



KAPLAN KIRSCH ROCKWELL

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December 7, 2007

E-Filing

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

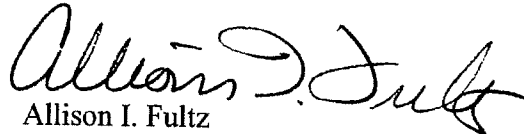
**Re: Genesee & Wyoming Inc. – Control Exemption – Maryland Midland
Railway, Inc., Finance Docket No. 35098; and**

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

Dear Sir:

I am enclosing the Response of the Maryland Transit Administration to
November 30, 2007 Decision in the above referenced proceedings.

Sincerely,


Allison I. Fultz

Enclosure

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**Before the
Surface Transportation Board
Washington, D.C.**

FINANCE DOCKET NO. 35098

**GENESEE & WYOMING INC.
-- CONROL EXEMPTION --
MARYLAND MIDLAND RAILWAY, INC.**

FINANCE DOCKET NO. 35099

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

**RESPONSE OF
THE MARYLAND TRANSIT ADMINISTRATION
TO NOVEMBER 30, 2007 DECISION**

Communications with respect to this
document should be addressed to:

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Administration

Dated: December 7, 2007

**Before the
Surface Transportation Board
Washington, D.C.**

FINANCE DOCKET NO. 35098

**GENESEE & WYOMING INC.
-- CONROL EXEMPTION --
MARYLAND MIDLAND RAILWAY, INC.**

FINANCE DOCKET NO. 35099

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

**RESPONSE OF
THE MARYLAND TRANSIT ADMINISTRATION
TO NOVEMBER 30, 2007 DECISION**

In response to a Petition of the Maryland Transit Administration ("MTA"), this Board issued a stay on November 30, 2007 (the "*November 30 Decision*") of the effective date of the Notices of Exemption filed by Genesee & Wyoming Inc. ("GWI") and by Maryland Midland Railway, Inc. ("MMID") (each a "Notice of Exemption" or "NOE"), respectively, in these proceedings. As a result, the effective dates of the two Notices of Exemption are stayed until December 21, 2007. *November 30 Decision*, slip op. at 3.

In addition, the *November 30 Decision* requests both MTA and MMID to submit supplemental pleadings to respond to specific questions posed there. The questions to which MTA is requested to respond, and MTA's responses, follow. As noted below, MTA is hereby withdrawing its request for a stay of the effective dates of these proceedings.

1. *How long will it take to correct the deeds if necessary?*

MMID has provided MTA with a proposed corrective deed. MTA is now in the process of verifying the accuracy of the property description included in that deed. Because of the importance of ensuring that the corrective deeds are completely accurate, MTA is having the property descriptions verified by an independent third party. MTA expects that to be complete by no later than Friday, December 14, 2007. When the verification is complete, MTA will deliver the revised and accurate corrective deeds to MMID for signature.

2. *What is the purpose of the investigation that MTA has undertaken and does it relate to matters within the Board's purview?*

The Maryland Department of Transportation ("MDOT") learned, from announcements in the media and from filings that were published on this Board's website, of the pending transaction between GWI and MMID. The Purchase and Sale Agreement ("PSA") between MTA and MMID (a copy of which was attached to the MTA Petition for Stay, as Exhibit 1) provided MTA with certain rights upon sale of the property that is the subject of that agreement. MDOT and MTA immediately began to review the matter to determine whether MTA's retained rights had been acknowledged and whether MMID had complied with its obligations to MTA. When reviewing that information, the new administration of MDOT¹ noted the discrepancy between the price MMID paid for the property that is the subject of the transaction covered by the NOE in Finance Docket No. 35099, and the price that, according to media reports, GWI proposes to paying for the stock of MMID in the transaction that is the subject of Finance Docket No. 35098.

¹ MDOT Secretary John Porcari and Deputy Secretary Beverly Swaim-Staley assumed their responsibilities at MDOT on March 6, 2007. The documents relating to the transaction between MTA and MMID were executed in February 2005.

A quick review of the history of the MMID-MTA transaction revealed that the Maryland Board of Public Works (“BPW”) had raised questions about the price MMID was paying for the property at the time it was asked to review the transaction in 2005. As a result of the realization of this discrepancy and of the questions that had previously been raised about the MTA-MMID transaction, the MDOT leadership began a more intensive investigation into the circumstances that preceded execution of the PSA, including a review of all appraisals and of all other information available to MDOT. In that investigation, MDOT leadership sought information that would permit it to reach a conclusion as to whether the MMID-MTA transaction was in fact an arms-length transaction that was undertaken in a manner fully consistent with state law, and with the requirements and processes of MDOT, MTA and the BPW.

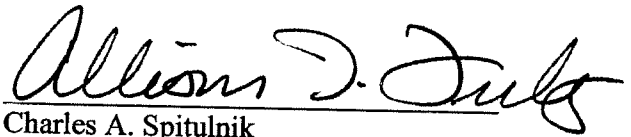
The issues raised by this investigation are within the Board’s purview to the extent that this Board has consistently admonished participants in its proceedings about abuse of its processes and about inappropriate use of the Board’s jurisdiction over transactions to shield the participants from legitimate application of state law. *See, e.g., STB Finance Docket No. 34501 – James Riffin d/b/a/ the Northern Central Railroad – Acquisition and Operation Exemption – in York County, PA and STB Finance Docket No. 34502 – James Riffin d/b/a/ the Northern Central Railroad – Petition for Declaratory Order* (February 23, 2005), *slip op.* at 5 (revoking notice of exemption for acquisition of a line of railroad on the basis that petitioner appeared to be using STB’s licensing process in “improper ways” to evade “legitimate processes of state law”). MTA sought the stay in this proceeding to ensure that nothing about the Board’s approval or exemption of either transaction gives any party an argument that the transaction is immune from review or challenge under state law as a result of the broad preemption authority contained in 49 U.S.C. §§10501(b) and 11321(a).

3. *How will that investigation be hindered if the Board allows the exemptions to become effective?*

Because MDOT and MTA have completed their investigation of the transaction between MMID and MTA, no response to this question is required. As noted above, MTA is hereby withdrawing its request for a stay of the effective date of the transactions in both proceedings.

Dated: December 7, 2007

Respectfully submitted,



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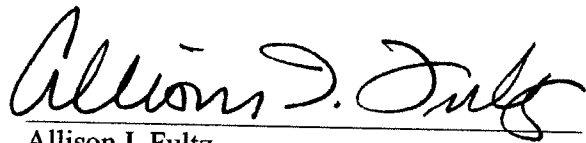
Certificate of Service

I hereby certify that I have this 7th day of December, 2007, caused to be served a copy of the foregoing Response of the Maryland Transit Administration to the November 30, 2007 Decision upon the following parties of record by first class mail, with postage prepaid:

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