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SERVICE DATE – NOVEMBER 16, 2007

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35099]

Maryland Midland Railway, Inc.—Acquisition and Operation Exemption—Certain Assets of the Maryland Transit Administration

Maryland Midland Railway, Inc. (MMID), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by purchase from the State of Maryland, acting by and through the Maryland Transit Administration (MTA), two active rail lines, totaling approximately 28 miles. The two active lines extend from milepost 32.6 at or near Westminster, MD, to milepost 24.3 at or near Cedarhurst, MD, and milepost 60.1 at or near Walkersville, MD, to milepost 39.6 at or near Littlestown, PA. In its notice, MMID also seeks to acquire, by purchase from the State of Maryland, acting by and through MTA, and operate approximately 6 miles of inactive rail line. The inactive line extends from milepost 45.1 at Taneytown, MD, to milepost 39.6 at Littlestown.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35098, Genesee & Wyoming Inc.—Control Exemption—Maryland

Midland Railway, Inc. (FD 35098), wherein Genesee & Wyoming Inc. (GWI), seeks to acquire indirect control of MMID.<sup>1</sup>

Based on projected revenues for the lines being acquired, MMID expects to remain a Class III rail carrier after consummation of the proposed transaction. MMID certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

MMID states that, due to an inadvertent error, it already has acquired the lines from MTA, pursuant to a purchase and sale agreement that was executed on February 16, 2005, and a quitclaim deed that was executed on January 23, 2006. MMID states that it is filing this notice of exemption to correct this error.

Because the projected annual revenues of the lines, together with MMID's projected annual revenue, will exceed \$5 million, MMID is required, at least 60 days before an exemption is to become effective, to send notice of the transaction to the national and local offices of the labor unions with employees on the affected lines and post a copy of the notice at the workplace of the employees on the affected lines and certify to the Board that it has done so. 49 CFR 1150.42(e). MMID attached to its October 22, 2007 submission of the notice of exemption a certification of posting of the labor notice, which states that the requisite labor notice was posted at the workplace of

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<sup>1</sup> The notice of exemption in this proceeding was filed initially on October 22, 2007. However, the related notice of exemption in FD 35098 was supplemented on November 2, 2007, and the filing date of that notice therefore was considered to be November 2, 2007. Because the supplemental information pertains to the transaction that is the basis of both proceedings, the filing date for the notice of exemption in this proceeding also is considered to be November 2, 2007.

those affected MMID employees on October 22, 2007. MMID notes that those employees are not represented by national labor unions and therefore no notice has been provided to such unions.

MMID has requested a waiver of the requirement in 49 CFR 1150.42(e), asking that this notice become effective 30 days after it has been filed, rather than the requisite 60 days. MMID argues for the waiver, stating that it has been operating the two active lines for 15 years and will continue to be the operator of these lines, and because the inactive line has had no traffic for several years, there are no affected employees on this line. The waiver request will be addressed by the Board in a separate decision in this proceeding.

As a result, the earliest this transaction will be considered to be consummated will be either 60 days after MMID's October 22 certification that it has satisfied the requirements of section 1150.42(e) or any earlier date established by the Board if the Board grants the requested waiver.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than 7 days before the exemption becomes effective.<sup>2</sup>

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<sup>2</sup> In the absence of a waiver granted by the Board, the earliest the exemption could become effective would be December 21, 2007 (60 days after MMID has certified that it has satisfied the requirements of section 1150.42(e)).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35099, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on R.W. Smith, Jr., DLA Piper US LLP, 6225 Smith Avenue, Baltimore, MD 21209.

Board decisions and notices are available on our website at  
“[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: November 13, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary