

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42057

PUBLIC SERVICE COMPANY OF COLORADO D/B/A XCEL ENERGY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: February 17, 2004

By complaint filed on December 20, 2000, the Public Service Company of Colorado d/b/a Xcel Energy (Xcel) challenges the rates charged by The Burlington Northern and Santa Fe Railway Company (BNSF) for movements of coal from origins in the Powder River Basin of Wyoming to Xcel's Pawnee Steam Electric Generating Station near Brush, CO. Xcel alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed, along with other relief. The parties filed opening evidence on January 10, 2003, reply evidence on April 4, 2003, rebuttal evidence on May 19, 2003, and briefs on September 8, 2003.

On January 20, 2004, BNSF filed a Petition for Leave to File Statement of Clarification and tendered its Statement of Clarification (Statement), apparently designed to address Board statements made in recent decisions in other rail rate reasonableness proceedings. On February 6, 2004, Xcel responded in opposition to acceptance of BNSF's tendered Statement. Alternatively, Xcel requested that it be given until 20 days after issuance of a decision accepting the Statement to reply to its content. In the interest of developing a complete record, the BNSF Statement will be accepted. Xcel will be permitted to reply by March 8, 2004.

In accordance with the Board's statement in the recent decision in Duke Energy Corporation v. CSX Transportation, Inc., STB Docket No. 42070, slip op. at 44-45 (STB served Feb. 4, 2004), the parties should, also by March 8, 2004, provide the Board with more recent traffic data (to include full year 2002 and 2003) for the stand-alone traffic group.

An oral argument to discuss the issues raised in this proceeding will be held on Thursday, March 18, 2004, beginning at 10:00 a.m., in the Surface Transportation Board Hearing Room (Room 760), at 1925 K Street, N.W., Washington, D.C.

No additional written comments may be filed in connection with the oral argument (other than the written summary discussed below), as an extensive written record will already have been developed in this proceeding. The Board may, however, provide for filing post-argument briefs. Each party is encouraged to use its oral argument time to call attention to the points it believes

are particularly important. The purpose of oral argument is not to restate the written arguments previously made, but to summarize and emphasize the key points of a party's case, and provide an opportunity for questions that the Board may have regarding any issue in the proceeding.

The parties in this case will each have 45 minutes of argument time. Xcel will open and may reserve part of its time for rebuttal if it so chooses. Each party must provide the full name and title of its speaker to the Board, together with a written summary (not to exceed 3 pages) of the specific points it wishes to discuss at the oral argument, as soon as possible, but no later than March 8, 2004.

If a party wishes to enhance its argument by using projector-adaptable visual displays and/or handouts, it may do so. Staff will be available to demonstrate the Hearing Room's projection system on Wednesday, March 17, 2004, from 2:00 p.m. to 4:00 p.m. Please call (202) 565-1709 to make arrangements.

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

It is ordered:

1. BNSF's Statement of Clarification submitted on January 20, 2004, is accepted. Xcel may file a reply to the Statement by March 8, 2004. Also by March 8, 2004, the parties should provide the Board with the more recent traffic data for the stand-alone traffic group as discussed above.

2. Oral argument in this proceeding will be held on Thursday, March 18, 2004, beginning at 10:00 a.m., in the Surface Transportation Board Hearing Room (Room 760), at 1925 K Street, N.W., Washington, D.C.

3. Each party must provide the oral argument information specified above in writing by March 8, 2004.

4. If required by the Board, post-argument briefs will be due on April 2, 2004.

5. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary