

Advisory Commission will be held on Wednesday, November 8, 1995.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet at 1 p.m. at Park Headquarters, Marconi Station for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—September 22, 1995
3. Reports of Officers
4. Report of Superintendent
  - How NBS position is being used
  - Update cranberry bog restoration
  - Update General Management Plan
5. Old Business
6. Use & Occupancy Issues—Michael Brennan
7. Report Shank Painter Pond—Alix Ritchie
8. Role of Advisory Commission for public review of General Management Plan
9. Suggestions for addressing Superintendent's request for improved dune shack policy.
10. New Business
11. Agenda for Next Meeting
12. Date for Next Meeting
13. Public Comment
14. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: October 16, 1995.

Chrysantra L. Walter,  
Deputy Field Director, Northeast Field Area.  
[FR Doc. 95-26206 Filed 10-20-95; 8:45 am]

BILLING CODE 4310-70-P

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32760]

### 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

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Decision No. 6; Notice of Issuance of Procedural Schedule.

**SUMMARY:** The Commission is issuing a procedural schedule, following the receipt of comments from the public on applicants' proposed procedural schedule and applicants' reply to those comments. This schedule will provide for issuance of a final decision no later than 255 days after applicants file the primary application, which is 60 days beyond the time proposed by applicants.

**EFFECTIVE DATE:** The effective date of this decision is October 24, 1995. Notices of intent to participate in this proceeding will be due 45 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 filing of the primary application. For further information, see the procedural schedule set forth below.

**ADDRESSES:** An original and 20 copies of all documents must refer to Finance Docket No. 32760 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32760, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jerome Nelson, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and to each of applicants' representatives: (1) Arvid E. Roach II, Esq., Covington & Burling, 1201 Pennsylvania Avenue NW., P.O. Box 7566, Washington, DC 20044; and (2) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 Nineteenth Street NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Julia Farr, (202) 927-5352. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** On August 4, 1995, Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), and The Denver and Rio Grande Western Railroad Company (DRGW) (collectively, applicants)<sup>1</sup> notified the Commission of their intent to file an application seeking authority under 49 U.S.C. 11343-45 for: (1) the acquisition of control of SPR by UP Acquisition Corporation (Acquisition), an indirect wholly owned subsidiary of UPC; (2) the merger of SPR into UPRR; and (3) the resulting common control of UP and SP by UPC. Applicants stated that they will file their application by December 1, 1995, and proposed a procedural schedule for use in the resulting proceeding. Under that schedule, a final decision would be issued 195 days after the filing of the application.

In Decision No. 1, served and published in the Federal Register on September 1, 1995, 60 FR 45737, the Commission gave notice of the pre-filing notification and asked for comments on applicants' proposed procedural schedule. The Commission also asked for comments on a variation of the applicants' proposed procedural schedule, wherein parties filing inconsistent or responsive applications, comments, protests, requests for conditions, or any other opposition evidence and arguments would submit their pleadings to the Commission 60 days after the filing of the primary application (in applicants' proposed schedule, these parties would submit their pleadings 90 days after the filing of the primary application). Comments were due on September 18, 1995; most were received on or before that date. Applicants replied to the comments on September 28, 1995.<sup>2</sup>

Approximately 35 public comments were received in response to Decision

<sup>1</sup> UPC, UPRR, and MPRR are referred to collectively as Union Pacific. UPRR and MPRR are referred to collectively as UP.

SPR, SPT, SSW, SPCSL, and DRGW are referred to collectively as Southern Pacific. SPT, SSW, SPCSL, and DRGW are referred to collectively as SP.

<sup>2</sup> We have received petitions for leave to file additional comments on the procedural schedule by the United States Department of Justice (DOJ-2) and The Kansas City Southern Railway Company (KCS-4), and their respective additional comments (DOJ-3 and KCS-5). Applicants replied. We will accept all of these pleadings into the record.

No. 1. Comments were filed by shippers, government parties, railroads, electric utility interests, and rail labor unions. Most of the commenters opposed the Commission's suggested variation on applicants' proposed procedural schedule. Several commenters supported the applicants' proposed 195-day schedule or stated that the proposed schedule offered them the minimum amount of time in which they could prepare their submissions. Several commenters opposed the proposed 195-day schedule as being too short, and suggested alternative procedural schedules extending from 9 months to the full 2½ years allotted under the statute. After reviewing all of the comments we received on the proposed procedural schedule, we have determined that a 255-day procedural schedule (which is 60 days more than applicants have proposed) will ensure that all parties are accorded due process and allow us time to consider fully all of the issues in this proceeding.

We believe that applicants have demonstrated reasons for, and that circumstances justify, a departure from standard procedures and deadlines in merger proceedings. We have established that it is possible to review major merger proceedings in less time than that allowed by the Interstate Commerce Act and by our regulations, while still considering all parties' concerns. If we set a procedural schedule that is longer than is necessary for all parties to present concerns and for us to carefully consider those concerns and the effects of the proposed transaction on the public interest, it would be a step backward in our effort to process applications fairly but efficiently.

Within this expedited 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 the applicants have reached or may reach with any parties, regardless of the complexity of the agreements.

We issued an expedited schedule in *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. 10 (ICC served Mar. 7, 1995). We do not believe that the fact that the *BN/Santa Fe* application had been filed several months before we adopted the expedited procedural schedule justifies an additional 5 months to prepare

opposition evidence in this proceeding, as some parties suggest. In that case, we responded to parties' requests (arguing that they did not want to expend resources to analyze an application when they were not sure who would be the applicants) by suspending the procedural schedule pending Santa Fe Pacific Corp.'s shareholders' vote. Subsequently, the feedback we received at the time we sought comments on expediting the schedule in *BN/Santa Fe* indicated that many parties had not begun to prepare their submissions in earnest until issuance of the procedural schedule. Those parties had ample time to prepare their submissions, and their submissions were given serious and substantial consideration. The same will be true in this proceeding.

We also do not believe that the uncertainty of the Commission's future justifies a longer procedural schedule; the Commission continues to be responsible for performing its functions efficiently and effectively. The issue of the agency's future and any effect that it might have on the UP/SP proceeding can be addressed if necessary as circumstances evolve.

We are not unmindful of the concerns parties raise regarding the amount of time necessary to prepare their cases, and have crafted the attached procedural schedule with fairness to all parties in mind. We have adjusted applicants' proposed procedural schedule to give more time for the filing of comments, protests, requested conditions, and inconsistent and responsive applications; for the filing of rebuttals in support of inconsistent and responsive applications; for the filing of briefs; and for the preparation for oral argument.

All interested parties, including the United States Department of Justice (DOJ) and the United States Department of Transportation (USDOT), may file written comments, protests, requests for conditions, and inconsistent and responsive applications 120 days (rather than 90 days) after the filing of the primary application. All descriptions of inconsistent and responsive applications, as well as petitions for waiver or clarification, will be due 60 days after the filing of the primary application.

We will not allow parties filing comments, protests, and requests for conditions to file rebuttal in support of those pleadings. As we have mentioned previously, we believe that parties filing inconsistent and/or responsive applications have a right to file rebuttal evidence, while parties simply commenting, protesting, or requesting

conditions do not. In the *BN/Santa Fe* proceeding we stated:

The relief responsive applicants seek is different from the relief that parties simply requesting conditions seek. Traditionally, applicants, whether they are primary or responsive applicants, have the right to close the evidentiary record on their case. Therefore, responsive applicants can answer arguments made in opposition to their application in rebuttal filings. Parties seeking conditions, on the other hand, come to the Commission as part of and in opposition to the primary application, and the primary applicants respond to those parties in their rebuttal in support of the primary application. Allowing \* \* \* rebuttal evidence would deprive the primary applicants of their right to close the evidentiary record on their case. We see no necessity for such filings, and believe the current procedural schedule will allow the Commission to fully comprehend and evaluate all issues that the parties seeking conditions will raise in this proceeding.

*BN/Santa Fe*, Decision No. 16 at 11. Rebuttals in support of inconsistent and responsive applications are due 15 days (rather than 10 days) after the filing of responses to those applications are due.

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.

Briefs are due 20 days (rather than 10 days) after the close of the evidentiary record. In spite of arguments that we should not limit briefs to 50 pages, we believe that past experience demonstrates that it is appropriate to do so. We will impose no page limitations on evidentiary submissions. Briefs must be filed in accordance with the requirements at 49 CFR 1104.2 (8½ by 11; double-spaced). 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. Further, we do not see a necessity at this time to schedule an oral hearing to resolve issues of disputed fact. We can schedule such a hearing if and when it becomes necessary to do so.

Oral argument will be scheduled no earlier than 30 days (rather than 15 days) after briefs are due. The scheduling of an oral argument and a

voting conference is at the Commission's discretion. Although we have found from our experience in *BN/Santa Fe* that we had adequate time to fully digest and consider the parties' arguments and responses to questions at oral argument, and to weigh these arguments in our decisionmaking process at a voting conference held the following day, we are planning to allow an extra day between an oral argument and a voting conference in this proceeding.

A few other matters require our attention. USDOT raises an issue regarding the service list in this proceeding. USDOT contends that accelerated review of the merger only can take place if the Commission issues a definitive service list early in the case to ensure timely receipt of the evolving record. Because in *BN/Santa Fe* the Commission issued its service list after all opposition evidence was filed, USDOT argues that it lost time trying to secure copies of evidentiary filings from participants, and in turn had trouble meeting subsequent deadlines.

We agree that issuing an accurate service list at an earlier stage in this proceeding would help to facilitate parties' participation under an accelerated procedural schedule. Therefore, rather than adhering to the practice of compiling and issuing a service list after parties file comments, we will issue the definitive service list before the filing of comments, requests for conditions, inconsistent and responsive applications, and other opposition evidence are due in this proceeding. To compile and issue timely an accurate service list, we are requiring persons to notify the Commission in writing, within 45 days after the primary application is filed, of their intent to participate in this proceeding.

Another party, Gulf Rice Arkansas (GRA), seeks clarification of whether the investigation of abandonment protests will be accomplished through an oral hearing. Under 49 U.S.C 10904, which outlines the procedures for applications to abandon lines or discontinue service on lines, there is no specific provision for an oral hearing to investigate protests. The statute states that, if the Commission determines that an investigation is necessary, it must be completed within 135 days after the date the abandonment application is filed. At this time it is not possible to determine whether an oral hearing will be necessary, although unlikely, in order to investigate a particular proposed abandonment.

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 UP/SP-4), they are directed to consult with Administrative Law Judge Jerome Nelson. Judge Nelson 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 Nelson 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 Nelson 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).<sup>3</sup>

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

Decided: October 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,  
Secretary.

#### Final Procedural Schedule

- F—Primary application and related applications filed.
- F+30—Commission notice of acceptance of primary application and related applications published in the Federal Register.
- 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.
- F+120—Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. DOJ and USDOT comments due.
- F+135—Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.

<sup>3</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, an appeal to a decision issued by Judge Nelson 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 Commission itself in the first instance must also be filed within 3 working days.

F+150—Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.

F+165—Rebuttal in support of inconsistent and responsive applications due.

F+185—Briefs due, all parties (not to exceed 50 pages).

F+215—Oral argument (at Commission's discretion).

F+217—Voting Conference (at Commission's discretion).

F+255—Date of 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 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, unless cross-examination is needed to resolve material issues of disputed fact. 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.

[FR Doc. 95-26271 Filed 10-20-95; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32787]

**West Michigan Railroad Co.—  
Acquisition and Operation  
Exemption—Line of Southwestern  
Michigan Railroad Company, Inc., d/b/  
a the Kalamazoo, Lakeshore & Chicago  
Railway Co.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission, under 49 U.S.C. 10505, exempts West Michigan Railroad Co. from the prior approval requirements of 49 U.S.C. 11343-45, to acquire and operate 14.88 miles of rail line owned by Southwestern Michigan Railroad Company, Inc. d/b/a the Kalamazoo, Lakeshore & Chicago Railway Co., between milepost 15.67 in Hartford and milepost 30.55 in Paw Paw, in Van Buren County, MI.

**DATES:** This exemption is effective on October 18, 1995. Petitions to reopen must be filed by November 17, 1995.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 32787 to: (1) Office

of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Daniel A. LaKemper, West Michigan Railroad Co., 1318 South Johanson Road, Peoria, IL 61607; Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036; and R. Franklin Unger, Trustee, Kalamazoo, Lake Shore & Chicago Railway Co., 1143 Audubon, Grosse Pointe Park, MI 48230.

**FOR FURTHER INFORMATION CONTACT:**

Beryl Gordon, (202) 927-5610. [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: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services at (202) 927-5721.)

Decided: October 12, 1995.

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

Vernon A. Williams,  
*Secretary.*

[FR Doc. 95-26166 Filed 10-20-95; 8:45 am]

BILLING CODE 7035-01-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled  
Substances; Notice of Application**

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 19, 1995, Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols (7370).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States

Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 22, 1995.

Dated: October 16, 1995.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of  
Diversion Control, Drug Enforcement  
Administration.*

[FR Doc. 95-26089 Filed 10-20-95; 8:45 am]

BILLING CODE 4410-09-M

**Importer of Controlled Substances;  
Notice of Registration**

By Notice dated August 10, 1995, and published in the Federal Register on August 17, 1995 (60 FR 42905), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059) ...	II
Carfentanil (9743) .....	II

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 16, 1995.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of  
Diversion Control, Drug Enforcement  
Administration.*

[FR Doc. 95-26088 Filed 10-20-95; 8:45 am]

BILLING CODE 4410-09-M

**Foreign Claims Settlement  
Commission**

**Claims Against Albania; Notice of  
Extension of Deadline for Filing of  
Claims**

**AGENCY:** Foreign Claims Settlement Commission of the United States; Justice.

**ACTION:** Notice.

**SUMMARY:** The Foreign Claims Settlement Commission announces the extension of the deadline for the filing of claims against the Government of Albania for the nationalization, expropriation, confiscation, or other taking of property of United States nationals by the former Albanian