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December 7, 2007

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

ENTERED
Office of Proceedings
DEC 7 - 2007
Part of
Public Record

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

Finance Docket No 35099
Maryland Midland Railway, Inc – Acquisition and Operating Exemption
– Certain Assets of the Maryland Transit Administration

Dear Secretary Williams

On behalf of Maryland Midland Railway, Inc (“MMID”) enclosed for filing in the above-referenced dockets please find an original and ten copies of MMID’s supplemental pleading

Also enclosed is an additional copy of this letter and the supplemental pleading. Please receipt-stamp these documents and return them to our messenger. Please feel free to contact me with any questions you may have.

Thank you for your assistance.

Very truly yours,

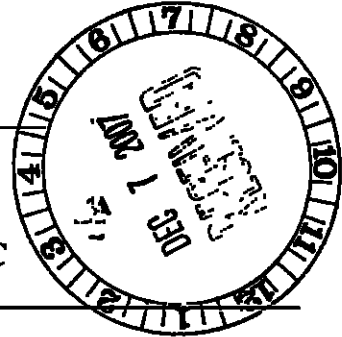
Martin Schaefermeier

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35098

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



FINANCE DOCKET NO 35099

MARYLAND MIDLAND RAILWAY, INC
- ACQUISITION AND OPERATION EXEMPTION -
CERTAIN ASSETS OF THE MARYLAND TRANSIT ADMINISTRATION

SUPPLEMENTAL PLEADING OF MARYLAND MIDLAND RAILWAY, INC

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**ATTORNEYS FOR MARYLAND MIDLAND
RAILWAY, INC.**

Dated December 7, 2007

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SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35098

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

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MARYLAND MIDLAND RAILWAY, INC.
– ACQUISITION AND OPERATION EXEMPTION –
CERTAIN ASSETS OF THE MARYLAND TRANSIT ADMINISTRATION

SUPPLEMENTAL PLEADING OF MARYLAND MIDLAND RAILWAY, INC

As directed by the decision of the Surface Transportation Board (the “Board”) served on November 30, 2007 in the above-captioned dockets. Maryland Midland Railway, Inc (“MMID”), by its counsel, hereby files this supplemental pleading

Background

On October 22, 2007, Genesee & Wyoming Inc (“GWI”), a noncarrier, filed a verified notice of exemption in STB Finance Docket No 35098 to permit GWI to acquire indirect control of MMID. Also on October 22, 2007, MMID filed a verified notice of exemption in STB Finance Docket No 35099 to acquire two active rail lines and acquire and operate one inactive rail line from the Maryland Transit Administration (“MTA”).¹ On November 19, 2007, the

¹ MMID had already acquired the lines from the 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. Due to an inadvertent error, MMID did not file a notice of exemption to

MTA filed a petition to stay the effective dates of the exemption notices in both proceedings MMID filed a separate reply² in opposition to the MTA petition for stay on November 27, 2007 in each proceeding

In its reply, MMID presented four fundamental reasons for denying the MTA petition for stay

First, a major focus of the MTA petition is a claimed concern regarding an error in the quitclaim deed for the right-of-way that was sold by MTA to MMID. However, before the MTA filed its petition for stay, MMID and GWI had already unconditionally agreed to correct the deed (and had communicated this agreement to the MTA several times)

Second, the only other reason for a stay presented in the MTA petition is the general, unsubstantiated assertion that MTA and other State officials are “conducting an investigation into the legitimacy of the transaction between the MTA and MMID ” However, the petition fails to identify any basis for such investigation and fails to provide any explanation of what the MTA is investigating, what prompted the investigation, when the investigation will be concluded, what the MTA suspects, or why the MTA waited so long after the consummation of the sale transaction to commence the investigation. Moreover, there is no basis for questioning the legitimacy of the real estate transaction, considering that the sale was made at the suggestion of the MTA and at a price proposed by the MTA, was supported by a report from an outside consultant commissioned by the Maryland Department of Transportation (“MDOT”)³ that

acquire the active lines and to acquire and operate the inactive line prior to the acquisition. MMID filed its notice of exemption to correct this error

² The two replies have virtually the same content and will be referred to throughout the remainder of this document as a single “reply ”

³ The MTA is a modal agency of the MDOT, which was involved along with MTA in the sale transaction with MMID

concluded that the sale would result in substantial benefits to the State of Maryland and its citizens, and was approved by the Board of Public Works of the State of Maryland (whose members included, among others, Robert Ehrlich, the then governor of the State of Maryland)

Moreover, the proposed transaction is not a sale of the assets of MMID. It is a sale of the stock of MMID from the current stockholders to GWI. The transaction does not affect the assets or obligations of MMID at all. Thus, the proposed acquisition of MMID by GWI would in no way prejudice any investigation which the MTA might wish to conduct, since the proposed transaction simply substitutes GWI for the current stockholders of MMID and otherwise does not affect the corporate existence of MMID or its ability to respond to any issues the MTA might raise

Third, the MTA petition argues that no one would be harmed by a stay. However, as explained in more detail in MMID's reply, this argument fails to recognize the harm to MMID's stockholders from the increased risk to the consummation of the merger that would likely result from a stay. In a similar context, the Delaware Chancery Court has repeatedly recognized that the risk of non-consummation arising from delay, by itself, is a sufficient reason to deny an injunction in all but the most compelling of cases. MMID Reply in Opposition to MTA Petition for Stay at 7-8 (November 27, 2007), citing *In re Wheelabrator Technologies, Inc. Stockholders Litigation*, 1990 WL 131351, at *9 (Del. Ch. September 6, 1990), *Braunschweiler v. American Home Shield Corp.*, 1989 WL 128571, at *7 (Del. Ch. October 26, 1989), and quoting *Solash v. Telex Corp.*, 1988 WL 3587, at *13 (Del. Ch. January 19, 1988)

Fourth and finally, a stay would serve no public interest. The arguments made by the MTA in support of its petition for stay relate solely to the private real estate transaction between

the MTA and MMID. However, the Board has held repeatedly that it is not the proper forum to resolve private contractual disputes.

In its decision served on November 30, 2007, the Board issued a housekeeping stay of the effective dates of the exemption notices until December 21, 2007. In addition, the Board's decision gave MTA and MMID until December 7, 2007 to file supplemental pleadings, and until December 14, 2007 to file replies to such pleadings. The Board directed MMID to address in its supplemental pleading whether there are any compelling reasons not already presented for allowing the exemptions to become effective by December 21, 2007.

Argument

The MMID reply already provides compelling reasons for denying the MTA petition for stay and for allowing the exemptions to become effective on December 21, 2007. In addition, there are further compelling reasons for denying the petition for stay.

On November 28, 2007, MMID provided to the MTA an initial, proposed draft of a revised deed to correct the error complained of by the MTA. On December 5, 2007, one week after MMID proposed the initial draft of the corrective deed, MMID and the MTA received a letter from Jeffrey Thompson at Chicago Title Insurance Company ("Chicago Title"), the MTA's title company that worked on the initial sale of the right-of-way, proposing generally the corrections that he believed need to be made to the deed. MMID's goal is consistent with that of the MTA, to make sure that any corrective deed accurately describes the property that was intended to be conveyed. To this end, MMID is currently working with the MTA's title company to prepare a final corrective deed that would reconvey to the MTA the excess property

that was erroneously conveyed to MMID⁴ This corrective deed will make the conveyance consistent with the underlying purchase and sale agreement

On December 6, 2007, MTA's title company confirmed by e-mail that MMID counsel and MTA have agreed in principle to the property description in the corrective deed. The only step that remains is for MMID to confirm the accuracy of the property description and for MMID to execute the corrective deed We expect that these steps will be completed by early next week These additional facts further confirm that there are simply no issues related to the deed that could provide a basis for granting the MTA petition for stay

In addition, on November 27, 2007, as requested by the MTA, MMID submitted to the MTA a memorandum containing a chronology (with supporting documentation) of the real estate transaction between the MTA and MMID These materials demonstrate that MDOT commissioned an outside consultant who prepared and provided to MDOT a report evaluating the transaction In the report, MDOT's own consultant concluded that MMID was the only logical buyer for the property and that the transaction would allow the State to avoid millions of dollars of future expenses by shifting costs related to the property from the State to MMID The materials MMID submitted to the MTA also show that the State Senate Budget and Taxation Committee and the House Committee on Appropriations approved MDOT's request for the sale of the property and that the State of Maryland Board of Public Works ultimately approved the transaction

The materials submitted to the MTA leave no doubt that the real estate transaction underwent the required State review and approval process In the face of this demonstration, the

⁴ The excess property was not covered by MMID's notice of exemption filed in STB Finance Docket No 35099 The notice describes the rail lines acquired from the MTA consistent with the purchase and sale agreement

MTA has failed to identify any basis for questioning the legitimacy of the transaction. Issuing a further stay in these circumstances would implicitly give credence to MTA's generalized and unsupported claims. The Board should not allow its proceedings to be diverted in this fashion.

Finally, any additional delay in the effective dates of the exemptions could raise concerns by shippers with respect to the future ability by MMID to provide rail service on the affected lines and concerns by MMID employees about the timing of the transition to GWI ownership. Denying the petition for stay would avoid unnecessary uncertainty in this regard. Indeed a refusal to countenance further delay would be consistent with the Board's repeated recognition that it is not the proper forum for the resolution of private contractual disputes.

Conclusion

For all of the reasons set forth above and in MMID's reply to the petition for stay, the MTA has failed to demonstrate that it is entitled to the extraordinary remedy of a stay. Accordingly, the Board should deny the MTA's petition for stay and allow the exemptions to become effective by December 21, 2007.

Respectfully submitted,



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