

## 220 CMR: DEPARTMENT OF PUBLIC UTILITIES

### 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 Hearing 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 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 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 nine copies of such exhibits on the Department, 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.

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- (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. (220 CMR 1.15(3)).
- (10) Production and View of Objects. A party may file a motion for the production or view of any object which relates to the subject matter of any proceeding then pending before the Department. Said motion shall be filed in accordance with 220 CMR 1.01(5) and shall be granted in the discretion of the presiding officer where justice requires.