

SERVICE DATE - APRIL 20, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36486 (Sub-No. 1)

GRAINBELT CORPORATION—TRACKAGE RIGHTS EXEMPTION—BNSF RAILWAY
COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved trackage rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: April 19, 2021

By petition filed on February 26, 2021, Grainbelt Corporation (GNBC) requests that the Board partially revoke the trackage rights exemption granted to it under 49 C.F.R. § 1180.2(d)(7) in Docket No. FD 36486, as necessary to permit that trackage rights arrangement to expire twelve months from the effective date of the exemption. GNBC filed its verified notice of exemption in Docket No. FD 36486 on February 26, 2021, and simultaneously filed its petition for partial revocation in this docket. Notice of the exemption was served and published in the Federal Register (86 Fed. Reg. 14,176) on March 12, 2021, and the exemption became effective on March 28, 2021.

As explained by GNBC in its verified notice of exemption in Docket No. 36486, GNBC and BNSF Railway Company (BNSF) have entered into an amendment to their existing trackage rights agreement covering trackage between approximately milepost 668.73 in Long, Okla., and approximately milepost 723.30 in Quanah, Tex. (the Line), allowing GNBC to (1) use the Line to access the Plains Cotton Cooperative Association (PCCA) facility near BNSF Chickasha Subdivision milepost 688.6 at Altus, Okla., and (2) to operate additional trains on the Line to accommodate the movement of trains transporting BNSF customers' railcars (loaded or empty) located along the Line, to unit train facilities on the Line.² GNBC Verified Notice of

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² GNBC states that it already holds overhead trackage rights granted by BNSF's predecessor between Snyder Yard at milepost 664.00 and Quanah at milepost 723.30, allowing GNBC to interchange at Quanah with BNSF and Union Pacific Railroad Company. GNBC Verified Notice of Exemption 2, Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry., FD 36486. According to GNBC, these original trackage rights were supplemented in 2009 to allow GNBC to operate between Snyder, Okla., and Altus, with the right to perform limited local

Exemption 1-3, Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry., FD 36486.

GNBC explains that the trackage rights covered by the verified notice in Docket No. FD 36486 are local rather than overhead rights and therefore they do not qualify for the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8). (GNBC Pet. 4.) GNBC therefore filed its verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7) and, in this sub-docket, filed a petition for partial revocation of the exemption as necessary to permit the amendment to the trackage rights to expire twelve months from the effective date, on March 28, 2022,³ pursuant to the parties' agreement.⁴ (*Id.* at 3.) GNBC argues that the requested relief will promote the rail transportation policy and is limited in scope. (*Id.* at 4-6.) GNBC also asserts that the Board has routinely granted similar petitions to allow trackage rights to expire on a negotiated date. (*Id.* at 4-5.)

On March 4, 2021, GNBC filed in Docket Nos. FD 36486 and FD 36486 (Sub-No. 1) letters of support from PCCA and Cargill Cotton asking that the Board promptly grant GNBC's requests in both dockets.

DISCUSSION AND CONCLUSIONS

Although GNBC and BNSF have expressly agreed on the duration of the proposed trackage rights, trackage rights approved under the class exemption at § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time rather than lasting in perpetuity. *See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 3) (STB served Feb. 23, 2021); *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 1) (STB served Mar. 11, 2020); *New Orleans Pub. Belt R.R.—Trackage Rts. Exemption—Ill. Cent. R.R.*, FD 36198 (Sub-No. 1) (STB served June 20, 2018).

service at Long, Okla. *Id.* (citing Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry., FD 35332 (STB served Dec. 17, 2009)). GNBC states that the trackage rights were further amended in 2013 to allow GNBC to provide local service to a grain shuttle facility in Headrick, Okla., and again in 2014 to allow GNBC to provide local service to a grain shuttle facility in Eldorado, Okla. *Id.* (citing Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry., FD 35719 (STB served Mar. 15, 2013), and Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry., FD 35831 (STB served June 12, 2014)).

³ On March 5, 2021, GNBC filed a supplement to clarify that the “effective date” referred to in the petition is the effective date of the exemption, which it identifies as March 29, 2021. (GNBC Suppl. 1.) However, the effective date of the exemption was March 28, 2021 (30 days from the filing of the verified notice); accordingly, the Board will interpret the petition as seeking to allow the trackage rights to expire on March 28, 2022.

⁴ GNBC states that the expiration of the trackage rights amendment sought here will not affect the termination date of the underlying trackage rights as supplemented and amended. (GNBC Pet. 3.)

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when the Board finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Granting partial revocation in these circumstances to permit the trackage rights to expire twelve months after the exemption's effective date would eliminate the need for GNBC to file a second pleading seeking discontinuance when the agreement expires, thereby promoting the rail transportation policy at 49 U.S.C. § 10101(2), (7), and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights is consistent with the limited scope of the transaction previously exempted.⁵ Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36486 to expire twelve months after the effective date of the exemption, on March 28, 2022.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.
2. As discussed above, the trackage rights in Docket No. FD 36486 are permitted to expire on March 28, 2022, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice of this decision will be published in the Federal Register.
4. This decision is effective on May 20, 2021. Petitions to stay must be filed by April 30, 2021. Petitions for reconsideration must be filed by May 10, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

⁵ Because the proposed transaction is of limited scope, the Board need not make a market power finding. See 49 U.S.C. § 10502(a).