

different railroads, the rules (49 CFR Part 1145) allow separate r/vc ratio ceilings for individual railroads. The proposed national average r/vc ratio for 1995 is 139.5%. Ratios are also proposed for individual class I railroads and for the Eastern region and the Western region. The Commission is deferring initiation of the fourth annual compliance proceeding.

EFFECTIVE DATE: March 1, 1995, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927-6239; or H. Jeff Warren, (202) 927-6243. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423 or telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

This decision will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant or adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Authority: 49 U.S.C. 10321(a), 10731; 5 U.S.C. 553.

Decided: January 27, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,
Secretary.

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[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 9; Notice of Proposed Revision of Procedural Schedule.

SUMMARY: The Commission is seeking public comments on the applicants'

proposal to revise the procedural schedule adopted in Decision Nos. 4 and 5 in this proceeding, served October 5, 1994, and November 10, 1994, respectively, to provide for issuance of a final decision within 165 days from the date on which the Commission decision containing notice of shareholder approval is served. To facilitate meeting that deadline and to help narrow the focus to the relevant issues, the Commission is proposing page limitations for certain filings and is considering issuing a preliminary scoping order.

DATES: Written comments must be filed with the Commission no later than February 21, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to the Honorable Stephen L. Grossman, FERC, Office of Hearings, 825 North Capitol Street, NE, Washington, D.C. 20426 and to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036-1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon or Dugie Standeford, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: On October 13, 1994, an application was filed for approval of Burlington Northern, Inc.'s (BNI) acquisition of, control of, and merger with Santa Fe Pacific Corporation (SFP), the resulting common control of Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) by the merged company, the consolidation of BN and Santa Fe railroad operations and the merger of BN and Santa Fe. Applicants also seek exemption from regulation for the merged holding company and merged railroad to control The Wichita Union Terminal Railway Company [Finance Docket No. 32549 (Sub-No. 1)] and for 11 construction projects related to the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)]. We accepted the application in our Decision No. 5, served and published in the **Federal Register** on November 10, 1994 (59 FR

56089), and we set certain filing dates under the procedural schedule previously adopted in our Decision No. 4, served October 5, 1994.

In Decision No. 7, served December 5, 1994, we granted the requests of several parties and postponed the procedural schedule set forth in Decision Nos. 4 and 5 pending the outcome of an SFP shareholder vote. In Decision No. 7, we stated that upon approval of the proposed BNI/SFP merger by the shareholders, we would immediately issue a new schedule requiring the first comments to be filed 30 days later and adjusting other schedule dates accordingly. That shareholder vote has been postponed several times and is now scheduled for February 7, 1995.

In New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995) (60 FR 5890, January 31, 1995), we are seeking comments on our proposed establishment of more timely procedures for processing applications for major and significant rail combinations. In the January 26, 1995 Notice of Proposed Rulemaking, we gave all interested parties until March 2, 1995, to file written comments. We also served a copy of the notice on all parties on the service list in this merger proceeding and asked for comments on whether this case should be governed by the schedule originally adopted or the schedule proposed in Ex Parte No. 282 (Sub-No. 19).

By petition filed January 27, 1995, BNI, BN, SFP, and Santa Fe request that we adopt a modified, expedited procedural schedule which tracks the schedule proposed by the Commission for public comment in Ex Parte No. 282 (Sub-No. 19) in place of the original schedule. We are now seeking public comments on this proposal by the applicants to revise the procedural schedule previously established in this proceeding to provide for the service of a final decision no later than 165 days from the date the Commission serves its decision containing notice of shareholder approval of the proposed merger, as set out in Appendix A to this Notice. Additionally, to facilitate our meeting this deadline and to better focus the filings on relevant issues, we are proposing page limitations on all filings that should not require extensive evidentiary submissions. The specific limitations are set out in Appendix A to this notice. These limits would not extend to tables of contents, prefaces, tables of authorities, summaries of argument, and other introductory materials. Further, to help narrow the focus to relevant issues, we are

considering issuing a preliminary scoping analysis immediately after the filings due on day N+30 in Appendix A. We seek public comments on the proposed page limitations and scoping order. Given that the procedural schedule proposed here tracks the procedural schedule we are proposing in Ex Parte No. 282 (Sub-No. 19) for all major and significant consolidations, we also seek comments from any interested person on whether we should impose similar page limitations and employ a preliminary scoping analysis for future transactions under those proposed rules as well.

In Ex Parte No. 282 (Sub-No. 19), we noted that a vital element in carrying out the proposed expedited merger procedures is strict compliance with the Commission's environmental rules at 49 CFR Part 1105. These rules provide that environmental assessments normally be prepared in mergers, consolidations or acquisitions of control involving significant changes in operation or rail line abandonments and construction. If a merger is likely significantly to affect the environment, the National Environmental Policy Act (NEPA) requires the Commission to prepare an environmental impact statement (EIS).

To expedite the NEPA environmental review process, we have proposed in Ex Parte No. 282 (Sub-No. 19) that applicants be required to consult with the Commission's Section of Environmental Analysis (SEA) with, or prior to, the filing of their pre-filing

notices for all mergers involving the preparation of environmental documentation. In the case of mergers involving an environmental assessment, the new merger procedures would require that the applicant submit, with its application, a preliminary draft environmental assessment (PDEA), to be based on consultations with SEA and the various agencies set forth in 49 CFR 1105.7(b) of our environmental rules. SEA would then use the PDEA to prepare a draft environmental assessment for public comment.

In their January 27, 1995 petition, applicants in this proceeding point out that they have already submitted a comprehensive environmental report. According to applicants, that report, prepared by the third-party consulting firm, fully complies with the Commission's proposed requirement for the submission of a PDEA. Applicants further claim an exemption from the requirements of filing historical reports under 49 CFR 1105.8 and have advised the Commission that no structure which is 50 years old or older will be affected by the proposed merger. According to the applicants, their environmental report shows that the proposed consolidation will not result in any significant environmental impacts sufficient to require the preparation of an EIS. Finally, applicants state that their third-party consultant, already at work under SEA's supervision, is engaged in a detailed review of the environmental aspects of the proposed

merger and that the current workplan calls for completion of an environmental document, following public comment, by early July 1995. Applicants assert that there is no reason to deviate from the expedited schedule contemplated in Ex Parte No. 282 (Sub-No. 19) to ensure compliance with the NEPA review process.

The filing of a PDEA is a predicate to the expedited schedule we proposed in Ex Parte No. 282 (Sub-No. 19). We also cautioned that mergers that involve actions that significantly affect the environment may require the preparation of an EIS, and that such a requirement would make it impossible to follow a 180-day schedule. Rail construction is such an action and the application contains requests for approval of 11 construction projects. We solicit further comments from the applicants and the parties on these environmental questions and suggestions on how to complete the environmental review process for the merger within the limits of the schedule proposed by the applicants.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 2, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,
Secretary.

APPENDIX A.—PROPOSED REVISED, EXPEDITED PROCEDURAL SCHEDULE

N	Date Commission serves decision containing notice of shareholder approval on all parties.
N+5	Discovery conference on application held.
N+30	Comments and protests due on the application (not to exceed 50 pages); requested conditions due; description of anticipated inconsistent and responsive applications due.
N+35	Discovery conference on comments, protests and conditions held.
N+60	Inconsistent and responsive applications due. Response to comments, protests, conditions and rebuttal in support of primary applications due (not to exceed 100 pages).
N+65	Discovery conference on inconsistent applications held.
N+75	Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register .
N+90	Response to inconsistent and responsive applications due (not to exceed 75 pages). Rebuttal in support of comments, protests, and conditions to the primary application due (not to exceed 50 pages).
N+100	Rebuttal in support of inconsistent and responsive applications due (not to exceed 50 pages).
N+110	Briefs due, all parties (not to exceed 50 pages).
N+125	Oral argument (at Commission's discretion).
N+135	Voting Conference (at Commission's discretion).
N+165	Date for service of decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed

by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Administrative Law Judge assigned to this

proceeding will have the authority initially to resolve any discovery disputes.

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