

## 220 CMR: DEPARTMENT OF PUBLIC UTILITIES

### 1.06: Hearings

- (1) Grant of Hearing. Public hearing will be granted whenever required by statute, and otherwise as the Department may determine in specific cases.
- (2) Calendar. The Secretary of the Department shall maintain a docket and a hearing calendar of all proceedings set for hearing. So far as practicable, hearings shall be heard in the order in which they have been listed on the Department's docket.
- (3) Place. All hearings shall be held at Boston at the offices of the Department, unless by statute or vote of the Commission a different place is designated.
- (4) Hearing List. When more than one hearing is scheduled for the same time and place, uncontested matters shall be heard before contested matters.
- (5) Notice.
  - (a) Persons Notified. Except where the Department has issued an order of notice pursuant to 220 CMR 1.06(5)(d), the Department shall give written notice of a scheduled hearing in any pending matter to all parties, to persons required by statute to be notified, to others who have made written request for notice of hearing in a particular matter and to such other persons as deemed necessary or appropriate by the Department. In addition, the Department may give notice by newspaper publication or by such other means as it may deem advisable. In any proceeding pursuant to M.G.L. c. 164, § 94; M.G.L. c. 159, §§ 19, 20, except for carriers certified pursuant to M.G.L. c. 159, § 12B, and others upon a showing of good cause, the Company shall give notice by publication pursuant to 220 CMR 5.06.
  - (b) Contents of Notice. Such notice shall include, but need not be limited to, the time, date place and nature of the hearing. Notice of hearings relating to the issuance or amendment of certificates, permits, or licenses shall include the name of the municipality in which the applicant maintains his principal place of business, a brief description of the type of commodity involved (if applicable) and of the area of authority sought and the name and address of applicant's attorney, if his appearance has been filed.
  - (c) Length of Notice. Unless otherwise provided by statute, or unless the Department finds that a shorter period of notice is reasonable and consistent with the public interest, notice of a hearing shall be given at least 14 days prior thereto.
  - (d) Order of Notice. The Department may require any person filing an initial pleading to give notice of the hearing on such pleading by publication or other means or both, in which case such person shall receive an order of notice from the Department which shall be returned, with proof of compliance with said order, not later than the commencement of hearing on the petition. (220 CMR 1.15(2)).
  - (e) Continuances. For good cause shown, the Commission or the presiding officer may grant a continuance. All requests for continuances shall be made by a motion in accordance with 220 CMR 1.04(5).

- (f) Address. Unless notice to the contrary has been received by the Department, notices of hearing shall be sufficient if mailed or delivered to the following:
1. If the addressee is a holder of a certificate, permit or license, the address shown on the last application for the issuance or amendment thereof.
  2. If the addressee has tariffs on file, to the address shown on any tariff in effect at the time of notice.

(6) Conduct of Hearings.

- (a) Presiding Officer. The hearing shall be conducted by a presiding officer who shall be the Commission Chairman, a Commissioner designated by the Chairman or a hearing officer designated by the Commission. The presiding officer shall administer oaths and affirmations, issue subpoenas, and make all decisions regarding the admission or exclusion of evidence or any other procedural matters which may arise in the course of the hearing.

(b) Procedural Conference.

1. The presiding officer may direct the parties to attend a preliminary conference to discuss procedural matters relating to the proceeding at any time before the commencement of the evidentiary hearing. The preliminary conference may be a public hearing on the record if requested by a party or ordered by the presiding officer.

To the extent that it is deemed necessary and practicable, the presiding officer shall establish a detailed schedule for the proceeding, including, but not limited to, the dates for the filing of information requests and responses, objections to discovery questions and responses to those objections, evidentiary hearings, and filing testimony, stipulations, settlement proposals, and briefs. The presiding officer shall also address any other procedural matters that will aid in the orderly disposition of the case.

2. The presiding officer shall, through written memorandum to the parties or announcement on the record, announce any action taken at the procedural conference. Any schedule established by the presiding officer shall be binding on the parties unless later modified by the presiding officer after notice to all parties.

(c) Discovery

1. Purpose. The purpose for discovery is to facilitate the hearing process by permitting the parties and the Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled.
2. Rules Governing Discovery. Because the Department's investigations involve matters with a wide range of issues, levels of complexity and statutory deadlines, the presiding officer shall establish discovery procedures in each case which take into account the legitimate rights of the parties in the context of the case at issue. In establishing discovery procedures, the presiding officer must exercise his or her discretion to balance the interests of the parties and ensure that the information

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necessary to complete the record is produced without unproductive delays. In exercising this discretion, the presiding officer shall be guided by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.* These rules, however, shall be instructive, rather than controlling.

3. Discovery Schedules. Discovery requests may be made at any time after the commencement of an investigation, and parties are encouraged to comply voluntarily with any such requests for information before the formal hearing process begins. Where appropriate, the presiding officer shall establish a formal schedule, either at the procedural conference or at some time before the commencement of evidentiary hearings. The schedule may be expedited for good cause shown. In cases brought under M.G.L. c. 164, § 94G, discovery may be expedited and/or information responses to discovery requests of relevant materials may be made a matter of inquiry in a future proceeding under that statute.
4. Motions to Compel Discovery. A party may move for an Order to compel compliance with its discovery request. Unless otherwise permitted by the presiding officer for good cause shown, such motion shall be made no later than seven days after the passing of the deadline for responding to the request. If the presiding officer finds that a party has failed to comply in a reasonable manner with a legitimate discovery request without good cause, he or she may, after issuance of an Order compelling discovery, order whatever sanctions are deemed to be appropriate, including, but not limited to, those listed in Rule 37 of the Massachusetts Rules of Civil Procedure. A party's failure to file a motion to compel discovery in a timely manner, absent a showing of good cause, may result in a waiver of its right to compel the response.
5. Amending Responses. A party is under a continuing duty to amend seasonably an early response if it obtains information that the response was incorrect or incomplete when made, or that the response, though correct when made, is no longer true or complete.
6. Depositions.
  - a. Depositions may be taken if agreed to by all parties or by Order of the presiding officer in the event of a dispute following a motion by the requesting party. The presiding officer may, in his or her discretion, impose reasonable conditions on the deposition process, including, but not limited to, placing restrictions on the scope of the depositions or on the use of the depositions in the proceeding. All depositions shall be transcribed at the expense of the deposing party or parties.
  - b. All motions for deposition should include the name and title of the person to be deposed, the issues which will be the subject of the deposition, and a statement of the manner in which the deposition will expedite the hearing process. The party to be deposed and parties in the proceeding shall be served with the motion for deposition and may file objections to or comments on the motion no later than seven days after service. The presiding officer shall grant a motion for deposition if it is determined that the taking of a

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deposition will be more efficient than other available discovery methods, and will not unduly burden the affected parties.

### 7. Entry upon land for inspection and other purposes.

- a. Scope. Any party may serve on any entity subject to the Department's jurisdiction a request to permit entry upon or within designated land, buildings, or other property in the possession or control of such entity (or upon land and property wherever situated, belonging to some other entity in which any entity subject to the Department's jurisdiction owns an interest) upon whom the request is served for the purpose of inspection, observation, measurement, surveying, photographing, testing or sampling the property or any designated room, object, machine, storage facility, practice or operation therein or thereon.
- b. Procedure. The request may be served without leave of the presiding officer but shall be filed with the Department. The request shall describe the property to be inspected and shall specify a reasonable time at which to make the inspection and perform the related acts. Such request shall be served no later than ten days before the date of the proposed inspection. If the entity served objects to such inspection it shall file a written objection with the presiding officer stating therein its basis for objecting, no later than five days after the service of the request. Upon notice of such objection, the presiding officer shall at his or her first opportunity convene a hearing and shall order such inspection to proceed absent a showing of good cause by the entity.

### (d) Rulings.

1. Presiding Officer. The presiding officer shall make all rulings during the course of the hearings when requested to do so by a party, although he or she may, at his or her discretion, refer any matter to the full Commission. The presiding officer may require, at his or her discretion, written memoranda on any issue or permit oral argument. The presiding officer may rule at the time of the request or take any matter under advisement. The presiding officer shall make all rulings promptly after submission, generally no later than the next hearing date.
2. Effect of Rulings and Decision by Presiding Officer. Rulings and decisions of the presiding officer shall remain in full force and effect unless and until set aside or modified by the Commission. Any ruling or other decision of the presiding officer may be appealed to the full Commission.
3. Appeals to the Commission. If a party wishes to appeal a ruling or decision of the presiding officer, the party should immediately notify the presiding officer, on the record if possible. The presiding officer shall prescribe a reasonable time period for the submittal of the appeal and any response to be filed by other parties. The appeal must be filed in writing with supporting documentation, and served on all parties to the proceeding.
4. Offers of Proof. Any offer of proof made in connection with an objection taken to a ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which

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the party contends would be adduced by such testimony; and if the excluded evidence is in documentary or written form, or refers to documents or records, a copy of such evidence shall be marked for identification and shall constitute an offer of proof.

- (e) Motions to Dismiss and for Summary Judgment. A party may move at any time after the submission of an initial filing for dismissal or summary judgment as to all issues or any issue in the case. The motion shall be filed in writing and served on all parties. A motion for summary judgment shall set forth in detail such supporting facts as would be admissible in evidence. The presiding officer shall afford other parties a reasonable time to respond in writing, and may, in his or her discretion, permit oral argument on the motion.
- (f) Order of Presentation. In any hearing held upon the Department's own motion or upon petition, the person being investigated or the petitioner, as the case may be, shall open and close. In hearings on complaints, the complainant shall open and close. Where there is more than one person being investigated or more than one petitioner or complainant or where a hearing is being held on the Department's own motion and on complaint or petition, the order of presentation shall be in the discretion of the presiding officer. After all the evidence and testimony of the person opening has been received, the evidence and testimony of all other parties or others who have been allowed to participate in the hearing shall be received in the order determined by the presiding officer. All witnesses shall be subject to cross-examination by the Commissioners, the presiding officer, counsel for the Department, counsel for other parties, and counsel for any other person as permitted by the presiding officer. A reasonable amount of time for the preparation of cross-examination may be afforded.
- (g) Conduct of Persons Present. All parties, counsel, witnesses, and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of this Commonwealth. Where such decorum is not observed, the presiding officer may take such action as he deems appropriate.
- (h) Additional Evidence. At any stage of the hearing the presiding officer may call for further evidence upon any issue, and require such evidence to be presented by the party or parties concerned or by the staff counsel, either at that hearing or adjournments thereof. At the hearing, the presiding officer may authorize any party to file specific documentary evidence as a part of the record within a specified time.

### (7) Transcripts.

- (a) Transcript and Record. At the request of any party, made in writing at least one day before the hearing date, or of its own accord, the Department shall provide that all proceedings in a pending case be officially recorded by a reporter appointed for that purpose. The Department shall require any party requesting a copy of the transcript to pay the reasonable cost of preparing said copy before the Department makes said copy available to the party.

- (b) Transcript Corrections. Corrections in the official transcript may be made only to 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 days from the date of receipt of the transcript. The presiding officer may call for the submission of proposed corrections and may make dispositions thereof at appropriate times during the course of the proceedings.