttal Testimony - Rebuttal testimony may be allowed at the discretion of the Board subject to filing requirements set by the Board as to time, form and issues.
- G. Board Witness - Notwithstanding the requirements for prefiled written direct testimony the board shall have the right to call and examine any witness at any time which may assist the Board in rendering its final decision.
- H. Public Comment - The Board shall allow comment by the public subject to such scheduling and length restrictions as the Board deems necessary and reasonable.
- I. Time - Presentation and receipt of testimony and evidence shall be concluded not more than sixty (60) days after the initial hearing date.
- J. Briefs - The Board may require the submission of Briefs regarding issues to be addressed by the Board.

### **1.13 Final Decision**

- A. Time - The Board shall issue its Final Decision not later than one hundred twenty (120) days after the commencement of final hearings or not later than sixty (60) days after all testimony and evidence has been received, whichever time period is shorter.
- B. Form - The Final Decision shall conform to the Rhode Island Administrative Procedures Act requirements regarding Decisions and Orders.
- C. Findings - The Board shall make specific findings regarding and shall grant a Board License only upon a finding that the applicant has shown that:
  - 1. Construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the produced facility,
  - 2. The proposed facility is cost-justified,

3. The proposed facility can be expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed facility will be accomplished in compliance with all of the requirements of the laws, rules, regulations, and ordinances, under which, absent the Act, a license would be required, or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver or some part of such requirements when compliance therewith cannot be assured,
4. The proposed facility will not cause unacceptable harm to the environment, and
5. The proposed facility will enhance the socioeconomic fabric of the state.

~~2. The Board's Final Decision shall specifically address:~~

- ~~a. each of the advisory opinions received from designated agencies the Public Utilities commission and Statewide Planning. The Board shall state the reasons for accepting, rejecting or modifying such advisory opinions, and.~~
- ~~b. any other matter deemed appropriate by the Board.~~

- D. Effect - The grant of a Board License in favor of the application shall constitute a granting of all licenses which would, absent the Act, be required for the facility except for building, construction and occupancy permits for which final designs will not be executed until after the final decision is issued, and for other state or local licenses that may, by their nature, be applied for and/or received after a Board License is granted. The Final Decision of the Board shall specifically identify all such licenses that have been granted pursuant to the Board License.
- E. Conditions and Modifications - As a precondition for the grant of a Board License, the Board may require any modification or alteration to the proposed facility and may place conditions on the grant of the Board License. A Board license may be issued conditionally upon the applicant's receipt of federal licenses.

## **1.14 Post Licensure Proceedings**

### **A. Post Licensing Permits**

1. Generally - An applicant must apply for and receive all applicable permits over which the Board has authority and which would be required absent the Act. Such permits are not deemed granted by the Board License. The Board retains final permitting authority for such permits under the Act and considers action by local or state officials or agency on such applications to be advisory opinions.

2. Meeting Mandated - After applying for local building permits, the Applicant shall arrange for and attend a meeting with the issuing authority and representative of the State Building Code Commission to assure that the issuing authority can arrange for any assistance it may need in reviewing the final design drawings and plans for the applicant's energy facility. Such assistance will be made available, if needed, by the State Building Code Commission. The Coordinator shall be given notice of such meeting.
3. Filing of Advisory Opinions - After an advisory opinion is issued on an application for any post licensing permit by the state or local official or agency having authority over such permit, the applicant shall file the advisory opinion with the Board. If the applicant is aggrieved by the advisory opinion, it may file a statement with the Board expressing its disagreement and explaining the reasons therefore. If a local or state official or agency fails to process an application for a post licensing permit within a reasonable period of time, the applicant may file a statement of that fact with the Board along with any other pertinent information concerning the failure to process.
4. Statement of Disagreement with an Advisory Opinion - A statement of disagreement or failure to process under § 1.14(A)(3) of this Part shall be filed with the Board in compliance with § 1.5 of this Part. The Board may schedule a hearing to consider any such statement under § 1.9 of this Part. The Board may delegate an existing agency or authority with appropriate expertise to investigate such matters and to testify at a hearing.
5. Granting of Building Permits by Board - The filing of an Advisory Opinion on a post licensing permit by the applicant under § 1.14(a)(3) of this Part constitutes a granting by the Board of that permit unless said advisory opinion does not recommend that the Board grant the permit, or unless said advisory opinion is accompanied by a Statement of Disagreement under §§ 1.14(A)(3) and 1.14(A)(4) of this Part. If a disagreement exists, the Board will, after consideration of the filing or after a hearing under these rules, issue an order. Such order may grant such building permit or may accept the advisory opinion without change. The Board may also alter or modify an advisory opinion after consideration of the filing or after hearing in any way it deems necessary, before granting such permit(s).

B. Oversight of Construction and Start-Up of Facility

1. Consultants to Board - During the construction period, the period of plant start-up, and a reporting period to follow, the Board may hire such consultants, or may delegate an existing agency or authority with appropriate expertise as it deems necessary, to visit the plant and plant site to determine if construction, construction practices, operation or

operational practices are in compliance with the terms of the Board's license. Specifically the Board's consultant shall be responsible for aspects of the Board's license that are not overseen or monitored by existing state or local agencies. The applicant shall pay any and all reasonably incurred fees of such consultants. The Board shall provide a copy of the executed contract between the Board and the consultant to the applicant. The applicant may object to the reasonableness of the contract, including reasons therefore, in writing to the Board within 30 days. The Board shall consider such objection and respond to the applicant within 30 days of receipt of the objection. Fees paid to consultants under this section shall be limited to \$20,000 unless an amount in excess of \$20,000 is agreed upon by the applicant and the Board.

2. Consultant Reporting Requirements - Said consultants shall report to the Board periodically as the Board sees fit but at least on a monthly basis. If a consultant finds the applicant in noncompliance with the terms of the Board's license, he or she shall report to the Board immediately.
3. Verbal Cease and Desist Order - The Chairperson ~~Chairman~~, or in his or her absence, any member of the Board, may issue a verbal cease and desist order to an applicant to halt any aspect of construction or operation of the plant if there is reasonable cause to believe that irreversible damage to the environment will result from an act by the applicant or his agent of noncompliance with the terms of the Board's license. Such order may be rescinded by the issuing Board member or a majority of the Board if the problem is corrected. Any verbal cease and desist order must be followed by a written cease and desist order by the Board in compliance with § 1.15(B)(2) of this Part as soon as possible, but no later than the next business day following the verbal cease and desist order.
4. Report of Applicant After Start-Up - Following successful start-up of the Energy Facility, the applicant shall file a final report to the Board stating that the facility has been constructed in compliance with the terms of the Board's license. Such report should note any exceptions or instances of noncompliance. The Board's consultant shall review the report and file his or her comments to the Board.
5. Board Consideration - The Board will meet in open session to consider the final report if it considers a meeting necessary. The Board may accept the final report with or without such a meeting, or alternatively, may issue a "show cause" order under § 1.15(B)(3) of this Part.
6. Noncompliance - Failure of the applicant to comply with this section shall be considered a failure to comply with the Board license to site under § 1.15(B)(1) of this Part.

- C. ~~Board Review of Projects otherwise exempt from Hearing—The Board may review any project under the post licensure procedures contained in Rule 1.14 under the following conditions:~~
- ~~1. If the applicant files a Statement of Disagreement with an Advisory Opinion, pursuant to Rule 1.14(a);~~
  - ~~2. If the Board, on its own motion or in response to a complaint from a member of the public, finds that there is reasonable cause to believe that irreparable damage to the environment may result from an act by the applicant or its agent, as described in Rule 1.14(b)(3);~~
  - ~~3. If the Board finds, through investigation of a complaint or on its own motion, that the transmission facility is a threat to the public health, safety or welfare, or is not in compliance with the Board's rules or orders.~~

## **1.15 Suspension of Proceedings and Suspension or Revocation of Board License**

### **A. Board Proceedings**

1. Generally - Failure of the applicant to comply with any duly promulgated board rule, regulation, requirement or procedure for the licensing of energy facilities or failure to pay lawfully assessed expenses shall constitute grounds for suspension of licensing proceedings.
2. Suspension Hearings - Prior to the suspension of licensing proceedings the Board shall issue a written "Show Cause" order setting a date on which the applicant must appear before the Board to show cause why the licensing proceedings should not be suspended. The "Show Cause" shall specifically state the alleged non-compliance. A "Show Cause" hearing shall be scheduled not later than ten (10) days and not sooner than forty-eight (48) hours after the issuance of a "Show Cause" Order.
3. Suspension Order - After a "Show Cause" Hearing, the Board may in writing at any time without additional hearing or prior notice suspend licensing proceedings if the noncompliance addressed at the "Show Cause" Hearing is not rectified.
4. Tolling - Suspension shall toll the Act's time limits for beginning and completing hearings and for rendering decisions.
5. Cancellation of Suspension - The Board may in writing at any time cancel a suspension of Board proceedings if the noncompliance has been rectified or is no longer of consequence to the parties and the Board.
6. Time Limits - After a suspension is canceled, counting of the statutory time limits for beginning and completing hearings and for rendering decisions

shall resume at the point in which the suspension occurred or, if the Board finds it necessary to the orderly conduct of the proceedings, at the beginning of any statutory time period.

7. Initiation - The Board may issue a "Show Cause" Order at the request of a party or on the Board's own motion.
8. Noncompliance Order - Nothing in this section shall limit the authority of the Board to issue orders to remedy noncompliance with these rules, a Board License, licenses, the Act or orders of the Board.

#### B. Board License

1. Generally - Failure of the applicant to comply with any provision, condition or limitation contained in a Board License to site, construct, or alter a major energy facility, failure to comply with a Cease and Desist order issued by the Board, failure to pay lawfully assessed expenses, or failure to comply with a Board order to remedy a noncomplying action shall be grounds for suspension or revocation of a Board License.
2. Cease and Desist Order - The Board may issue in writing a "Cease and Desist" Order to rectify noncompliance with the Act, a Board License, or rule or order of the Board at any time with or without prior hearing upon motion of any party or on the Board's own motion. If a "Cease and Desist order" is issued without prior hearing, the applicant may within five (5) days of receipt of the "Cease and Desist Order" request a hearing at which the applicant and any other party may present testimony and evidence to show that the "Cease and Desist Order" should, or should not, be dissolved.
3. Suspension or Revocation Hearing and Order - Prior to the suspension or revocation of a Board License the Board shall issue a written "Show Cause" order setting a date on which the applicant must appear before the Board to show cause why the Board License should not be suspended or revoked. The content of a "Show Cause" order and the procedure for a "Show Cause" hearing shall follow the requirements set out in § 1.15(A) of this Part.
- ~~4. Combining Hearings—Hearings under subpart B(2) and B(3) may be combined at the discretion of the Board.~~
- ~~4.5.~~ Canceling of Suspension - The Board may in writing at any time cancel suspension of a Board License if the grounds for the suspension have been rectified. A revocation may not be canceled.



## 1.16 Judicial Review

- A. Preliminary Decision and Advisory Opinions - The preliminary decision of the Board and advisory opinions of designated agencies are interlocutory decisions for which judicial review is not available until the Board issues its Final Decision.
- B. Final Decision, [Judicial Review - Judicial review of a Board decision is governed by R.I. Gen Laws § 42-98-12.](#) ~~Any person aggrieved by a Final Decision of the Board may within ten (10) days of the ratification of such decision obtain judicial review by petitioning the Supreme Court for a writ of certiorari to review the legality and reasonableness of such decision or order. The petition for a writ of certiorari shall fully set forth the specific reasons for which it is claimed that the decision or order is unlawful or unreasonable.~~
- C. Judicial Review of Rules - The validity or applicability of any rule of the Board may be determined in an action for declaratory judgment in the Superior Court of Providence County, when it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. The Board shall be made a party to the action.

## 1.17 Motions

- A. General - Other than oral motions made during a hearing, any application to the Board to take any action or to enter any order after commencement of a proceeding or after commencement of an investigation by the Board shall be made in writing, shall be filed with the Coordinator, shall state specifically the grounds therefor, shall set forth the action or order sought, and shall be served upon all person entitled thereto by these rules.
- B. Delay of Proceeding - Except as otherwise directed by the Board, the filing of a motion, either prior to or during any proceeding, and any action thereon, shall not delay the conduct of such proceeding.
- C. Objections - Any party objecting to a written motion filed pursuant to this rule shall within five (5) days of the service of the motion, file an objection thereto in writing setting forth in detail the grounds for the objection. The time for filing objections may be varied by order of the Board.

## 1.18 Time

- A. Computation of Time - Except as otherwise provided by law, in computing any period of time prescribed or allowed by any rule, regulation, or order of the Board, or by any applicable statute, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday in Rhode Island, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or a holiday.

- B. Extension of Time - Except as otherwise provided, whenever by any rule, regulation, or order of the Board, or any notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, for good cause, be extended upon motion made before expiration of the period originally prescribed or as previously extended, and upon motion made after the expiration of the specified period, the act may be permitted to be done, where reasonable grounds are shown for the failure to act.
- C. Continuances - Except as otherwise provided by the Act, the Board may, for good cause at any time, with or without motion, continue or adjourn any hearing. A hearing before the Board shall begin at the time and place fixed in an order or a notice, but thereafter may be adjourned from time to time or from place to place by the Board.
- D. Requests for Time Extensions - Except as otherwise provided by law, requests for extensions of time in which to perform any act required or allowed to be done at or within as specified time by any rule, regulation, or order of the Board, shall be by motion in writing, timely filed with the Board, stating the facts on which the application rests, except that during the course of a hearing in a proceeding, such requests may be made by oral motion. Written motions filed under this section shall conform to the requirements of § 1.17 of this Part.

### **1.19 Formal Requirements as to Applications, Petitions, Motions and Other Papers Filed in Proceedings.**

- A. Title - All papers filed with the Board in any proceeding shall clearly show the docket designation and title of the proceeding before the Board. The initial application or petition filed shall also show, in the title, the names of all persons in whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title of subsequent papers filed.
- B. Signature - Except as may be otherwise required by the Board, the original copy of each application, petition, protest, motion, objection, brief, rate schedule, notice, report, statement and other paper or amendment thereto, shall be signed by the party in interest, or by its attorney, as required by these rules, and shall show the office, address and telephone number of the same. All other copies filed shall be fully conformed thereto.
- C. Effect of Signature - The signature of the person, officer or attorney on any paper filed with the Board constitutes a certification by such individual that he or she has read the paper being subscribed and filed, and knows the contents thereof, that if executed in any representative capacity, the matter has been subscribed and executed in the capacity specified upon the pleading or matter filed with full power and authority to so do, that the contents are true as stated, except as to matters and things, if any stated on information and belief, and that those matters and things are believed to be true.

## **1.20 Service**

- A. Service Upon Parties - A copy of all pleadings and other documents filed in any proceeding governed by these rules shall be served upon all other parties. If a party appears after the original documents have been filed, a copy of all papers previously filed shall be furnished to such person if the person so requests. Service shall also be effected on any other person designated to receive service by the Board, member of the Board, or the Coordinator.
- B. Manner of Service - Unless otherwise ordered by the Board, service under these rules shall be made upon a party or participant or upon his or her attorney, if an appearance has been entered, by first class mail postage prepaid or by hand-delivery to his or her place of business.
- C. Date of Service - The date of service shall be the day when the matter served is deposited in the mail, or is delivered in person, as the case may be. In computing the time from such date, the provisions of § 1.18 of this Part shall apply.
- D. Certificate of Service - There shall accompany and be attached to the original of each paper filed with the Board in a proceeding, when service is required to be made, a certification of service.

## **1.21 Assessment of Expenses**

- A. Responsibility - An applicant shall be charged with and shall pay the expenses reasonably incurred by the Board and Designated Agencies for hearing and investigation relating to the applicant's application.
- B. Payment - The Board in its discretion may require prepayment of such expenses or a portion of such expenses. The amount of prepayment shall be based on the Board's best estimate of expenses to be incurred for stenographers, engineers, chemists, accountants, legal counsel, expert witnesses, travel and materials for the hearing or investigation. Payment shall be made by the applicant within thirty (30) days after the rendition of the bill.
- C. Deposit of Prepayment - Monies prepaid shall be deposited in an interest-bearing account and shall be drawn on as needed by the Board or the Coordinator to satisfy expenses actually incurred.
- D. Accounting of Prepayment - A complete accounting of monies prepaid by the applicant and charges made against prepayments shall be kept by the Coordinator and shall be available to the applicant upon request.
- E. Return of Prepayment - Any monies prepaid and not expended shall be promptly returned to the applicant with appropriate interest after the end of Board

proceedings after there has been an accounting of all Board and Designated Agency expenses.

## 1.22 Pre-Hearing Procedure

### A. Generally

1. At any time subsequent to the filing of an application, the Board, on its own motion or at the request of any party, may hold a ~~preheating-~~ prehearing conference, for the purpose of determining a date for the close of discovery, simplifying issues, considering admissions of fact and documents, limiting the number of expert witnesses, scheduling the filing of exhibits, testimony, and briefs, scheduling public hearings and such other matters as the Board shall deem appropriate.
2. At or before a pre-hearing conference, the Board may order a party to file copies of exhibits, names and addresses of all witnesses it intends to call in its direct case, together with a short statement of the purposes of each exhibit and of the testimony of each witness. After the entry of such an order, a party shall not be permitted, except in the discretion of the Board, to introduce into evidence in its direct case exhibits which are not filed in accordance with the order.
3. At the conference the Board may also designate a date before which it requires any party in interest to specify what items shown by filed exhibits are conceded. Further proof of such conceded items will not be required.

## 1.23 Hearings

### A. Generally

1. Except as permitted or required by law, all hearings shall be public. The Board may, however, limit the number of spectators and participants to the extent that safety and good order require. The Board may also eject or bar the admission of any person who disrupts or threatens to disrupt a public hearing.
2. All hearings shall be held ~~in Providence~~ at the offices of the Board, unless by statute or order of the Board a different place is designated.
3. The hearing shall be conducted by a presiding officer who shall be the Chairperson ~~Chairman~~ or a Board member appointed by the Chairperson ~~Chairman~~. The presiding officer, any Board member, or the Coordinator may administer oaths and affirmations, and the presiding officer shall make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing.

4. Parties shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The Board and, Board counsel may examine witnesses and require additional testimony.
5. The Board or the presiding officer may limit appropriately the number of expert witnesses that may be heard upon any issue.
6. At any stage of the hearing the Board or the presiding officer may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned, either at that hearing or adjournments thereof. At the hearing, the Board or the presiding officer may, if deemed advisable, authorize any participant to file specific documentary evidence as part of the record within a fixed time, expiring not less than ten (10) days before the date fixed for filing and serving briefs.

B. Testimony

1. All direct testimony may be presented orally or in writing. Unless otherwise directed by the presiding officer, written testimony when properly authenticated by the witness under oath, may be transcribed into the record or admitted as an exhibit.
2. Written testimony shall be prepared in question and answer form, shall contain a statement of the qualifications of the witness, shall be signed under oath, and shall be accompanied by any exhibits to which it relates. Such written testimony shall be subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally.
3. Cross-examination of the witness presenting such written testimony shall proceed at the hearing at which it is authenticated if, not less than ten (10) days prior to the hearing, service of the written testimony has been made upon each party of record, unless the presiding officer or the Board directs otherwise.

C. Objections - When objections to the admission or exclusion of evidence before the Board or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exception to adverse rulings of the Board are not necessary.

D. Hearing Record

1. Hearings shall be stenographically reported by the official reported of the Board, and a transcript of the hearing shall be a part of the record. Such transcript shall include a verbatim report of the hearing; nothing shall be omitted therefrom except as is directed on the record by the Board or the presiding officer.

2. The record in a proceeding shall close after the filing of briefs by the parties and thereafter there shall not be received in evidence or considered as part of the record any document, letter or other evidence submitted except as provided in § 1.23(A)(6) of this Part, or changes in the transcript as provided in § 1.24(B) of this Part.

## **1.24 Copies of Transcripts**

- A. Availability in Public Hearings - The Board will cause to be made a stenographic or electronic record of all public hearings and such transcripts thereof as it requires for its own purposes. Persons desiring a transcript may obtain the same from the official reporter upon payment of the fees fixed therefor.
- B. Transcript Corrections - Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the presiding officer, at any time during the hearing, or after the close of evidence, but not more than ten (10) days from the date of receipt of the transcript. The presiding officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.

## **1.25 Witnesses**

- A. Oral Examination - witnesses shall be examined orally unless the testimony is taken by deposition as provided in § 1.27 of this Part or the facts are stipulated or the testimony is submitted in prepared written form as provided in § 1.23(B) of this Part. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.
- B. Expert Witnesses - Witnesses subpoenaed by the Board shall be paid the same fees and mileage as are paid for like services in the courts of Rhode Island. Witnesses subpoenaed at the instance of a party shall be paid the same fees by the party at whose instance the witness is subpoenaed and the Board before issuing any subpoenas as provided in § 1.26 of this Part, may require a deposit of an amount adequate to cover the fees and mileage involved.

## **1.26 Subpoenas**

- A. Issuance - Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the Board upon its own motion, will issue only upon motion in writing to the Board or the presiding officer, except that during sessions of a hearing in a proceeding, such motion may be made orally on the record before the Board or presiding officer, who is hereby given authority to determine the relevancy and materiality of the evidence sought and to issue such subpoenas in accordance with such determination. Such written motion shall be

verified and shall specify as nearly as may be possible the general relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as may be of the documents desired and the facts to be proven by them in sufficient detail to indicate the materiality and relevance of such documents.

- B. Service and Return - Service shall be made by a Rhode Island sheriff, his deputy or other disinterested party designated by the Board or the presiding officer. If service of subpoena is made by a Rhode Island sheriff or his deputy, such service shall be evidenced by his return thereof; if made by another person, such person shall make affidavit thereof, describing the manner in which service is made, and shall return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit, or statement, shall be returned forthwith to the Coordinator, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.
- C. Fees of Witnesses - Witnesses who are subpoenaed shall be paid fees as provided in § 1.25 of this Part.

## **1.27 Deposition and Data Requests**

### **A. Depositions**

1. For good cause shown, the testimony of any witness may be taken by deposition, upon application by motion of any party in a proceeding pending before the Board, at any time before the hearing is closed.
2. The motion shall state the name and address of the proposed deponent, the subject matter to which the deponent is expected to testify, the reasons why the deponent cannot appear before the Board to testify in person, and the date, time and place of the proposed deposition. objection to the motion, if any, shall be made in accordance with § 1.17(C) of this Part.
3. If authorized, the deposition shall proceed in the same manner and pursuant to the same procedures as govern depositions in the Superior Court of the State of Rhode Island.

### **B. Data Requests**

1. In any proceeding pending before the Board, the Board and any party may request such data, studies, workpapers, reports, and information as are reasonable, relevant to the proceeding and are permitted by these rules and/or statute.



2. Data requests shall be in writing, shall be directed to the party or its attorney, and shall specify in as much detail as possible the material requested. Any requested material or portion thereof to which objection is not made as set forth below shall be produced for the requesting party as soon as practicable and in no event later than fifteen (15) days after service of the request, unless the time for production is otherwise shortened or extended by agreement or order.
3. Objection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than five (5) days after service of the request. The motion shall include the portions of the data request objected to and shall set forth in detail the basis for the objection. Objections to such motion shall be filed in compliance with § 1.17(C) of this Part. The Board shall thereupon determine by order the validity of the request and shall establish a date for compliance. The relevancy of such a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of Civil Procedure.
4. The failure of a party to comply with a data request or a Board order related thereto may, at the discretion of the Board, be grounds for striking any testimony offered by the nonresponding party related to such request.

## **1.28 Stipulations**

- A. Presentation and Effect - The parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at a hearing, and when so received in evidence at a hearing, shall be binding on the parties with respect to the matters therein stipulated.
- B. Form, Style and Service - Stipulation shall conform to the applicable requirements of §§ 1.19 and 1.20 of this Part, except stipulations made orally on the record during hearings.

## **1.29 Rules of Evidence - Official Notice**

- A. Rules of Evidence - In all proceedings wherein evidence is taken, irrelevant, immaterial or unduly repetitious evidence shall be excluded. While the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the extent practicable, the Board shall not be bound by technical evidentiary rules, and, when necessary to ascertain facts not reasonable susceptible of proof under the rules, evidence not otherwise admissible may be submitted, unless precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The rules of privilege



recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when 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.

- B. Exhibits Copies - In all cases wherein evidence is taken, documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- C. Administrative Notice - In all proceedings wherein evidence is taken, notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge, but parties shall be notified either before or during the hearing, or be reference in preliminary reports or otherwise, of the material noticed, including any report or data required by law or regulation to be filed with the Board and they shall be afforded an opportunity to contest the material so noticed. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

### **1.30 Briefs, Oral Arguments, and Proposed Findings and Orders**

- A. Briefs and Memoranda of Law
  - 1. Unless waived by the parties with the consent of the Board or the presiding officer, whether oral argument be heard or not, at the close of the taking of the testimony in each proceeding, or at such other time during the proceeding as the Board shall deem appropriate, the Board or the presiding officer shall fix the time for the filing and service of briefs or memoranda of law, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved and shall fix the order in which such briefs shall be filed. The first or initial brief shall be filed by the party or parties upon whom rests the burden of proof, except that the Board or the presiding officer, when its judgment the circumstances or exigencies require, may direct that briefs or memoranda shall be filed simultaneously. The party upon whom rests the burden of proof shall have the right to file a reply brief.
  - 2. Briefs should contain:
    - a. a concise statement of the case,
    - b. an abstract of the evidence relied upon by the party filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears, and

- c. proposed findings of fact and conclusions, together with the reasons and authorities therefor, separately stated.
- B. Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in the appendix to the brief. Any analysis of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain. Every brief of more than twenty (20) pages shall contain a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages where the citations appear. All briefs shall be as concise as possible and shall in all other aspects conform to the requirements of §§ 1.19 and 1.20 of this Part.
- C. Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing, except by special permission of the Board or the presiding officer. All briefs shall be accompanied by a certificate showing service upon all parties or their attorneys who appeared at the hearing or on brief, and except where filing of a different number is permitted or directed by the Board or presiding officer, seven (7) ~~fifteen (15)~~ copies of each brief shall be furnished for the use of the Board.
- D. Oral Argument - When, in the opinion of the Board or the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the presiding officer may, either of his own motion or at the request of a party at or before the close of the taking of testimony, allow and fix a time for the presentation of oral argument, imposing such limits or time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of the testimony.

### **1.31 Reopening Proceedings**

- A. By Parties
  - 1. Except as provided in § 1.31(A)(3) of this Part, at any time after the conclusion of a hearing in a proceeding, but before issuance of a decision, any party to the proceeding may, for good cause shown, move to reopen the proceedings for the purpose of taking additional evidence. Copies of such motion shall be served upon all participants or their attorneys of record, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceedings, including material changes of fact or law alleged to have occurred since the conclusion of the hearing, and shall in all other respects conform to the applicable requirements of §§ 1.17 through 1.20 of this Part.
  - 2. Within ten (10) days following the service of such motion, or such shorter or longer time as the Board or the presiding officer may order, any other party to the proceedings may file an objection thereto, and in default

thereof shall be deemed to have waived any objections to the granting of such petition.

3. The Board will not consider any motion to reopen filed within ten (10) days before the expiration of the time in which the Board must issue a Final or Preliminary Decision.
- B. By the Board - At any time prior to the filing of a decision, after notice to the parties and opportunity to be heard, the Board may reopen the proceeding for the receipt of additional evidence on its own motion, if the Board has reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

### **1.32 Relief From Order**

- A. Clerical Mistakes - Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Board at any time on its own initiative, or on motion of any party and after such notice as the Board orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court and thereafter while the appeal is pending may be so corrected with leave of the supreme Court.
- B. Mistake, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, Other - On motion and upon such terms as are just, the Board may relieve a party from a final order or proceeding for the following reasons:
1. Mistake, inadvertence, surprise, or excusable neglect,
  2. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under § 1.31 of this Part.
  3. Fraud, misrepresentation, or other misconduct of an adverse party,
  4. The order is void.
  5. A prior order on which the order is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application, or
  6. Any other reason justifying release from the operation of the order
- C. A motion shall be made within a reasonable time not more than one (1) year after the order is entered. A motion under § 1.32(B) of this Part does not affect the finality of an order or suspend its operation. This rule does not limit the power of the Board to entertain an independent action to relieve a party from an order or to set aside an order for fraud upon the Board.

### **1.33 Petitions**

- A. General - Petitions for relief under any statute or other authority designated to the Board shall be in writing, shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite by appropriate reference the statutory provision or other authority relied upon for relief. Seven (7) ~~Fifteen (15)~~ copies shall be filed with the original.
- B. Petitions for Issuance, Amendment, or Repeal of Rules
1. A petition for the issuance, amendment or repeal of a rule by the Board shall, in addition to the requirements of subsection (a) above, set forth the specific rule, amendment or repeal requested, and state in detail with citations to appropriate references, the reasons for the requested action. Seven (7) ~~Fifteen (15)~~ copies shall be filed with the original.
  2. Upon submission of such a petition, the Board will within thirty (30) days, either deny the petition in writing or initiate rule-making procedures in accordance with R.I. Gen. Laws § 42-35-8 shall set forth the rule or statutory provision in question and shall state in detail, with appropriate citations, whether the rule or provisions should or should not apply.

### **1.34 Severability**

If any provision of the Regulation is held to be invalid, such invalidity shall not affect the provisions or the applications thereof not specifically held invalid.

### **1.35 Statewide Master Construction Plan**

Each entity intending to construct a major energy facility in the state must file annually with the Board a "statewide master construction plan" consisting of a brief and concise description of any major energy facilities which the filing party proposes to construct in the succeeding two years. This plan shall be filed within ninety days of the adoption of these regulations and on each subsequent December 1 for the following year, unless the Board grants ~~gives~~ leave to file at a later date. The plan may be amended during the year to add proposed major energy facilities when plans for construction of new facilities arise that were not known or not likely at the time the plan was filed for such year.

### **1.36 Transmission Line Licensing**

The Board intends to expedite the licensing process for transmission lines and reserves the right to shorten the time limits provided in these regulations, subject to the constraints provided in applicable law.