

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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