

STANDARD GROUND RULES¹

A. Generally

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 CMR 1.00, the Procedural Rules of the Department. In addition, the following ground rules shall supplement the Department's procedural rules in the conduct of this proceeding. These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

B. Filing of Documents

1. Address of Filings

The original paper version of all documents must be filed with Mark D. Marini, Department Secretary, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts, 02110. Unless otherwise noted, the original must be filed with the Department by 5:00 p.m. on the applicable due date.

2. Number and Distribution of Paper Documents

For this proceeding, the Department requires paper documents to be filed and distributed in the following manner:

Type of Document	Number of Copies	Distribution
Prefiled Testimony	1 original and 1 copy	Original to Department Secretary and 1 copy to Hearing Officer
Information Requests and Responses	1 original	Original to Department Secretary
Responses to Record Requests	1 original	Original to Department Secretary
Bulk Responses (100 pages and more)	1 original	Original to Department Secretary
Pleadings, Motions, and Memoranda	1 original and 1 copy	Original to Department Secretary and 1 copy to Hearing Officer
Briefs	1 original	Original to Department Secretary

¹ On April 20, 2021, the Ground Rules were updated to provide for ten days to respond to a motion for protective treatment, unless otherwise directed by the Hearing Officer.

3. Format

All information and record requests filed with the Department and all documents offered as exhibits shall be accompanied by a cover letter describing the filing and noting the distribution of copies. Responses to information and record requests shall contain the following information: (1) set and question number; (2) recitation of request; and (3) identity of the person who supports the response. Unless otherwise directed by the Hearing Officer, all responses to information requests should be premarked for identification in the upper right-hand corner in the following format:

D.P.U.: 21-xx
Exhibit:
Date:
H.O.: [name]

All information and record requests filed with the Department and all documents offered as exhibits must contain an internally consistent and usable form of referencing. For information requests, the exhibit number should follow the Department's naming conventions, e.g., DPU 1-12; DPU-NG 5-9; AG 3-13. Supplemental or revised responses to information and record requests should follow the same format with the addition of the notation (Supp.) or (Rev.) following the exhibit or record request designation. For multiple supplements or revisions, the documents should contain a number notation after the exhibit or record request designation, e.g., (Supp.), (Supp. 2), (Rev.), (Rev. 2). Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers. Where it is necessary to supply page numbers for a document, the numbers should be added in some way that differentiates the additions from the preexisting text. The Department will not accept documents without an acceptable referencing system.

4. Electronic Filing

All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@mass.gov and [\[Hearing Officer\]@mass.gov](mailto:[Hearing Officer]@mass.gov); or (2) on a CD-ROM or USB drive.² The file size of any electronic document should not exceed 20 MB.

The text of the transmittal e-mail, or the transmittal letter accompanying the CD-ROM or USB drive, must specify: (1) the docket number of the proceeding (D.P.U. 21-xx); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The transmittal document should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. The electronic file name should identify the document consistent with the Department's naming conventions, e.g., DPU 1-12; DPU-NG 5-9;

² If any party is unable to submit any document electronically, including bulk responses, the party must contact the Hearing Officer in advance to explain why it is not filing the document electronically. The Hearing Officer will then determine whether additional paper copies are needed.

AG 3-13, RR-DPU-5 and, due to website limitations, should not exceed 20 characters in length. At a minimum, a CD-ROM or USB drive must be labeled with the docket number of the proceeding (D.P.U. 21-xx).

All spreadsheets and workpapers, *i.e.*, documents originally created as spreadsheets, must be provided as working Excel files with all cell references and formulae intact. In addition, any Excel files should be backwards compatible such that they may be opened in the previous two versions of the relevant software.

The Department strongly encourages filers to submit electronically produced, searchable documents in PDF format and to avoid submitting scanned documents but will accept scanned documents when they cannot be created electronically. All PDF files should be backwards compatible such that they may be opened in the previous two versions of the relevant software.

If the petitioner, applicant, or any other participant has already filed a document relevant to this proceeding, such as the initial petition, application, or filing, without providing an electronic copy of that document, such entity is directed to do so in compliance with the above electronic filing requirements as soon as practicable. All documents submitted in electronic format will be posted on the Department's website:
<https://eeaonline.eea.state.ma.us/DPU/Fileroom>.³

Electronic copies must also be provided to all persons on the service list for this proceeding. Parties filing documents containing proprietary or other confidential materials or critical energy infrastructure information ("CEII") shall submit electronic copies of the redacted public version of such documents (see rules on protected materials in Section E.2., below).

C. Exchange of Materials

All documents filed with the Department shall also be served on each party. Parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, e-mail, or other speedy means of delivery. Unless otherwise not feasible, the use of mail delivery alone should be avoided in the exchange of discovery material. Where material is exchanged electronically, a follow-up copy of the material must be delivered by mail or by hand consistent with the service list outlined above. Electronic delivery is not a substitute for filing the original of materials that must be submitted to Mark D. Marini, Department Secretary. All materials shall be deemed to be filed or received on the date on which the original filing is received (via mail or hand delivery) by the Department Secretary.

D. Motions

Consistent with 220 CMR 1.04(5), any motion, unless made during a hearing, shall be made in writing. This requirement includes requests for confidential treatment, extensions of time deadlines, and continuances of hearing dates. In the motion, the moving party shall provide a statement of reasons why the motion should be granted, including citations of supporting

³ Click on "Dockets/Filings," select "Dockets by Number," and enter "21-xx."

authorities. Whenever possible, the moving party should first consult with the other parties to the proceeding to ascertain whether there are any objections. The motion should state whether such consultation occurred and the outcome of any such consultation. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be served with the motion. A party opposing a motion may serve a(n) response/opposition within five (5) business days of such filing, for all motions other than motions for protective treatment, where parties may serve a response or opposition with ten days of the motion, unless otherwise directed by the Hearing Officer. Papers not served with the motion or response/opposition may be filed only with leave of the Hearing Officer.

E. Discovery

1. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence, which typically occurs the last day of evidentiary hearings. Each individual information request response should be submitted in a separate, searchable PDF file.

Parties shall provide responses to information requests within ten (10) business days of receipt of the request, unless otherwise indicated.

For the purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

2. Protected Materials

a. Introduction

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. See G.L. c. 25, § 5D; G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth.

b. Confidential Materials

i. Generally

The Department has formalized its requirements for motions seeking to protect records from public disclosure in 220 CMR 1.04(5)(e). A party requesting confidential treatment must submit the request in writing at the time of filing and 220 CMR 1.04(5)(e) provides that a 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 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. The party seeking such treatment bears the burden of demonstrating that the materials should be afforded the treatment requested notwithstanding the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

In conjunction with a motion for protection from public disclosure, unredacted paper and electronic copies of the materials for which protection is sought must be filed directly with the Hearing Officer. The unredacted copies 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 and on the CD-ROM or USB drive containing the electronic copy. Redacted paper and electronic copies of the materials marked "REDACTED," must also be filed for the public docket.

ii. Deadline for Responses

Parties shall have ten days to respond to a motion for protective treatment unless otherwise directed by the Hearing Officer.

c. Critical Energy Infrastructure Information

Where a party seeks protection for information that may constitute CEII pursuant to G.L. c. 4, § 7, cl. twenty-sixth (n), the party must submit the request in writing at the time of filing pursuant to the following procedure. First, the party must physically segregate the pages containing CEII and mark each page with "Contains CEII -- Do Not Release." The party shall submit the unredacted copy of the materials directly to the Hearing Officer in a sealed envelope, clearly marked with the words "CONFIDENTIAL" on the outside of the envelope. If possible, a redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.

Second, the party must make a request in writing that is filed as a stand-alone document, just as a motion for protective treatment is filed, and the request must contain a statement of justification, which shall be treated as a public record. The statement must contain the following information: (1) the reason the record was provided to the Department and the date of submittal; (2) a precise description of the information to be protected; and (3) the reasons for the claim of CEII and the harm of public disclosure.

3. Discovery Disputes

The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance. Counsel for each of the parties shall confer in advance of filing any discovery motion in a good faith effort to narrow areas of disagreement to the fullest possible extent. Counsel for the party that intends to file the motion shall be responsible for initiating the conference. All such motions shall include language certifying that the conference was held and stating the date and time of the conference and the names of all participating parties. Motions lacking such language may be denied without prejudice.

All motions arising out of a party's response to, or asserted failure to comply with, an information or record request, shall be accompanied by a memorandum that shall set forth the following: (1) the text of the request at issue and the opponent's response thereto and (2) immediately thereafter, the moving party's position as to the request and response at issue, including supporting authority.

F. Hearing Exhibits

1. Offering of Exhibits Not Previously Provided

The proponent of an exhibit that is not already in the possession of the Department must serve additional copies of the proposed exhibit on the Department, as provided for in the ground rules or otherwise directed by the Hearing Officer, at least seven (7) days prior to the hearing at which such exhibit is to be offered. 220 CMR 1.10(5)(a). The exhibit must be in the format outlined in Section B.3., above. Nonconforming documents may not be accepted.

2. Late-Filed Exhibits

Exhibits offered after the close of the record labor under a heavy burden of untimeliness. Before submitting any exhibit after the close of the record, the party must file a motion to reopen the record that is supported by appropriate affidavits. Only for good cause shown will the record be reopened and parties allowed to submit exhibits for marking and admission into evidence. See 220 CMR 1.04(5), 1.11(7), (8). As noted in Section D., above, a party opposing such motion may serve an opposition within five (5) business days of such filing, unless otherwise directed by the Hearing Officer.

G. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. 220 CMR 1.06(5)(h). As such, they are part of the evidentiary record, unless challenged as unresponsive and stricken in whole or in part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth (5th) business day following the day on which the request is made. Objections to record requests shall be made at the time the request is

made and in no event later than the end (5:00 p.m.) of the next business day. Each individual record request response should be submitted in a separate PDF file.

H. Hearing Arrangements

All evidentiary hearings will be conducted at the offices of the Department at One South Station, Boston, Massachusetts. The hearings will begin each day at 10:00 a.m., according to the established schedule and will run until 5:00 p.m. Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.

Reasonable accommodations at the evidentiary hearing for people with disabilities are available upon request. Give as much advance notice as possible to the Hearing Officer and include in your request a detailed description of the accommodation needed. Interpretation services may be available at the evidentiary hearing upon request. Give as much advance notice as possible to the Hearing Officer and include in your request the language(s) required and how many persons will require interpretation services. The Department may be unable to fulfill last-minute requests for accommodations or interpretation services. If a request for accommodations or interpretation services is sent by email, please include the Department's ADA Coordinator at DPUADACoordinator@mass.gov.