

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35098]

Genesee & Wyoming Inc.—Control Exemption—Maryland Midland Railway, Inc.

Genesee & Wyoming Inc. (GWI), a noncarrier, has filed a verified notice of exemption¹ 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.² Pursuant to the merger agreement, MMID-ASI will merge with MMID and the surviving corporation will continue as MMID. MMID's sole shareholder will be MMID Holding and GWI will own a majority of shares of MMID Holding. Accordingly, MMID Holding will have direct control and GWI will have indirect control over MMID.³

¹ The notice was initially filed on October 22, 2007. On October 29, 2007, a petition to reject the notice was filed by Patriot Rail Corp. (Patriot). On November 2, 2007, a response to Patriot's petition was filed by GWI (November 2 filing). Because the notice was supplemented by the November 2 filing, that date will be considered the filing date.

² 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 granting GWI's motion for protective order was issued on November 9, 2007.

³ According to GWI, MMID Holding is not listed as an applicant in the verified notice of exemption because MMID Holding will obtain control of only one rail carrier (MMID) following consummation of the proposed merger transaction and therefore does not need to obtain an exemption under 49 U.S.C. 11323.

GWI is a noncarrier holding company that directly or indirectly controls one Class II carrier and 24 Class III carriers, as well as additional carriers with two of its wholly owned subsidiaries that are noncarrier holding companies (RP Acquisition Company One and RP Acquisition Company Two).⁴ MMID is a Class III rail carrier that owns lines of railroad located: between approximately milepost 69.7 at or near Highfield, MD, and approximately milepost 19.9 at or near Emory Grove, MD; and between approximately milepost 60.1 at or near Walkersville, MD, and approximately milepost 39.6 at or near Littlestown, PA.⁵

The transaction is scheduled to be consummated on or after the date that exemption covered by this notice becomes effective (which will occur on December 2, 2007).

Applicants state that: (i) the rail lines involved in this transaction do not connect with any rail lines now controlled, directly or indirectly, by GWI; (ii) this transaction is not part of a series of anticipated transactions that would connect any of these rail lines with each other; and (iii) this transaction does not involve a Class I carrier.⁶ Therefore,

⁴ The members of the GWI family of railroads own and/or operate rail property located in Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Mississippi, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin.

⁵ Concurrent with this notice, MMID is seeking authority to acquire and operate three rail lines owned by the Maryland Transit Administration in STB Finance Docket No. 35099, Maryland Midland Railway, Inc.—Acquisition and Operation Exemption—Certain Assets of the Maryland Transit Administration.

⁶ The basis of Patriot’s petition to reject this notice of exemption was its contention that GWI failed to comply with the second criterion. Patriot’s petition has been denied by the Board in a separate decision in this docket.

this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves at least one Class II and one or more Class III rail carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the verified 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 effectiveness of the exemption. Petitions for stay must be filed no later than November 23, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35098, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K Street, N.W., Washington, DC 20006.

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Decided: November 13, 2007.

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

Vernon A. Williams

Secretary