

SERVICE DATE - JULY 2, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42057

PUBLIC SERVICE COMPANY OF COLORADO D/B/A XCEL ENERGY
v.
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: July 1, 2002

In a verified complaint filed and served on defendant The Burlington Northern and Santa Fe Railway Company (BNSF), on December 20, 2000, the Public Service Company of Colorado d/b/a Xcel Energy, Inc. (Xcel), alleges that the rates to be assessed by BNSF on complainant's movements of coal from origins in the Powder River Basin (PRB) of Wyoming to Xcel's Pawnee Steam Electric Generating Station (Pawnee) near Brush, CO, will exceed a maximum reasonable level.¹ Xcel alleges that BNSF possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed along with other relief.² Xcel also requests an award of reparations equal to all amounts paid to BNSF for service to Pawnee in excess of maximum reasonable levels beginning January 1, 2001, plus interest.

This decision denies a request by Xcel for the collection of two different sets of BNSF locomotive fuel consumption data on the ground that it would impose an undue burden on BNSF.

PROCEDURAL HISTORY

In preparation for the development and submission of variable cost evidence, on March 27, 2001, Xcel filed a Petition for Order Establishing Procedures for a Study to Measure Movement-Specific Locomotive Fuel Consumption (Original Petition) in which it requested that the Board issue an

¹ The service was provided by BNSF under a rail transportation contract that expired on December 31, 2000. As of January 1, 2001, the applicable rate is a trainload rate for movements in cars supplied by Xcel (Common Carrier Pricing Authority BNSF-90043).

² Xcel seeks to have the Board prescribe a common carrier rate for BNSF's rail transportation between the PRB mine origins and Xcel's Pawnee facility.

order adopting its proposal for performing a fuel consumption study. On August 10, 2001, on the basis of information obtained subsequent to the filing of its Original Petition, Xcel filed an Amended Petition for Order Establishing Procedures for a Study to Measure Movement-Specific Locomotive Fuel Consumption (Amended Petition). In the Amended Petition, Xcel requested access to information obtained by electronic fuel gauges already installed on BNSF locomotives. On August 30, 2001, BNSF filed a reply to Xcel's Amended Petition, opposing Xcel's request as burdensome, given that BNSF had already agreed to supply information for the fuel consumption study using locomotive event recorders in accordance with the procedure adopted in Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42056 (STB served Feb. 9, 2001) (TMPA v. BNSF), and given the disruption to its routine business practices that would result from Xcel's request.

In a decision served on February 1, 2002 (February 1 decision), the Board granted Xcel's petition for issuance of a subpoena duces tecum to the manufacturer of electronic fuel gauges used by BNSF on its locomotives. In response, the manufacturer, Wabtec Railway Electronics (formerly Pulse Electronics) (Pulse/Wabtec), supplied documents relating to the operation and accuracy of the gauges. As permitted by the February 1 decision, on March 4, 2002, Xcel filed a Supplement to Amended Petition for Order Establishing Procedures for a Study to Measure Movement-Specific Locomotive Fuel Consumption (Supplement to Amended Petition), and, on March 25, 2002, BNSF filed its reply.

DISCUSSION AND CONCLUSIONS

Xcel, in its Amended Petition and Supplement to Amended Petition, seeks to collect movement-specific data for its fuel consumption study using both locomotive event recorders and Pulse/Wabtec's electronic fuel gauges. Whether a request for data is granted depends upon its reasonableness, including the availability of other, less-intrusive means of obtaining the information. In balancing the interests of the parties, the Board is guided by the relative burdens of granting or denying the requested relief.³

Xcel argues that the gauges produce reliable data and their use does not constitute an additional burden to BNSF given that the gauges are already installed on BNSF's locomotives. Xcel alleges that BNSF personnel are fully aware of the operation and maintenance of the gauges and that use of the gauges in the study would not require implementation of new or intrusive monitoring systems. Xcel argues that the increased accuracy afforded by use of two data sets rather than one outweighs the potential burden imposed upon BNSF by its request.

³ See TMPA v. BNSF, slip op. at 8.

BNSF disagrees. In its reply to Xcel's Supplement to Amended Petition, BNSF argues that the need to familiarize itself with the fuel gauge system, the need to account for the specifics of each locomotive and corresponding fuel gauge in terms of calibration and verification for accuracy, and the need to establish and comply with a protocol for the study would impose a significant burden on its operations. It states that Xcel's most recent amendments to the proposal add to the burden, particularly the suggestion that each study train be required to end its cycle at the location where it began. According to BNSF, such a requirement would necessitate modifications to its current operations, expansion of the study to cover trains from which collected data would not be used, or implementation of monitoring procedures to ensure that data would be collected only from trains that meet the study's requirements.

BNSF's assessment of the burden presented by Xcel's proposals is compelling. Although both Xcel and BNSF agree that BNSF has received training manuals and on-site instruction in the use of the fuel gauge system, there are disparities in the parties' accounts of what these training measures entailed. Xcel characterizes the instruction as two days of classes on fuel gauge operation and maintenance. BNSF describes it as an impromptu explanation to a limited number of people who may or may not remain employed in those jobs at present, with the subject matter limited to resolving problems BNSF had encountered while using the fuel gauges. In either case, it seems reasonable to conclude that adoption of Xcel's proposal could necessitate that BNSF acquire further expertise on the fuel gauge system.

An additional concern is raised by the likelihood that calibration of the gauges to the equipment currently in use by BNSF would be burdensome but necessary for accurate data collection. According to BNSF, documents obtained from Pulse/Wabtec confirm that, for each style of fuel tank in use, the gauges must be calibrated to that specific tank on that individual locomotive. Xcel's proposed fuel study procedures do not account for this situation and make no allowance for the complications it could present to BNSF's routine operations. Nor do the procedures account for BNSF's allegations that the fuel gauges currently installed on its locomotives require controlling for the effect of external factors (such as track slope, fuel density, and temperature) on data accuracy. Although Xcel states that BNSF is basing its objections on its experience with an older design of the fuel gauges and that recent design improvements have dealt with this concern, Xcel does not address the issue in relation to fuel gauges of the older design, which are the fuel gauges of concern here.

Given the availability of event recorders as a less burdensome and readily available method of data collection, it would not be reasonable to impose additional burdens upon BNSF beyond those already presented by use of the event recorders. The additional burden appears to be substantial and the less burdensome method has not been shown to be inadequate so as to necessitate two sets of data.

Therefore, Xcel's request that the Board compel BNSF to perform a fuel consumption study using both event recorders and electronic fuel gauges, as outlined in its Amended Petition and Supplement to Amended Petition, will be denied.

It is ordered:

1. Xcel's Amended Petition and Supplement to Amended Petition to require BNSF to include electronic fuel gauges as part of the fuel consumption study are denied.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary