

Before the
SURFACE TRANSPORTATION BOARD
STB Docket No. FD 36486 (Sub-No. 1)
GRAINBELT CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
BNSF RAILWAY COMPANY

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**PETITION FOR PARTIAL REVOCATION
TO PERMIT EXPIRATION OF
AMENDMENT TO TRACKAGE RIGHTS**

Grainbelt Corporation (“GNBC”), a Class III railroad, is today filing a Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) to exempt from the provisions of 49 U.S.C. §11323 the grant of amended local trackage rights by BNSF Railway Company (“BNSF”) to GNBC.¹ The amended trackage rights agreements provide that the rights granted will expire automatically twelve months from the effective date.² GNBC is filing this Petition for Partial Revocation seeking authority to allow the expiration of the amendment to the trackage rights upon the negotiated termination date, without the need to seek discontinuance authority at that time. BNSF agrees to the relief requested herein. Revocation is consistent with the rail transportation policy as set forth in 49 U.S.C. §10101, is of limited scope, and regulation is not required to protect shippers from abuse of market power.

¹ The amendment is to the same original underlying trackage rights agreement which was entered into between GNBC and BNSF’s predecessor, the supplemental trackage rights granted to GNBC by BNSF and SLWC in December 2009, and the amendments to the trackage rights granted to GNBC by BNSF and SLWC in March, 2013 and in June 2014.

² A copy of the amendment which reflects the negotiated termination date is attached to the Notice of Exemption being filed with the Board today.

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Background

In 2009, GNBC entered into written supplemental trackage rights agreements with BNSF and Stillwater Central Railroad, LLC f/k/a Stillwater Central Railroad, Inc. (“SLWC”) under which GNBC was granted certain local trackage rights over connecting lines of SLWC and BNSF between Snyder, Oklahoma, and Altus, Oklahoma. The Board issued a notice of exemption for the supplemental trackage rights, and subsequently granted the accompanying petition to revoke to allow the supplemental trackage rights to expire on the tenth anniversary of their execution. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and Stillwater Central Railroad Company*, STB Finance Docket No. 35332 (served December 17, 2009), and STB Finance Docket No. 35332 (Sub-No. 1) (served March 12, 2010).

GNBC subsequently agreed with BNSF and SLWC to amend the trackage rights to permit additional local service by GNBC to a grain shuttle facility located along the trackage rights lines in Headrick, Oklahoma. Based on the negotiated commercial terms, the parties agreed that the amended trackage rights (and the supplemental trackage rights previously approved) would terminate on February 1, 2023. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and Stillwater Central Railroad Company*, STB Docket No. FD 35719 (served March 15, 2013), and STB Docket No. FD 35719 (Sub-No. 1) (served May 22, 2013). In 2014, GNBC again agreed with BNSF and SLWC to amend the trackage right in 2014 to allow GNBC to provide local service to a grain shuttle facility in Eldorado, Oklahoma. Under this agreement, the parties negotiated commercial terms for the trackage rights expire upon the expiration of the previous amendment to the trackage rights, on February 1, 2023. *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and*

Stillwater Central Railroad LLC, STB Docket No. FD 35831 (served June 12, 2014), and STB Docket No. FD 35831 (Sub-No. 1)(served Aug. 25, 2014).

GNBC is today filing a Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) with the Board, seeking a further amendment of the trackage rights to allow GNBC: (1) To use the Joint Facilities to deliver and pull cars to and from the existing Plains Cotton Cooperative Association facility near BNSF Chickasha Subdivision MP 688.6 at Altus, OK, for the purpose of building unit trains with distributive power. GNBC is permitted to operate on BNSF's mainline (the Joint Facilities) as necessary. (2) To operate additional trains on the Joint Facilities in order to accommodate the movement of trains transporting BNSF Customers' railcars (loaded or empty) located along the Joint Facilities, to unit train facilities on the Joint Facilities. The purpose of this petition is to partially revoke the trackage rights exemption that GNBC is obtaining in order to allow the most recent amendment to the trackage rights to expire on the termination date negotiated by the parties -twelve months from the effective date. (The termination date of the underlying trackage rights as supplemented and amended will not be affected.)

Discussion

Although GNBC on the one hand, and BNSF on the other hand, expressly agreed in the written agreement governing these amended trackage rights that they should expire twelve months following the effective date, the current amendment to the trackage rights would normally remain effective indefinitely until GNBC received authority to discontinue the rights. *See Railroad Consolidation Procedures – Exemption for Temporary Trackage Rights*, STB Ex Parte No. 282 (Sub-no. 20), served February 10, 2003, at 2-3 (“*Temporary Trackage Rights Exemption NPR*”).

The Board has adopted regulations creating a class exemption for “temporary trackage rights” that allow overhead trackage rights in given circumstances to automatically terminate on a date negotiated by the parties. *See* 49 C.F.R. §§1180.2(d)(8), 1180.4(g). However, the class exemption is applicable only if the temporary trackage rights are overhead, and only if the term is less than one year. In this instance, the parties have negotiated limited local trackage rights, and therefore, the class exemption does not apply.

The Board is directed by 49 U.S.C. §10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. Allowing the supplemental trackage rights in this proceeding to expire in accordance with the negotiated agreement would be fully consistent with the standards of Section 10502. Detailed scrutiny of a discontinuance application is not required to carry out the transportation policy of 49 U.S.C. §10101, and the transaction is clearly limited in scope and will not result in any abuse of market power.

In similar situations, the Board has “routinely” granted individual petitions to allow trackage rights to expire on a negotiated date. *Temporary Trackage Rights NPR*, at 3. *See, e.g., Union Pacific Railroad Company – Temporary Trackage Rights Exemption (Modification) – The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34554 (Sub-No. 3), served March 25, 2005; *The Burlington Northern and Santa Fe Railway Company – Trackage Rights Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 34316 (Sub-No. 1), served May 16, 2003. Indeed, the Board has three times previously granted GNBC’s petition to allow the amended trackage rights between the parties which are being

amended to expire on a particular negotiated date. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and Stillwater Central Railroad Company*, STB Docket No. FD 35719 (Sub-No. 1) (served May 22, 2013); *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and Stillwater Central Railroad Company*, STB Finance Docket No. 35332 (Sub-No. 1) (served March 12, 2010); and *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company and Stillwater Central Railroad LLC*, STB Docket No. FD 35831 (served June 12, 2014), and STB Docket No. FD 35831 (Sub-No. 1)(served Aug. 25, 2014).

The grant of this Petition is necessary for the parties to realize the negotiated economic benefits of the amended trackage rights, and BNSF would not have granted the rights if not for their limited nature. The relief requested is clearly limited in scope in that the underlying transaction only involves the addition of local service to one additional customer in addition, and some limited additional train movements to the existing overhead and limited local trackage rights of GNBC which will not terminate. In proposing the temporary trackage rights exemption, the Board found:

Individual approval of trackage rights transactions for which the carriers seek authorization for a limited period of time does not appear to be necessary to carry out the goals of the RTP. Rather, exempting such proposals as a class would promote the RTP by eliminating the need to file a second pleading seeking discontinuance when the agreement expires, thereby minimizing regulation of the rail system (49 U.S.C. 10101(2)), promoting the continuation of a sound rail system by facilitating the process of line repair and maintenance (49 U.S.C. 10101(4)), and promoting coordination between rail carriers (49 U.S.C. 10101(5)). The proposed class exemption would also reduce the regulatory uncertainty of the parties, facilitate the parties' ability to reach agreement on temporary trackage rights, reduce the filing fees required of carriers seeking such rights, and encourage more use of trackage rights in general and temporary trackage rights in particular. 49 U.S.C. 10101(7), (15).

Temporary Trackage Rights Exemption NPR, at 3. For the same reasons that the Board adopted the class exemption, and previously approved the termination of the various supplements and amendments of the trackage rights between the parties, it should also in this proceeding allow the new amended trackage rights to expire at the time negotiated by the parties. In addition to the policies cited by the Board, the grant of the requested relief will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

As with the class exemption for temporary trackage rights, GNBC understands that at the time of the expiration of the rights, any employees adversely affected by the discontinuance of these temporary trackage rights will be entitled to protection under the conditions imposed in *Oregon Short Line Railroad Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Conclusion

For the foregoing reasons, GNBC requests that the Board grant this Petition for Partial Revocation and permit the amended trackage rights to expire twelve months from the effective date, in accordance with the terms of the written trackage rights amendments between the respective parties.

Respectfully submitted,



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