

SERVICE DATE – APRIL 6, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36486 (Sub-No. 3)¹

GRAINBELT CORPORATION—TRACKAGE RIGHTS EXEMPTION—BNSF RAILWAY
COMPANY

Digest:² 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 5, 2022

By petition filed on February 11, 2022, 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 (Sub-No. 2), as necessary to permit that trackage rights arrangement to expire on March 28, 2023. GNBC filed its verified notice of exemption on February 11, 2022, and simultaneously filed its petition for partial revocation. Notice of the exemption was served and published in the Federal Register (87 Fed. Reg. 13,039) on March 8, 2022, and the exemption became effective on March 22, 2022.

As explained by GNBC in its verified notice of exemption in Docket No. FD 36486 (Sub-No. 2), GNBC and BNSF Railway Company (BNSF) have entered into an amendment to extend the term of the previously amended, local trackage rights on trackage owned by BNSF 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) 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 (collectively, the PCCA Trackage Rights). (GNBC Verified Notice of Exemption 1-3, Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry., FD 36486 (Sub-No. 2).)

¹ The pleadings in this docket were originally filed in Docket No. FD 36580 (Sub-No. 1), but given that the trackage rights at issue are the same as those in Docket No. FD 36486, this proceeding has been changed to a subdocket of that original proceeding.

² 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).

GNBC explains that the trackage rights covered by the verified notice in Docket No. FD 36486 (Sub-No. 2) 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 a petition for partial revocation of the exemption as necessary to permit the PCCA Trackage Rights to expire on March 28, 2023, pursuant to the parties' agreement. (GNBC Pet 3.) GNBC argues that the requested relief will promote the rail transportation policy and is limited in scope. (*Id.* at 4-5.) GNBC also asserts that the Board has routinely granted similar petitions to allow trackage rights to expire on a negotiated date. (*Id.* at 5.)

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 49 C.F.R. § 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).

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 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.³ Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36486 (Sub-No. 2) to expire on March 28, 2023.

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).

³ Because the proposed transaction is of limited scope, the Board need not make a market power finding. See 49 U.S.C. § 10502(a).

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 (Sub-No. 2) are permitted to expire on March 28, 2023, subject to the employee protective conditions set forth in Oregon Short Line Railroad, 360 I.C.C. 91.
3. Notice of this decision will be published in the Federal Register.
4. This decision is effective on May 6, 2022. Petitions to stay must be filed by April 18, 2022. Petitions for reconsideration must be filed by April 26, 2022.

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