

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35126

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

Decided: April 22, 2009

This decision directs Pro-Go Corp. (Pro-Go) to show cause why the Board should not dismiss the proceeding in the above-titled docket.

On February 28, 2008, Pro-Go filed a verified notice under the class exemption at 49 CFR 1150.31 to operate a rail line—a set of three tracks totaling about 1 mile in length—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 because Pro-Go failed to articulate any justification for reconsideration. The Board 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. Finally, 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.

Since the June 13, 2008 decision, neither Pro-Go nor Prima has made any further filings with the Board. As such, the Board orders Pro-Go to show cause why the Board should not dismiss this proceeding, STB Finance Docket No. 35126.

It is ordered:

1. Pro-Go has 14 days from the service date of this decision to show cause why the Board should not dismiss this proceeding, STB Finance Docket No. 35126.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary