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February 21, 2023
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February 21, 2023

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration, Office of
Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: STB Finance Docket Nos. 36486 (Sub-No. 4) and 36486 (Sub-No. 5)
Grainbelt Corporation - Trackage Rights Exemption -
BNSF Railway Company

Dear Ms. Brown:

Enclosed for filing in the above referenced Sub-No. 4 docket is a Trackage Rights Notice of Exemption for Grainbelt Corporation ("GNBC"). In addition, GNBC is filing in Finance Docket 36486 (Sub-No. 5) a Petition for Partial Revocation to permit the partial revocation of the trackage rights.

The filing fees have been paid via pay.gov. If there are any questions related to this filing, please contact me.

Respectfully,

CLARK HILL

/s/ *Eric M. Hocky*

Eric M. Hocky
Counsel for Grainbelt Corporation

EMH:e
Enclosures

FILED
February 21, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 21, 2023
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36486 (Sub-No. 5)

GRAINBELT CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
BNSF RAILWAY COMPANY

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

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Dated: February 21, 2023

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36486 (Sub-No. 5)

GRAINBELT CORPORATION
- TRACKAGE RIGHTS EXEMPTION -
BNSF RAILWAY COMPANY

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 current amendment to the trackage rights agreements provides that a portion of the local rights previously granted to GNBC (“the PCCA Trackage Rights”) are being extended, but will expire automatically on March 31, 2024, as specified in the amendment.² GNBC is filing this Petition for Partial Revocation seeking authority to allow the expiration of the PCCA Trackage Rights upon the new negotiated termination date as set forth in the current amendment, without the need to seek discontinuance authority at that time. BNSF agrees to the relief requested herein. Revocation is

¹ The amendment is to the same original underlying overhead trackage rights agreement which was originally entered into between GNBC and BNSF’s predecessor, and which was subsequently partially assigned by BNSF to SLWC. The original agreement has been subsequently been amended to grant GNBC various local trackage rights along the line.

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. The “PCCA Trackage Rights” are defined in the Notice of Exemption.

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.

Background

GNBC holds overhead trackage rights granted by the predecessor of BNSF between Snyder Yard, milepost 664.00 and Quanah, Texas, milepost 723.30 (the “original trackage rights”), under which GNBC has the right to interchange at Quanah with BNSF and with Union Pacific Railroad (as the successor to Southern Pacific Railroad). BNSF subsequently sold a portion of the subject trackage to Stillwater Central Railroad, LLC f/k/a Stillwater Central Railroad, Inc. The original overhead trackage rights have been amended over the years to allow various local services to be provided.

In 2021, BNSF and GNBC amended the trackage rights again to include the PCCA Trackage Rights allowing: (1) GNBC 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. These rights also permit GNBC to operate on BNSF's mainline (the Joint Facilities) as necessary; and (2) GNBC 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. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (served March 12, 2021). Subsequently, in STB Docket No. FD 36486 (Sub-No. 1) (served April 20, 2021), the Board granted GNBC a petition for partial revocation of this trackage rights exemption to allow the PCCA Trackage Rights to expire on March 28, 2022.

In 2022, the Board approved a notice of exemption permitting BNSF and GNBC to enter into an amendment to extend the PCCA Trackage Rights. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 2) (served March 8, 2022). As it did in 2021, the Board subsequently granted GNBC a petition for partial revocation of the PCCA Trackage Rights exemption to allow them to expire on March 28, 2023. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 3) (served April 6, 2022).

GNBC is today filing a Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) with the Board, seeking authority for a further extension to the PCCA Trackage Rights granted in 2021 and extended in 2022. The purpose of this petition is to partially revoke the trackage rights exemption that GNBC is seeking in order to allow the PCCA Trackage Rights to expire on March 31, 2024, the new termination date negotiated by the parties and set forth in the current amendment.

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 on the negotiated termination 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 previously granted two previous GNBC petitions in this docket to allow the PCCA Trackage Rights to expire on a particular negotiated date. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 1) (served April 20, 2021); and *Grainbelt Corporation – Trackage Rights*

Exemption – BNSF Railway Company, STB Docket No. FD 36486 (Sub-No. 3) (served April 6, 2022).

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 extension if not for its limited nature. The relief requested is clearly limited in scope in that the underlying transaction only involves the extension of local service that has previously been authorized to one additional customer, 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 PCCA Trackage Rights amendments of the trackage rights between the parties, it should also in this proceeding allow the new amended PCCA Trackage Rights agreement 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 current amended PCCA Trackage Rights to expire on March 31, 2024, in accordance with the terms of the written trackage rights amendment negotiated by the parties.

Respectfully submitted,



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