

21457 SERVICE DATE - LATE RELEASE JANUARY 30, 1997  
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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33220

CSX CORPORATION AND CSX TRANSPORTATION, INC.--CONTROL AND  
MERGER--CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

AGENCY: Surface Transportation Board

ACTION: Decision No. 8; Notice of Issuance of Procedural  
Schedule.

SUMMARY: The Board is issuing a procedural schedule, following  
the receipt of public comments on a proposed procedural schedule  
and replies to those comments. This schedule provides for  
issuance of a final decision no later than 365 days after filing  
of the primary application.

EFFECTIVE DATE: The effective date of this decision is  
February 5, 1997. Notices of intent to participate in this  
proceeding will be due 45 days after the primary application is  
filed. All descriptions of inconsistent and responsive  
applications, as well as any petitions for waiver or  
clarification with respect thereto, will be due 60 days after the  
primary application is filed. All comments, protests, requests  
for conditions, inconsistent and responsive applications, and any  
other opposition evidence and argument will be due 120 days after  
the primary application is filed. For further information, see  
the procedural schedule set forth below.

ADDRESSES: An original plus 25 copies<sup>1</sup> of all documents,  
referring to STB Finance Docket No. 33220, must be sent to the  
Office of the Secretary, Case Control Branch, ATTN: STB Finance  
Docket No. 33220, Surface Transportation Board, 1201 Constitution  
Avenue, N.W., Washington, DC 20423.<sup>2</sup> Parties are requested also  
to submit all pleadings, and any attachments, on a 3.5-inch  
diskette in WordPerfect 5.1 format.

In addition, one copy of all formal filings in this  
proceeding must be sent to Administrative Law Judge Jacob

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<sup>1</sup> In order for a document to be considered a formal filing,  
the Board must receive an original plus 25 copies of the  
document, which must show that it has been properly served.  
Documents transmitted by facsimile (FAX), as in the past, will  
not be considered formal filings and thus are not encouraged  
because they will result in unnecessarily burdensome, duplicative  
processing in what we expect to become a voluminous record.

Applicants may file in bound volumes an original plus 25  
copies of related applications, petitions, and notices of  
exemption; however, to facilitate processing of these related  
filings, we will require that applicants also file two unbound  
copies of each of these filings.

<sup>2</sup> It is anticipated that the Board will move to its new  
offices in March 1997. The Board's address at the new offices  
will be: Surface Transportation Board, Mercury Building, 1925 K  
Street, N.W., Washington, DC 20423.

Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2538; FAX: (202) 219-3289], and to each of the applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; and (2) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036. FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 927-5352. [TDD for the hearing impaired: (202) 927-5721.] SUPPLEMENTARY INFORMATION: On October 18, 1996, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)<sup>3</sup> filed their CSX/CR-1 notice of intent to file an application (hereinafter referred to as the primary application) seeking Board authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of CRI by Green Acquisition Corp. (Acquisition), an indirect wholly owned subsidiary of CSXC; (2) the merger of CRI into Acquisition; and (3) the resulting common control of CSXT and CRC by CSXC. Applicants indicated that they expected to file their primary application, and any related applications, petitions, and notices, on or before March 1, 1997.

By letter dated December 27, 1996, CSXC and Acquisition advised the Board that certain amendments had been made to the Agreement and Plan of Merger (the Merger Agreement) dated October 14, 1996, by CSXC, Acquisition, and CRI. The Merger Agreement, as first entered into, envisioned: (1) the acquisition by Acquisition of approximately 19.9% of the common stock of CRI (this has already occurred, and the stock has been placed in a voting trust); (2) the subsequent acquisition by Acquisition of an additional approximately 20.1% of the common stock of CRI; and (3) after our approval of the primary application, the merger of CRI with and into Acquisition. As amended, however, the Merger Agreement now envisions that the merger of CRI with and into Acquisition will occur prior to our approval of the primary application. This change of plans necessarily means that applicants no longer seek our authorization for the acquisition of control of CRI by Acquisition, or for the merger of CRI into Acquisition.<sup>4</sup> Applicants, however, continue to seek Board authorization for the common control, by CSXC, of CSXT and CRC (hereinafter referred to as the CSXT/CRC control transaction). Applicants continue to indicate that they expect to file their primary application, and any related applications, petitions, and notices, on or before March 1, 1997.<sup>5</sup>

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<sup>3</sup> CSXC and CSXT are referred to collectively as CSX. CRI and CRC are referred to collectively as Conrail. CSX and Conrail are referred to collectively as applicants.

<sup>4</sup> The Merger Agreement envisions that, in connection with the merger of CRI into Acquisition, Acquisition (the surviving corporation) will be renamed "Conrail Inc." References to CRI (i.e., Conrail Inc.) embrace both the "old" Conrail Inc. (i.e., the corporation presently known as Conrail Inc.) and the "new" Conrail Inc. (i.e., the renamed corporation that will exist after the merger of Conrail Inc. into Acquisition).

<sup>5</sup> The primary application, and each related application, petition, and notice, must be accompanied by the appropriate fee.  
(continued...)

In Decision No. 2, served and published on November 15, 1996 (61 FR 58613), we gave notice of applicants' pre-filing notification, and we found that the transaction proposed by applicants is a "major" transaction as defined at 49 CFR 1180.2(a).

In Decision No. 3, served and published on November 15, 1996 (61 FR 58611), we invited comments from interested persons on a proposed procedural schedule. Comments were due on December 6, 1996; most were received on or before that date. On December 10, 1996, Norfolk Southern Corporation (NSC) responded to applicants' comments. On December 16, 1996, applicants replied to the comments.

**Public comments.** Approximately 25 comments were received in response to Decision No. 3. Comments were filed by shipper organizations, railroads, electric utilities, government entities, and rail labor unions and by United States Senators Byron L. Dorgan and John D. Rockefeller IV.

Some commenters suggested that we hold in abeyance any decision regarding the procedural schedule pending the outcome of the hostile takeover bid launched by NSC. Others suggested that the Board coordinate dates in both the present proceeding and the NSC proceeding (STB Finance Docket No. 33286), and issue a single procedural schedule.

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<sup>5</sup>(...continued)

See, in general, 49 CFR 1002.2(f), as recently amended in Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--1997 Update, STB Ex Parte No. 542 (Sub-No. 1) (STB served Jan. 23, 1997, 62 FR 3487 (Jan. 23, 1997), and effective February 24, 1997). The fees applicants will have to pay may include, among others, the fees codified at: 49 CFR 1002.2(f)(39)(i) (\$889,500 for the primary merger application); 49 CFR 1002.2(f)(12)(i) or (12)(iii) (\$44,500 for either an application or a petition involving the construction of a rail line); 49 CFR 1002.2(f)(21)(i) (\$13,200 for an abandonment application, except an abandonment application filed by CRC under the Northeast Rail Service Act); 49 CFR 1002.2(f)(21)(ii) (\$2,200 for an abandonment notice of exemption); 49 CFR 1002.2(f)(21)(iii) (\$3,800 for an abandonment petition for exemption); 49 CFR 1002.2(f)(22) (\$250 for an abandonment application filed by CRC under the Northeast Rail Service Act); 49 CFR 1002.2(f)(36) (\$11,300 for an application for use of terminal facilities); 49 CFR 1002.2(f)(40)(iv) (\$750 for a trackage rights notice of exemption); and 49 CFR 1002.2(f)(40)(vi) (\$5,600 for a trackage rights petition for exemption). The Board is in the process of revising its rules and the way user fees are applied to reflect more accurately the resources expended on related filings in proceedings involving major transactions filed under fee items 38 through 41. We plan to issue interim rules shortly to cover this revision and that also will implement a new three-tiered fee structure for inconsistent applications that includes a determination of whether the transaction being proposed is minor, significant, or major. In addition, we plan to clarify what a responsive application is and what fees should be assessed for the various types of responsive applications.

We find no reason to delay issuance of this procedural order, which only begins a procedural schedule when a CSX/Conrail application is filed. We realize circumstances are unusual here, but we believe that it would not be judicious to speculate about whether two merger applications will be filed, and we continue to have the power to revise our handling of this matter as necessitated by changes in these circumstances. Applicants in this proceeding already have filed their notice of intent, and pursuant to 49 CFR 1180.4(b) their application is anticipated within 3 to 6 months.<sup>6</sup> In the interest of efficient government, we believe that we should establish a procedural schedule in a timely manner to give adequate notice to all interested persons prior to the anticipated filing date of the application.<sup>7</sup>

We find it unnecessary to consolidate this proceeding with STB Finance Docket No. 33286, in which no application has yet been filed, and thus will adopt separate, but identical, procedural schedules for these proceedings, which will not begin in either case until an application is filed.<sup>8</sup> Rather, once an application seeking approval to control Conrail has been filed and the procedural schedule in that proceeding has begun, we will require that any subsequent application from any other party seeking approval to control Conrail, or any portion of Conrail, must be filed as an inconsistent or responsive application in accordance with the procedural schedule then underway. Thus, we will in effect have a single proceeding for determining the control or merger of Conrail.

After reviewing all of the comments we received on the proposed procedural schedule, we have determined, as discussed below, that a 365-day procedural schedule (which is 110 days more than applicants had proposed) will ensure that all parties are

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<sup>6</sup> We note that, pursuant to 49 CFR 1180.4(b)(3), "[a] pre-filing notice may be amended to indicate a change in the anticipated filing date."

<sup>7</sup> We note that, at a shareholders' meeting on January 17, 1997, CSX failed to obtain Conrail shareholders' approval to opt out of Subchapter 25E of the Pennsylvania Business Corporation Act. See Pa. Stat. Ann., tit. 15, §§ 2541 through 2548 (West 1995). This has no effect on our decision to adopt a procedural schedule, which is only triggered by the filing of the formal merger application. Our issuance of such a decision neither requires action by any person or party nor prejudices any person or party.

We also note that CSX, Conrail and NSC have indicated an agreement to meet to discuss matters pertaining to a merger involving Conrail. Given the intent of CSX and Conrail currently on the record to file their application by March 1, the Board believes that it must address the pending petition to set a procedural schedule at this time. As with any action that the Board takes, if circumstances change that warrant modification of a Board decision, the Board will take whatever action is appropriate.

<sup>8</sup> By separate decision served concurrently in STB Finance Docket No. 33286, we are adopting the same procedural schedule for the NSC proceeding.

accorded due process and will allow us ample time to consider fully all of the issues in this proceeding. Within this procedural schedule, we will consider all issues affecting the public interest, and will also address cumulative impacts and crossover effects of prior mergers as appropriate. Further, we will consider the transaction in light of any settlement agreements that the applicants may reach with any parties, regardless of the complexity of the agreements.

We have carefully considered the parties' concerns regarding the amount of time necessary to prepare their cases, and have crafted the attached procedural schedule with fairness to all parties in mind. Accordingly, we have adjusted the proposed procedural schedule to give more time for the submission of filings. We also believe that we have established a schedule that will provide adequate time for the processing of any inconsistent applications that may be filed in this proceeding.

**Environmental reporting.** Applicants filed comments requesting that we modify the requirement that applicants file an environmental report (ER) on F<sup>9</sup> - 30 days and instead require that only a preliminary environmental report (PER) be filed on F - 30 days, and a full ER when the application is filed. Applicants state that they need more time to prepare and complete a detailed analysis of environmental effects, as contemplated in 49 CFR 1105.7. We will grant applicants' request. We note, however, that, while applicants' two-step procedure would provide early notice of specific locations that will be the subject of the detailed analysis of localized environmental effects, the PER would not be sufficient to allow the Board's Section of Environmental Analysis (SEA) to commence an adequate review process during the 30 days prior to the filing of the application. Accordingly, SEA will require additional time to complete its environmental review as a result of the delayed filing of applicants' ER. We have considered this delay in adopting the extended procedural schedule.

Also, in their comments, applicants propose that the Board require inconsistent and responsive applicants to file their complete ERs substantially in advance of the filing of their inconsistent and responsive applications because, applicants allege, inconsistent and responsive applicants will have significantly more lead time to perform environmental analysis and will have the benefit of applicants' PER and ER. NSC, in its reply comments, disputes applicants' allegations.

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. As we have stated in past merger proceedings, anyone intending 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) or a preliminary draft environmental impact statement (PDEIS), as determined by SEA.

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<sup>9</sup> F is the date of filing of the primary application.

Generally, these types of actions require an environmental report under 49 CFR 1105.6(b)(4) that would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, because of the time frames that we are adopting, a PDEA or PDEIS is necessary at the time that an inconsistent or responsive application is filed. We, however, will not require an inconsistent or responsive applicant to file an ER in advance of the filing of the inconsistent or responsive application.

Although the information would be presented in a somewhat different format, the PDEA or PDEIS should address essentially the same environmental issues that would have been covered by an ER. The PDEA or PDEIS, like the ER, should be based on consultations with SEA and the various agencies set forth at 49 CFR 1105.7(b). In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants shall consult with SEA as early as possible. If a PDEA or PDEIS 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). Again, anyone intending to file an inconsistent application or responsive application shall consult with SEA as early as possible regarding the appropriate environmental documentation. Due to the uncertainties associated with this proposed transaction, we reserve the right to adjust the environmental review process, as appropriate.

**Notice of intent to participate.** All documents received by the Board concerning this proceeding will become part of the record and will be placed in the public docket for inspection and copying. Only those documents considered formal filings (i.e., those meeting the filing specifications discussed above in the ADDRESSES section) will be downloaded to the so-called pleading list. Moreover, persons who submit documents that are not considered formal filings will not be placed on the service list in this proceeding.

We will compile and issue an official service list at an early stage of this proceeding to help facilitate the participation of persons who will be actively participating as "parties of record" (**POR**). We are requiring these persons to notify the Board, in writing, within 45 days after the primary application is filed, of their intent to participate actively in this proceeding. In order to be designated a POR, a person must submit an original plus 25 copies of the notice, along with a certificate of service to the Secretary of the Board, indicating that the notice has been properly served on applicants' representatives and Judge Leventhal.<sup>10</sup> Every future filing must

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<sup>10</sup> The Office of the Secretary will compile the official service list for this proceeding after service of this decision  
(continued...)

have its own certificate of service indicating that all PORs on the service list and Judge Leventhal have been served with a copy of the filing. Members of the United States Congress will be designated as **MOC** and Governors will be designated as **GOV** on the service list. They are not parties of record and need not be served with copies of filings, unless designated as a POR.

We will continue to follow the practice established in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (UP/SP). See UP/SP, Decision No. 15 (STB served Feb. 16, 1996), at 2-3. Copies of decisions, orders, and notices will be served only on those persons who are designated as POR or MOC or GOV on the official service list. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289-4357.

**Comments, protests, requests for conditions, and other opposition evidence and argument.** Most commenters express a need for more time to prepare protests, requests for conditions, and other opposition evidence and argument, and ask that these submissions be due on F + 120 days or later, instead of due on F + 75 days. In their response to those comments, applicants support giving persons at least 120 days to make such submissions.

We will extend the time for filing comments, protests, requests for conditions, and other opposition evidence and argument to F + 120 days as requested by applicants and most of the commenters. All inconsistent and responsive applications, and comments, including comments from the United States Department of Justice (DOJ) and the United States Department of Transportation (DOT), are also due on F + 120 days. Every party intending to file an inconsistent or responsive application must contact the Office of the Secretary at (202) 927-5686 or 927-8910 to reserve an STB Finance Docket No. 33220 Sub-number to use in filing the description of anticipated inconsistent or responsive application due on F + 60 days. [After the Board relocates to its new offices, the new number will be (202) 565-1681.]

**Responses and rebuttals.** Applicants request that the Board permit them to file at F + 150 days a single pleading (Consolidated Filing) containing responses to comments, protests, and requested conditions filed by all participating parties (including all government parties) and their rebuttal in support of the primary application, as well as their responses to inconsistent or responsive applications. We will grant

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<sup>10</sup>(...continued)  
adopting a procedural schedule. Persons named on the earlier service list will not automatically be placed on the official service list.

applicants' request to file a Consolidated Filing containing responses to comments, protests, and requested conditions filed by all participating parties (including all government parties) and their rebuttal in support of the primary application, as well as their responses to inconsistent or responsive applications. We agree that a Consolidated Filing by applicants would result in a more orderly record and would allow them to address the issues coherently in one submission, without needless fragmentation or repetition.<sup>11</sup> Numerous commenters (including DOT), however, have urged that we allow them additional time to digest and respond to comments, protests, requested conditions, and, in particular, any inconsistent and responsive applications. Given the complexity and magnitude of issues that potentially may arise in an inconsistent or responsive application in this proceeding, we will add time in the schedule for responses to these filings. Responses to inconsistent and responsive applications, comments, protests, requested conditions, and opposition evidence and argument, as well as rebuttal in support of the primary application, will be due on F + 180 days. We note that, because inconsistent and responsive applicants must submit descriptions of their intended applications on F + 60 days, parties will have in effect 120 days to prepare their responses due on F + 180 days to any inconsistent and responsive applications. This schedule will allow adequate time for the processing of inconsistent and responsive applications filed in this proceeding, and we do not anticipate that further extensions to this schedule will be necessary.

We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings. Parties filing inconsistent and/or responsive applications have a right to file rebuttal evidence, while parties simply commenting, protesting, or requesting conditions do not. UP/SP, Decision No. 6 (ICC served Oct. 19, 1995, at 7-8, 60 FR 54384 (Oct. 23, 1995)); Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision No. 16 (ICC served Apr. 20, 1995), at 11. Rebuttal in support of inconsistent and responsive applications will be due on F + 220 days, which will allow inconsistent and responsive applicants 40 days instead of 15 days to prepare their rebuttals.

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<sup>11</sup> Applicants also request that, as in recent merger proceedings, the Board indicate that it will require appeals of ALJ decisions to be filed within 3 working days and responses to appeals or to any procedural motion filed with the Board also to be filed within 3 working days. As in prior merger proceedings, 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, an appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the 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 Board itself in the first instance must also be filed within 3 working days of the date the motion is filed.

**Other dates.** We also will expand the schedule to allow parties 5 additional days to prepare briefs (not to exceed 50 pages), which will be due on F + 260 days, as well as 5 additional days to prepare for oral argument (close of record), which is scheduled on F + 300 days. As for the remainder of the schedule, we will adopt the timetable as has been proposed. The voting conference (at Board's discretion) is scheduled on F + 305 days; and the date of service of the final decision is scheduled on F + 365 days.

In summary, the procedural schedule we adopt here consisting of a 365-day time period both is fair to all of the parties and allows us sufficient time to resolve the unique issues that we anticipate will arise in connection with any merger proposal involving Conrail. Our schedule is consistent with the thrust and weight of the comments and accommodates the processing of major inconsistent or responsive applications.

**Discovery.** In accordance with our decision in Expedited Procedures For Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527 (STB served Oct. 1, 1996, 61 FR 52710 (Oct. 8, 1996)), parties should not file any discovery requests or materials with the Board unless they are attached as part of an evidentiary submission, or motions to compel or responses thereto. The Secretary's Office will otherwise reject them. If parties wish to engage in discovery or establish discovery guidelines, they are directed to consult with Administrative Law Judge Leventhal. Judge Leventhal 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 Leventhal 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 Leventhal 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 (ICC served July 11, 1994), at 9 (applying the "stringent standard" of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by the ICC's former Chief Administrative Law Judge Paul S. Cross).

**Merger-related abandonments.** The procedural schedule applicable to merger-related abandonments will be as follows: (1) all merger-related abandonment proposals (which may be filed as applications, petitions, and/or notices) are to be filed, with any and all supporting documentation, simultaneously with the primary application; and (2) if the primary application is complete, we shall publish in the Federal Register, by day F + 30, notice of the acceptance of the primary application as well as notice of any merger-related abandonment proposal. Thereafter, with respect to each merger-related abandonment proposal: (3) interested parties must file notifications of intent to participate in the specific abandonment proceedings by day F + 45; (4) interested parties must file opposition

submissions, requests for public use conditions, and/or Trails Act requests by day F + 120; (5) applicants may file rebuttal in support of their abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, by day F + 180; (6) as with the primary application and all related matters, briefs shall be due by day F + 260, oral argument will be held on day F + 300, and a voting conference will be held, at the Board's discretion, on day F + 305; and (7) if, in the final decision served on day F + 365, we approve the primary application, we also will address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we either approve or exempt any of the abandonment proposals, we shall require interested parties to file, no later than 10 days after the date of service of the final decision, offers of financial assistance with respect to any approved or exempted abandonments.

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

Decided: January 30, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

FINAL PROCEDURAL SCHEDULE

- F - 30 Preliminary Environmental Report, including supporting documents, due.
- F Primary application & related applications filed. [Environmental Report, including all supporting documents, due.]
- F + 30 Federal Register publication of: notice of acceptance of primary application and related applications, petitions and notices; and notice of any merger-related abandonment applications, petitions, and notices of exemption.
- F + 45 Notification of intent to participate in proceeding due.
- F + 60 Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
- F + 120 Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. Comments by U.S. Department of Justice and U.S. Department of Transportation due. With respect to all merger-related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
- F + 150 Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.
- F + 180 Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition arguments and evidence due. Rebuttal in support of primary application and related applications due. With respect to all merger-related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
- F + 220 Rebuttal in support of inconsistent and responsive applications due.
- F + 260 Briefs due, all parties (not to exceed 50 pages).
- F + 300 Oral argument (close of record).
- F + 305 Voting conference (at Board's discretion).
- F + 365 Date of service of final decision. With respect to any approved or exempted abandonments: offers of financial assistance must be filed no later than 10 days after the date of service of the 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 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. Discovery on responsive and inconsistent 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.