

have no precedential value and may not be relied upon in any manner during subsequent arbitration proceedings conducted under the rules in this part.

#### § 1108.11 Enforcement and appeals.

(a) *Petitions to modify or vacate.* A party may petition the Board to modify or vacate an arbitral award. The appeal must be filed within 20 days of service of a final arbitration decision, and is subject to the page limitations of § 1115.2(d) of this chapter. Copies of the appeal shall be served upon all parties in accordance with the Board's rules at part 1104 of this chapter. The appealing party shall also serve a copy of its appeal upon the arbitrator(s). Replies to such appeals shall be filed within 20 days of the filing of the appeal with the Board, and shall be subject to the page limitations of § 1115.2(d) of this chapter.

(b) *Board's standard of review.* On appeal, the Board's standard of review of arbitration decisions will be narrow, and relief will be granted only on grounds that the award reflects a clear abuse of arbitral authority or discretion or directly contravenes statutory authority. Using this standard, the Board may modify or vacate an arbitration award in whole or in part.

(1) Board decisions vacating or modifying arbitration decisions under the Board's standard of review are reviewable under the Hobbs Act, 28 U.S.C. 2321 and 2342.

(2) Nothing in these rules shall prevent parties to arbitration from seeking judicial review of arbitration awards in a court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. 9-13, in lieu of seeking Board review.

(c) *Staying arbitration decision.* The timely filing of a petition for review of the arbitral decision by the Board will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.3(f) of this chapter.

(d) *Enforcement.* Parties seeking to enforce an arbitration decision made pursuant to the Board's arbitration program must petition a court of appropriate jurisdiction under the Federal Arbitration Act, 9 U.S.C. 9-13.

#### § 1108.12 Fees and costs.

(a) *Filing fees.* When parties use the Board's arbitration procedures to resolve a dispute, the party filing the complaint or an answer shall pay the applicable filing fee pursuant to 49 CFR part 1002.

(b) *Party costs.* When an arbitration panel is used, each party (or side to a dispute) shall pay the costs associated with the arbitrator it selects. The cost of the neutral arbitrator shall be shared equally between the opposing parties (or sides) to a dispute.

(c) *Single arbitrator method.* If the single arbitrator method is utilized in place of the arbitration panel, the parties shall share equally the costs of the neutral arbitrator.

(d) *Board costs.* Regardless of whether there is a single arbitrator or a panel of three arbitrators, the Board shall pay the costs associated with the preparation of a list of neutral arbitrators.

#### § 1108.13 Additional parties per side.

Where an arbitration complaint is filed by more than one complainant in a particular arbitration proceeding against, or is answered or counter-claimed by, more than one respondent, these arbitration rules will apply to the complainants as a group and the respondents as a group in the same manner as they will apply to individual opposing parties.

### PART 1109—USE OF MEDIATION IN BOARD PROCEEDINGS

Sec.

1109.1 Mediation statement of purpose, organization, and jurisdiction.

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AUTHORITY: 49 U.S.C. 721(a) and 5 U.S.C. 571 *et seq.*

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#### § 1109.1 Mediation statement of purpose, organization, and jurisdiction.

The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever

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possible. Parties may seek to resolve a dispute brought before the Board using the Board's mediation procedures. These procedures shall not be available in a regulatory proceeding to obtain the grant, denial, stay or revocation of a request for construction, abandonment, purchase, trackage rights, merger, pooling authority or exemption related to such matters. The Board may, by its own order, direct the parties to participate in mediation using the Board's mediation procedures. The Board's mediation program is open to all parties eligible to bring or defend matters before the Board.

### § 1109.2 Commencement of mediation.

(a) *Availability of mediation.* Mediation may be commenced in a dispute before the Board:

(1) Pursuant to a Board order issued in response to a written request of one or more parties to a matter;

(2) Where the Board orders mediation by its own order; or

(3) In connection with a rate complaint, as provided by § 1109.4 and part 1111 of this chapter.

(b) *Requests for mediation.* Parties wishing to pursue mediation may file a request for mediation with the Board at any time following the filing of a complaint. Parties that use the Board's mediation procedures shall not be required to pay any fees other than the appropriate filing fee associated with the underlying dispute, as provided at 49 CFR 1002.2. The Board shall grant any mediation request submitted by all parties to a matter, but may deny mediation where one or more parties to the underlying dispute do not consent to mediation, or where the parties seek to mediate disputes not eligible for Board-sponsored mediation, as listed in § 1109.1.

### § 1109.3 Mediation procedures.

(a) *Mediation model.* The Chairman will appoint one or more Board employees trained in mediation to mediate any dispute assigned for mediation. Alternatively, the parties to a matter may agree to use a non-Board mediator if they so inform the Board within 10 days of an order assigning the dispute to mediation. If a non-Board mediator is used, the parties shall share equally

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the fees and/or costs of the mediator. The following restrictions apply to any mediator selected by the Board or the parties:

(1) No person serving as a mediator may thereafter serve as an advocate for a party in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a party to the mediation before any other federal court or agency; and

(2) If the mediation does not fully resolve all issues in the docket before the Board, the Board employees serving as mediators may not thereafter advise the Board regarding the future disposition of the remaining issues in the docket.

(b) *Mediation period.* The mediation period shall be 30 days, beginning on the date of the first mediation session. The Board may extend mediation for additional periods of time not to exceed 30 days per period, pursuant to mutual written requests of all parties to the mediation proceeding. The Board will not extend mediation for additional periods of time where one or more parties to mediation do not agree to an extension. The Board will not order mediation more than once in any particular proceeding, but may permit it if all parties to a matter mutually request another round of mediation. The mediator(s) shall notify the Board whether the parties have reached any agreement by the end of the 30-day period.

(c) *Party representatives.* At least one principal of each party, who has the authority to bind that party, shall participate in the mediation and be present at any session at which the mediator(s) request that principal to be present.

(d) *Confidentiality.* Mediation is a confidential process, governed by the confidentiality rules of the Administrative Dispute Resolution Act of 1996 (ADRA) (5 U.S.C. 574). In addition to the confidentiality rules set forth in the ADRA, the Board requires the following additional confidentiality protections:

(1) All parties to Board sponsored mediation will sign an Agreement to Mediate. The Agreement to Mediate shall incorporate these rules by reference.