

on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: March 22, 2002.

Timothy B. Wolgast,
Deputy Associate Administrator for
Administration.

[FR Doc. 02-7365 Filed 3-26-02; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34060]

Midwest Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will County, IL

AGENCY: Surface Transportation Board.

ACTION: Notice of conditional grant of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Midwest Generation, LLC (Midwest) of a line of railroad, approximately 4,007 feet long, to serve its coal-fired generating plant in Joliet, Will County, IL.¹

DATES: The exemption is subject to our further consideration of the anticipated environmental impacts of the proposal and will not become effective until the environmental review process is completed. The Board will then issue a further decision addressing the environmental issues and establishing an effective date for the exemption, if warranted, subject to any necessary conditions. Petitions to reopen must be filed by April 16, 2002.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34060, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001; (2) Michael F. McBride, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Avenue, NW., Washington, DC 20009-5728 (Midwest counsel); and (3) Paul A. Cunningham, Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004-2664 (IC counsel).

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565-1600. [TDD

for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da-2-Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293-7776. [TDD for the hearing impaired: 1-800-877-8339.]

Board decisions and notices are available at our Web site at www.stb.dot.gov.

Decided: March 20, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,
Secretary.

[FR Doc. 02-7244 Filed 3-26-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority— Construction of a Line of Railroad in Pemiscot County, MO

AGENCY: Surface Transportation Board.

ACTION: Notice of ruling on fee waiver.

SUMMARY: The Surface Transportation Board (Board) grants an appeal of the denial of a fee waiver request, but reaffirms that henceforth it will narrowly apply its rule providing for a waiver of filing fees for state and local government entities, as originally intended.

DATES: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Vernon A. Williams, (202) 565-1650 [TDD/TTY for the hearing impaired: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: This decision addresses an appeal of a Board order denying a request for waiver of a filing fee. Under the law, the Board is required to assess fees upon parties filing pleadings seeking to engage the Board's processes. The fees that the Board charges were established by the Board's predecessor, the Interstate Commerce Commission (ICC), in *Regulations Governing Fees for Services*, 1 I.C.C.2d 60 (1984), and they have been amended on various occasions.

The Board's fee program is described fully in 49 CFR 1002.2. Under the provisions of 49 CFR 1002.2(e)(1), a government entity may request a waiver of the otherwise applicable filing fee. In

Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—Policy Statement, STB Ex Parte No. 542 (Sub-No. 6) (STB served Dec. 6, 2000) (*Policy Statement*), the Board reviewed how the government-entity fee waiver provision had been used by "state or local government entit[ies] acting in a proprietary capacity as [carriers]" (*id.* at 3), specifically citing cases in which "states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party." *Id.* The Board expressed the view that, in the past, waivers had been too readily issued, and emphasized that, for the future, it would closely adhere to the strict guidelines established by the ICC in determining whether to grant a waiver. In particular, the Board stated (*id.* at 4, emphasis in original) that "fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, * * * and comes before the Board in that capacity."

In this case, Pemiscot County Port Authority (Pemiscot) filed a request with the Office of the Secretary for waiver of the \$51,500 filing fee required in connection with a petition for a construction exemption under 49 U.S.C. 10502. Because Pemiscot would be seeking authority to construct and operate (through a third party operator) a line of railroad, by letter dated December 10, 2001, Pemiscot's request for waiver of the fee was denied. On March 8, 2002, Pemiscot submitted an untimely appeal, which we will accept for filing, of the decision denying the fee waiver request. In its appeal, Pemiscot argues that even though it will retain a residual common carrier obligation if it contracts with a third party to operate the proposed line, the project that it wants to pursue would "convey[] a public benefit, * * * the project would not exist but for public funding, and * * * the transaction does not entail any effort to gain an advantage over another party." Pemiscot also argues that a waiver is in the best interest of the public and that denial of the waiver would impose an undue hardship on it.

Pemiscot has clearly not shown that the denial of its waiver request was erroneous, and indeed, the decision follows closely the guidelines laid out in the *Policy Statement*. Nevertheless, because a party in a different case was granted a fee waiver after issuance of the *Policy Statement* under circumstances not substantially different from those prevailing here, we will grant

¹ On June 19, 2001, Midwest filed a petition under 49 U.S.C. 10901(d) to require the Illinois Central Railroad Company (IC) to allow Midwest's proposed construction to cross IC's track. The proceeding is docketed as STB Finance Docket No. 34060 (Sub-No. 1), *Midwest Generation, LLC—Petition for Line Crossing Authority Under 40 U.S.C. 10901(d)*. The crossing proceeding remains pending.