

## 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 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 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.<sup>3</sup>

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).<sup>4</sup> 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.<sup>5</sup>

<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> Concurrent with this notice, MMID is seeking authority to acquire and operate three rail lines

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.<sup>6</sup> Therefore, 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, SW., 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, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 13, 2007.

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

**Vernon A. Williams,**

*Secretary.*

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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*.

<sup>6</sup> 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.

## 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

<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.

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 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>

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, SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on R.W. Smith, Jr., DLA Piper U.S. LLP, 6225 Smith Avenue, Baltimore, MD 21209.

<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)).

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 13, 2007.

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

**Vernon A. Williams,**  
*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-721X]

#### Everett Railroad Company— Discontinuance of Service Exemption—in Blair County, PA

Everett Railroad Company (ERC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 1.5-mile line of railroad between milepost 22.5 (at approximately 0.5 miles south of the line's crossing of Cross Cove Road) and milepost 24.0 (at the current end of track immediately east of the line's at-grade crossing of Pennsylvania State Highway 866), in Blair County, PA. The line traverses United States Postal Service Zip Code 16662.

ERC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that has been, or would need to be, rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on

December 18, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),<sup>1</sup> must be filed by November 26, 2007.<sup>2</sup> Petitions to reopen must be filed by December 6, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to ERC's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 9, 2007.

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

**Vernon A. Williams,**  
*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-268 (Sub-No. 16X) and  
STB Docket No. AB-355 (Sub-No. 34X)]

#### Portland Terminal Company— Abandonment Exemption—in Cumberland County, ME; and Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Cumberland County, ME

Portland Terminal Company (PT) and Springfield Terminal Railway Company (ST) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for PT to abandon, and for ST to discontinue service over, approximately 1.3 miles of railroad known as the Mountain Branch in Westbrook, ME, extending from milepost 6.0 to milepost 7.3 in Cumberland County, ME. The line traverses United States Postal Service

<sup>1</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

<sup>2</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.