

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35126

PRO-GO CORP.—OPERATION EXEMPTION—IN SUFFOLK COUNTY, NY

Decided: May 22, 2009

On February 28, 2008, Pro-Go filed a verified notice under the class exemption at 49 CFR 1150.31 to operate a rail line described as extending between approximately mileposts 50 and 52 on the Long Island Railroad in Holtsville, Suffolk County, NY. Pro-Go Corp.—Operation Exemption—in Suffolk County, NY, STB Finance Docket No. 35120 (STB served Mar. 13, 2008) (Pro-Go I). In Pro-Go I, the Board rejected the notice because Pro-Go failed to submit sufficient information to enable the Board to determine whether the proposed transaction qualified for the class exemption. The notice was unclear about the status of an owner of a portion of the line—Prima Asphalt Concrete, Inc. (Prima). The Board asked whether Prima would acquire a common carrier obligation as a result of Pro-Go’s proposed transaction and would therefore also need to seek Board authority to operate the line.

On April 2, 2008, Pro-Go simultaneously filed a petition for reconsideration of Pro-Go I and a new verified notice of exemption in this proceeding, seeking the identical authority sought in Pro-Go I and containing additional information in response to the Board’s concerns. Subsequently, by an order served on April 16, 2008, the Board’s Chairman imposed a housekeeping stay on the Federal Register publication date of the notice and the effective date of the exemption in this proceeding, pending Board resolution of the issues raised in the petition for reconsideration in Pro-Go I.

By decision served June 13, 2008, the Board denied Pro-Go’s petition for reconsideration and also rejected Pro-Go’s claim that Prima did not have to seek authority from the Board to acquire the line as a common carrier in connection with Pro-Go’s filings, finding that neither Prima nor the proposed transaction fell under the so-called “State of Maine” exception created by Maine, DOT—Acquisition Exemption—Maine Central R. Co., 8 I.C.C.2d 835 (1991). The Board directed Prima to seek acquisition authority from the Board if Pro-Go’s notice in this proceeding was to be published and eventually become effective. Also, the Board ordered that the stay imposed in the April 16, 2008 decision in this proceeding remain in effect pending the filing of a request for acquisition authority by Prima.

Noting that neither Pro-Go nor Prima had made any further filings with the Board since June 2008, the Board issued a show cause order, served on April 23, 2009, directing Pro-Go to show cause within 14 days, May 7, 2009, why the proceeding should not be dismissed. That deadline has passed with neither Pro-Go nor Prima filing anything with the Board.

As a result of Pro-Go's failure to respond to the show cause order, as directed, we will assume that Pro-Go no longer desires authority from the Board to operate the subject rail line. Consequently, Pro-Go's notice of exemption will be dismissed with prejudice and the proceeding will be terminated.<sup>1</sup>

It is ordered:

1. The notice of exemption filed by Pro-Go on February 28, 2008, is dismissed with prejudice and this proceeding is terminated.

2. This decision is effective on its service date.

By the Board, Anne K. Quinlan, Acting Secretary

Anne K. Quinlan  
Acting Secretary

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<sup>1</sup> Also, Prima's failure to seek acquisition authority, as directed by the Board, means that neither it nor Pro-Go can engage in or own any interstate rail operations until they first seek and obtain proper Board authority to do so.