Department of Justice (DOJ) and the Department of Transportation (DOT), in which to file written comments and protests on the primary application (including any comments in opposition to the primary application), as well as requested conditions. These filings will be due 62 days after publication of this notice, which is the same date that inconsistent and responsive applications are due. All descriptions of anticipated inconsistent or responsive applications, as well as petitions for waiver or clarification, will be due 32 days after publication of this notice.

There were a few comments on the proposed page limitations. Most commenters were generally opposed, but were willing to accept some page limitations on briefs. To facilitate meeting the expedited deadline set out in this notice, the Commission will limit briefs to 50 pages, but will impose no page limitations on evidentiary submissions. Briefs must be filed in accordance with the requirements at 49 CFR 1104.2. Because reply briefs appear to be unnecessary to complete our review of a merger, we do not anticipate granting any requests to file reply briefs. Based on the lack of response to our proposed preliminary scoping order, we do not anticipate issuing such an order at this time. However, in pursuing discovery and in preparing pleadings, we encourage the parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues, as identified by the applicable statutory standards and our control regulations, including our merger policy statement (49 CFR 1180.1). For example, arguments that the transaction will cause competitive harm should be accompanied by a clear statement of how rates will be raised, service degraded, or both, in some identifiable market. Responses countering such competitive arguments should explain clearly why those adverse impacts will not occur.

In order for us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, inconsistent applications and responsive applications must contain certain environmental information. Anyone desiring to file an inconsistent or a responsive application involving significant operational changes or an action such as a rail line abandonment or construction under 49 CFR 1105.6(b)(4) of our environmental rules must include, with its application, a preliminary draft environmental assessment (PDEA). Generally, these types of actions require an environmental report under 49 CFR

1105.6(b)(4) which would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, because of the accelerated time frames, a PDEA is necessary at the outset.

The preparation of a PDEA should not be burdensome. Although the information would be presented in a somewhat different format, the PDEA should address essentially the same environmental issues that would have been covered by an environmental report. The PDEA, like the environmental report, should be based on consultations with the Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). SEA will be available to provide assistance as needed.

SEA will use the PDEA to expedite the environmental review process. If a PDEA is not submitted or is insufficient, we will not process the inconsistent or responsive application.

If an inconsistent or responsive application does not involve significant operational changes or an action such as an abandonment or construction, it generally is exempt from environmental review. The applicant must certify, however, that the proposal meets the exemption criteria under 49 CFR 1105.6(c)(2)

Anyone desiring to file an inconsistent application or responsive application should consult with SEA as early as possible regarding the appropriate environmental documentation.

If the parties wish to engage in any discovery or establish any discovery guidelines (see, e.g., the proposed discovery guidelines in BN/SF-24; see also the proposed discovery guidelines in KCS-3, Ex. D, pp. 4-7), they are directed to consult with Stephen L. Grossman, Administrative Law Judge. Judge Grossman is authorized to convene a discovery conference, if necessary and as appropriate, in Washington, DC, and to establish such discovery guidelines, if any, as he deems appropriate. However, Judge Grossman is not authorized to make adjustments to, or to modify, the dates in the procedural schedule. We believe the schedule as adopted allows sufficient time for meaningful discovery. Any interlocutory appeal to a decision issued by Judge Grossman will be governed by the stringent standard of 49 CFR 1115.1(c): "Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." See Union Pacific Corporation, Union Pacific Railroad Company And Missouri Pacific Railroad Company—Control—Chicago And North Western Transportation Company And Chicago And North Western Railway Company, Finance Docket No. 32133, Decision No. 17, at 9 (ICC served July 11, 1994) (applying the "stringent standard" of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by former Chief Administrative Law Judge Paul S. Cross).5

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

energy resources.

Decided: March 3, 1995.

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

## Vernon A. Williams,

Secretary.

## Appendix A—Final Procedural **Schedule**

April 10, 1995—Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due. May 10, 1995—Inconsistent and responsive applications due. All comments, protests, requests for

conditions, and any other opposition evidence and argument due. DOJ and DOT comments due.

May 25, 1995-Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.

June 9, 1995—Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of

primary application due. June 19, 1995—Rebuttal in support of inconsistent and responsive applications due.

June 29, 1995—Briefs due, all parties (not to exceed 50 pages). July 14, 1995—Oral argument (at Commission's discretion).

July 24, 1995—Voting Conference (at Commission's discretion). August 23, 1995—Date for service of final 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

<sup>&</sup>lt;sup>5</sup> For the purposes of the present proceeding, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, any appeal to a decision issued by Judge Grossman must be filed within 3 working days of the service date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Commission itself in the first instance must also be filed within 3 working days.