

Surface Transportation Board, DOT

§ 1113.4

should be stated on the original subpoena. The written acceptance of service of a subpoena by the person subpoenaed will be sufficient without other evidence of return. The original subpoena bearing or accompanied by the required return, affidavit, statement, or acceptance of service, should be returned forthwith to the Chief, Section of Administration, Office of Proceedings, unless otherwise directed.

(e) *Witness fees.* A witness who is summoned and responds to the summons is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpoena is served, except that when the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996; 74 FR 52907, Oct. 15, 2009]

§ 1113.3 Authority of officers.

(a) *General.* (1) The presiding officer has the authority to regulate the procedure in the hearing before him, and has authority to take all measures necessary or proper for the efficient performance of the duties assigned him. These include authority: (i) To hold hearings; (ii) to administer oaths and affirmations; (iii) to grant intervention; (iv) to accept any pleading; (v) to establish special rules of procedure appropriate to the effective handling of the particular proceeding; (vi) to examine witnesses; (vii) to issue subpoenas at the hearing; (viii) to dispose of requests for discovery; (ix) to hold conferences for the settlement and simplification of issues; (x) to rule on motions and dispose of procedural requests; (xi) to make initial decisions; (xii) to exclude any person from the hearing for contemptuous conduct; and (xiii) to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts.

(2) The presiding officer has the authority: (i) To terminate examination or cross-examination of repetitious or cumulative nature; (ii) to limit direct examination to material matters; (iii)

to limit cross-examination to disputed material facts; (iv) to require that principal examination or cross-examination be conducted by one or more counsel representing similar interests in proceedings where several parties are involved; (v) to set reasonable schedules for the presentation of witnesses; (vi) and to set reasonable time limits for the examination or cross-examination of witnesses. In order to enforce this paragraph, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness.

(b) *Motions to dismiss; amendments.* (1) The presiding officer shall have power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding.

(2) The presiding officer may grant leave to amend any application or complaint.

(c) *Preparation of the decision by the prevailing party.* Any proceeding in which an oral hearing is held and in which the officer is able to announce his decision either:

(1) On the record after the close of the taking of testimony and the hearing of arguments by the officer, or

(2) By appropriate notification to the parties after the close of hearing, may be made the subject of an initial decision prepared by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him.

(d) *Recording; media coverage.* The presiding officer shall have authority to permit or to refuse to permit the recording of the hearing by means of live or delayed television or radio broadcast, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§ 1113.4 Prehearing conferences.

(a) *Purposes.* Upon written notice by the Board in any proceeding, or upon written or oral instruction of an officer, parties or their representatives

§ 1113.5

may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering:

- (1) The simplification of issues;
- (2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;
- (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by any or all parties of matters of public record, such as annual reports and the like, to avoid the unnecessary introduction of proof;
- (4) The procedure at the hearing;
- (5) The limitation of the number of witnesses;
- (6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and
- (7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding. Parties may request a prehearing conference.

(b) *Facts disclosed privileged.* Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, will not be used against participating parties either before the Board or elsewhere unless fully corroborated by other evidence.

(c) *Recordation and decision.* Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and defining the issues, will be recorded in an appropriate decision unless the parties enter into a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.

(d) *Objection to the decision; subsequent proceedings.* If a decision is entered, the parties may, within 20 days of the date of service, or within such lesser time as is set by the officer, present objections on the grounds that the decision does not fully or correctly embody the agreements reached at the conference. Thereafter the terms of the written

49 CFR Ch. X (10–1–10 Edition)

stipulation or statement of the officer, as the case may be, will determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§ 1113.5 Stipulations.

Apart from the procedure contemplated by the prehearing provisions, the parties may, by stipulation in writing filed with the Board at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. The parties should agree to facts in this manner whenever practicable.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§ 1113.6 Appearances; withdrawal or absence from hearing.

(a) *Who may appear.* Any individual may appear for himself. Any member of a partnership which is a party to any proceeding may appear for such partnerships upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.

(b) *Withdrawal or absence from hearing.* A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or willfully be absent therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person who has entered an appearance withdraws from the hearing in a manner other than that specified, the Board or the Officer may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or if the withdrawal is without the permission of the presiding