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EXPEDITED CONSIDERATION REQUESTED

May 21, 2002

Office of the Secretary
Attn: Rini Ghosh, Esq.
Environmental Review
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of the Secretary
MAY 22 2002
Part of
Public Record

Re: Midwest Generation, LLC -- Exemption from 49 U.S.C. 10901 --
For Construction in Will County, IL; Finance Docket No. 34060

Dear Ms. Ghosh:

Midwest Generation, LLC ("Midwest") has received the May 10, 2002 Comments ("Comments") of Illinois Central Railroad Company ("IC") regarding the draft Environmental Assessment ("EA") prepared by the Section of Environmental Analysis ("SEA") concerning Midwest's proposal to construct a rail line at its Joliet Generating Station in Will County, Illinois. Because Midwest must start construction soon if it is to complete even the shorter rail line ("Route B") before December 31, 2002, Midwest submits the following reply to IC's proposed mitigation conditions in the hope of assisting SEA and expediting the process.

Most of IC's proposed conditions only involve Midwest's preferred longer route, which the SEA has denominated as "Route A."¹ In light of the other environmental issues raised by IC and the time it might take to resolve those issues in the final EA, Midwest has decided it has no

¹ IC contends that the drainage ditch may be a "wetland," but Midwest anticipated such a contention and responded to it in its May 10, 2002 Comments. Accordingly, and to avoid any contention that this letter is untimely, we are only replying to IC's proposed mitigation conditions to simplify SEA's task, and are not submitting further argument. If, for any reason, however, the Board deems it appropriate to grant leave to file this letter, Midwest hereby so requests.

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Attn: Rini Ghosh, Esq.
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alternative at this time but to build the shorter rail line denominated by the SEA as "Route B," if it is to have a new rail line in place by December 31, 2002 when its rail transportation contract with IC expires. Route B is the alternative preferred by IC. See IC August 17, 2001 Letter to Ms. Victoria Rutson at 7-8. Route B would avoid construction of the bridge through the Sugar Run area, and, as a result, there would be no historic structure issues,² Sugar Run-related construction concerns, or fish habitat issues for the SEA to consider. Midwest still prefers Route A, but it has decided to construct the shorter Route B with the hope and expectation of constructing the remainder of Route A (including essentially all of Route B) sometime in the near future, once the SEA has completed its assessment of that Route.

Because the draft EA preliminarily approved both proposed rail routes and the focus of most of IC's proposed conditions involve the longer Route A, SEA can proceed with a final EA for the shorter Route B without further deliberation, in light of Midwest's consent to most of IC's proposed Route B-related conditions. Meanwhile, Midwest requests that the SEA continue to proceed in its review of the preferred Route A and when the SEA produces its final EA on that route, Midwest can construct Route A by merely extending the shorter route.

Although IC's environmental concerns focus primarily on the longer Route A, certain mitigation measures proposed by IC also include the Route B project area. With respect to any independent monitoring of the rail construction, as recommended by IC (Comments at 8), SEA should be aware that all construction is required to be permitted by the Will County Land Use Department to assure compliance with, among other things, the County's floodplain ordinance, soil erosion and sedimentation control ordinance, and stream and wetland protection ordinance. The County also has the authority and responsibility to verify compliance with these ordinances. The County's oversight and compliance verification should satisfy IC's insistence that Midwest's construction be independently monitored. Midwest accepts IC's proposed condition if SEA agrees that Will County is an appropriate "independent monitor."

IC also insisted in its comments that Midwest not use herbicides during construction in the project area. See Comments at 5. Midwest reiterates its earlier position that it will not use herbicides during such construction in the project area. Thus, Midwest accepts that proposed condition as well.

²In fact, the Illinois Historic Preservation Agency ("IHPA") specifically found that the proposed rail line ("Route B") will not have any effect on any historic properties. See Natural Resources Consulting Inc.'s October 26, 2000 Letter to the IHPA and the IHPA Letter in response dated December 2, 2000, copies of which are attached hereto. Accordingly, if SEA were to permit Route B now to be constructed, it could do so without regard to IC's proposed historic-structure condition.

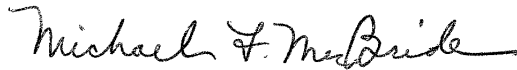
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Finally, IC proposes that Midwest must adhere to a strict order of construction. See Comments at 7. Midwest believes that, in and of itself, the order of construction does not have any impact on the environment, if the construction is otherwise performed in accordance with SEA's requirements. Midwest needs flexibility to proceed with the different stages of construction at its own discretion but in accordance with all required conditions. We trust SEA agrees.

Midwest reiterates its request that SEA act as expeditiously as possible in approving Midwest's proposal to build Route B line so that construction can begin in time to complete the project by December 31, 2002 (actually, more likely by October 31, 2002, when the construction season in the Midwest historically ends). Midwest also requests that SEA continue its ongoing review of Route A.

Please do not hesitate to give either one of us a call if you have any questions. Thank you for all of your assistance in this matter.

Very truly yours,



Michael F. McBride
John M. Collins

Attorneys for
Midwest Generation LLC

cc (w/Atts.): All Persons on Service List
David Konschnik, Esq.
Joseph Dettmar, Esq.



Natural Resources Consulting, Inc.

Specializing in wetland, biological and environmental permitting services

P.O. Box 128
Cottage Grove, Wisconsin 53527-0128
phone: 608-839-1998
fax: 608-839-1995

October 26, 2000

Mr. Cody Wright
Illinois Historic Preservation Agency
1 Old State Capitol Plaza
Springfield, IL 62701-1507

RE: Request for Section 106 of the Historic Preservation Act Review, Midwest Generation Joliet Station 9, Proposed Track Alignment 4, Will County, Illinois - NRC Project No. 00-093

Dear Mr. Wright:

Midwest Generation EME, LLC is proposing a railroad track alignment near Joliet, Will County, Illinois. The project is located east of Brandon Road, approximately 250 feet south of the DesPlaines River, within the southeast $\frac{1}{4}$ of Section 20 and the West $\frac{1}{2}$ of Section 21, Township 35 North, Range 10 East. The proposed track alignment is located between the existing Illinois Central tracks to the south and the existing Burlington Northern & Santa Fe tracks to the north. Figure 1 is the USGS Topographic Map for the site and vicinity.

The property currently consists of undeveloped land on man-made terraces in the limestone bedrock. A ditch excavated through Sogan Loam (Lithic Haplustolls), a somewhat excessively drained soil, was observed between the proposed track alignment and the Burlington Northern & Santa Fe tracks to the north. The proposed track alignment may impact some or all of the referenced ditch. Because the ditch was excavated in upland soils for stormwater conveyance, it is our opinion that the referenced ditch is not subject to jurisdiction under Section 404 of the Clean Water Act. We have submitted a request for a jurisdictional determination to the U.S. Army Corps of Engineers - Chicago District.

We are hereby requesting a Section 106 review of the project area in the event that the USACE takes jurisdiction on the ditch. Please call us if you have any questions.

Sincerely,
Natural Resources Consulting, Inc.

Joseph A. Pagliara, P.W.S.
Senior Environmental Scientist

Cc: J. Wozniak - Midwest Generation
J. Jaworski - Midwest Generation



**Illinois Historic
Preservation Agency**

1 Old State Capitol Plaza • Springfield, Illinois 62701-1507 • (217) 782-4836 • TTY (217) 524-7128

Will County
Joliet
Station 9/Track 4
Railroad Track Alignment

Please refer to: IHPA LOG #0011130016HWI

December 2, 2000

Mr. Joseph A. Pagliara, P.W.S.
Natural Resources Consulting, Inc.
Senior Environmental Scientist
Post Office Box 128
2520 Peiper Road, #4
Cottage Grove, WI 53527-0128

Dear Sir:

Thank you for requesting comments from our office concerning the possible effects of the referenced project on cultural resources. Our comments are required by Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties".

Our staff has reviewed the specifications and assessed the impact of the project as submitted by your office. We have determined, based on the available information, that this project, as proposed, will have no effect on any Historic Properties. We, therefore, have no objection to the undertaking proceeding as planned.

Please submit a copy of this letter with your application to the state or federal agency from which you obtain any permit, license, grant, or other assistance. Please retain this letter in your files as evidence of compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.

Sincerely,

Anne E. Haaker
Deputy State Historic
Preservation Officer

AEH:EGH:bb