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MVC TRANSPORTATION, LLC–ACQUISITION EXEMPTION–  
P&LE PROPERTIES, INC.  
STB Finance Docket No. 34462

MVC TRANSPORTATION, LLC–PETITION FOR DECLARATORY ORDER  
STB Finance Docket No. 34462 (Sub-No. 1)

Good morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

These cases involve an ongoing dispute between MVC Transportation, LLC and Proline Railroad Track Co. over the ownership of certain rail assets located in a rail yard in McKees Rocks, Pennsylvania. MVC has asked in its request for a declaratory order that the Board resolve the ownership issues, while Proline has asked a Pennsylvania court to do so by filing suit there in 2003. Basically, Proline argues that it owns the property through a series of transactions that began with the sale of the track in 1997 by the bankrupt P&LE Properties, a successor to the Pittsburgh and Lake Erie Railroad Company. MVC argues that Proline never acquired a property interest in the track assets and that MVC actually acquired the real property and the yard track after a notice of exemption filed with the Board became effective on April 15, 2004.

The draft decision denies MVC's request for a declaratory order. The draft explains that this track was excepted track when used by the Pittsburgh and Lake Erie Railroad Company because it used the track for typical yard operations such as switching, maintenance, warehousing, and refueling activities. Because the track was excepted under section 10906,

there was no need for any of the parties who allegedly purchased the track from P&LE Properties to obtain authority prior to acquiring the track for salvage or for P&LE Properties to obtain abandonment authority prior to disposing of the track for salvage. The track in question ceased being part of the national rail transportation system years ago when it was sold for salvage by P&LE Properties.

The draft decision also rejects MVC's assertion that Proline's ownership claim undermines the authority the Board granted to MVC through MVC's notice of exemption. It is a longstanding principle that the Board's grant of a notice of exemption to acquire gives the applicant permission to acquire, but does not mandate the acquisition. Thus, the authority the Board granted to MVC was permissive, not mandatory, and MVC's acquisition exemption could not confer on MVC any ownership rights to the yard track assets it did not possess under Pennsylvania law.

The draft decision finds that it is proper for the Pennsylvania court to resolve the dispute over ownership of the yard track assets. The questions here involve local property law, contract law, and mortgages, which are for a court to answer, not the Board.

The draft decision then turns to Proline's petition to revoke the exemption. Proline argues that MVC misled the Board about the ownership of the assets which MVC sought permission to acquire through the notice of exemption. The draft decision explains that MVC's

claimed ownership is not false and misleading merely because MVC argues that it lawfully could acquire the facilities even though another party, Proline, claimed ownership. As was just noted, who actually owns these facilities is better left to the Pennsylvania court. Therefore, the draft decision also denies Proline's petition to revoke.

If you have any questions, we'll be happy to respond to them now.