

## STB FINANCE DOCKET NO. 33862 (SUB-NO. 1)

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

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*Decided March 21, 2001*

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The Board granted the Public Service Company of Colorado's (PSCO) Track Crossing Request under 49 U.S.C. 10901(d) and ordered PSCO and BNSF to negotiate the compensation and any remaining terms for the crossing.

## BY THE BOARD:

By petition filed on May 19, 2000, the Public Service Company of Colorado (PSCO) requests that we issue an order, pursuant to 49 U.S.C. 10901(d), authorizing it to cross track owned by The Burlington Northern and Santa Fe Railway Company (BNSF), to reach a line of the Union Pacific Railroad Company (UP), in connection with the construction of a 1,500-foot railroad line to serve PSCO's Comanche Power Station (Comanche Station) in Pueblo County, CO.<sup>1</sup> By decision served on October 10, 2000 (*October 2000 decision*), we instituted this line crossing proceeding and established a procedural schedule for the filing of verified statements.<sup>2</sup> Because PSCO's May 19, 2000, petition was an evidentiary submission, it was treated as PSCO's opening statement. BNSF's reply to PSCO's petition was due November 9, 2000, but BNSF did not reply. On November 29, 2000, PSCO filed a response to the *October 2000 decision*,

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<sup>1</sup> In *Public Service Company of Colorado — Construction Exemption — Pueblo County, CO*, STB Finance Docket No. 33862 (STB served Aug. 23, 2000) (*August 2000 decision*), we conditionally granted PSCO an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901, to construct the line, subject to completion of an environmental review and issuance of a further decision addressing the environmental impacts of the proposal. In a further decision served on January 8, 2001, we granted final approval of the exemption, subject to environmental mitigation measures regarding the construction and operation of the line, and made the exemption effective on February 7, 2001.

<sup>2</sup> We also denied BNSF's motion to dismiss the crossing petition, filed June 8, 2000. On October 20, 2000, BNSF filed a petition for judicial review of both our *August 2000* and *October 2000 decisions*. Our unopposed motion to dismiss, without prejudice, the petition for judicial review on the grounds that the decisions BNSF sought to challenge were not final or ripe for review was granted in *The Burlington Northern and Santa Fe Railway Company v. Surface Transportation Board*, No. 00-1455 (D.C. Cir. Jan. 31, 2001).

indicating that there is no longer a dispute between the parties as to the basic configuration and form of the crossing and requesting that we grant approval of the crossing petition, subject to a final determination of appropriate compensation. We will grant the crossing petition, require the parties to negotiate the compensation and any remaining terms for the crossing and report back to us within 45 days, and reserve jurisdiction over the proceeding until such time as the parties have reached a crossing agreement.<sup>3</sup>

### BACKGROUND

The Comanche Station is a coal-fired generating plant that burns approximately 2.8 million tons of coal and receives 230 unit trains of coal each year. It is now served exclusively by BNSF from a spur extending from BNSF's railroad line. The BNSF line consists of two segments of track that come together near the Comanche Station spur. One track segment runs south from a point known as Southern Junction to Walsenberg, CO, and the other runs southwest from Pueblo, CO, to Walsenberg. UP's lines are west of, and parallel to, BNSF's Southern Junction-Walsenberg line.

The UP and BNSF tracks involved in this project are "directional running" double tracks (meaning each track carries traffic one way only) that are operated by UP and BNSF pursuant to agreements between the two carriers. Under these agreements, both UP and BNSF trains use UP's track to run south to Walsenberg from the Southern Junction. Northbound trains of UP and BNSF 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 UP and would cross the BNSF line at grade, and extend to a point of connection on the existing Comanche spur, permitting loaded coal trains to travel southbound to the Comanche Station using the UP track. A connection would also be constructed to the BNSF track from a point on the Comanche spur to permit UP to take northbound empty trains on BNSF's track to the point of connection with UP's track north of the Southern Junction.<sup>4</sup>

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<sup>3</sup> PSCo requests that we expressly reserve the authority to approve its original configuration for the crossing (*see* discussion *infra*) in the event the parties do not reach an agreement. This appears to be unnecessary, given our reservation of jurisdiction over the proceeding until such time as the parties have reached a crossing agreement.

<sup>4</sup> For additional background on the construction proposal, see the *August 2000 decision*.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10901(d)(1), a rail carrier may not block any construction or extension authorized by the Board under 49 U.S.C. 10901 by refusing to permit the crossing of its property if: (A) the construction does not unreasonably interfere with the operation of the crossed line; (B) the operation does not materially interfere with the operation of the crossed line; and (C) the owner of the crossing line compensates the owner of the crossed line.

PSCo submits that we have enough information before us to grant final approval of PSCo's crossing petition. Moreover, PSCo states that there is no longer a dispute between the parties as to the basic configuration and form of the crossing. Although PSCo originally proposed in its crossing petition that the crossing of BNSF's track would be by way of a prefabricated, diamond crossing, PSCo has since agreed to a double turnout configuration that would apparently minimize interference with BNSF's operations over its main north-south route through Colorado and would also be safer to operate. According to PSCo, BNSF has indicated that it is willing to consider modifying an agreement in place between UP and BNSF to enable UP to run south on BNSF's track for a short distance, as required by the double turnout configuration. PSCo states that UP also prefers the double turnout configuration over the diamond crossing but notes that the precise details of the double turnout configuration still need to be worked out by BNSF, PSCo, and UP.

PSCo has met the statutory criteria in 49 U.S.C. 10901(d) for approval of its crossing petition and has agreed to modify its proposal to accommodate BNSF's concerns and minimize interference with BNSF's operations. Based on the information before us, we conclude that PSCo's construction of the crossing will not unreasonably interfere with the operation of the crossed line, 49 U.S.C. 10901(d)(1)(A), and that PSCo's operation of the crossing will not materially interfere with the operation of the crossed line, 49 U.S.C. 10901(d)(1)(B). PSCo states that it intends to negotiate in good faith with BNSF regarding the proper level of compensation and requests that, if its crossing petition is granted, construction of the crossing be permitted to begin immediately upon such grant, while the appropriate level of compensation is determined. We agree with PSCo that construction need not be delayed pending resolution of the compensation question. *See Louisville & Jefferson Co & CSX Const. & Oper. Jeff. KY*, 4 I.C.C.2d 749, 755 (1988). If the parties are unable to agree on the amount of payment, or on the precise terms of operation, either party may submit the matters in dispute to the Board for determination. 49 U.S.C. 10901(d)(2). We

will reserve jurisdiction over the proceeding until such time as the parties have reached a crossing agreement.

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

*It is ordered:*

1. PSCo's track crossing request under 49 U.S.C. 10901(d) is granted.
2. Within 45 days of March 22, 2001, the service of this decision, PSCo and BNSF shall negotiate the compensation and any remaining terms for the crossing, and PSCo shall file a report with the Board.
3. Petitions to reopen must be filed by April 11, 2001.
4. The Board reserves jurisdiction over this proceeding until such time as the parties have reached a crossing agreement.

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