

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34060

MIDWEST GENERATION, LLC
– EXEMPTION FROM 49 U.S.C. 10901–
FOR CONSTRUCTION IN WILL COUNTY, IL

Decided: September 17, 2001

By petition filed on June 19, 2001, Midwest Generation, LLC (Midwest) seeks an exemption from the prior approval requirements of 49 U.S.C. 10901 to allow it to construct approximately 4,007 feet of rail track. Midwest's construction would cross track controlled by the Illinois Central railroad Company (IC). To allow the crossing, Midwest has simultaneously filed a petition for crossing authority under 49 U.S.C. 10901(d), docketed as STB Finance Docket No. 34060 (Sub-No. 1).

On July 13, 2001, IC filed a reply in opposition to the proposed exemption and a separate reply to the crossing proposed in the (Sub-No. 1) docket. IC argues that we lack jurisdiction to grant the construction exemption and that the same jurisdictional defects allegedly affecting the construction preclude our jurisdiction to consider the crossing requested in the (Sub-No. 1) docket.¹ Alternatively, IC argues that, even if we were to accept jurisdiction over the construction, the criteria for exemption under 49 U.S.C. 10502 have not been met.

Midwest's petition raises issues that require consideration by the Board. Pursuant to 49 U.S.C. 10502(b), the Board must determine whether to begin a proceeding within 90 days of the filing of such a petition. A decision must then be issued within 9 months of the date when the proceeding is formally instituted. The 90th day in this proceeding is September 17, 2001. In compliance with the statute, this order will be issued, and the proceeding will be formally instituted. The parties do not need to submit additional evidence in response to this decision.

¹ IC also argues that, even if Midwest is eligible to invoke our jurisdiction over crossing under section 10901(d)(1), the crossing must be denied under that provision because it would materially interfere with IC's future operation of the crossed line. This issue will be resolved in the (Sub-No. 1) docket.

It is ordered:

1. Under 49 U.S.C. 10502(b), a proceeding is instituted to consider the issues raised in this proceeding.

2. The proceeding will be completed by June 17, 2002.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary