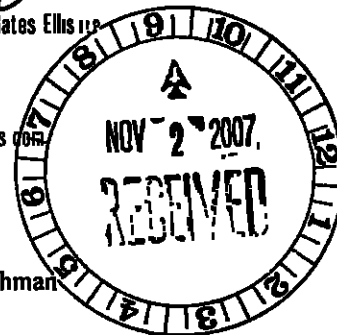


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November 2, 2007

Via E-Filing

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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

Dear Secretary Williams

On behalf of Genesee & Wyoming Inc. ("GWI"), please find enclosed for filing in the above-referenced docket a copy of GWI's **Reply in Opposition to Petition to Reject Verified Notice of Exemption**

Please contact me if you have any questions about this filing. Thank you

Respectfully submitted,

Edward J. Fishman
Attorney for Genesee & Wyoming Inc.

Enclosure

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BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO 35098

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

**REPLY IN OPPOSITION TO PETITION
TO REJECT VERIFIED NOTICE OF EXEMPTION**

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**ATTORNEYS FOR
GENESEE & WYOMING INC.**

Dated November 2, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35098

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

**REPLY IN OPPOSITION TO PETITION
TO REJECT VERIFIED NOTICE OF EXEMPTION**

Pursuant to 49 C F R § 1104.13(a), Genesee & Wyoming Inc ("GWI") hereby files this Reply in Opposition to the Petition to Reject Verified Notice of Exemption (the "Petition to Reject") filed by Patriot Rail, Corp ("Patriot") in this proceeding on October 29, 2007. GWI verified in its Notice of Exemption filed on October 22, 2007 ("Control Notice"), and reaffirms herein, that its planned acquisition of indirect control of Maryland Midland Railway, Inc ("MMID") is not part of a series of anticipated transactions that would connect MMID with any other railroad in GWI's corporate family. Therefore, GWI is entitled to use the class exemption under 49 C F R § 1180.2(d)(2) for the acquisition of indirect control of MMID and Patriot's Petition to Reject should be denied.

Argument

Patriot makes three separate but related arguments in support of its claim that GWI is not entitled to use the class exemption under 49 C F R § 1180.2(d)(2).¹ All three arguments are

¹ Patriot, which is neither a connecting carrier nor shipper on the relevant lines, reveals in footnote 1 of its Petition to Reject why it is so interested in whether GWI qualifies for the class exemption. According to Patriot, it is "of the belief that it had a binding agreement to acquire MMID and is pursuing its remedies in other forums." A contractual dispute between Patriot and MMID is not within the purview of the Board's jurisdiction. See City of Alameda – Acquisition Exemption – Alameda Beltline Railroad, Finance Docket No 34798 (STB served Apr 3, 2006).

focused on the requirement under § 1180 2(d)(2) that the control transaction “is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family ” First, Patriot contends that GWI’s choice of wording in its Control Notice “equivocates, at best” with respect to whether the control transaction complies with the non-connection requirement See Petition to Reject at 5 This argument is wholly unfounded GWI verified in its Control Notice as required under § 1180 2(d)(2), and reaffirms here without any equivocation, that its planned acquisition of indirect control of MMID “is not part of a series of anticipated transactions that would connect the railroads [i.e., the MMID and the railroads in GWI’s corporate family] with each other or any railroad in their corporate family ” GWI used slightly different but substantively equivalent language in its Control Notice to avoid the use of the parenthetical language set forth in the preceding sentence This parenthetical language would have been necessary if the applicable language of the regulation had been quoted verbatim in the Control Notice ² There is no requirement that the Control Notice must contain such verbatim language, and therefore Patriot’s observation about the slight difference in wording is a distinction without an intended legal difference

Second, Patriot claims that an excerpt from GWI’s press release about the transaction supports Patriot’s belief that GWI intends to connect the MMID with another railroad in GWI’s corporate family (the York Railway Company, which owns track that is approximately 8 miles

² The use of the verbatim language from the regulation would not have worked in this situation because GWI itself is not a “railroad” and therefore referring to a transaction that “would connect the railroads with each other” requires further explanation

from the northern endpoint of the inactive segment of MMID's line of railroad in Littlestown,

PA) The GWI press release contains the following statement ³

"The Maryland Midland is an excellent short line railroad and a good geographic fit with our York operations," said GWI Chief Executive Officer John C. Hellmann. "This proximity lends itself to efficiencies that make the financial combination attractive. The Maryland Midland's customer base is highly competitive in the U.S. cement and aggregates market, and we look forward to providing quality customer service for the long term."

The statement from GWI's Chief Executive Officer does not state that GWI is planning to engage in a series of transactions that would connect the MMID with the York Railway Company. The statement's reference to "proximity that lends itself to efficiencies" relates to the financial efficiencies associated with consolidating administrative and management support of railroads that operate in regional proximity to each other. As Patriot knows from its own business plans and activities, GWI and other shortline railroad holding companies often acquire control of railroads that are near (but not physically connected) to their existing railroads in order to maximize the opportunity for efficient and cost effective operation and management. ⁴

GWI is not planning to connect the MMID with the York Railway Company. MMID owns an inactive segment of rail line between Taneytown, MD and Littlestown, PA that is approximately 8 miles south of York Railway's track in Hanover, PA. As explained in detail in the Notice of Exemption filed by MMID in Finance Docket No. 35099, MMID does not operate and has not operated over that inactive segment of track between Taneytown and Littlestown.

³ Patriot cites to a portion of this statement (see Petition to Revoke at 6) as it is paraphrased in an October 23, 2007 article from baltimoresun.com that is attached to Patriot's Petition to Revoke. A full copy of the GWI press release was available on the GWI website well before Patriot's filing and is attached hereto as Exhibit A.

⁴ As GWI specified in its Control Notice, it has agreed to acquire indirect control of MMID in order to "permit the efficient operation and management of MMID as part of the GWI system." See Control Notice at 6.

because there are no customers on that stretch of trackage⁵ More importantly, neither MMID nor GWI has rights to operate or is planning to acquire rights to operate between Littlestown and the connection with York Railway Thus, Patriot's speculation about GWI's intentions is unfounded

Lastly, Patriot contends that a statement attributed by the baltimoresun.com reporter to the "vice president of sales and marketing" of MMID's largest customer (Lehigh Cement) somehow demonstrates that GWI's planned acquisition of control of MMID is part of an alleged plan to connect MMID with York Railway There are several reasons why Patriot's contention is unwarranted First, Lehigh does not speak on behalf of GWI Second, even if one assumes that the statement attributed to Lehigh's representative is accurately quoted in the on-line article, such a statement merely reflects the "hope" of a Lehigh marketing representative that GWI's acquisition of control of MMID will give Lehigh access to more competitive rates through potential future acquisitions by GWI The alleged statement was made without the involvement of GWI, was not based on any information provided to Lehigh by GWI, does not specify that GWI is planning to connect MMID with York Railway, and merely refers to the possibility that unspecified future acquisitions by GWI could make additional routings possible in the future Regardless of Lehigh's future hopes, GWI is not planning to engage in a series of anticipated transactions that would connect MMID with its York Railway operations

Pursuant to 49 C.F.R. § 1150.42(c), if a verified notice contains false or misleading information, the exemption is void ab initio See Yolo Shortline Railroad Company – Lease and

⁵ MMID also specified in the Notice of Exemption that MMID may abandon or discontinue its operating authority over that inactive segment unless sufficient traffic develops over that portion of the line in the future Therefore, Patriot's suggestion in footnote 4 of its Petition to Reject that the Board inquire as to the status of the inactive segment is unnecessary and not relevant to whether GWI's Control Notice qualifies under the class exemption

Operation Exemption – Port of Sacramento, STB Finance Docket No 34114 (STB served Feb 3, 2003) For the reasons described above, Patriot’s speculative allegations do not satisfy this standard. Thus, GWI is entitled to use the class exemption under 49 C.F.R. § 1180.2(d)(2) and Patriot’s Petition to Reject should be dismissed.

Patriot failed to argue explicitly for revocation of the Control Notice, but even if it had, it cannot meet the high burden necessary for revocation.⁶ Under 49 U.S.C. § 10502(d), the Board may revoke an exemption in whole or in part if it finds that regulation is necessary to carry out the rail transportation policy set forth in 49 U.S.C. § 10101. Central Illinois Railroad Co. – Operation Exemption – Rail Line of the City of Peoria, IL, STB Finance Docket No 34753 (STB served Jun 27, 2007). The party seeking revocation has the burden of proof and petitions to revoke must be based on reasonable, specific concerns. I&M Rail Link LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company, d/b/a Canadian Pacific Railway, STB Finance Docket No 33326 (STB served Apr 2, 1997), aff’d sub nom., City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). For the reasons specified herein, Patriot has failed to meet this burden and therefore any argument by Patriot that the Control Notice should be revoked (once it becomes effective) is without merit.

⁶ The opening line of Patriot’s Petition to Reject refers to revocation. See Petition to Reject at 2. To the extent the Board treats the pleading as a Petition to Revoke, it should be rejected for the same reasons outlined herein.

Conclusion

For the foregoing reasons, the Board should deny the Petition to Reject and allow GWI's Verified Notice of Exemption to become effective 30 days from filing in accordance with the applicable regulations

Respectfully submitted.

By



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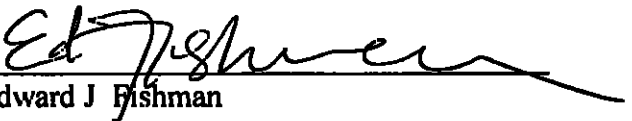
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**ATTORNEYS FOR
GENESEE & WYOMING INC.**

Dated November 2, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2007, I served the foregoing Reply in Opposition to Petition to Reject Verified Notice of Exemption on Louis E Gitomer, 600 Baltimore Avenue, Suite 301, Towson, Maryland 21204-4022, via e-mail and first-class, postage pre-paid mail


Edward J Fishman