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SERVICE DATE - OCTOBER 10, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33862 (Sub-No. 1)

PUBLIC SERVICE COMPANY OF COLORADO--PETITION FOR CROSSING
AUTHORITY UNDER 49 U.S.C. 10901(d)

Decided: October 5, 2000

By petition filed on May 19, 2000, the Public Service Company of Colorado (PSCo) requests that we issue an order, pursuant to 49 U.S.C. 10901(d), to allow PSCo to cross track owned by The Burlington Northern and Santa Fe Railway Company (BNSF).¹ PSCo states that it has had discussions with BNSF regarding the proposed crossing, but that efforts to obtain BNSF's permission to cross its track have been unsuccessful.

On June 8, 2000, BNSF filed a motion to dismiss the crossing petition, arguing that the Board lacks jurisdiction over the proposed crossing. BNSF alleges that PSCo is not a rail carrier and that our jurisdiction under 49 U.S.C. 10901(d) is limited to a rail carrier's proposed crossing of a rail line.

BNSF filed a similar motion to dismiss the construction petition in the lead docket in this proceeding, arguing that the line PSCo proposes to construct is a spur or industrial track that, under 49 U.S.C. 10906, is exempt from 49 U.S.C. 10901. In the August 23 decision, slip op. at 2-3, we found the track to be a line of railroad and not an exempt spur because the construction would substantially alter the competitive situation for the transportation of coal from the Powder River Basin to PSCo's Comanche station and because PSCo will be assuming the responsibilities of a carrier. We concluded, therefore, that we have jurisdiction over both the construction exemption and the proposed crossing. Having found in the August 23 decision, slip op. at 3, that we have jurisdiction over the crossing request, we will deny BNSF's motion to dismiss the crossing petition.

Under 49 U.S.C. 10901(d)(1), the Board may authorize a carrier to cross over the line of

¹ In Public Service Company of Colorado-- Construction Exemption--Pueblo County, CO, STB Finance Docket No. 33862 (STB served Aug. 23, 2000) (August 23 decision), we conditionally granted PSCo an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct a line of railroad approximately 1,500 feet in length to serve its Comanche Power Station in Pueblo County, CO, subject to completion of the environmental review process and issuance of a further decision addressing the environmental impacts of the proposal. On September 8, 2000, the Board's Section of Environmental Analysis served an environmental assessment (EA). Comments on the EA are due on October 10, 2000.

another rail carrier if: (1) the construction does not unreasonably interfere with the operation of the crossed line; (2) the operation does not materially interfere with the operation of the crossed line; and (3) the owner of the crossing line compensates the owner of the crossed line. If the parties disagree on the operating terms or the amount of compensation, either party may submit the dispute to the Board for determination under 49 U.S.C. 10901(d)(2).

In the August 23 decision, slip op. at 1 n.2, we stated that a decision on the crossing petition must await a final decision allowing construction to proceed. In order to be able to issue a decision on the crossing soon after² our final decision on the construction, we will institute the crossing proceeding now to be handled under the modified procedure at 49 CFR 1112. Because PSCo's petition is an evidentiary submission, it will be treated as an opening statement.

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 motion to dismiss the crossing petition is denied.
2. PSCo's crossing petition will be handled under the modified procedure.
3. BNSF's reply to PSCo's petition is due on November 9, 2000.
4. PSCo's rebuttal is due on November 29, 2000.
5. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary

² PSCo requests that construction of the requested crossing be permitted to commence immediately upon the issuance of a decision granting this authority, while the appropriate level of compensation is determined.