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SERVICE DATE – LATE RELEASE NOVEMBER 30, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35098

GENESEE & WYOMING INC.—CONTROL EXEMPTION—  
MARYLAND MIDLAND RAILWAY, INC.

STB Finance Docket No. 35099

MARYLAND MIDLAND RAILWAY, INC.  
—ACQUISITION AND OPERATION EXEMPTION—  
CERTAIN ASSETS OF THE MARYLAND TRANSIT ADMINISTRATION

Decided: November 30, 2007

This decision grants a housekeeping stay of the effective date of the exemptions in these proceedings.

BACKGROUND

On October 22, 2007, Genesee & Wyoming Inc. (GWI), a noncarrier, filed a verified notice of exemption<sup>1</sup> to permit GWI to acquire indirect control of Maryland Midland Railway, Inc. (MMID), upon consummation of a merger agreement between GWI, MMID Holding Inc. (MMID Holding), MMID Acquisition Sub Inc. (MMID-ASI), and MMID.<sup>2</sup> Pursuant to the merger agreement, MMID-ASI would merge with MMID and the surviving corporation would continue as MMID. MMID's sole shareholder would be MMID Holding and GWI would own a majority of shares of MMID Holding. Accordingly, MMID Holding would have direct control and GWI would have indirect control over MMID.<sup>3</sup>

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<sup>1</sup> The notice was initially filed on October 22, 2007. Because supplemental information was filed on November 2, 2007, that date was considered to be the filing date.

<sup>2</sup> The full version of the merger agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A decision on GWI's motion for protective order was issued in a separate decision on November 9, 2007.

<sup>3</sup> According to GWI, MMID Holding was not listed as an applicant in the verified notice of exemption because MMID Holding would obtain control of only one rail carrier (MMID) following consummation of the proposed merger transaction and therefore would not be subject to the provisions of 49 U.S.C. 11323.

Also, on October 22, 2007, MMID, a Class III rail carrier with annual revenues in excess of \$5 million, filed a verified notice of exemption under 49 CFR 1150.41 to acquire (by purchase) two active rail lines and acquire (by purchase) and operate one inactive rail line, totaling approximately 34 miles, owned by the Maryland Transit Administration (MTA). The two active lines extend from milepost 32.6 at or near Westminster, MD, to milepost 24.3 at or near Cedarhurst, MD, and from milepost 60.1 at or near Walkersville, MD, to milepost 39.6 at or near Littlestown, PA; and the inactive line extends from milepost 45.1 at Taneytown, MD, to milepost 39.6 at Littlestown. In its notice of exemption, MMID stated that, due to an inadvertent error, it neglected to obtain authority in advance of its acquisitions. MMID informs us that it has already acquired the lines from MTA, pursuant to a purchase and sale agreement that was executed on February 16, 2005 (Agreement), and a quitclaim deed that was executed on January 23, 2006, and that it filed the notice of exemption to correct its error.

On November 16, 2007, notice of the control exemption in STB Finance Docket No. 35098 was served and published in the Federal Register at 72 FR 64702, and notice of the acquisition and operation exemption in STB Finance Docket No. 35099 was served and published in the Federal Register at 72 FR 64702-03. The control exemption is scheduled to become effective on December 2, 2007, and the acquisition and operation exemption is scheduled to become effective on December 21, 2007 (unless the Board grants MMID's request for waiver of the 60-day advance labor notice requirement).

On November 19, 2007, MTA filed a petition to stay the effective dates in both proceedings. MTA argues that a stay should be granted for three reasons. First, MTA states that it has been unable to ascertain whether the pending transactions adversely affect any of MTA's surviving rights or obligations under its Agreement with MMID. Second, MTA claims that it has become aware of inconsistencies between the deeds vesting title in MMID and its Agreement with MMID. Specifically, MTA claims that the deeds list an additional 9.78 miles of line that MTA did not intend to sell to MMID. Third, MTA states that it and the Maryland Department of Transportation (MDOT) are conducting an investigation into the legitimacy of the transaction between MTA and MMID. MTA claims that the stay is needed to resolve these three matters.

MMID filed a reply on November 27, 2007, opposing MTA's petition for a stay.

## DISCUSSION AND CONCLUSIONS

A housekeeping stay of the effective date of the exemptions is appropriate to allow time for MTA and MMID to provide additional information and for the Board to consider the issues presented in the stay request. The effective dates of the exemptions will therefore be stayed until December 21, 2007.

MTA and MMID shall have until December 7, 2007, to file supplemental pleadings and until December 14, 2007, to file replies to those supplemental pleadings. MTA should specifically address how long it would take to correct the deeds if necessary, the purpose of its investigation and whether it relates to matters within the Board's purview, and how that investigation would be hindered if the Board allowed the exemptions to become effective. MMID should address whether there are any compelling reasons not already presented for allowing the exemptions to become effective by December 21, 2007. After the Board has received this additional information, it will determine whether a further stay should be issued.

MMID also has requested a waiver of the requirements of 49 CFR 1150.42(e) to permit the acquisition and operation exemption it is seeking to become effective 30 days after the posting of the advance labor notice required to be given to employees who may be affected by MMID's planned acquisition and operation of three lines of railroad and to the national offices of the employees' labor unions. Given that neither exemption can become effective before December 21, 2007, MMID's labor notice waiver request is moot and therefore need not be addressed.

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

It is ordered:

1. The effective dates of the exemptions in STB Finance Docket No. 35098 and STB Finance Docket No. 35099 are stayed until December 21, 2007.
2. MTA and MMID shall file supplemental pleadings by December 7, 2007, and replies by December 14, 2007.
3. This decision is effective on its date of service.

By the Board, Charles D. Nottingham, Chairman.

Vernon A. Williams  
Secretary