

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 1.00: PROCEDURAL RULES

Section

- 1.01: Scope and Construction
- 1.02: General Provisions
- 1.03: Appearances; Intervention and Participation; Parties
- 1.04: Pleading
- 1.05: Service
- 1.06: Hearings
- 1.07: Quorum; Tentative or Proposed Decisions
- 1.08: Recessing Hearing for Conference
- 1.09: Consolidation
- 1.10: Evidence; Subpoenas
- 1.11: Rulings, Briefs, Oral Argument, and Post-hearing Procedure
- 1.12: Decisions
- 1.13: Appeal from Department Decisions
- 1.14: Miscellaneous

1.01: Scope and Construction

(1) Procedure Governed. 220 CMR 1.00 shall govern practice and procedure, except with respect to the adoption of regulations pursuant to 220 CMR 2.00: *Rules for Adopting, Amending, or Repealing Regulations and for Issuing Advisory Rulings*, before the Massachusetts Department of Public Utilities under applicable laws of the Commonwealth of Massachusetts and except where a statute provides otherwise.

(2) Transportation Oversight Division. 220 CMR 1.02(8)(c), 1.06(4), (5), and (6)(b) shall not apply to matters requiring action by the Transportation Oversight Division. The matters referred to in 220 CMR 1.02(8)(c), 1.06(4), (5), and (6)(b) shall be governed by 220 CMR 250.00: *Transportation Oversight Division Practice*.

(3) Definitions. As used in 220 CMR 1.00, except as otherwise required by the context:

Adjudicatory Proceeding shall be as defined in M.G.L. c. 30A, § 1(1).

Commission means the Commissioners appointed under the provisions of M.G.L. c. 25, § 2, when acting as such.

Department means the Massachusetts Department of Public Utilities, its Commissioners and employees.

Parties. As used in 220 CMR 1.00, Party means;

- (a) the specifically named persons whose legal rights, duties, or privileges are being determined in an adjudicatory proceeding before the Department;

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (b) any other person who as a matter of constitutional right or by any provision of the Massachusetts General Laws is entitled to participate fully in such proceeding and who enters an appearance;
- (c) any other person allowed by the Department to intervene as a party.

Presiding Officer means that person who is designated to conduct hearings pursuant to the provisions of 220 CMR 1.06(5)(a) or 220 CMR 250.01: *General*.

Transportation Oversight Division shall mean the Transportation Oversight Division of the Department.

- (4) Waiver. Where good cause appears, not contrary to statute, the Commission and any presiding officer may permit deviation from 220 CMR 1.00.

1.02: General Provisions

- (1) Office. The principal office of the Department is One South Station, 5th Floor, Boston, Massachusetts. The office of the Department shall be open from 8:45 A.M. to 5:00 P.M. each weekday except Saturdays, Sundays, and legal holidays.
- (2) Date of Receipt.
 - (a) By the Department. All communications, including correspondence, motions, and pleading, shall be deemed to be filed or received on the date on which they are received by the Department at its principal office. With respect to electronic filings, the document is deemed filed on the date the Department receives the electronic filing if it is received during the Department's normal business hours. If the document is electronically filed on a weekend, on a holiday observed by the Department, or during hours when the Department is closed, the document will be deemed filed on the date when the Department is next open for business.
 - (b) By Parties and Other Persons. All communications, including correspondence, motions, and pleading, shall be deemed to be filed or received on the date on which they are deposited in the United States mail, properly addressed and postage paid, delivered in person to a party or other person, or served electronically pursuant to the Department's Electronic Filing Guidelines.
- (3) Identification. Communications should concern but one matter, should contain the name and address of the communicator, and the appropriate certificate or permit number, if there be any pertaining to the subject of the communication. When the subject matter pertains to a pending docket, the title of the proceeding and the docket number should be given.
- (4) Computation of Time. Computation of any period of time referred to in 220 CMR 1.00 shall begin with the first day following that on which the act that initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Department is closed, in which event the period shall run until the end of the next following business day. When such period of time, with the

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

intervening Saturdays, Sundays, and legal holidays counted, is five days or less, the said Saturdays, Sundays, and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.

(5) Extensions of Time. In the discretion of the Commission or the presiding officer, for good cause shown, any time limit prescribed or allowed by 220 CMR 1.00 may be extended. All requests for extensions shall be made by motion in accordance with 220 CMR 1.04(5), and shall be made before the expiration of the period originally prescribed or as previously extended. The Secretary of the Commission shall notify all parties of the Commission's action upon the motion.

(6) Signatures. Every application, notice, pleading, petition, complaint, motion, brief, and memorandum shall be signed by the filing party or by one or more attorneys, in their individual names on behalf of the filing party. Electronic signatures, pursuant to the Department's Electronic Filing Guidelines, shall satisfy this requirement.

(7) Appearances. An appearance shall be made in any proceeding by filing a written notice thereof and serving a copy on all persons who have theretofore appeared.

(8) Formal Requirements as to Pleading, Documents, and Other Papers Filed in Proceedings.

(a) Copies. Except as may be otherwise required by the rules or regulations of the Department, or ordered or requested by the Department, at the time pleading, documents, or other papers are filed with the Department, there shall be furnished to the Department an original of such papers. A paper filed pursuant to the Department's Electronic Filing Guidelines shall be considered an original.

(b) Form. Except for forms provided by the Department, which shall be used where appropriate, pleading, documents, or other papers filed with the Department shall be printed or typewritten on paper cut or folded to either letter or legal size, 8½ inches wide by 11 to 14 inches long, with left-hand margin not less than 1½ inches wide and other margins not less than one inch. The impression shall be double spaced, except that quotations in excess of a few lines may be single spaced and indented. Double-sided pages are permitted. Photocopied or the like copies will be accepted as typewritten, provided all copies are clear and permanently legible. The Department's Electronic Filing Guidelines govern the form of electronic filings.

(c) Filing. All pleading, documents, or papers relating to matters requiring action by the Commission shall be filed with the Secretary of the Department. One South Station, 5th Floor, Boston, Massachusetts, 02110, unless electronically filed pursuant to 220 CMR 1.02(8)(d).

(d) Electronic Filing: Papers may be filed and signed by electronic means pursuant to the Department's Electronic Filing Guidelines. A paper filed electronically in compliance with the Electronic Filing Guidelines is a written paper or document for purposes of 220 CMR 1.00.

(9) Ex Parte Communications in Adjudicatory Proceedings.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (a) From the initial filing in an adjudicatory proceeding until the rendering of a final decision, a Commissioner, presiding officer, or staff member of the Department may not communicate with a party or interested person about any substantive issue of fact, law, or policy except upon reasonable notice and opportunity for all parties to participate.
- (b) Communications not prohibited by 220 CMR 1.02(9)(a) include:
1. Communications concerning scheduling, administrative, and other procedural matters; and
 2. Communications between a party and assigned settlement intervention staff for the purpose of producing a settlement, or communications between a party and staff assigned to conduct alternative dispute resolution or mediation proceedings.
- (c) If a person makes or attempts to make an *ex parte* communication prohibited by 220 CMR 1.02(9)(a), the Commissioner, presiding officer, or staff member shall advise the person that the communication is prohibited and shall immediately terminate the prohibited communication.
- (d) If a Commissioner, presiding officer, or staff member violates the *ex parte* rule, he or she shall, no later than two business days after determining that the communication was prohibited, serve on each party and place in the docket file the following:
1. A written statement including the substance and circumstances surrounding the communication; the identity of each person who participated in the communication; the time, date, and duration of the communication; and whether, in his or her opinion, the receipt of the *ex parte* communication disqualifies him or her from further participation in the adjudicatory proceeding; and
 2. Any written or electronic documentation of the communication.
The above documents to be placed in the docket file shall not be made a part of the evidentiary record.
- (e) The Department may, upon the motion of any party or on its own motion, accept or require the submission of additional evidence of the substance of a communication prohibited by 220 CMR 1.02(9)(a).
- (f) Upon receipt of a communication made or caused to be made by a party in violation of 220 CMR 1.02(9)(a), the Department may, to the extent consistent with the interests of justice, require the party to show cause why his or her claim or interest in the adjudicatory proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.
- (g) Where a party has violated 220 CMR 1.02(9)(a), the Department or presiding officer may take such action as is deemed appropriate within the circumstances.

1.03: Appearances; Intervention and Participation; Parties

(1) Intervention.

- (a) Any person who desires to participate in a proceeding shall file a written petition for leave to intervene or to participate in the proceeding.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (b) Form and Contents of Petition. The petition shall state the name and address of the petitioner. It shall describe the manner in which the petitioner is substantially and specifically affected by the proceeding. It shall state the contention of the petitioner, the relief sought and the statutory or other authority therefor, and the nature of the evidence the petitioner will present if the petition is granted.
- (c) Filing and Service of Petition. Unless otherwise provided in the notice of hearing, the petition must be filed at least seven days prior to the date for hearing. No petition may be filed or will be acted upon during a hearing unless permitted by the Commission or the presiding officer after opportunity for all parties to object thereto. The petition must be served as required under 220 CMR 1.05(1).
- (d) Answers to Petitions. A party may file an answer to a petition no later than five days after the petition is filed.
- (e) Action on Petitions. The Commission, or the presiding officer, shall rule on all such petitions and may grant a person leave to intervene as a party in the whole or any portion of a proceeding or may allow a person who is not a party to make limited appearance by making an oral or written statement of his position on the issue, or by such other participation as the Commission or the presiding officer may determine. Such grant may be conditioned on such terms as the Commission or presiding officer may direct. No grant of such leave to intervene or participate shall be deemed to constitute an expression by the Department that the person allowed to participate is a party in interest, who may be aggrieved by any final decision, order, or ruling, unless the grant explicitly so states.

1.04: Pleadings

- (1) Initial Pleading.
- (a) Definition. An initial pleading, as used in 220 CMR 1.04(1), shall refer to any paper or document by which an adjudicatory proceeding may be commenced. Such papers or documents shall include but not be limited to applications, petitions, complaints, protests, and appeals from decisions of the Director of the Transportation Oversight Division.
- (b) Content. Every initial pleading shall be on the form provided by the Department, and if no form is provided, the pleading, as far as possible, shall contain the following:
1. A title that indicates either the nature of the proceedings or the parties involved therein.
 2. The complete name and address of the party filing the pleading.
 3. If the party filing the pleading is represented by counsel, the name and address of the attorney.
 4. The name and address of all other petitioners.
 5. A clear and concise statement of the facts upon which the pleading is maintained.
 6. In the case of appellate proceedings, a clear and concise statement of the appellant's objections to the decision or action from which the appeal was taken.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

7. A reference to the statute under which relief is sought.
8. A prayer setting forth the relief sought.
9. As part of the initial petition pursuant to M.G.L. c. 164, § 94; or pursuant to M.G.L. c. 159, §§ 19, 20, the company shall file a copy of the proposed notice as set forth in 220 CMR 5.06: *Notice of General Rate Increases to Customers of Gas, Electric, Water, and Telephone Companies* and a list of newspapers in which it proposes to publish such notice.

(c) Application for Permission to Establish Rates on Less than Statutory Notice. Application for permission to establish rates on less than statutory notice shall have attached thereto, as an exhibit, a copy of the proposed tariff or schedule. When the tariff is to meet the existing rate of a competing common carrier, the petition shall state the name, address, and the particular rate or rates of the competing carrier to be met and shall be signed, under oath, by the carrier filing the application. A contract carrier shall not be deemed a competing carrier in the consideration of such applications.

(2) Answer. Except where a different period is specified, an answer shall be filed within 14 days after service of the document to which the answer is directed.

(3) Amendments to Pleadings. Leave to file amendments to any pleading will be allowed or denied as a matter of discretion. If amendment is made to an initial pleading, an answer to said amended pleading, if permitted, shall be filed within such time as may be directed by the Commission or the presiding officer.

(4) Withdrawal of Pleadings.

(a) Prior to Commencement of Hearing. A party may withdraw an initial pleading filed with the Department at any time prior to the commencement of a hearing on such pleading. A notice of withdrawal of pleadings shall be served on the Department and each party in accordance with 220 CMR 1.05(1)

(b) After Commencement of Hearing. A party desiring to withdraw an initial pleading after the commencement of hearing on such pleading shall file a motion for withdrawal, in accordance with 220 CMR 1.04(5). If any person has an objection thereto, he shall within ten days after receipt of said motion, file a statement with the Department setting forth the reasons for his objection and serve a copy of same, in accordance with 220 CMR 1.05(1), on each person entitled thereto. Such an objecting person shall, if a party, have a hearing on the motion to withdraw if, at the time of filing, he so requests. In the absence of objections or a request for hearing, within 30 days after the filing thereof, the motion of withdrawal shall be deemed allowed, unless otherwise ordered.

(5) Motions.

(a) General. An application to the Department to take any action or to enter any order after initial pleading or after commencement of an investigation by the Department shall be by motion which, unless made during a hearing, shall be made in writing, shall state specifically the grounds therefor, and shall set forth

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

the action or order sought. A copy of all motions made in writing, or reduced to writing at the request of the Commission, shall be served upon all persons entitled thereto in accordance with 220 CMR 1.05(1).

(b) Delay of Adjudicatory Proceeding. Except as otherwise directed by the presiding officer or the Commission, the filing of a motion, either prior to or during any adjudicatory proceeding, and any action thereon shall not delay the conduct of such proceeding.

(c) Motion Prior to Hearing. A motion shall be in writing and may be filed prior to hearing by any party or by a person whose petition filed pursuant to 220 CMR 1.03(1) is pending. Any party may file a written answer to such motion no later than five days after such filing.

(d) Motions During Hearing. With the exception of motions to withdraw pleadings filed pursuant to 220 CMR 1.04(4) and petitions filed pursuant to 220 CMR 1.03(1), upon the making of a motion in the course of a hearing, replies thereto and argument thereon shall be permitted within the time and in the manner directed by the presiding officer.

(e) Motion for Protection from Public Disclosure. Documents in the possession of the Department are presumed to be public records. To overcome this presumption and protect information from public disclosure, a party must file with the Department a written motion for a protective order. If no such motion is made at the time the record is filed with the Department, the Department may make the information available to the public without further notice.

The party moving for a protective order shall substantiate its motion, which shall be treated as a public record, with the following information:

1. the time period for which confidential treatment is desired;
2. the reason the record was provided to the Department, and the date of submittal;
3. a precise description of the information to be protected;
4. the reasons for the claim of confidentiality, including proof that an exemption to public disclosure applies;
5. proof of the harm of public disclosure;
6. the extent to which the record or its contents has been disclosed to other persons or to federal, state, and local agencies, including the status of any requests for confidentiality; and
7. a certification to the best of the moving party's knowledge, information, and belief, that the information is not customarily available in the public domain.

In conjunction with a motion for protection from public disclosure, one unredacted copy of the materials for which protection is sought must be filed directly with the presiding officer. The unredacted copy should be submitted in a sealed envelope, clearly marked with the words "CONFIDENTIAL" on the outside of the envelope as well as on each page of the materials. A redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (1) Service.
 - (a) General Rule. Service of all papers relating to any proceeding, including complaints, orders, decisions, pleadings, motions, processes, notices, briefs, claims of appeal, and exhibits, shall be by personal delivery, first-class mail, or electronic service pursuant to the Department's Electronic Filing Guidelines.
 - (b) On Whom Served. All such papers shall be served by the person filing the same on every person who has theretofore entered an appearance in the proceeding. If a person appears after the paper has been filed, a copy of all papers previously filed shall be furnished to such person, if he so requests. Proof of service shall accompany all papers when filed. If service in accordance with 220 CMR 1.05(b) is deemed by any person to be too burdensome, application may be made to the Department or to the presiding officer for relief.
 - (c) Service by the Department. A copy of any paper served by the Department, showing the addressees to whom the paper was mailed or electronically served, shall be placed in the Department's files and shall be *prima facie* evidence of service and the date thereof.

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.
- (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) Notice.
 - (a) Persons Notified. Except where the Department has issued an order of notice pursuant to 220 CMR 1.06(4)(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: *Notice of General Rate Increases to Customers of Gas, Electric, Water, and Telephone Companies.*
 - (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

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

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 that shall be returned, with proof of compliance with said order, not later than the commencement of hearing on the petition.

(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.

(5) 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 that 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 that 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 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.* Rule 26 *et seq.*, 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 earlier 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 that 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 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.

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

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 that 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, technical staff for the Department, counsel for other

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

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 or she 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.

(6) 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.

1.07: Quorum; Tentative or Proposed Decisions

(1) Quorum. At least two Commissioners shall participate in any action of the Commission. All decisions and rulings of the Commission shall be by a vote of a majority of the Commission.

(2) Tentative or Proposed Decisions.

(a) In the event that a majority of the Commission have neither heard nor read the evidence and their decision is adverse to any party other than the Department, then if any party in advance of hearing so requests in writing, such decision shall be made only after a tentative or proposed decision is delivered or mailed to each party.

(b) Such tentative or proposed decision shall contain a statement of reasons and a determination of each issue of fact or law necessary to such decision.

(c) Upon the proper filing and service of objections by a person adversely affected by such decision no later than ten days after receipt of the same, the

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Commission shall allow either oral or written arguments to be presented to a majority of the Commission, the choice to be in the discretion of the Commission.

1.08: Recessing Hearing for Conference

Recessing Hearing for Conference. In any proceeding the presiding officer may in his or her discretion call all parties together for a conference prior to the taking of testimony, or may recess the hearing for such conference. The presiding officer shall state on the record the results of such conference.

1.09: Consolidation

Consolidation. The Department upon its own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be consolidated for hearing on any or all of the matters in issue in such proceedings.

1.10: Evidence; Subpoenas

(1) Evidence. The Department shall follow the rules of evidence observed by courts when practicable and shall observe the rules of privilege recognized by law, except as otherwise provided by any other law. There shall be excluded such evidence as is unduly repetitious or cumulative or such evidence as is not of the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. All unsworn statements appearing in the record shall not be considered as evidence on which a decision may be based.

(2) Official Notice. Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of this Commonwealth and in addition, the Department may take notice of general, technical, or scientific facts within its specialized knowledge; provided, that the Commission shall notify all parties of the material so noticed, and provided further, that any party on timely request be afforded an opportunity to contest the matters so noticed.

(3) Documentary Evidence; Incorporation by Reference. Any matter contained in any records, investigations, reports, and documents in the possession of the Department of which a party or the Department desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding. Such records and other documents need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(4) Prepared Testimony; Discovery Responses. Unless otherwise directed by the presiding officer, prepared written testimony and discovery responses must be authenticated by an affidavit of the witness at the time of filing. The presiding officer may allow prepared direct testimony or discovery responses of any witness to be offered as an exhibit and may omit oral presentation of the testimony. Copies of such proposed exhibit shall be served upon all persons who have filed an appearance and on the

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

presiding officer and any staff counsel of record, at least seven days in advance of the session of the hearing at which such exhibit is to be offered.

(5) Copies of Exhibits to Parties and Department; Time of Service.

(a) Direct Evidence. Except as otherwise provided in 220 CMR 1.00, when exhibits of a documentary character, that have not been previously provided to the Department, are to be offered in evidence, the person proposing to offer the same, in addition to the service required by 220 CMR 1.02(8)(a) and 1.05, shall serve additional copies of such exhibits on the Department as provided for in the ground rules or otherwise directed by the presiding officer, at least seven days prior to the hearing at which such exhibits are to be offered.

(b) Rebuttal Exhibits. All exhibits in rebuttal may be served at the time they are introduced at the hearing.

(6) Copies of Tariffs. In any hearing held pursuant to an investigation of the proposed rates, the proponent of the rates shall introduce as an exhibit a copy of the proposed rates and of those being canceled.

(7) Partnership Witnesses. In all proceedings held under M.G.L. c. 159A, § 7, or M.G.L. c. 159B, § 11, relating to acquisition of a certificate or permit or the capital stock of a carrier by a partnership, at least one partner, who shall be familiar with the financial circumstances, training, and experience of all other partners, shall appear as witness.

(8) Stipulations. Two or more parties to any proceeding may file with the Department and serve on all parties a written stipulation of specific facts or issues. The stipulation shall be supported by whatever evidence the parties deem relevant to assist the Department in determining whether the stipulation should be accepted. Other parties shall file any response to the stipulation no later than five days after service, or within such other time as may be ordered by the presiding officer. The Department may request additional information in support of the stipulation. If the Department approves the stipulation, it shall be incorporated into any final Department Order. The Department shall rule on the acceptability of the stipulation in a timely manner so as to minimize the administrative burden of the parties.

(9) Subpoenas. The Department and all other parties shall have authority in accordance with M.G.L. c. 30A, § 12 and M.G.L. c. 25, § 5A to issue subpoenas requiring the attendance and testimony of witnesses and the production of any documents in question in the proceeding.

(10) Production and View of Objects. A party may file a motion for the production or view of any object that relates to the subject matter of any proceeding then pending before the Department. Said motion shall be filed in accordance with 220 CMR 1.04(5) and shall be granted in the discretion of the presiding officer where justice requires.

1.11: Rulings, Briefs, Oral Argument and Post-hearing Procedure

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

- (1) Request for Rulings. Within the time designated for the filing of briefs pursuant to 220 CMR 1.11(3), any party may file requests for rulings in accordance with the provisions of M.G.L. c. 25, § 5.
- (2) Oral Argument, When Made. When, in the opinion of 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 motion or at the request of a party or staff counsel at or before the close of the taking of testimony, allow and fix a time for the presentation of oral argument, imposing such limits of time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of testimony.
- (3) Briefs. Briefs may be filed by a party either before or during the course of a hearing, or within such time thereafter as the presiding officer shall designate. Failure to file a brief shall in no way prejudice the rights of any party. The order of filing briefs after the hearing, including reply briefs, will be designated by the presiding officer.
- (4) Contents and Scope of Brief; Proposed Findings and Order. Briefs may contain:
 - (a) A concise statement of the case;
 - (b) An abstract of the evidence relied upon by the party filing, with reference to the pages of record or exhibits where the evidence appears;
 - (c) Argument and authorities; and
 - (d) Proposed findings and conclusions and, if desired, a proposed form of order or rule.
- (5) Briefs, Form of. Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. Any analyses 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 20 pages shall contain a subject index, with page references, and a list of all cases cited, alphabetically arranged, with reference to the pages where the citations appear. All briefs shall be as concise as possible and shall in all other respects conform to the requirements of 220 CMR 1.02(8).
- (6) Briefs, Filing and Service. Briefs not filed and served on or before the dates fixed therefor shall not be accepted for filing. All briefs shall be accompanied by a certificate showing service upon all parties and persons who have been allowed to cross-examine and present evidence. In addition to the brief served on the Department pursuant to 220 CMR 1.02(8)(a) and 1.05, additional copies shall be served as provided for in the ground rules or otherwise directed by the presiding officer. At the discretion of the presiding officer, additional copies may not be needed where they are filed pursuant to the Department's Electronic Filing Guidelines. Requests for an extension of time in which to file briefs shall conform to the requirements of 220 CMR 1.02(5) and shall be filed before the time fixed for filing such briefs.
- (7) Filing of Documents Subsequent to Hearing. The Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of hearing, such time to be determined by the

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

Commission. If a request for such subsequent filing is granted, the requesting party shall on or before the date set for filing, serve all documents or exhibits that are the subject of the request to all parties and persons who have filed appearances pursuant to 220 CMR 1.05. If such requirement for copies is impracticable, the Department may suspend the provision; in such cases, the Department shall allow reasonable inspection of the original by all parties.

(8) Reopening Hearings. No person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause. Such motions shall be filed in accordance with the provisions of 220 CMR 1.04(5). The Department shall notify all parties of its action upon the motion. Notwithstanding the above, the Department may, at any time prior to the rendering of a decision, reopen the hearing on its own motion. In case of such reopening on motion of the Department, the parties shall be notified and the hearing shall not be convened less than five days after the sending of such notice.

(9) Motion for Recalculation. No later than 20 days after service of a final Department Order, a party may file a motion for recalculation based on an alleged inadvertent error in a calculation contained in a final Department Order. The motion shall set forth in detail the proposed adjustments and the basis for the changes. The Department may, in its discretion, convene a conference or hearing to discuss the motion. The Department must act upon a motion for recalculation within 60 days of receipt of such motion unless it notifies the parties in writing that a longer period of time will be required and specifies the additional length of time necessary to consider the motion.

(10) Motion for Reconsideration. No later than 20 days after service of a final Department Order, a party may file a motion for reconsideration. Parties to the proceeding shall be afforded a reasonable opportunity to respond to a motion for reconsideration.

(11) Motion for Clarification. No later than 20 days after service of a final Department Order, a party may file a motion for clarification. Parties to the proceeding shall be afforded a reasonable opportunity to respond to a motion for clarification.

(12) Extension of Judicial Appeal Period. In accordance with M.G.L. c. 25, § 5, judicial appeals from final Department Orders must be filed within 20 days after service of the Order. Upon motion to the Department within the 20-day period, a party may request an extension of the appeal period. Reasonable extensions shall be granted upon a showing of good cause.

1.12: Decisions

All decisions of the Department shall be in writing and shall be accompanied by a statement of reasons for the decision. A copy of the decision and such statement of reasons shall be served on all parties pursuant to 220 CMR 1.05(1).

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

1.13: Appeal from Department Decisions

The Department shall notify all parties of their right to appeal a final decision of the Department pursuant to M.G.L. c. 25, § 5, and of the time limits on their rights to appeal.

1.14: Miscellaneous

Fees. Fees shall be paid in accordance with M.G.L. c. 25, § 10B.

REGULATORY AUTHORITY

220 CMR 1.00: M.G.L. c. 30A, § 1(1).