

ENVIRONMENTAL ASSESSMENT
Finance Docket No. 33862

Public Service Company of Colorado
Construction and Operation of a Rail Line to Serve the
Comanche Power Station, Pueblo County, Colorado

Prepared by:
Surface Transportation Board
Section of Environmental Analysis

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EXECUTIVE SUMMARY

Statement of Proposed Action

PSCo proposes to construct a new rail line in Pueblo County, Colorado from a point of connection on the line of the Union Pacific Railroad Company (UP) to a point of connection on the existing Comanche Power Station lead track (Fig. ES-1). This EA addresses the potential environmental impacts associated with construction and operation of the proposed UP rail line.

The proposed rail line would allow access from UP to provide service to Comanche Power Station. If construction were approved, there would be no increase in rail traffic, but instead a potential change in the rail carrier delivering coal to Comanche Power Station. Currently, The Burlington Northern and Santa Fe Railway Company (BNSF) delivers approximately 3.0 million tons of coal per year to the plant. The BNSF delivers approximately five unit coal trains per week, or 250 trains per year. Each train is made up of approximately 117 cars.

Construction of the proposed project would impact approximately 1.4 acres of land (Fig. ES-2). The estimated length of the track is 1500 feet with an average right-of-way width of 100 feet. Construction of the track and rail bed would be in accordance with standards approved by the American Railway Engineering Association (AREA) and the U.S. Department of Transportation, Federal Railroad Administration (FRA) Class 3 railroad operation. Construction, if approved, is expected to take approximately three months. Construction details are provided in Section 2.0.

The track would be inspected weekly as required by FRA track safety standards. Additional inspections would be carried out, as necessary, when warranted by weather conditions. Qualified persons hired by PSCo would conduct inspections. PSCo would require the maintenance contractor to implement a maintenance program to prevent deterioration of the track and structures consistent with industry and FRA safety standards.

On March 23, 2000, PSCo submitted a written request to the Board for a waiver of the preparation of an Environmental Impact Statement (EIS) required by the Board's regulations for rail line construction proposals (Appendix B, Exhibit 1). On March 31, 2000, SEA granted a waiver from the requirement to prepare an EIS (Appendix B, Exhibit 2). SEA based this decision on the information available to date that included:

- The preferred route is 1500 feet in length
- Completion of the project will have no effect on the thresholds set forth in 49 CFR 1105(7)(e)(4) or (5)
- The project is not expected to have any effect on archeological or architectural resources
- The project should have no impact on residential areas
- No threatened, endangered fish or wildlife or species of special concern have been found to inhabit the project area
- No wetlands are present.

On April 14, 2000, PSCo submitted a petition to the Board for an exemption under 49 U.S.C. § 10502 from the requirements of 49 U.S. C. § 10901. The petition was for the construction by PSCo of the approximately 1500 feet of new rail line to serve the Comanche Power Station in Pueblo County, Colorado to the spur of the Comanche Power Station (Appendix B, Exhibit 3).

On May 5, 2000, PSCo submitted a letter to SEA requesting that SEA limit detailed review in the EA to the proposed route described in the petition (Appendix B, Exhibit 4). On May 10, 2000, SEA granted this request (Appendix B, Exhibit 5). SEA's reasons for granting the request were based on consultation with PSCo. PSCo stated that the proposed route is the only feasible route that will accomplish the purposes of the project: to establish competitive rail service to PSCo's Comanche Power Station. Although it appears to be possible to construct a rail line that would connect the nearby Colorado & Wyoming Railway (C&W) to the Comanche Power Station at a location north and east of the PSCo proposed route, this apparent alternative entails numerous operational and engineering uncertainties. Additionally, establishing access for UP to the Comanche Power Station could be accomplished via trackage rights over BNSF's track extending from Pueblo, Colorado to the plant. However, BNSF has not made this proposal to PSCo.

CONCLUSION

This Environmental Assessment (EA) considers the potential environmental impacts of Public Service Company of Colorado's (PSCo) proposed construction and operation of a 1500 foot rail line in Pueblo County, Colorado. This proposed rail line would provide rail access for a second rail carrier to provide coal to the Comanche Power Station operated by PSCo in Pueblo County. The EA preliminary concludes that this proposal would not significantly affect the quality of the natural or human environment provided the recommended mitigation measures set forth in Section 6.0 are implemented. Accordingly, the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) recommends that, if the Board approves this project, PSCo be required to implement the mitigation contained in Section 6.0. SEA will consider all comments received in response to the EA in making its final recommendations to the Board.

Finance Docket 33862
Public Service Company
of Colorado

Approximate Location of
MP 122.95 & Original
Southern Junction

UP Southbounds

BNSF & UP Northbounds

BNSF Southbounds

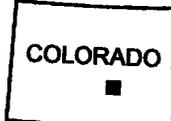
Comanche Station
Power Plant

Area of Proposed
Construction

BNSF Connection to Comanche Power Station

N O L A N

Vicinity Map



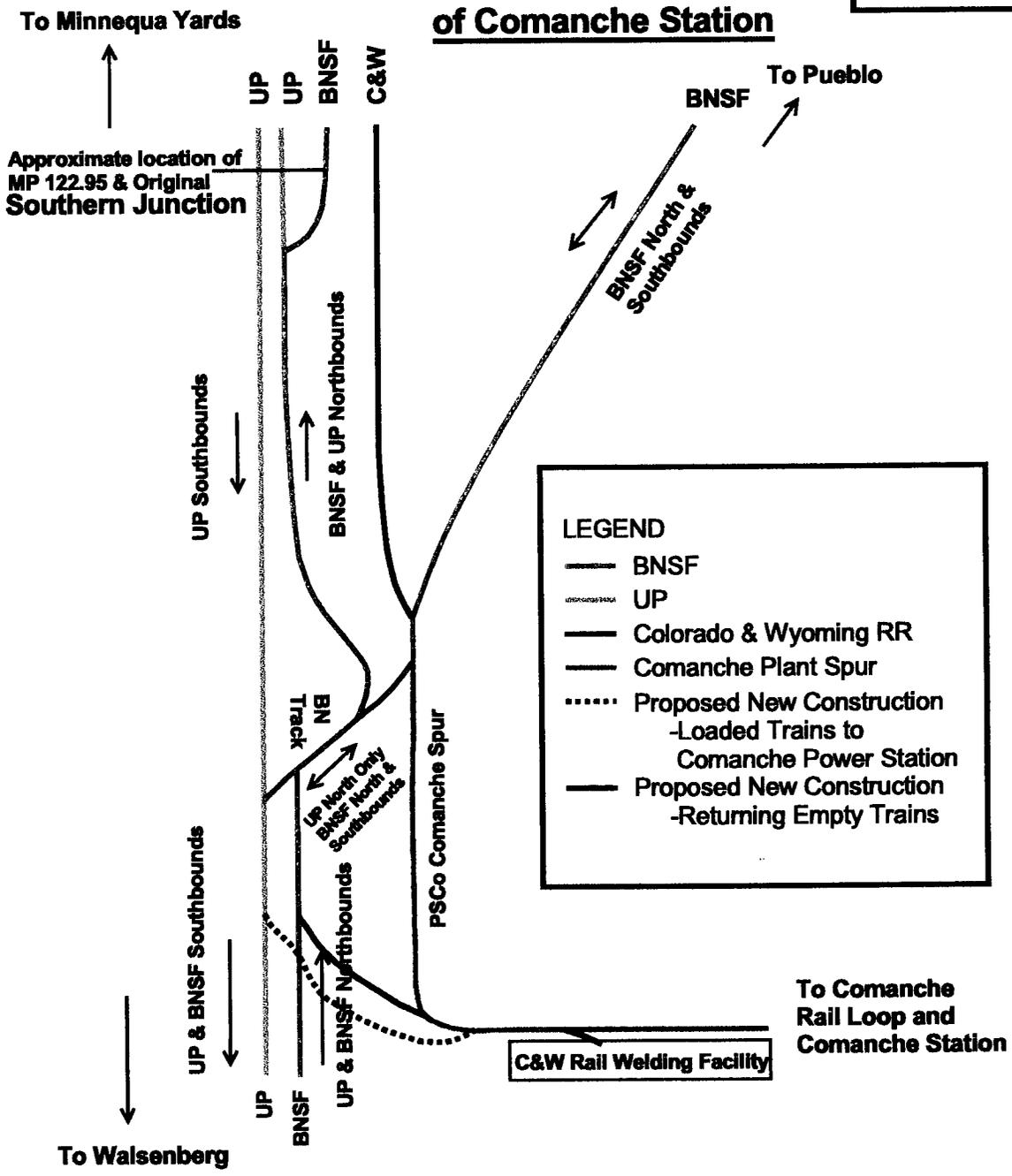
0 2000 Feet



Burns &
McDonnell
SINCE 1898

Figure ES-1
GENERAL LOCATION
MAP

Rail Tracks in the Vicinity of Comanche Station



LEGEND

- BNSF
- - - UP
- Colorado & Wyoming RR
- Comanche Plant Spur
- Proposed New Construction
- - - Loaded Trains to Comanche Power Station
- - - Returning Empty Trains

Pictorial Drawing, Not to Scale

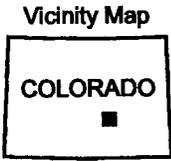


Figure ES-2
SITE MAP

Burns & McDonnell with corporate headquarters in Kansas City, Missouri and a regional office in Denver, Colorado was retained by PSCo to act as the independent third party consultant to assist SEA in the preparation of this EA. The use of third party consultants is addressed at 49 CFR 1105.4(j). Under the direction, supervision, and approval of SEA, the third party consultant develops the technical data required to complete the environmental review of the proposed project and assists in the preparation of the EA. PSCo's request for the use of a third party consultant and SEA's response is provided in Appendix B, Exhibits 6 and 7.

Description of the Affected Environment

Following is an overview of the project area. The project area is bordered by UP and BNSF rail lines, and the Comanche Power Station lead track. Section 3.0 contains a detailed discussion of the affected environment.

The proposed project would be in Pueblo County, Colorado. Pueblo County is included in parts of two natural physiographic areas. About 95 percent are gently rolling plains of the upper Arkansas River Valley. The other physiographic area covering approximately 5 percent of this region is the foothills of the southern Rocky Mountains. The bedrock consists of shale, limestone, and sandstone.

The climate in the area is semi-arid. July is the hottest month and January is the coldest. Precipitation is highest in August and lowest in February, averaging approximately 12 inches annually.

No surface water resources exist in the project area.

The project area is not within a non-attainment Air Quality Control Region.

The land around the project area is industrial with the Rocky Mountain Steel plant located north of the proposed project and the Comanche Power Station to the east. Vegetation typical of disturbed areas occurs adjacent to the existing rail lines. No areas of native vegetation are present. No wetlands exist in the project area. Since most of the area is disturbed, the range of habitats is limited.

Transportation infrastructure in the project area consists of the UP, BNSF and C&W rail lines. The primary sources of noise in the project area include the UP, BNSF and C&W rail lines, Rocky Mountain Steele and Comanche Power Station.

Alternatives Considered

One of the alternatives considered was access via C&W's rail line. This alternative would entail both operational and engineering uncertainties and PSCo concluded that this was not a viable alternative. Access via trackage rights over BNSF's track was also considered. However, BNSF has made no viable trackage rights proposal and PSCo rejected this alternative. Since PSCo concluded that neither of these alternatives were viable and SEA agreed to this conclusion, SEA did not conduct an environmental analysis of them.

The no-build alternative would mean continued service solely by BNSF and the environmental impacts associated with the construction and operation of the preferred alternative would not occur.

Synopsis of Environmental Impacts of the Proposed Action

The following discussion summarizes the potential environmental impacts from the construction and operation of the proposed rail line. As discussed here and in more detail in Section 4.0, we expect that the construction and operation of PSCo's proposed rail line will have minimal negative impacts.

Physical Resources

Geology, Soils and Climate

A right-of-way averaging 100 feet would be required for this project. Land that would be impacted by the proposed project includes already disturbed soils. The proposed project would be along existing railroad tracks in an industrial area.

Surface and Ground Water

No surface waters would be impacted. Because no additional rail traffic would result from implementing the proposed action, ground water would not be affected.

Air Quality

Air quality impacts to Pueblo County are expected to be minimal. Impacts during construction would include emissions from construction workers' vehicles, heavy equipment, and from increases in fugitive dust. PSCo would employ appropriate measures to control fugitive dust. These impacts would cease following construction. Emissions during operation of the track would be from diesel locomotives. These emissions would be localized and are not expected to significantly affect air quality since there will be no increase in rail traffic.

Biological Resources

Vegetation lost due to construction of this project is primarily weedy species. Only limited wildlife habitat would be impacted. Impacts to local wildlife would result from increased noise during construction activities. Some loss of wildlife, including mainly ground dwelling mammals such as cottontails may occur during construction. However, any loss would not be significant to the overall populations of wildlife in the area.

No Federally-listed or state-listed endangered or threatened species are known to occur in the project area or would be impacted by the project.

Noise

Noise levels in the project area would temporarily rise during construction due to the operation of heavy equipment and other machinery used during construction. This increase in noise is temporary and would not have significant impacts. Noise following construction is not expected to increase since there will be no additional rail traffic. Construction would take place in an industrial area with no nearby residences, schools or hospitals.

Cultural Resources

The Colorado State Historic Preservation Officer (SHPO) has concluded that no known cultural resources would be impacted by this project. If any cultural or archeological remains were uncovered during construction, PSCo would notify the SHPO as a condition to any decision approving this project.

Hazardous Materials/Waste Sites

The proposed project is designed to allow both UP and BNSF unit coal trains access to Comanche Power Station that is now served solely by BNSF. No hazardous materials will be transported.

However, in the event of a derailment, both UP and PSCo have trained personnel who could promptly respond, contain the spill, and clean up the materials following EPA protocol.

A database search was completed for the site of the proposed construction. No mapped hazardous waste sites were found by Environmental Data Resources, Inc. (EDR) in its database search of available public and government records either within the proposed construction area or within the ASTM E 1527-00 search radius (approximately one mile) around the property.

Socioeconomic Setting

The proposed project is located in Pueblo County southeast of the City of Pueblo. The 1999 population of Pueblo County was 138,262. The City of Pueblo, which lies 110 miles south of Denver, is a major transportation center and is served by two U.S. Highways, two major railroads, numerous truck lines, and a commercial airline. The 1999 population of the City of Pueblo was 102,821. The 1998 unemployment rate for the City of Pueblo and Pueblo County was 7.6 percent. The 1999 per capita income for the City of Pueblo was \$15,331 and the median family income for the same year was \$36,100.

Conclusion

Based on the information provided from all sources to date and subject to the recommended conditions, SEA preliminarily concludes that, as currently proposed, construction and operation of PSCo's proposed rail line would not significantly affect the quality of the natural or human environment. Therefore, an EIS is unnecessary in this proceeding.

Request for Comments

SEA specifically invites comments on all aspects of this EA, including the scope and adequacy of the recommended mitigation as well as any other reasonable alternatives. SEA will consider all comments received in response to the EA in making its final recommendations to the Board. The Board will consider SEA's final recommendations and the environmental comments in making its final decision in this proceeding.

If you wish to file comments or questions regarding this EA, send an original and 10 copies to the Board's Section of Environmental Analysis; Surface Transportation Board, 1925 K Street NW, Washington, DC 20423, to the attention of Dana White, telephone 202.565.1552. Please refer to Finance Docket No. 33862 in all correspondence addressed to the Board.

Date made available to the public: September 8, 2000

Comment due date: October 10, 2000

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- Exhibit 2 Response from United States Fish and Wildlife Service
- Exhibit 3 Response from Colorado Division of Wildlife
- Exhibit 4 Response from Colorado Historical Society

B - Board and Petitioner's Correspondence

- Exhibit 1 PSCo's request for waiver of EIS requirements
- Exhibit 2 Board's response to PSCo's request for waiver of EIS requirements
- Exhibit 3 Petition of PSCo for exemption from 49 U.S.C. § 10901
- Exhibit 4 PSCo's request to limit detailed review in the EA to the proposed route described in the petition
- Exhibit 5 Board's response to PSCo's request to limit the environmental analysis to petitioner's proposed route
- Exhibit 6 PSCo's request to retain Burns & McDonnell as the third-party consultant
- Exhibit 7 Board's response to PSCo's request for the third-party consultant

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1.0 PURPOSE AND NEED

On April 14, 2000, Public Service Company of Colorado (PSCo), an operating company of New Century Energies, submitted a petition to Surface Transportation Board (Board) for an exemption under 49 U.S.C. § 10502 for the construction and operation of a rail line in Pueblo County, Colorado. The primary purpose of the project is to establish competitive rail access for the delivery of coal to the Comanche Power Station. Under 49 U.S.C § 10502 the Board must exempt the proposed construction of a rail line from the requirements of 49 U.S.C. §10901 if it finds that regulation of the project: (1) is not necessary to carry out the transportation policy of 49 U.S.C. § 10102; and (2) either: (a) the transaction or service is of limited scope, or (b) the application of a subdivision of subtitle IV of the Interstate Commerce Commission Termination Act is not needed to protect shippers from the abuse of market power.

PSCo provides electricity and natural gas to approximately 70% of the State of Colorado. PSCo has approximately 1.4 million electric customers and also engages in electric power sales in the wholesales electric power market. PSCo owns and operates fifteen generating stations within its service area, which have a total summer net capability of 3,540,000 kW. Seven of PSCo's plants produce electricity by burning coal and these coal-fired stations burn approximately eight million tons of coal annually. PSCo has purchased this coal from mines in Colorado and the Powder River Basin (PRB) in Wyoming. Approximately 2.8 million tons of PRB coal are burned at Comanche Power Station, which is located near tracks owned by The Burlington Northern Santa Fe Rail Roadway Company (BNSF) running between Pueblo and Walsenberg, Colorado. The coal burned at Comanche Power Station is presently delivered from mines in the PRB by BNSF in unit coal trains pursuant to a rail transportation contract that expires at the end of 2000.

Under the current rail track configuration at Comanche Power Station, no other railroad may serve Comanche Power Station unless permission is received from the BNSF to operate over its track. PSCo desires to have direct access by two railroads at Comanche Power Station as PSCo seeks to negotiate a new rail transportation arrangement to replace the current agreement.

The need for establishing competitive rail access to Comanche Power Station has been heightened by changes in the electric utility industry. First, passage of the Clean Air Act Amendments of 1990 and the Energy Policy Act of 1992 have both increased the necessity of utilities to seek high quality low sulfur coal at the lowest possible delivered price. In addition, the current efforts in the State of Colorado and other states to further restructure the electricity

industry to permit greater choice at the retail sales level has provided an additional reason for PSCo to seek to reduce its costs of producing electricity in order to stay competitive and to continue to serve its customer.

2.0 PROPOSED ACTION AND ALTERNATIVES

2.1 PROPOSED ACTION

The proposed action consists of the construction, operation, and maintenance of a new rail line approximately 1500 feet in length. The proposed rail line would begin from a point of connection on the line of the Union Pacific Railroad Company (UP) parallel to the BNSF's Pueblo-Walsenberg track to a point of connection on the existing Comanche Power Station (Fig. 2-1) lead track. The UP and BNSF rail lines involved in this project are "directional running" double tracks constructed by predecessors to UP and BNSF in the early 1900s and operated by UP and BNSF pursuant to longstanding agreements between the two carriers. Under these agreements, UP and BNSF trains both use UP's track to run south to Walsenberg from what has been historically known as the "Southern Junction." Northbound UP and BNSF trains use the BNSF track to move from Walsenberg to the vicinity of the Southern Junction. Consistent with this arrangement, the new rail line to be constructed by PSCo would run south-southeast from a point of connection with the UP line and would cross the BNSF line at grade, allowing loaded coal trains to travel southbound to Comanche Power Station using the UP track¹. A connection would also be constructed by UP to the BNSF track from a point on the plant spur to permit UP to exercise its rights to take northbound empty trains on BNSF's track to the point of connection with UP's track north of the Southern Junction.

Once the proposed new track is in place, it is expected that UP traffic over the line will vary, depending on the results of the competitive bidding process, but the UP traffic could be as high as 100% of the coal train traffic into the Comanche Power Station, which is presently five unit coal trains per week.

2.1.1 Construction

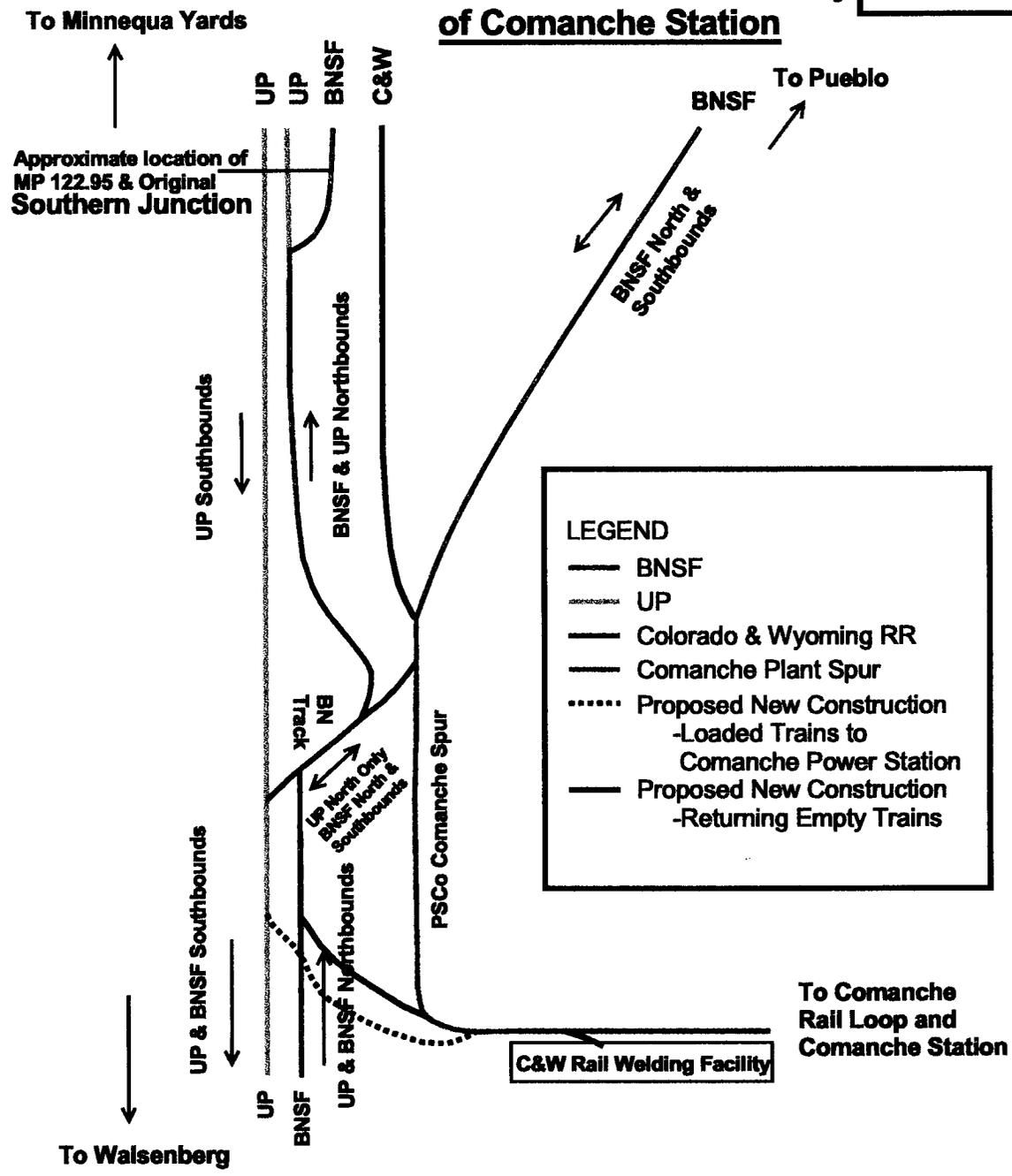
The proposed rail line would begin from a point of connection with the UP line and would cross the BNSF line at grade. Construction of the track and railbed would follow methods approved by the American Railway Engineering Association (AREA) and the U.S. Department of

¹ In its construction exemption petition PSCo noted that the new rail line it proposed would have to cross the track of the BNSF to reach the Comanche Power Station, and that discussions with BNSF were ongoing regarding the crossing. PSCo also noted that, in the event it could not obtain BNSF's permission to cross its track, PSCo would seek authority to cross BNSF's track from the Board pursuant to 49 USC §10901(d). On May 19, 2000 PSCo filed such a petition, which is pending before the Board.

Transportation, Federal Railroad Administration (FRA)² (Figs. 2-2 & 2-3). The entire length of the proposed rail line would involve new construction. It is contemplated that PSCo would construct and own the rail line to be constructed. It is also contemplated that another railroad, most likely UP, would provide rail operations over the line, but PSCo would retain the residual common carrier obligation attached to this new line.

² American Railway Engineering Association. 1993. Manual for Railway Engineering. Vol. I and II. American Railway Engineering Association. Washington, D.C.

Rail Tracks in the Vicinity of Comanche Station



LEGEND

- BNSF
- - - - - UP
- Colorado & Wyoming RR
- Comanche Plant Spur
- Proposed New Construction
-Loaded Trains to
Comanche Power Station
- Proposed New Construction
-Returning Empty Trains

Pictorial Drawing, Not to Scale

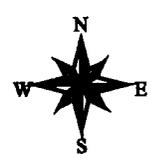
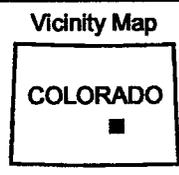


Figure 2-1
SITE MAP

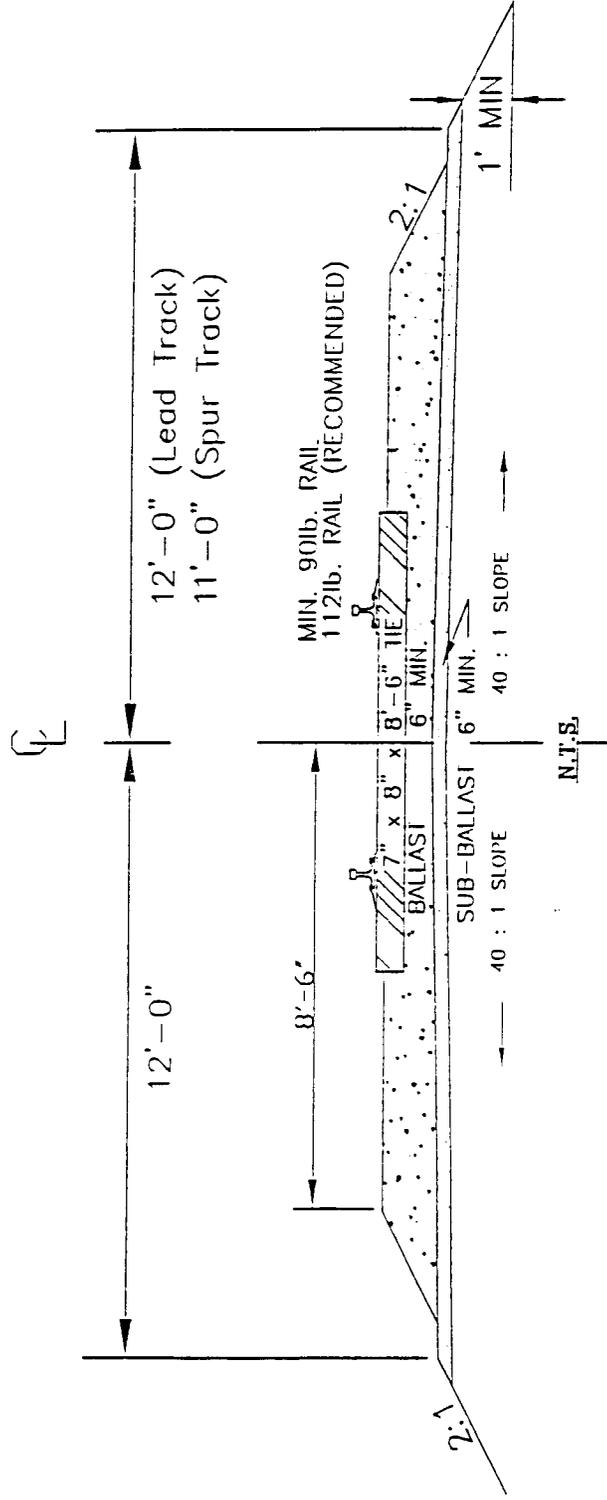


Figure 2-2
 Standard Plan - Industrial Tracks
 Typical Roadbed and Ballast Section
 (BNSF)



The topography along the proposed rail line is generally level and has been previously disturbed by industrial construction. General surface grading of the area would be necessary. However, cut or fill activities would be insignificant and are not expected.

The right-of-way width would be 100 feet, 50 feet on either side of the centerline. Construction is expected to take approximately three months from the time of initial activities through final inspection. Construction activities would occur on weekdays between approximately 7 a.m. to 5 p.m.

2.1.2 Operation

It is expected that traffic over the new line could be as high as 100% of the coal train traffic into the Comanche Power Station, which is presently five unit coal trains per week. Initially, PSCo would be the only shipper served by the new line, although service to other shippers located on the line now or in the future is also possible. PSCo does not intend to provide rail operations over the track. Instead, PSCo would arrange for the common carrier obligation of the newly constructed line to be fulfilled by qualified rail carriers, in particular UP, to whose track the new line will connect. UP has indicated to PSCo that it would be willing to provide rail operations over the new line if, and when, it is constructed.

2.1.3 Maintenance

The track structures would be inspected weekly as required by Federal Railroad Administration (FRA) track standards. Additional inspections would be carried out, as necessary, when warranted by weather. The UP, BNSF, PSCo, or a third-party contractor would conduct maintenance of the track.

2.2 ALTERNATIVES

One of the alternatives PSCo considered was access via C&W's rail line. This alternative would entail legal, as well as operational and engineering uncertainties. Therefore, PSCo concluded that this was not a viable alternative. Access via trackage rights over BNSF's track is also a potential alternative. However, BNSF has made no viable trackage rights proposal leading PSCo to reject this alternative as well. Since PSCo concluded that neither of these alternatives were viable and SEA agreed with this conclusion, SEA did not conduct an environmental analysis of them.

The no-build alternative would mean continued service to Comanche Power Station and the vicinity solely by BNSF and the environmental impacts associated with the construction and operation of the preferred alternative would not occur.

3.0 AFFECTED ENVIRONMENT

This chapter provides a description of the existing environment in the proposed project area and vicinity.

3.1 PHYSICAL RESOURCES

3.1.1 Geology, Soils and Climate

The proposed project would be in Pueblo County, Colorado. Pueblo County is included in parts of two natural physiographic areas. About 95 percent are gently rolling plains of the upper Arkansas River Valley. Elevation of this physiographic area ranges from 4,400 to 5,800 feet, increasing gradually from east to west. These undulating to rolling shale plains are mantled with loess or windblown sand, alluvium, or outwash in many places.

The other physiographic area consisting of approximately 5 percent of the region is the foothills of the southern Rocky Mountains. Elevation ranges from 5,800 to 8,000 feet. The physiography consists of rugged hills and low mountains in a narrow band along the eastern slopes of the Rocky Mountains.

There are four main kinds of parent material in the Pueblo Area: alluvium, eolian deposits, soft to hard sedimentary rocks of Cretaceous age and Precambrian granite. Overlying bedrock, in more than half of the Pueblo Area is a cover of unconsolidated clay, silt, sand and gravel, locally more than 100 feet thick. Sedimentary rocks of Cretaceous age include shale, limestone, and sandstone.

The climate is semi-arid with the average annual total precipitation at 11.9 inches. The average maximum temperature is 68.4 degrees Fahrenheit; the average minimum temperature is 36.4 degrees Fahrenheit. The average total snowfall is 32.6 inches. At least 75 percent of the possible sunshine is received in all months. The average growing season for Pueblo County is 167 days. The last freeze in spring generally occurs on April 29 and the first in the fall on October 13.

3.1.2 Surface and Ground Water

The Arkansas River and its tributaries provide drainage. The Arkansas River begins near the Continental Divide in the mountains to the west and flows eastward near the center of the survey area. Other perennial streams in Pueblo County that empty into the Arkansas River are Fountain Creek, St. Charles River, Greenhorn Creek, and Huerfano River. Except for the Arkansas River,

these drainages become a mere trickle during periods of drought. Numerous intermittent streams, in a generally north-south orientation, empty into the Arkansas River.

Beds of limestone, shale, and sandstone underlie Pueblo County. The limestone and shale contain no water. Superficial deposits above the limestone yield small quantities of water in places, which are sufficient to water livestock. The Dakota Formation found at a depth 130 feet provides some of the ground water in the area.

No surface water resources are in the project area.

3.1.3 Air Quality

The project area is not within a designated Air Quality Control Region.³ Air quality in the project area is categorized as "attainment"⁴ for all criteria pollutants (40 CFR 8). "Attainment" means the concentration of each criteria pollutant is below the concentration designated by the EPA for the protection of air quality.

3.2 BIOLOGICAL RESOURCES

3.2.1 Vegetation and Wetlands

The project area consists of railroad right-of-way and contains little biological diversity. Vegetation found in and around the project area consists of rabbit brush (*Chrysothamnus* spp.), tall fescue (*Festuca arundinacea*), sagebrush (*Artemisia* spp.) and milkweed (*Asclepias* spp.). No native vegetation communities are in or immediately adjacent to the project area.

3.2.2 Wildlife

Since the types of habitat in and near the project area are limited, the variety of wildlife species is low. In the project area, habitat for wildlife is restricted to the few areas that have vegetation.

Species expected to occur include cottontail (*Sylvilagus audubonii*), black-tailed (*Lepus*

³ Area designated by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act, Section 107 for purpose of air quality planning and monitoring and to protect the public health and welfare.

⁴ Under the provisions of the Clean Air Act, the EPA has established health-based National Ambient Air Quality Standards (NAAQS) for six air pollutants: ozone, total suspended particulate matter, sulfur oxides, nitrogen dioxide, carbon monoxide, and lead. Air Quality Control Regions are designated as either attainment or nonattainment areas. If emissions of a particular pollutant exceed the maximum emissions allowed under the national ambient air quality standard for that pollutant, then the region in question is designated as a "nonattainment area" for that pollutant. Likewise, if emissions do not exceed the maximum allowed levels, the region is an "attainment area" for the specific pollutant. The designations are pollutant-specific, which means that an area may fall into both categories for different pollutants.

californicus) and white-tailed (*Lepus townsendii*) jackrabbit, coyote (*Canis latrans*), badger (*Taxidea taxus*) mourning dove (*Zenaida macroura*) and western meadowlark (*Sturnella neglecta*). Although the Colorado Division of Wildlife (CDOW) stated that black tailed prairie dog colonies exist in close proximity to the proposed site, these colonies are in an isolated area approximately 300 feet northeast of the project area. The ground disturbance that already exists in the project area would be prohibitive to black-tailed prairie dog colonization. Additionally, construction operations would not impact the species since the colony is in a fenced area.

3.2.3 Endangered, Threatened and Rare Species

SEA contacted the U.S. Fish and Wildlife Service and the CDOW regarding threatened and endangered species in the project area. Neither agency noted any endangered, threatened or rare species within the project area (See Appendix A, Exhibits 2 & 3).

3.3 NOISE

Primary sources of noise in the project area are from rail lines owned by UP, BNSF and C&W, the nearby Rocky Mountain Steele plant and Comanche Power Station.

3.4 CULTURAL RESOURCES

SEA contacted the Colorado State Historic Preservation Office (SHPO). In response the Colorado SHPO stated that there were no known archaeological or historic sites within the project area (See Appendix A, Exhibit 4).

3.5 HAZARDOUS MATERIALS/WASTE SITES

The proposed project is designed to allow both UP and BNSF unit coal trains access to Comanche Power Station that is now served solely by BNSF. No hazardous materials will be transported. However, in the event of a derailment, both UP and PSCo have trained personnel who could promptly respond, contain the spill, and clean up the materials following EPA protocol.

A database search was completed for the site of the proposed construction. No mapped hazardous waste sites were found in Environmental Data Resources, Inc. (EDR) of available government records either within the proposed construction area or within the ASTM E 1527-00 search radius (approximately one mile) around the property.

3.6 SOCIOECONOMIC SETTING

The City of Pueblo is a major transportation center that is served by two U.S. highways, two railroads, numerous truck lines, and a commercial airline. The Pueblo trade area consists of over a dozen counties in Southern Colorado. The area within Pueblo City limits consists of 44.034 square miles (28,182 acres). The total area of Pueblo County is 2,414 square miles.

The City of Pueblo has had stagnant population growth for the past three decades (Table 3-1). In 1960, Pueblo was the second largest city in the State of Colorado; in 1998, it ranked sixth largest. The Hispanic population in Pueblo grew significantly during the 1980 through 1990 period while other racial groups declined. Almost 40 percent of the City of Pueblo's population is Hispanic, based on 1990 Census figures, compared to 35.5 percent ten years previously (Table 3-2). A 1998 estimate by the U.S. Census Bureau suggests that the Hispanic population continues to grow at a faster rate than the County's total population. The 1990 through 1998 growth rate for the Hispanic population was 23.4 percent, compared to an overall population gain of 9.6 percent. The 1998 Pueblo County Hispanic population is estimated at 54,401, or 40.3 percent of the total county population. The African-American population has been very stable historically, and currently is estimated to comprise a little over 2.0 percent of the County's population.

	1960	1970	1980	1990	1999
City of Pueblo	91,181	97,774	101,686	98,640	102,821
Pueblo County	118,707	118,238	125,972	123,051	138,262

U.S. Bureau of the Census: Colorado Division of Local Government, Demography Office for 1999

	City of Pueblo			Pueblo County		
	1980	1990	% Change	1980	1990	% Change
Non-Hispanic Origin						
White	62,188	56,451	-9.2	80,606	75,382	-6.5
African-American	2,030	1,932	-4.8	2,135	2,029	-5.0
Other	1,390	1,288	-7.3	1,600	1,550	-3.1
Hispanic Origin	36,078	38,969	8.0	41,631	44,090	5.9
Total	101,696	98,640	-3.0	125,972	123,051	-2.3

U.S. Bureau of the Census

Population projections for Pueblo County and the City of Pueblo are shown in Table 3-3.

Table 3-3 Projected Population Growth						
Year	1990	1995	2000	2005	2010	2015
Pueblo County	123,051	130,179	140,226	150,049	160,270	171,231
City of Pueblo	98,640	101,921	103,296	105,706	108,173	110,696
Colorado Division of Local Government for Pueblo County: City of Pueblo Department of Planning and Development for City of Pueblo						

Per Capita Income for the City of Pueblo in 1999 was \$15,331 and the median family income in 1997 was \$36,100. Employment trends for 1978 through 1998 are shown in Table 3-4. A substantial decline in the unemployment rate has occurred and the number of persons employed has grown by 38.4 percent during the period of 1982 through 1998. The unemployment rate in Pueblo, however, is still substantially higher than Colorado's 1998 rate of 3.8 percent and the U.S. rate of 4.5 percent.

Table 3-4 Employment Trends: Pueblo County, Colorado 1978-1998 (Annual Average)						
	1978	1982	1986	1990	1994	1998
Total Unemployment	46,154	41,734	44,556	48,640	51,652	57,758
Unemployment	4,331	8,896	6,053	3,715	3,185	4,758
Unemployment Rate %	8.6	16.6	12.0	7.1	5.8	7.6
Total Labor Force	50,485	50,030	50,609	52,355	54,834	62,516

Table 3-5 lists the latest statistics available from the U.S. Bureau of the Census indicating the rate of poverty for Pueblo County.

Table 3-5 Persons with Income Below Poverty						
	1990 Census * 90 % Confidence Interval			1995 Estimate 90 % Confidence Interval		
	Low Bound	Estimate (Mid-Range)	High Bound	Low Bound	Estimate (Mid-Range)	High Bound
Pueblo County	19.7 %	20.2 %	20.8 %	14.7%	18.3 %	21.8 %
* 1990 Census represents last reference year for which complete income data were available, i.e. 1989. U.S. Bureau of the Census						

4.0 ENVIRONMENTAL IMPACTS OF PROPOSED PROJECT

This section contains a discussion of the potential environmental impacts associated with the construction and operation of PSCo's proposed rail line. The following discussion uses information from SEA's field review of the proposed project, literature review and agency consultation and comments.

4.1 PHYSICAL RESOURCES

4.1.1 Geology, Soils and Climate

Impacts to existing land use would be limited to the proposed rail line right-of-way. The rail right-of-way would require approximately 1.4 acres. The soils in this area have previously been disturbed; and therefore, no significant environmental impacts are expected.

4.1.2 Surface and Ground Water

Since the proposed project would not cross, or be near, any surface water, rail construction would have no impacts on surface or ground water. During construction, erosion and sedimentation control measures would be employed along the right-of-way.

4.1.3 Air Quality

The Board's environmental regulations (49 CFR 1105.7(e) (5)) require the analysis of anticipated effects of a proposed rail line project on air quality if a threshold level of eight trains a day are expected to use the affected rail line, or if the proposed construction is located in a Class I or nonattainment area. Since at most five trains per week would use the proposed rail line and the project area is not within a Class I or nonattainment area, a detailed analysis of such impacts is not warranted.

There would be no increased emissions from the diesel locomotives that would operate on the proposed rail line. BNSF currently delivers five trains per week to PSCo's Comanche Power Station. No significant change in the number of trains operating in the area would result from the proposed project. The only change would be that the trains serving the plant would belong to UP rather than BNSF. No significant impacts to local air quality would be expected from the operation of the proposed project.

However, during construction of the proposed project there may be temporary impacts to air quality because of the heavy equipment being used.

4.2 BIOLOGICAL RESOURCES

4.2.1 Vegetation and Wetlands

Vegetation that would be lost due to construction of the proposed project would include common grasses and weeds. Additionally, portions of the proposed project are in railroad right-of-way that is void of vegetation.

The proposed project would not impact any wetlands.

4.2.2 Wildlife

Wildlife habitat impacted by the proposed project would be limited to habitat on presently disturbed lands. The limited amount of wildlife within the project area would be subject to sporadic disturbance because of noise and human activity generated during construction activities. However, since the proposed project is adjacent to rail lines, operation of the rail line is not anticipated to impact species already using the area. Black-tailed prairie dog colonies exist in the project area; however, the colonies are in an isolated area approximately 300 feet northeast of the project area. The ground disturbance that already exists in the project area would be prohibitive to black-tailed prairie dog colonization. Additionally, construction operations would not impact the species since the colony is located within a fenced area.

Some species may be temporarily displaced because of increased noise from construction equipment and the presence of humans. However, such disturbances would be temporary and are not anticipated to cause a major, permanent, redistribution of resident species. Some mortality of small animals may result during construction due to operation of heavy equipment. However, mortality would be insignificant to the overall populations of species in the project area.

4.2.3 Endangered, Threatened and Rare Species

No known populations of Federally-listed or state-listed endangered or threatened species or their habitats are within the proposed project area. Therefore, the proposed project would have no adverse effects on protected species.

4.3 NOISE

The Board applies a threshold level of rail traffic beyond which noise created by a proposed project must be quantified and sensitive receptors identified (49 CFR 1105.7(e)(6)). The threshold level of eight trains a day would not be exceeded by this project since the same number of trains will continue to service Comanche Power Station.

4.4 CULTURAL RESOURCES

The Colorado State Historic Preservation Officer (SHPO) has concluded that no known cultural resources would be impacted by this project. If any cultural or archeological remains were uncovered during construction, PSCo would notify the SHPO as a condition to any decision approving this project.

4.5 HAZARDOUS MATERIALS/WASTE SITES

The proposed project is designed to allow both UP and BNSF unit coal trains access to Comanche Power Station that is now served solely by BNSF. No hazardous materials will be transported. However, in the event of a derailment, both UP and PSCo have trained personnel who could promptly respond, contain the spill, and clean up the materials following EPA protocol.

A database search was completed for the site of the proposed construction. No mapped hazardous waste sites were found in Environmental Data Resources, Inc. (EDR) of available government records either within the proposed construction area or within the ASTM E 1527-00 search radius (approximately one mile) around the property.

4.6 SOCIOECONOMIC SETTING

No socioeconomic impacts related to the construction and operation of the proposed rail line are expected because of the limited size of the proposed project and its location in an industrial zone.

5.0 AGENCY CONSULTATION, COORDINATION AND REQUESTED MITIGATION

SEA sent consultation letters to various Federal, state and local agencies seeking their comments on the construction and operation of the proposed rail line. The letters were distributed in May 2000. Agency responses to the consultation letter are provided in Appendix A. This chapter summarizes comments received and requested mitigation from the agencies and the response and/or mitigation proposed by PSCo.

PHYSICAL RESOURCES

Geology and Soils

Comment: No comments were received concerning geology and soils.

Surface and Ground Water

Comment: No comments were received concerning surface and ground water.

Air Quality

Comment: No comments were received concerning air quality.

PSCo's Response: Construction equipment would be maintained in good working condition and be properly tuned to avoid excess exhaust and fumes.

BIOLOGICAL RESOURCES

Vegetation and Wetlands

Comment: Colorado Division of Wildlife (CDOW) stated the importance of returning disturbed areas to their natural state. CDOW suggested that native short grass prairie species be replanted to return the site back to its preexisting habitat (See Appendix A, Exhibit 3).

PSCo's Response: PSCo would re-seed all disturbed areas outside the railroad sub-grade with native species.

Wildlife

Comment: CDOW stated that black tailed prairie dog colonies exist in close proximity to the proposed site and care should be taken to minimize disturbance to these areas during construction (See Appendix A, Exhibit 3).

PSCo's Response: The prairie dog colonies are in an isolated area approximately 300 feet northeast of the project area. The ground disturbance that already exists in the project area would

be prohibitive to black-tailed prairie dog colonization. Additionally, construction operations would not impact the species since the colony is in a fenced area.

NOISE

Comment: No comments were received concerning noise issues.

PSCo's Response: Equipment would be maintained with properly functioning mufflers. Construction would be limited to weekdays, between 7 a.m. and 5 p.m.

CULTURAL RESOURCES

Comment: The Colorado SHPO stated that there are no known cultural resources within the areas of potential effect. Additionally, project activities appear to be in previously disturbed areas and therefore, no historic properties should be affected (See Appendix A, Exhibit 4).

PSCo's Response: PSCo will immediately notify the Colorado SHPO if any cultural or archaeological remains are uncovered during construction.

HAZARDOUS MATERIALS/WASTE SITES

Comment: No comments were received concerning hazardous materials or waste sites.

SOCIOECONOMIC SETTING

Comment: No comments were received concerning socioeconomics.

6.0 SECTION OF ENVIRONMENTAL ANALYSIS RECOMMENDATIONS FOR MITIGATION AND REQUEST FOR COMMENTS

Based on our independent analysis of the project, the mitigation proposed by PSCo, and the comments received from the various parties consulted with prior to and during the preparation of this report, SEA recommends that if the Board approves PSCo's construction and operation of the proposed rail line such approval be subject, in addition to those measures PSCo has voluntarily agreed to and outlined in Section 5.0., to the following mitigation measures which are identified below by general impact category:

PHYSICAL RESOURCES - Geology and Soils, Surface and Ground Water, and Air Quality

- PSCo shall limit construction activities and vegetation clearing to the railroad right-of-way.
- PSCo shall ensure that all construction debris is removed and disposed of in a proper and legal manner consistent with state and local disposal procedures.
- PSCo will employ Best Management Practices to prevent erosion within the proposed project area.

BIOLOGICAL RESOURCES - Vegetation and Wetlands, Wildlife, and Visual Resources

- PSCo shall reseed the right-of-way outside the subgrade slope with grasses and other appropriate vegetation to minimize impacts on wildlife after construction is completed.

NOISE

- PSCo shall maintain construction and maintenance vehicles in good working order with properly functioning mufflers to control emissions and noise.

CULTURAL RESOURCES

- PSCo shall notify the Colorado SHPO if any cultural or archeological resources are discovered during construction.

HAZARDOUS MATERIALS/WASTE SITES

- Should a spill occur, PSCo shall follow the appropriate emergency response procedures outlined in its Emergency Response Plan, and ensure the spill is cleaned up according to all applicable Federal, state, and local regulations.

Conclusion

Based on the information provided from all sources to date and subject to the recommended conditions, SEA preliminarily concludes that, as currently proposed, construction and operation of PSCo's proposed rail line would not significantly affect the quality of the natural or human environment provided the recommended mitigation measures set forth in this Section are implemented. Therefore, the preparation of an EIS is unnecessary in this proceeding.

Request for Comments

SEA specifically invites comments on all aspects of this EA, including the scope and adequacy of the recommended mitigation as well as any other reasonable alternatives. SEA will consider all comments received in response to the EA in making its final recommendations to the Board. The Board will consider SEA's final recommendations and the environmental comments in making its final decision in this proceeding.

If you wish to file comments or questions regarding this EA, send an original and 10 copies to: Section of Environmental Analysis; Surface Transportation Board, 1925 K Street NW, Washington, DC 20423, to the attention of Dana White, telephone 202.565.1552. Please refer to Finance Docket No. 33862 in all correspondence addressed to the Board.

Date made available to the public: September 8, 2000

Comment due date: October 10, 2000

Appendix A
Agency Correspondence

Appendix A
Agency Correspondence

- Exhibit 1 Sample Letter to Agencies
- Exhibit 2 Response from United States Fish and Wildlife Service
- Exhibit 3 Response from Colorado Division of Wildlife
- Exhibit 4 Response from Colorado SHPO

Exhibit 1



**ENVIRONMENTAL
STUDIES AND
PERMITTING**

May 9, 2000

Comanche Rail Line Spur 00-100-4-000-00 PSCORREA

Dear :

Burns & McDonnell has been retained as the third-party consultant to the Surface Transportation Board for a project proposed by Public Service Company of Colorado. The project involves construction of approximately 600 feet of new rail line. The construction would begin at a point of connection on the line of the Union Pacific Railroad Company (UP) parallel to the BNSF's Pueblo-Walsenberg track to a point of connection on the existing Comanche plant lead track (see enclosed map and pictures of project area). The new rail line to be constructed by PSCo would run south-southeast from a point of connection with the UP line and would cross the BNSF line at grade, permitting loaded coal trains to travel southbound to Comanche using the UP track. A connection would also be constructed to the BNSF track from a point on the plant spur to permit UP to exercise its rights to take northbound empty trains on BNSF's track to the point of connection with UP's track north of the Southern Junction.

We are requesting that your office review the enclosed maps and make your determination regarding whether the project construction activities will jeopardize the continued existence of a state threatened or endangered species, or destroy or adversely modify the critical habitat of such species.

Sincerely,

Carol H. Parr
Environmental Scientist

Enclosure

7400 East Caley Avenue
Suite 100
Englewood, Colorado 80111
Tel: 303 721-9292
Fax: 303 721-0563
<http://www.burnsmcd.com>

Exhibit 2



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Colorado Field Office
755 Parfet Street, Suite 361
Lakewood, Colorado 80215

IN REPLY REFER TO:
ES/CO:T&E
Mail Stop 65412

JUN 29 2000

Ms. Carol H. Parr
Burns & McDonnell
7400 East Caley Avenue, Suite 100
Englewood, Colorado 80111

Dear Ms. Caley:

The U.S. Fish and Wildlife Service (Service) received your letter of May 5, 2000, regarding the proposed construction of the Comanche Rail Line Spur in Pueblo County, Colorado. You requested a list of Federal endangered and threatened species that may exist in the project area. These comments have been prepared under the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et. seq.).

The Service has no specific knowledge of the project site; however, enclosed is a list of Federal endangered, threatened, proposed and candidate species, by county, in Colorado. The list for Pueblo County can be used as a basis for determining species potentially present in the project area.

While other species could occur at or visit the project area, endangered or threatened species most likely to occur include:

Birds: Bald eagle, *Haliaeetus leucocephalus*, Threatened
Mountain plover, *Charadrius montanus*, Proposed Threatened

Plants: Colorado butterflyplant, *Gaura neomexicana* spp. *coloradensis*, Proposed Threatened

The Service also is interested in the protection of species which are candidates for official listing as threatened or endangered (Federal Register, Vol. 61, No. 40, February 28, 1996). While these species presently have no legal protection under the ESA, it is within the spirit of this Act to consider project impacts to potentially sensitive candidate species. It is the intention of the Service to protect these species before human-related activities adversely impact their habitat to a degree that they would need to be listed and, therefore, protected under the ESA. Additionally, we wish to make you aware of the presence of Federal candidates should any be proposed or

listed prior to the time that all Federal actions related to the project are completed. If any candidate species will be unavoidably impacted, appropriate mitigation should be proposed and discussed with this office.

While the Service has no specific knowledge of the presence of these species within the project area, the following may occur in or visit the project area.

Mammals: Swift fox, *Vulpes velox*, Candidate
Black-tailed prairie dog, *Cynomys ludovicianus*, Candidate

Fish: Arkansas darter, *Etheostoma cragini*, Candidate

If the Service can be of further assistance, contact me at (303)275-2343.

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy W. Carlson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

LeRoy W. Carlson
Colorado Field Supervisor

cc: Reading file
Project file

Reference: Specieslist\Comanche

COUNTIES -

U. S. Fish and Wildlife Service
Ecological Services
Colorado Field Office

(Effective May 18, 2000)

FEDERALLY LISTED SPECIES & THEIR STATUS IN COLORADO

	D O L O R E S	D O U G L A S	E A G L E	E L B E R T	E L P A S O	F R E M O N T	G A R F I E L D	G I L P I N	G R A N D	G U N N I S O N	H I N S D A L E	H U E R F A N O	J A C K S O N	J E F F E R S O N	K I O W A	K I T C A R S O N
Bald eagle, <i>Haliaeetus leucocephalus</i> , Listed Threatened	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Whooping crane, <i>Gris americana</i> , Listed Endangered				✓								✓				
Least tern (interior population), <i>Sterna antillarum</i> , Listed Endangered															✓	✓
Piping plover, <i>Charadrius melodus</i> , Listed Threatened				✓			✓								✓	✓
Eskimo curlew, <i>Numenius borealis</i> , Listed Endangered				✓											✓	✓
Mountain plover, <i>Charadrius montanus</i> , Proposed Threatened		✓		✓								✓			✓	✓
Southwestern willow flycatcher, <i>Empidonax traillii eximius</i> , Listed Endangered	✓						✓		✓							
Mexican spotted owl, <i>Sirix occidentalis lucida</i> , Listed Threatened	✓	✓			✓	✓	✓	✓				✓				
Lesser prairie chicken, <i>Tympanuchus pallidicinctus</i> , Candidate for List															✓	
Black-footed ferret, <i>Mustela nigripes</i> , Listed Endangered	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓
Swift fox, <i>Vulpes velox</i> , Candidate for listing		✓		✓	✓	✓						✓				
Preble's meadow jumping mouse, <i>Zapus hudsonius preblei</i> , Listed Threatened		✓		✓	✓									✓		
Canada lynx, <i>Lynx canadensis</i> , Listed Threatened	✓		✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Black-tailed prairie dog, <i>Cynomys ludovicianus</i> , Candidate for Listing		✓		✓		✓						✓		✓	✓	✓
Greenback cutthroat trout, <i>Oncorhynchus clarki stonias</i> , Listed Threatened					✓							✓				
Razorback sucker, <i>Xyrauchen texanus</i> , Listed Endangered	*		*				⊙		*	*	*					
Bonytail chub, <i>Gila elegans</i> , (presumed-historical) Listed Endangered	*		*				✓		*	*	*					

TABLE TERMINOLOGY

- ✓ The check mark indicates that the species is present in that county or that the county is within the historical range of the species
- * Water depletions in these counties may affect these species
- © This sign means that the species is present in the county and there is designated critical habitat for the species within the county
- Candidate Means there is sufficient information indicating that formal listing under the ESA may be appropriate
- Proposed Means the species is proposed for possible addition to the Lists of Endangered and Threatened Wildlife and Plants under the ESA
- Endangered Means the species could become extinct
- Threatened Means the species could become endangered

Exhibit 3

STATE OF COLORADO
Bill Owens, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE

AN EQUAL OPPORTUNITY EMPLOYER

John W. Mumma, Director

Pueblo Service Center
600 Reservoir Road
Pueblo, Colorado 81005
(719) 561-4909



For Wildlife -
For People

6/13/00

Burns and Mc Donnell
7400 East Caley Avenue
Suite 100
Englewood, Colorado 80111

Ms. Parr

On 6/08/00 District Wildlife Manager, Ryan Swygman and myself visited the proposed site for railway construction. Upon review of the proposed site on Public Service property of Comanche Power Plant, the Division of Wildlife and it's staff have these concerns. The site has a large amount of short grass prairie which contains a fair amount of wildlife species. Some of which are of special concern to the Division of Wildlife.

Black tailed prairie dog colonies exist in close proximity to the proposed site. With these colonies, other wildlife inhabit this type of habitat. Swift Fox, Burrowing owls, Mountain plover and various herptiles can be found using these active and inactive colonies.

Care should be taken to minimize disturbance to these areas during construction of the rail spur. Consideration in the route of the rail spur should try to avoid these areas if at all possible.

Another concern is the reclamation to the areas being disturbed during the construction of the rail spur. Native short grass prairie species such as Blue Grama and Buffalo grass should be replanted to return the site back to its preexisting habitat.

If you have any questions please feel free to contact officer Swygman or myself at 719-561-5300. Thank you for the opportunity to comment on this issue.

Sincerely,

Kevin Kaczmarek
Habitat Biologist
Area 11

DEPARTMENT OF NATURAL RESOURCES, Greg E. Walcher, Executive Director
WILDLIFE COMMISSION, Chuck Lewis, Chairman • Mark LeValley, Vice Chair • Bernard Black, Secretary
Marianna Raftopoulos, Member • Philip James, Member • Rick Enstrom, Member
Arnold Salazar, Member • Bob Shoemaker, Member

Exhibit 4



COLORADO
HISTORICAL
SOCIETY

The Colorado History Museum 1300 Broadway Denver, Colorado 80203-2137

June 8, 2000

Carol H. Parr
Environmental Scientist
Burns & McDonnell
7400 East Caley Avenue, Suite 100
Englewood, Colorado 80111

Re: Public Service Company Railroad Connection with Union Pacific Railroad

Dear Ms. Parr:

This is to acknowledge receipt of your May 31, 2000 correspondence concerning the project listed above.

A search of the Colorado Cultural Resource Inventory indicated that there are no known cultural resources within the areas of potential effect. Project activities appear to be in previously disturbed areas, therefore, we find that no historic properties will be affected. However, if any areas are undisturbed, we recommend that a cultural resource survey be undertaken to determine if historic properties will be affected by project activities. The old railroad grade shown on the quad map appears to be outside the area of potential effect but should be evaluated in accordance with the National Register criteria, 36 CFR 60.4, if avoidance is not possible.

If previously unidentified archaeological resources are discovered in the course of the project, work must be interrupted until the resources are properly evaluated in terms of the National Register of Historic Places eligibility criteria (36 CFR 60.4) in consultation with this office.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Jim Green at (303) 866-4674.

Sincerely,

Georgianna Contiguglia
State Historic Preservation Officer

Appendix B
Board and Petitioner's Correspondence

Appendix B

Board and Petitioner's Correspondence

- Exhibit 1 PSCo's request for waiver of EIS requirements
- Exhibit 2 Board's response to PSCo's request for waiver of EIS requirements
- Exhibit 3 Petition of PSCo for exemption from 49 U.S.C. § 10901
- Exhibit 4 PSCo's request to limit detailed review in the EA to the proposed route described in the petition
- Exhibit 5 Board's response to PSCo's request to limit the environmental analysis to petitioner's proposed route
- Exhibit 6 PSCo's request to retain Burns & McDonnell as the third-party consultant
- Exhibit 7 Board's response to PSCo's request for the third-party consultant

Exhibit 1



DONELAN CLEARY
WOOD & MASER, P.C.

March 23, 2000

By Hand Delivery

Elaine K. Kaiser, Esquire
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3225
1925 K Street, NW
Washington, DC 20423

Re: Finance Docket No. 33862; *Public Service Company of Colorado --
Construction of Rail Line in Pueblo County, Colorado; Request for
Waiver of EIS Requirement*

Dear Ms. Kaiser:

This letter is submitted on behalf of Public Service Company of Colorado, which will soon file an exemption petition pursuant to 49 U.S.C. §10502 in the above docket for authority to construct an approximately 600 foot long track in Pueblo County, Colorado for the purpose of connecting PSCo's Comanche electric generating station to the track of the Union Pacific Railroad Company.

In conjunction with the exemption petition, various measures have been taken by PSCo and Burns & McDonnell, the Third Party Consultant approved by the STB to assist in the preparation of environmental documentation, to commence the STB's environmental review process. Specifically, (1) on November 15, 1999, a meeting was held in your offices to brief the Section on Environmental Analysis ("SEA") on the proposed project; (2) on January 11, 2000, Burns & McDonnell was selected as the Third Party Consultant for this project; (3) a Memorandum of Understanding with the STB has been executed by Burns & McDonnell governing the environmental review process; and (4) Burns & McDonnell has conducted a preliminary review of the project area.

The Commission's regulations generally require the preparation of an Environmental Impact Statement ("EIS") for rail construction proposals. 49 C.F.R. § 1105.6(a). However, the regulations also permit the Chief of the SEA to exercise discretion in determining that a particular proposal is not likely to have a significant environmental impact and that, therefore, an Environmental Assessment ("EA") rather than an EIS may be the appropriate documentation for the project. Accordingly, PSCo requests the Commission to determine that PSCo's proposed construction project is not likely to have a significant environmental impact and that preparation of an EA would be the appropriate level of environmental review for the proposed project.

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, N.W., Suite 750, Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900



In support of this request for waiver of the EIS requirement, PSCo states the following:

- (1) The preferred route of the proposed project is less than 1000 feet in length, and is located in an area that is primarily railroad industrial in nature. Consequently, no pristine environmentally-sensitive areas will be traversed by the line;
- (2) Completion of this project will have no effect on the thresholds set forth in 49 C.F.R. 1105.7(e) (4) or (5), since the purpose of this project is to establish competitive rail access, not commence new or increased coal service to the Comanche plant;
- (3) The project is not expected to have any effect on archeological or architectural resources;
- (4) The project should have no impact on residential areas, as the project site is several miles away from the closest residential area;
- (5) No threatened, endangered or special concern fish or wildlife species has been found to inhabit the project area;
- (6) No wetlands are present; and
- (7) Our discussions with the Burns & McDonnell personnel assigned to this project indicate that their preliminary review of the project and project site confirms that there do not appear to be significant environmental issues associated with this project.

In conclusion, the lack of significant environmental impacts of this proposed rail construction project warrant the granting of a waiver of 49 C.F.R. § 1105.6(a) and a preliminary determination that, at this time, an environmental assessment is the sufficient level of environmental documentation for this project. We recognize, of course, that such a determination would be subject to re-examination in the event subsequent developments indicated that the level of expected environmental impacts warranted the preparation of an environmental impact statement.



DONELAN, CLEARY
ACCO & MASER, P.C.

Elaine K. Kaiser, Esquire

March 23, 2000

Page - 3 -

Please do not hesitate to give me a call if you have any questions.

Sincerely,

Thomas W. Wilcox

Attorney for

Public Service Company of Colorado

cc: Ms. Dana White
Mr. Barry Johnson
Ms. Karen Roberts
Lisa Lett, Esq.
Ms. Carol Parr (Burns & McDonnell)

8914/040

Exhibit 2

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

March 31, 2000

Mr. Thomas W. Wilcox
Thompson Hine & Flory LLP
1920 N Street, NW
Washington, DC 20036-1601

Re: Finance Docket No. 33862 - Public Service Company of Colorado,
Comanche Power Station Rail Line, Pueblo, Colorado
Waiver of EIS Requirement

Dear Mr. Wilcox:

Pursuant to 49 CFR 1105.6(d), we are granting your request of March 23, 2000, for a waiver of 49 CFR 1105.6(a), which generally provides for the preparation of an environmental impact statement for a rail line construction proposal. At this time, we believe that the proposed construction and operation are unlikely to have any significant environmental impact, and therefore, preparation of an environmental assessment is the appropriate level of environmental review.

The project proposed by the Public Service Company of Colorado (PSCO) involves the construction of an approximately 500-foot rail line in Pueblo County, Colorado for the purpose of establishing competitive rail access to PSCO's Comanche electric generating station. Under this proposal, PSCO would construct a line of rail that would connect to the main line of the Union Pacific Railroad Company (UP) by crossing the line of the Burlington Northern Santa Fe Railway Company in the vicinity of the Comanche station. As we understand the proposal, PSCO intends for the UP to be the operator of the new track.

You have provided the Section of Environmental Analysis (SEA) with preliminary information about the project as well as possible environmental impacts that may be associated with the proposed construction and operation that would seem to justify the preparation of an environmental assessment rather than an environmental impact statement. Further, as you indicate, staff from Burns & McDonnell, the approved independent third party contractor that has the responsibility of assisting SEA in preparing the environmental analysis and appropriate environmental documents, has visited the construction site and advised us that there do not appear to be significant environmental issues related to this project.



Based on the information available to date, we believe that the environmental impacts of this project will not be significant and, therefore, an environmental assessment is appropriate in this case. We base our determination on the following:

- (1) The preferred route of the proposed project is less than 1000 feet in length, and is located in an area that is primarily railroad industrial in nature. Consequently, no pristine or environmentally sensitive areas will be traversed by the line.
- (2) Completion of this project will have no effect on the thresholds set forth in 49 CFR 1105(7)(e)(4) or (5).
- (3) The project is not expected to have any effect on archeological or architectural resources.
- (4) The project should have no impact on residential areas, as the project site is several miles away from the closest residential areas.
- (5) No threatened, endangered fish or wildlife or species of special concern has been found to inhabit the project area.
- (6) No wetlands are present.

Accordingly, based on the currently available information, preparation of an environmental assessment rather than an environmental impact statement is warranted in this case at this time. As discussed above, the environmental impacts of this project are unlikely to be significant and can be addressed through appropriate mitigation measures.

After the environment assessment is prepared, it will be made available for public comment. The Surface Transportation Board then will consider the environmental assessment, the public comments, and any post environmental assessment recommendation of SEA before making its final decision in this proceeding. Of course, should the environmental assessment process disclose unanticipated impacts that are significant, we will require the preparation of an environment impact statement at that time. If you have any questions, please do not hesitate to contact me or Dana White of my staff at (202) 565-1552.

Sincerely,



Elaine K. Kaiser, Chief
Section of Environmental Analysis

cc: Stephen G. Thornhill, Burns & McDonnell

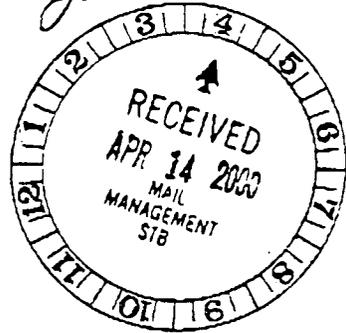
Exhibit 3

Lerry Guy X1617

ENTERED
Office of the Secretary
APR 18 2000
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33862



PETITION OF PUBLIC SERVICE COMPANY OF COLORADO
FOR EXEMPTION FROM 49 U.S.C. §10901

FEE RECEIVED

- CONSTRUCTION EXEMPTION -
PUEBLO COUNTY, COLORADO

FILED

APR 14 2000

APR 14 2000

SURFACE
TRANSPORTATION BOARD

EXPEDITED HANDLING REQUESTED

SURFACE
TRANSPORTATION BOARD

Public Service Company of Colorado ("PSCo"), an electric utility with its headquarters in Denver, Colorado, hereby petitions the Surface Transportation Board ("STB" or "Board"), pursuant to 49 U.S.C. §10502, for an exemption from the approval requirements of 49 U.S.C. §10901 for the proposed construction of a rail line in Pueblo County, Colorado. The primary purpose of the project is to establish competitive rail access to PSCo's Comanche Station ("Comanche"), a coal-fired power plant presently served only by The Burlington Northern & Santa Fe Railway Company ("BNSF").

I.

Background

PSCo is an operating company of New Century Energies, an investor-owned utility with headquarters in Denver, Colorado. PSCo provides electricity and natural gas to approximately 70% of the State of Colorado. PSCo has approximately 1.4 million electric customers and also engages in electric power sales in the wholesale electric power market. PSCo owns and operates fifteen generating stations within its service area which have a total summer net capability of 3,540,000 kW. Seven of PSCo's plants produce electricity by burning coal and these coal-fired stations burn approximately eight million tons of coal annually that has been purchased by PSCo

from mines in Colorado and the Powder River Basin in Wyoming ("PRB"). Approximately 2.8 million tons of PRB coal are burned at Comanche, which is located on tracks owned by the BNSF running between Pueblo and Walsenberg, Colorado. The coal burned at Comanche is presently delivered from mines in the PRB by BNSF in unit coal trains pursuant to a rail transportation contract that expires at the end of 2000.

Under the current rail track configuration at Comanche, no other railroad may serve Comanche unless permission is received from the BNSF to operate over its track. Consequently, Comanche is captive to the BNSF for deliveries of the facility's coal supply. PSCo desires to have direct access by two railroads at Comanche as PSCo seeks to negotiate a new rail transportation arrangement to replace the current agreement.

While head-to-head rail competition from origin to destination is always desirable, the need for establishing competitive rail access to Comanche has been heightened by dramatic changes in the electric utility industry. First, passage of the Clean Air Act Amendments of 1990 and the Energy Policy Act of 1992, have both increased the necessity of utilities to seek high quality low sulfur coal at the lowest possible delivered price. The former act, with its strict controls on sulfur dioxide and nitrogen oxides emissions, established the necessity of PSCo to burn low sulfur coal in its power plants. The latter act, with its emphasis on increasing competition in the electric utility industry, has provided greater incentive to PSCo to reduce its costs of producing electricity in order to remain competitive in the wholesale power market. In addition, the current efforts in the State of Colorado and other states to further restructure the electricity industry to permit greater choice at the retail sales level has provided an additional reason for PSCo to reduce its costs of producing electricity in order to stay competitive and continue to serve its customers.

II.

Description of the Project

The line of rail proposed by this Exemption Petition is approximately 600 feet in length. As shown on the map accompanying the attached Verified Statement of Mr. Barry Johnson, Team Lead-Coal Supply and Transportation for New Century Services, the preferred route of the track would run from a point of connection on the line of the Union Pacific Railroad Company

("UP") parallel to the BNSF's Pueblo-Walsenberg track to a point of connection on the existing Comanche plant lead track. The UP and BNSF tracks involved in this project are "directional running" double tracks constructed by predecessors to UP and BNSF in the early 1900s and operated by UP and BNSF pursuant to longstanding agreements between the two carriers. *See id.* at 2. Under these agreements, UP and BNSF trains both use UP's track to run south to Walsenberg from what has been historically known as the "Southern Junction." *Id.* Northbound trains of UP and BNSF use the BNSF track to move from Walsenberg to the vicinity of the Southern Junction. *Id.* Consistent with this arrangement, the new rail line to be constructed by PSCo would run south-southeast from a point of connection with the UP line and would cross the BNSF line at grade,¹ permitting loaded coal trains to travel southbound to Comanche using the UP track. A connection would also be constructed to the BNSF track from a point on the plant spur to permit UP to exercise its rights to take northbound empty trains on BNSF's track to the point of connection with UP's track north of the Southern Junction. *Id.* at 3.²

Once the track is in place, it is expected that traffic over the line will vary, depending on the results of the competitive bidding process, but it could be as high as 100% of the coal train traffic into the Comanche plant, which is presently five unit coal trains per week. *Id.* at 2. Initially, PSCo would be the only shipper served by the new line. It is contemplated that PSCo would construct and, at least initially, own the rail line to be constructed. However, PSCo does not intend to provide rail operations over the track. Instead, PSCo would arrange for the common carrier obligation of the newly constructed line to be fulfilled by qualified rail carriers, in particular UP, to whose track the new line will connect. UP has indicated to PSCo that it would be willing to provide rail operations over the new line if and when it is constructed. *Id.* at 3. Maintenance of the track would be conducted by either the UP, other railroads operating over the line, if any, PSCo, or a third-party contractor.

¹ PSCo has engaged in discussions with BNSF regarding the proposed crossing, including a meeting between PSCo and BNSF personnel on April 4, 2000. Johnson V.S. at 3. Should PSCo and BNSF be unsuccessful in reaching agreement over the terms and conditions for crossing BNSF's track, PSCo recognizes that it will be necessary to seek authority to cross BNSF's track pursuant to 49 U.S.C. §10901(d). Finance Docket No. 32984, *Hastings Industrial Link Railroad—Construction and Operation Exemption—Hastings, NE*. (Served December 10, 1996) at note 2.

² PSCo's understanding of the operating arrangements between UP and BNSF is based, in part, upon discussions with UP personnel about the terms of the agreements. Johnson V.S. at 2. In discussions to date between BNSF and PSCo about the project, BNSF personnel have not expressed an inconsistent or contrary view. *Id.*

III.

PSCo's Rail Construction Project Meets the Standards for Exemption Contained in 49 U.S.C. §10502

Under 49 U.S.C. §10502, the Board must exempt the proposed construction of a rail line from the requirements of 49 U.S.C. §10901 if it finds that regulation of the project: (1) is not necessary to carry out the transportation policy of 49 U.S.C. §10101; and (2) either: (a) the transaction or service is of limited scope, or (b) the application of a subdivision of subtitle IV of the Interstate Commerce Commission Termination Act is not needed to protect shippers from the abuse of market power. The proposed rail line described herein is exactly the type of transaction the drafters of the exemption provision envisioned. Specifically, the exemption provision "was considered an important cornerstone" of the Staggers Rail Act. *American Trucking Association v. I.C.C.*, 656 F.2d 1115, 1119 (5th Cir. 1981). The Court of Appeals for the Fifth Circuit in *American Trucking* relied on the legislative history of 49 U.S.C. §10502 in suggesting that "the Commission is charged with the responsibility of actively pursuing exemption for transportation services" that comply with the standards of that section. A review of that legislative history indicates the STB is further charged with removing "as many as possible of the [agency's] restrictions." H.R. Rep. No. 1430, 96th Cong., 2d Sess. at 105 (1980). The STB and its predecessor have consistently adhered to this directive. *See, e.g.*, Finance Docket No. 32158, *Gateway Western Railway Company - Construction Exemption - St. Clair County, Illinois*, (served May 11, 1993) at 8. *See Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. §10901*, 1 STB 75, 79 (1996) (Presumption that rail construction projects will be approved.)

The Board has often used its exemption authority in approving rail projects such as this one that will increase competition between railroads. *See*, Finance Docket No. 32630, *Omaha Public Power District—Construction Exemption—In Otoe County, NE*, (served May 2, 1995). As discussed in greater detail below, PSCO's proposed project complies with the standards of 49 U.S.C. §10502, and accordingly, should be exempted from the burdensome filing requirements associated with obtaining the Board's approval under 49 U.S.C. §10901.

A. Regulation is not Necessary to Carry Out the Rail Transportation Policy of 49 U.S.C. § 10101

Regulation of the proposed construction is not necessary to carry out any provision of the rail transportation policy set forth 49 U.S.C. §10101a. In fact, as stated above, the proposed project is entirely consistent with that policy, which strongly favors the construction of new rail lines. See, *Gateway Western Railway Company, supra*, at 12. Construction of the line will establish competitive rail access to Comanche, and will therefore allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail. 49 U.S.C. §10101(1) and (4). PSCo, and other shippers that are located along the line or locate there and/or Comanche's industrial track in the future, would have access to at least two competing carriers—BNSF and UP—thus permitting the actual demand for transportation service to govern the level of the rates for that service. Furthermore, the offering of alternative rail service to a site that has access to only one rail carrier will promote additional efficiencies, cost-competitive rates, and other sound economic conditions.

Exempting this project from regulation by the Board would also be consistent with the above-described policy to minimize the need for federal regulatory control over the rail transportation system and to reduce regulatory barriers to entry, *id.* at §§10101(2) and (7), and would reduce the burden and expense of federal regulation which otherwise would substantially diminish the savings associated with the proposed construction. Construction of this line would also contribute to the development and continuation of a sound rail transportation system with effective competition. *Id.* at §§10101(3), (4), and (5).

Finally, this project falls squarely within a well-established category of construction projects involving efforts by electric utilities and/or their subsidiaries and affiliates to establish competitive rail access to coal-fired electric power generating stations, which projects the Board and its predecessor have consistently recognized fall within the agency's exemption authority.³

³ *Omaha Public Power District, supra*; Finance Docket No. 32321, *Southern Gulf Railway Company - Construction Exemption - In Calcasieu Parish, LA* (served September 9, 1993); Finance Docket No. 32195, *Southern Electric Railroad Company - Construction Exemption - Effinghass County, GA* (served January 12, 1993); *Southern Electric Generating Company - Petition for Exemption - Construction of a Rail Line in Shelby County, AL, supra*; Finance Docket No. 32016, *Sioux and Western Railroad Company - Construction Exemption - Charles County, Mo.* (served March 25, 1992); Finance Docket No. 31972, *Southern Electric Railroad Company -*

In light of the nature of this project and this precedent, it would be inconsistent with the rail transportation policy explicitly set forth in 49 U.S.C. §10101 to require approval pursuant to 49 U.S.C. §10901, with its substantial risk of delay and concomitant effect of preventing PSCo from meeting the substantial commitments to be undertaken in connection with the proposed project.

B. The Proposed Construction Project is Limited in Scope

Along with a finding by the Board that regulation is not necessary to carry out the rail transportation policy, the Board must also find that the transaction or service is of limited scope or, alternatively, regulation must not be needed to protect shippers from an abuse of market power. PSCo's proposed construction satisfies both of these criteria.

The proposed project entails the construction of a rail line covering a distance of approximately 600 feet in length, all within a limited and defined geographic region of a single county in Colorado. As such, PSCo submits that a finding that this project is limited in scope would be consistent with prior agency precedent.⁴

C. Shippers in the Area will not be Subjected to an Abuse of Market Power

In the event the Board finds that this transaction is not of limited scope, 49 U.S.C. §10502(a)(2) explicitly includes a provision that an exemption still may be granted if regulation is not required to protect shippers from the abuse of market power. The construction and operation of the proposed rail line will result in competition for the delivery of coal, and possibly other commodities, to national markets between competing carriers. Consequently, PSCo, and perhaps other shippers who are now or in the future located in the vicinity of the new line, stand to benefit from this competition through lower rail rates. As such, regulation by the STB is clearly not needed in this instance to protect shippers from an abuse of market power.

Construction Exemption - Jefferson County, AL (served March 10, 1992); Finance Docket No. 31717, *Iowa Power Inc. - Construction Exemption - Council Bluffs, IA* (served December 20, 1990).

⁴ See Finance Docket No. 32984, *Hastings Industrial Link Railroad Company - Construction and Operation Exemption - Hastings, NE* (served December 2, 1996) (1 mile), Finance Docket No. 32433, *Chicago and North Western Transportation Company - Construction and Operation Exemption - City of Superior, Douglas County, WI* (served May 11, 1994) (2,900 feet).

IV.

**PSCo's Exemption for Construction Should be Made Effective
Upon Completion of the Board's Environmental Review**

PSCo respectfully requests that the Board act on this Exemption Petition prior to the completion of the environmental review of the project by the Section of Environmental Analysis ("SEA"). PSCo recognizes the need for adequate independent environmental review. To that end, the SEA has approved PSCo's retention of a third-party consultant in accordance with the STB's regulations governing environmental review. In addition, on November 15, 1999, a PSCo representative and SEA staff met to discuss the project and discuss the environmental documentation to be prepared by the third-party consultant. On March 23, 2000, PSCo submitted a letter to SEA requesting a determination that an environmental assessment is all that is required for this project. The SEA granted this request on March 31, 2000. The estimated completion time of the environmental assessment is between two and three months.

PSCo, therefore, respectfully requests that the Board issue an order exempting from 49 U.S.C. §10901 the construction and operation of the proposed rail line upon the date the order is served, with an effective date to coincide with the completion of the Board's environmental review and final review by the full Board of SEA's recommended mitigation measures. Such a determination is clearly within the Board's authority, is supported by established agency precedent, and warranted in this instance.⁵

V.

Expedited Handling Requested

PSCo respectfully requests that the STB expedite its handling of this Exemption Petition. As stated earlier, the current contract between BNSF and PSCo expires at the end of 2000. Any delays in the approval of this construction project will adversely affect the ability to PSCo to take full advantage of the railroad competition it establishes. As previously indicated, the environmental review of the project is underway. More significant resources must soon be

⁵ *Illinois Commerce Commission v. Interstate Commerce Commission*, 848 F.2d 1246 (D.C. Cir. 1988) cert. denied, 488 U.S. 1004 (1989); See, e.g., Finance Docket No. 32650, *Omaha Public Power District—Construction—In Otoe County, Nebraska* (served April 13, 1995); Finance Docket No. 32322, *Vaughan Railroad — Construction and Exemption — Nicholas and Fayette Counties, West Virginia*, (served November 4, 1993); *Iowa Power, Inc., supra*.

committed to this project in order to have the line in place prior to the expiration of the current contract. For this reason, it is important for PSCo to have some confidence that final regulatory approval will be obtained. Consequently, PSCo respectfully requests that the STB expeditiously issue the above referenced order conditionally approving this proposed project pending completion of the necessary environmental review.

VI.

Conclusion

For the foregoing reasons, PSCo respectfully requests the Board to expeditiously issue an order granting PSCo's request for an exemption from the railroad construction approval requirements contained in 49 U.S.C. §10901, with the effective date of the exemption to coincide with the completion of the Board's environmental review process.

Respectfully submitted,



Thomas W. Wilcox, Esq.
Christopher D. Perry, Esq.
THOMPSON HINE & FLORY LLP
1920 N Street, NW
Washington, DC 20036
(202) 371-9500

Lisa Lett, Esq.
Associate General Counsel
NEW CENTURY ENERGIES
1225 17th Street, Suite 600
Denver, CO 80202
(303) 294-2754
Attorneys for Public Service Company of Colorado.

April 14, 2000

STB Finance Docket No. 33862

VERIFIED STATEMENT OF BARRY JOHNSON

My name is Barry Johnson. I am Team Lead- Coal Supply and Transportation for New Century Services, a wholly owned subsidiary of New Century Energies, Inc., the parent company of operating utilities including Public Service Company of Colorado ("PSCo") and Southwestern Public Service Company ("SPS"). I am responsible for the acquisition and administration of the coal supply and coal transportation contracts and rail car activities for PSCo and SPS. PSCo purchases and ships approximately 8 million tons annually of western bituminous and subbituminous coals. SPS purchases approximately 9 million tons annually of subbituminous coal. In addition to those responsibilities, I develop coal price forecasts, have input into fuel budgeting, am responsible for the review of coal invoices for accuracy, provide input into the investigation and negotiation of fuel-related disputes, and perform various other duties. I also am responsible for evaluating alternative strategies on other special projects relating to coal supply, coal transportation, coal handling, and general fuel issues.

I received a Bachelor of Science degree in mechanical engineering from Texas Tech University, Lubbock, Texas, in 1983. In September, 1983 I began employment as a Process Engineer for Mason & Hanger, Inc., a nuclear ordinance contractor. In September 1988, I was hired by SPS's subsidiary, Utility Engineering, as a Mechanical Design Engineer on the coal-fired J.K. Spruce Unit 1 project for City Public Service of San Antonio. I transferred from Utility Engineering to the Fuel Administration department of SPS in March 1991 as an Engineer. I was promoted to Project Engineer in September 1993. In November 1995 I was promoted to Senior Engineer in SPS's Fuel Department. In August 1997 I assumed my current position for New Century Services. I am a licensed professional engineer in the state of Texas. I have previously filed testimony on behalf of NCE utilities before the Surface Transportation Board.

The purpose of this Verified statement is to provide the Surface Transportation Board with certain factual information regarding the line construction project encompassed by PSCo's construction Exemption Petition filed in Finance Docket No.

33862. As explained in the Exemption Petition and in this statement, the purpose of this project is to establish competitive railroad access to PSCo's Comanche electric generating station, located in Pueblo County, Colorado.

The Comanche station is a coal-fired electric generating station that burns approximately 2.8 million tons of coal each year. The plant receives 230 trainloads of 120 railcars each year, which is approximately five per week. As shown on the map accompanying this Verified Statement, the Comanche station is located along the track of the BNSF running almost directly south from a location known since the 1800's as the Southern Junction, to Walsenberg, Colorado, and also along a BNSF track extending south and west from Pueblo, Colorado. BNSF is the only railroad with direct physical access to Comanche. Deliveries of Comanche's coal supply are made by BNSF pursuant to a rail transportation contract that expires at the end of 2000. Immediately west of the BNSF track, also running south from the Southern Junction to Walsenberg, is track owned by the Union Pacific Railroad Company ("UP"). As PSCo investigated the feasibility of constructing a line of rail connecting the track of the UP to the Comanche station plant spur, which investigation included discussions with UP employees familiar with UP operations over this part of its system, we became aware that the trackage in this area was constructed by BNSF's and UP's predecessors beginning in the late 1800's and that the rights and operations of BNSF and UP *vis a vis* their respective tracks in the vicinity of the Comanche plant are controlled by certain construction and operation agreements.

Specifically, as I understand these agreements, the UP and BNSF tracks extending south from the Southern Junction – also known as milepost 122.95 on the UP's track (denoted on the attached map) – to Walsenberg were constructed by the railroads' predecessors and are currently used as a "double track," with the west (UP) track used for southbound traffic to Walsenberg, and the east (BNSF) track used for northbound traffic from Walsenberg. Accordingly, UP trains travel north from Walsenberg to milepost 122.95 on BNSF's track, and BNSF trains travel south from approximately this location to Walsenberg on UP's track. BNSF southbound traffic uses the UP track by means of a

crossover track identified on the map. My further understanding of the relationship between BNSF and UP regarding the use of the double track, in part gained from conversations with UP employees familiar with the agreements, is that the agreements do not contain any provisions that restrict the construction proposed by the Exemption Petition, or any provisions that restrict UP's rights and ability to provide rail service to the Comanche plant. In our discussions with BNSF personnel to date about the project they have not expressed a contrary view. Consequently, as shown on the attached map, the new track would facilitate the movement of southbound, loaded coal trains on the UP track onto the Comanche plant spur, and the movement by UP of northbound, empty trains on the BNSF track to UP's track in Minnequa, Colorado, north of the Southern Junction. It is PSCo's intention that UP would provide the rail operations over the newly constructed rail line pursuant to a trackage rights agreement or other appropriate arrangement with PSCo, and that UP would seek separate authority from the STB to provide rail operations over the line. UP has indicated its willingness to provide coal transportation service to Comanche should the line be constructed.

In addition, in order for the new rail line to reach the Comanche plant spur it will be necessary to cross the track of the BNSF. On March 15, 2000 we advised BNSF of our intentions to construct the new rail line and notified BNSF of our intentions that the new line would cross its track. A meeting between PSCo personnel and BNSF operating personnel was held on April 4, 2000 to discuss the crossing. We hope to continue to work with BNSF to reach a mutually acceptable agreement regarding the construction and operation of the crossing.

Exhibit 4

HINE & FLORY LLP

Attorneys at Law

May 5, 2000



By Hand Delivery

Elaine K. Kaiser, Esquire
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3225
1925 K Street, NW
Washington, DC 20423

Re: Finance Docket No. 33862; *Public Service Company of Colorado -- Construction of Rail Line in Pueblo County, Colorado; Request for Waiver of EIS Requirement*

Dear Ms. Kaiser:

On April 14, 2000, applicant Public Service Company of Colorado (PSCo) filed a petition for exemption from the STB's requirements for approval to construct a new line of railroad in Pueblo County, Colorado. On March 31, 2000, the Section of Environmental Analysis ("SEA") determined that an environmental assessment ("EA") was initially the level of environmental review that is appropriate for this project. For the reasons set forth below, PSCo hereby requests that the SEA limit detailed review in the EA to the proposed route described in the petition and indicated on the map attached to the petition. A copy of that map is attached to this letter for the SEA's convenience.

A. The proposed route is the only feasible route that will accomplish the purposes of this project: to establish competitive rail service to PSCo's Comanche Power Station. The project area is a long-established railroad industrial corridor used by the Union Pacific Railroad Company ("UP") and The Burlington Northern and Santa Fe Railway Company ("BNSF") and their predecessors. This requires any new track to be compatible with existing track and traffic patterns while also enabling the movement of unit coal trains into and out of the plant. The preferred route will accomplish these results. In addition, the new track will cross the track of BNSF, and the crossing must be located in a spot that minimizes the interference to BNSF operations over its line once the line and crossing are in place. Finally, the project will involve the movement of northbound, empty coal trains on BNSF's track under an agreement between BNSF and UP. The preferred location is the best spot for the trains to connect onto the BNSF track.

As shown on the map and described in the petition, immediately above the preferred location of the proposed line is a series of switches and interchanges used by both UP and BNSF. Connection of the track of the UP to the Comanche plant industrial

1920 N Street, N.W. Washington, D.C. 20036-1601 202-331-8800 fax 331-8330

BRUSSELS, BELGIUM CINCINNATI CLEVELAND COLUMBUS DAYTON PALM BEACH WASHINGTON, D.C.

Letter to Elaine K. Kaiser, Esquire

May 5, 2000

Page - 2 -

spur by crossing the BNSF track at this location could be expected to result in numerous operational complications that will be avoided by utilizing the preferred route.

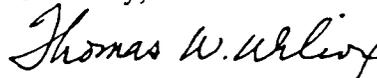
B. Although it appears to be possible to construct a line of rail that would connect the track of the Colorado & Wyoming Railway ("C&W") to the Comanche plant spur at a location north and east of the preferred location, this apparent alternative entails numerous operational and engineering uncertainties. These uncertainties include (1) the ability and willingness of C&W, a local short line railroad, to participate in a joint line unit train coal transportation movement with the UP; (2) the physical condition of the C&W's track; and (3) the engineering feasibility of connecting the C&W track and the Comanche spur via a crossing of the BNSF track. In addition, this alternative may not be consistent with the purposes of the project, which is to establish a viable competitive option to the BNSF at the facility.

C. Finally, establishing access for UP to the Comanche plant could conceivably be accomplished via trackage rights over BNSF's track extending from Pueblo, Colorado to the plant. However, BNSF has made no proposal to PSCo regarding such rights, and this does not appear to be at this time a viable alternative in any event for a variety of operational and economic reasons. No serious discussions have occurred between PSCo, BNSF, and/or UP regarding this option.

Accordingly, PSCo requests that SEA designate, as the preferred route for detailed EA study, the route designated by the dotted yellow line on the attached map.

Please do not hesitate to call if you have any questions or require additional information.

Sincerely,



Thomas W. Wilcox

attachments

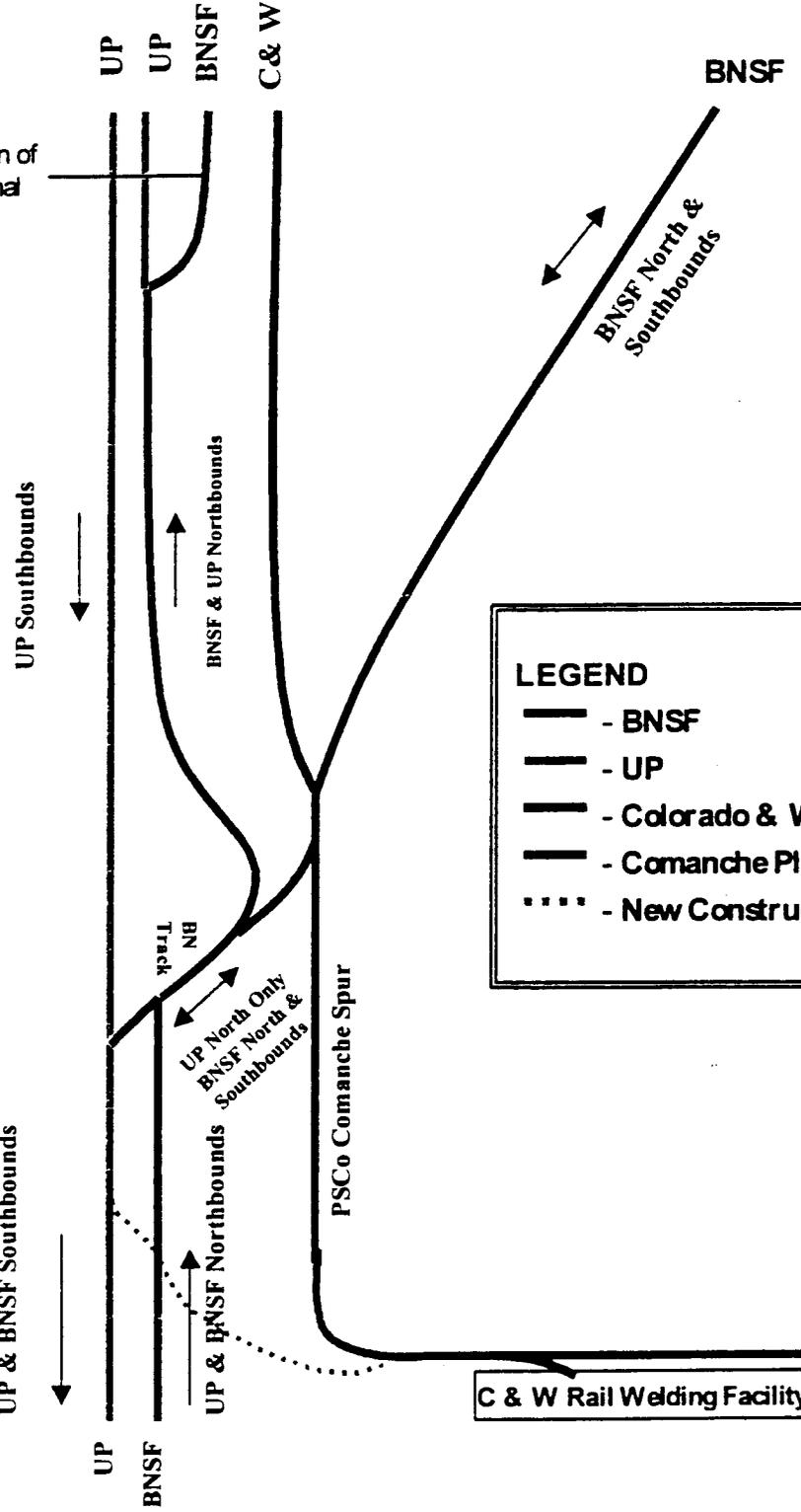
cc: Ms. Dana White
Mr. Barry Johnson
(w/ attachments)

To Minnequa Yards

of Comanche Station

To Pueblo

Approximate location of MP 122.95 & Original Southern Junction



LEGEND

- BNSF
- UP
- Colorado & Wyoming RR
- Comanche Plant Spur
- New Construction

To Walsenberg

To Comanche Rail Loop and Comanche Station

C & W Rail Welding Facility

Pictorial Drawing, Not to Scale

Exhibit 5

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

May 10, 2000

Mr. Thomas W. Wilcox
Thompson Hine & Flory LLP
1920 N Street, NW
Washington, DC 20036-1601

Re: Finance Docket No. 33862 - Public Service Company of Colorado,
Comanche Power Station Rail Line, Pueblo, Colorado

Dear Mr. Wilcox:

This responds to your letter dated May 5, 2000, in which you request that an in-depth environmental analysis be prepared only for the applicant's preferred route. Based on the information available at this time and considering the factors discussed below, the Section of Environmental Analysis (SEA) is granting your request.

Based on a careful review of the proposal, consultation with representatives from Burns & McDonnell, the third party contractor, and yourself as the applicant's representative, and consideration of all the material to date, SEA has determined that the environmental assessment will perform an in-depth environmental analysis only for the Public Service Company of Colorado's (PSCo's) preferred route.

PSCo's preferred route appears to be the only feasible route. Because of the configuration of and traffic patterns on the existing UP and BNSF rail lines in the area, and in order to minimize disruption of BNSF operations once the planned crossing of the BNSF rail line is completed, SEA preliminarily agrees that the proposed rail line construction described in PSCo's application, and set forth in the map attached to the application, appears to be the only feasible route. As you point out in your letter, PSCo's preferred route would allow competitive access into and out of the Comanche power plant while maintaining existing track and traffic patterns.

You further describe in your letter why two apparent alternatives are not feasible. SEA preliminary agrees that a possible rail line connection with the Colorado & Wyoming Railway, another rail line serving the area, to the Comanche plant is not feasible because of unresolved operational and engineering concerns. Additionally, SEA agrees that establishing access via trackage rights over BNSF tracks does not appear to be feasible at this time because of unresolved operational and economic reasons also discussed in your letter. However, the EA will include a discussion of why these alternatives would not be feasible. If circumstances change, we may need to reconsider the depth of the analysis for these alternatives.

Accordingly, SEA agrees to PSCo's request that SEA designate PSCo's preferred route for detailed analysis in SEA's environmental assessment.

If you have any questions, please feel free to contact me or Dana White, the project leader for this case, at (202) 565-1552.

Sincerely,



Elaine K. Kaiser, Chief
Section of Environmental Analysis

cc: Carol Parr, Burns & McDonnell

Exhibit 6



DONELAN CLEARY
WOOD & MASER, P.C.

January 10, 2000



SUBJECT: [illegible]

JAN 10 4 19 PM '00

RECEIVED
OFFICE OF ECONOMICS
DIRECTOR'S OFFICE

By Hand Delivery

Elaine K. Kaiser, Esquire
Chief, Section of Environmental Analysis
Surface Transportation Board
Room 3225
1925 K Street, NW
Washington, DC 20423

Dear Ms. Kaiser:

This letter is to request Commission approval, in accordance with 49 C.F.R. § 1105.10(d), of a third-party consultant to prepare the environmental documentation associated with the proposed construction by Public Service Company of Colorado ("PSCO"), a public corporation and a political subdivision of the State of Colorado, of a short segment of rail line in Pueblo County, Colorado. The proposed rail line would connect existing track owned and operated by the Union Pacific Railroad Company to PSCO's Comanche electric generating station, which is presently capable of being served only by the Burlington Northern and Santa Fe Railway Company. This segment of track is being constructed for the purpose of establishing competitive rail access for the delivery of coal to the Comanche station. The environmental document prepared by the third-party consultant would be submitted in connection with a rail construction exemption petition to be filed with the Commission by PSCO seeking authority to construct the rail line.

If approved, PSCO proposes to retain the firm of Burns & McDonnell, as the third-party consultant to develop this environmental document. It is our understanding that this firm is among the entities approved by the Commission to prepare Environmental Assessments and Environmental Impact Statements in conjunction with proposed rail construction projects.

If you have any questions regarding this request or need further information, please do not hesitate to contact the undersigned.

Sincerely,

Thomas W. Wilcox
Karyn A. Booth
Attorneys for
Public Service Company of Colorado

cc: Ms. Dana White
Barry Johnson
Karen Roberts
Lisa Lett

8914/040

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, N.W., Suite 750, Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900

Exhibit 7

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

January 11, 2000

Mr. Thomas W. Wilcox
Donelan Cleary
Wood & Maser, P.C.
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934

Re: Public Service Company of Colorado Construction in Pueblo
County, Colorado - Approval of Third Party Contractor

Dear Mr. Wilcox:

Your request for approval under 49 CFR 1105.10(d) and 40 CFR 1506.5 for retention of Burns & McDonnell as an independent third-party consultant is approved. Burns & McDonnell will assist the Section of Environmental Analysis (SEA) in preparing the appropriate environmental document on behalf of the Surface Transportation Board in connection with the prospective exemption petition to construct and operate a rail line in Pueblo County, Colorado. As we discussed, the SEA will direct, supervise, review, and approve all environmental documents prepared by the independent third-party contractor.

We have attached a disclosure statement and ask that you have Burns & McDonnell complete it and return it to us. Shortly, we will be forwarding to you a copy of a Memorandum of Agreement (MOU) which outlines the responsibilities of the Applicant, the Contractor and SEA. The MOU should be signed by the Applicant, forwarded to the third party contractor for signature and returned to us. The purpose of the MOU is to establish an understanding between the Applicant, the Contractor and SEA regarding the conditions and procedures each party must follow in preparing all environmental documentation.



If we can be of further assistance, please contact either Phillis Johnson-Ball at (202) 565-1530 or me at (202) 565-1538.

Sincerely yours,



Elaine K. Kaiser
Chief,
Section of Environmental Analysis

Enclosure

Appendix C
References

Appendix C

References

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Appendix D
List of Preparers

Appendix D
List of Preparers

Surface Transportation Board – Section of Environmental Analysis

Elaine K. Kaiser	Section Chief and Legal Review
Dana White	Project Leader

Third Party Consultant*

	Burns & McDonnell
Carol Parr	Assessment Preparation/Field Inspection
Mike Carnevale	QA/QC

* As provided for under 49 CFR 1105.4 (j), the Surface Transportation Board may be assisted in the preparation of environmental documentation by a third party consultant.