

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42057

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

v.

BNSF RAILWAY COMPANY¹

Decided: June 15, 2005

In a decision served on June 8, 2004 (June 2004 decision), the Board found that the defendant, BNSF Railway Company (BNSF), has market dominance over complainant Public Service Company of Colorado d/b/a Xcel Energy's (Xcel) coal traffic from origins in the Powder River Basin of Wyoming to Xcel's Pawnee steam electric generating plant near Brush, CO, and that the rate charged by BNSF exceeded a maximum reasonable level. BNSF was ordered to establish, within 60 days, a new reduced rate and to repay Xcel, with interest, the charges paid for common carrier service to the extent they exceeded the prescribed rate.² Technical corrections and petitions for reconsideration were addressed in decisions served on December 14, 2004, and January 19, 2005, respectively. Technical and computation errors in the reconsideration decision were addressed in a decision served on May 3, 2005.

By a petition filed on February 28, 2005, pursuant to 49 U.S.C. 11704(b) and (c)(2) and 49 CFR 1133, Xcel provided recalculated damages and sought an order directing payment by March 30, 2005. Xcel also sought payment of interest, in accordance with 49 CFR 1141. According to Xcel, the parties entered into an agreement whereby BNSF agreed to pay the reparations due under the June 2004 decision and the parties agreed to make adjustments to this amount as required by subsequent decisions, including any appeals of the decisions in this proceeding. In a decision served on March 25, 2005, BNSF was directed to remit to Xcel reparations with interest, as determined in that decision.

By a petition filed on May 31, 2005, Xcel again provided recalculated damages and sought an order directing payment by June 30, 2005. Xcel also sought payment of interest, in

¹ Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

² The reparations period began January 1, 2001, and ended with BNSF's establishment of a reasonable rate. The interest period extends until final payment of reparations.

accordance with 49 CFR 1141. Xcel asserts that, if reparations are not paid before the start of the new quarter, July 1, 2005, Xcel will have to recalculate the reparations based on a new interest rate, get BNSF's consent, file the revisions at the Board, and wait for another Board order. Xcel maintains that these steps will further delay payment. Xcel maintains that BNSF should have to pay before the end of the quarter based on the timing issue above and because BNSF was willing to pay higher reparations prior to the Board's modifications to the initial decision.

BNSF has not filed a reply to contest Xcel's reparations and interest calculations or its request for payment prior to June 30, 2005. According to Xcel's petition, BNSF has authorized Xcel to state that BNSF concurs in the accuracy of Xcel's calculations. Therefore, Xcel is entitled to \$1,621,617.08 in reparations as of May 17, 2005, with interest of \$124.38 per day after May 17, 2005, until June 30, 2005. Additional interest owed from July 1, 2005, until the date of payment shall be based on the 91-day Treasury Bill coupon equivalent yield for the appropriate quarter, as published by the U.S. Department of the Treasury in the Treasury Bulletin.

It is ordered:

1. By June 30, 2005, BNSF shall remit to Xcel reparations with interest as determined herein.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary