Voting Conference, January 19, 2005

Statement of Melissa Kronstain
Staff Attorney, STB Office of Proceedings

Public Service Company of Colorado d/b/a Xcel Energy
v.
The Burlington Northern and Santa Fe Railway Company

STB Docket No. 42057

Good morning Chairman Nober, Vice-Chairman Buttrey, and Commissioner Mulvey.

In a decision served on June 8, 2004 (June 2004 decision), the Board found that the Burlington Northern and Santa Fe Railway Company (BNSF) was charging an unreasonably high rate to haul coal from the Powder River Basin (PRB) to a captive power plant near Brush, CO. The Board therefore ordered the railroad to pay reparations to the shipper, Public Service Company of Colorado doing business as Xcel Energy (Xcel), and prescribed the maximum lawful rate the railroad could charge in the future.

Both parties have sought reconsideration of the June 2004 decision, raising a number of technical and substantive issues. On December 14, 2004, the Board issued a decision addressing the technical errors noted by the parties. The draft decision before you today addresses the substantive issues raised by the parties in their requests for reconsideration.

The draft decision first addresses BNSF's renewed request to dismiss Xcel's complaint because of the flawed operating plan submitted by Xcel. The Staff believes that it is not appropriate to dismiss solely because of correctable defects in the shipper's presentation with respect to the operations of a hypothetical railroad. Were the Board to entertain only those rate complaints where the railroad could not poke holes in the operating plan devised by the shipper, almost every rate challenge considered by this agency since the adoption of the stand-alone cost (SAC) test would have had to have been dismissed. But this agency is not expected to blandly call balls and strikes; rather, the right of the public must receive active and affirmative protection at the hands of the agency. In this case, Xcel made a good faith effort to present reasonable evidence on all the basic components of the SAC test. Accordingly, the Staff recommends denial of BNSF's renewed request to dismiss the complaint.

The draft decision next addresses BNSF's request to reconsider the methodology used to allocate revenues for cross-over traffic. Cross-over traffic refers to movements where the stand-alone railroad (SARR) would not replicate all of the railroad's current movement, but would instead interchange the traffic with the residual (off-SARR) portion of the system. The Board used a "Modified Straight-Mileage Prorate" (MSP) to allocate revenues from such movements. Under MSP, revenue is allocated based upon the total mileage hauled over the facilities replicated by the SARR and the residual facilities needed to serve that traffic, with a 100-mile bonus for originating or terminating the traffic.

BNSF objects to the Board's use of MSP, arguing that light-density lines should receive a larger share of revenues to reflect economies of density in the railroad industry. Such economies of density cause the average total cost per ton to fall with increasing traffic levels, because the fixed expenses are shared by more traffic. However, as shown in the draft decision, the railroad's own proposal also does not take into account the degree of economies of density. Instead, it allocates more revenue to the lighter-density lines, which alone does not justify its use as an approach superior to the mileage-based approach that has been traditionally used in SAC cases. When asked to depart from Board precedent because the existing approach has some alleged flaw, the alternative proposal should not share the same disputed feature. For these reasons, the Staff recommends that the Board deny BNSF's request.

Several other issues raised by the parties are addressed in the draft decision. With respect to the cost to transport materials to the construction site, the Staff recommends that the Board grant BNSF's request to modify the SAC calculations. As BNSF points out, the June 2004 decision inappropriately assumed that a SARR could transport material over the very line that the SARR would need to build. The draft decision therefore uses BNSF's evidence on the unit costs for materials transportation. However, the Staff recommends that the Board deny BNSF's other reconsideration requests.

The Staff agrees with Xcel that two other aspects of the June 2004 decision merit reconsideration. With respect to the locomotive peaking factor, the Staff agrees with Xcel that a peaking factor based on a peak day is unreasonable. Therefore, the draft decision proposes that the peaking factor be based on the peak week, which lowers the locomotive requirements and corresponding operating expenses. The Staff also agrees with Xcel that the DCF analysis should reflect the Board's most recent findings on inflation of rail assets and the industry cost of capital. Therefore, the draft decision before you reflects those changes. However, the Staff recommends that the Board deny Xcel's other requests for reconsideration.

Finally, the Staff believes that the Board should revise the revenue projections for three movements in the traffic group. BNSF has recently established new rates to govern transportation from the PRB to the Moba utility plant, operated by Western Fuels, and the Okalunion plant, operated by AEP Texas. Moreover, the Board has revised the rate prescription for movements from the PRB to TMPA's plant at Iola, TX. The draft decision updates the revenue forecasts for these three movements.

In the end, the challenged rates remain unreasonably high. The draft decision prescribes a maximum lawful rate for 2005 of $8.20 per ton in steel cars and $7.97 in aluminum cars. These rate prescriptions reflect a 2 percent increase to the rates prescribed in the June 2004 decision. Accordingly, the draft decision orders the parties to recalculate the reparations due to Xcel for all shipments covered by the complaint that moved prior the effective date of this decision. It also orders BNSF to establish rates that do not exceed the maximum reasonable rates prescribed in this decision.

We would be pleased to answer your questions.