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October 29, 2007

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

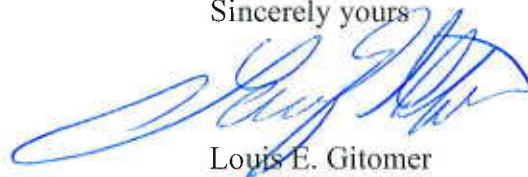
RE: Finance Docket No. 35098, *Genesee & Wyoming Inc.—Control
Exemption— Maryland Midland Railway, Inc.*

Dear Secretary Williams:

Enclosed for filing efilng is a Petition to Reject the Notice of Exemption filed in
the above-entitled proceeding.

Thank you for your assistance. If you have any questions, please call or email
me.

Sincerely yours



Louis E. Gitomer
Attorney for: Patriot Rail, Corp.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35098

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

PETITION TO REJECT VERIFIED NOTICE OF EXEMPTION

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Attorney for: PATRIOT RAIL, CORP.

Dated: October 29, 2007

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SURFACE TRANSPORTATION BOARD

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

PETITION TO REJECT VERIFIED NOTICE OF EXEMPTION

Patriot Rail, Corp. (“Patriot”) respectfully petitions the Surface Transportation Board (“STB” or “Board”) to reject or revoke the Verified Notice of Exemption (the “Notice”) filed in this proceeding on October 22, 2007 by Genesee & Wyoming Inc. (“GWI”) to acquire control of Maryland Midland Railway, Inc. (“MMID”) under 49 C.F.R. §1180.2(d)(2).¹

Patriot contends that the proposed transaction does not meet the criteria for using the notice of exemption procedure under 49 C.F.R. §1180.2(d)(2). Therefore, the proposed transaction is not exempt because it does not fall within the categories specified in 49 C.F.R. §1180.2(d).

BACKGROUND

GWI is a holding company that controls one Class II and numerous Class III railroads.² GWI seeks to acquire control of MMID³, a Class III railroad operating between Highfield, MD,

¹ Patriot is of the belief that it had a binding agreement to acquire MMID and is pursuing its remedies in other forums. However, Patriot believes that the Board has an obligation to protect its procedures from being misused to expedite transactions that do not properly qualify for a notice of exemption.

² Notice at 2.

³ It is interesting to note that on the same day the Notice was filed, MMID concurrently filed a notice of exemption in Finance Docket No. 35099, *Maryland Midland Railway, Inc.—Acquisition and Operation Exemption—Certain Assets of the Maryland Transit Administration*, to acquire

milepost 69.7, and Emory Grove, MD, milepost 19.9, and between Walkersville, MD, milepost 60.1, and Littlestown, MD, milepost 39.6.⁴ One of the railroads controlled by GWI is the York Railway Company which operates between East York and Porters, PA and between York and Hanover, PA.⁵

GWI recognizes that it must obtain advance Board authority to acquire control of MMID, and to that end filed a notice of exemption under 49 C.F.R. §1180.2(d)(2).

ARGUMENT

Patriot contends that GWI's acquisition of control of MMID does not meet the criteria of 49 C.F.R. §1180.2(d)(2), which exempt "Acquisition or continuance in control of a nonconnecting carrier or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier."

certain active and inactive lines from the Maryland Transit Administration (the "MTA"). MMID indicated that it had "inadvertently" failed to file for authorization to acquire and operate the lines even though MMID had filed at least six notices previously with the Board and its predecessor, had entered the Purchase and Sale Agreement with MTA on February 16, 2005, had not closed the transaction until January 23, 2006, and did not file the notice in Finance Docket No. 35099 until October 22, 2007, or more than two years of "inadvertence."

⁴ In Finance Docket No. 35099, MMID does not indicate the status of the line between Taneytown, MD and Littlestown, PA as other than "inactive." Patriot contends that the Board should inquire as to whether the "inactive" line was abandoned and therefore not subject to Board jurisdiction in this control proceeding, but requiring Board authorization before the line can be rebuilt and start to provide rail service. See *Suffolk & Southern Rail Road LLC—Lease and Operation Exemption—Sills Road Realty, LLC*, STB Finance Docket No. 35036 (STB served October 12, 2007); and *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Construction, Acquisition and Operation Exemption—in Wilmington and Woburn, MA*, STB Finance Docket No. 34797 (STB served July 10, 2007).

⁵ Patriot has not included mileposts since there are none in the Notice or any recent decisions or filing made at the Board concerning York.

In the notice, GWI states that: “MMID does not own or operate any lines of railroad which connect with the rail lines of any existing carrier controlled by GWI. This control transaction is not part of a series of anticipated transactions that would result in any connection between MMID and the rail lines of any existing carrier controlled by GWI. In addition, this control transaction does not involve a Class I carrier.” Patriot concedes that MMID does not connect with any GWI railroads and that the transaction does not involve a Class I carrier. However, Patriot calls the Board’s attention to the wording of GWI’s response to the second criteria, concerning planned future connection, which equivocates, at best, and the attached newspaper article.

GWI does not say that “the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family.” Instead it says “This control transaction is not part of a series of anticipated transactions that would result in any connection between MMID and the rail lines of any existing carrier controlled by GWI.” Although this may be dismissed as careless writing, it takes on a different meaning when viewed in light of the attached article from the October 23, 2007 Baltimore Sun (the “Article”).

Lehigh Cement Company (“Lehigh”) is the largest shareholder of MMID and will continue to own 12.6 percent of MMID after the acquisition of control by GWI. Lehigh is also the largest shipper on MMID. The Article states that MMID only interchanges with CSX Transportation, Inc. (“CSXT”) today, that Lehigh “hopes the [GWI] acquisition will eventually give it access to more competitive rail transfer rates.” Lehigh’s vice president of sales and marketing Kari Saragusa states: “If we had two or three options, the rates would be more competitive ... We hope [GWI] holdings, and their future acquisitions, will allow them to

connect the [MMID] to other line.” Furthering the conclusion that GWI intends to connect MMID to York is the statement of John C. Hellmann, chief executive of GWI, that MMID’s proximity to York “lends itself to efficiencies that make the financial combination attractive.” In addition, the filing by MMID in Finance Docket No. 35099 seeks to expand the MMID system to Littlestown, PA, over eight miles closer to York over the former line of the Penn Central Transportation Co. (which operated to York, PA and could be reactivated to complete the connection of the MMID and York).

Patriot contends that the language used by GWI in the Notice and the quotes of Lehigh, MMID’s largest shipper and large shareholder, and GWI’s CEO indicate that GWI does intend to connect MMID and York in the future. The intention to connect MMID to GWI’s system disqualifies this transaction from using the notice of exemption procedure under 49 C.F.R. §1180.2(d)(2). The proposed transaction also does not qualify for any other notice of exemption under 49 C.F.R. §1180.2(d).

CONCLUSION

Patriot respectfully requests that the STB reject the Notice filed by GWI since it does not meet the requirements of 49 C.F.R. §1180.2(d)(2).

Respectfully Submitted



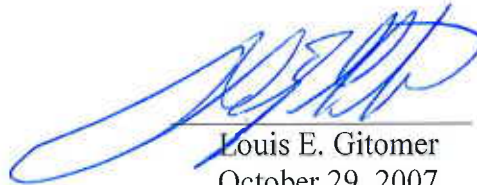
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Attorney for: PATRIOT RAIL, CORP.

Dated: October 29, 2007

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this Petition to Reject Verified Notice of Exemption upon all parties of record in this proceeding, by first class mail postage prepaid, or more expeditious manner.



Louis E. Gitomer
October 29, 2007

ATTACHMENT

www.baltimoresun.com/business/bal-bz.midland23oct23,0,2751389.story

baltimoresun.com

Deal might spur rail link

Conn. owner of York Railway to pay \$29 million for Maryland Midland

By Laura McCandlish

sun Reporter

October 23, 2007

Maryland Midland Railway Inc., a 70-mile short-line railroad that primarily serves Lehigh Cement Co. in Carroll County, is being sold for about \$29.1 million to Greenwich, Conn.-based Genesee & Wyoming Inc., operator of close to 50 short-line and regional freight railroads worldwide.

Situated near the York Railway that Genesee & Wyoming already owns, Maryland Midland could eventually link up with that southeastern Pennsylvania line, executives from Maryland Midland and Lehigh, its biggest shareholder, said yesterday.

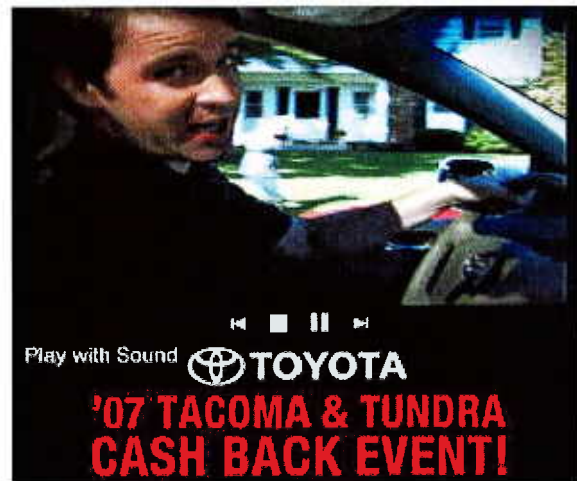
The Union Bridge cement operation, which will keep its 12.6 percent stake in the railroad, hopes the Genesee acquisition will eventually give it access to more competitive rail transfer rates. Lehigh Cement's headquarters is in Allentown, Pa.

The short line now has to hand off all cars to CSX Corp. at its terminals in Highfield, in Washington County, and Glyndon, in Baltimore County. Maryland Midland lacks access to nearby major rail interchanges in Hagerstown and Baltimore.

"If we had two or three options, the rates would be more competitive," said Kari Saragusa, Lehigh's vice president of sales and marketing. "We hope that Genesee & Wyoming holdings, and their future acquisitions, will allow them to connect the Maryland Midland to other lines."

Headquartered near the Lehigh plant in Union Bridge, Maryland Midland's tracks run from Taneytown south to Walkersville, and from Highfield across Carroll and Frederick counties to Baltimore County. The cement and stone industries represent about 90 percent of the 16,000 carloads it carries annually. Lehigh Cement Co. provides close to 65 percent of the Maryland Midland's business, Saragusa said.

The short line's proximity to the York Railway "lends itself to efficiencies that make the financial combination attractive," Genesee & Wyoming's chief executive John C. Hellmann said in a statement. The company would not discuss the fate of Maryland Midland's 30 employees until the deal closes.



Those jobs, the short line's name, its 10 iconic orange and blue locomotives and 400-plus owned and leased freight cars will be retained for now, Maryland Midland executives said.

"Everybody's still got a job," said Dave South, the railway's transportation manager. "The name's not going to change or anything."

Arthur W. Hatfield, an analyst with Morgan Keegan & Co. in Memphis, Tenn., said yesterday that the deal would make sense, especially given the proximity of the Maryland Midway and York Railway.

"This bolt-on acquisition represents a good strategic fit for Genesee," Hatfield wrote in a report yesterday. "The transaction gives us confidence in the company's ability to make acquisitions and grow earnings despite a weaker environment."

Genesee & Wyoming's revenue has more than doubled since 2002, to \$478.9 million last year. Second-quarter sales were up more than 16 percent from a year earlier. The company said the addition of Maryland Midland would immediately add to earnings.

Shares of Genesee & Wyoming increased by 96 cents yesterday, to close at \$29.26.

Maryland Midland Railway is one of four freight short lines still operating in the state, with a fifth scenic short line for tourists in Cumberland, said David Whorton, spokesman for the American Short Line & Regional Railroad Association.

The short line got its start in 1980, gaining control of track between Walkersville and Taneytown that had once been part of Western Maryland Railroad. One small locomotive then ran less than 200 carloads of freight a year.

Parts of the former Pennsylvania Railroad, from Westminster to Highfield, and then the Finksburg-to-Glyndon line, were purchased in subsequent years.

Fast forward to late 2001, when Lehigh Cement completed a plant expansion that doubled its size and its demand for the short line. In 2005, Maryland Midland purchased the Western Maryland line it had been leasing from the state.

The railway came up short in its bid to purchase track in Washington County between Highfield and Hagerstown, and between Glyndon and Baltimore, from CSX in 1997.

Maryland Midland now is urging Carroll County officials to create more industrial-zoned land in the area. Such zoning would encourage more commercial distribution centers to open along the railway, Bordner, the CEO, said.

"We have very limited land available for someone to come in and start an operation," Bordner said.

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