

SERVICE DATE – MAY 22, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35719 (Sub-No. 1)

GRAINBELT CORPORATION—TRACKAGE RIGHTS EXEMPTION—BNSF RAILWAY  
COMPANY AND STILLWATER CENTRAL RAILROAD COMPANY

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

Decided: May 16, 2013

By petition filed on February 28, 2013, Grainbelt Corporation (GNBC) requests that the Board partially revoke a class exemption to permit the amended trackage rights arrangements between grantee GNBC and grantors BNSF Railway Company (BNSF) and Stillwater Central Railroad Company (SLWC) exempted in Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company and Stillwater Center Railroad Company, Docket No. FD 35719, served and published in the Federal Register on March 15, 2013 (78 FR 16,570), to expire on February 1, 2023.

In the notice of exemption, BNSF and SLWC each agreed to grant amended trackage rights to GNBC, which together allow GNBC to provide local service to a grain shuttle facility in Headrick, Okla. Specifically, BNSF has amended its trackage rights to permit local service over the connecting line between the connection with SLWC east of Long, Okla. (milepost 668.73), and Altus, Okla. (milepost 688.00), and SLWC has amended its trackage rights to permit local service between Snyder Yard (milepost 664.00) and its connection with BNSF east of Long (milepost 668.73).

Prior to the amended trackage rights arrangement exempted in Docket No. FD 35719, GNBC already held overhead trackage rights granted by the predecessor of BNSF between Snyder Yard (milepost 664.00) and Quanah, Tex. (milepost 723.30), under which GNBC has the right to interchange at Quanah with BNSF and Union Pacific Railroad Company. BNSF subsequently sold a portion of the subject trackage to SLWC. The original trackage rights were supplemented in 2009 to allow GNBC to operate between Snyder and Altus, with the right to perform limited local service at Long. See Grainbelt Corp.—Trackage Rights Exemption—

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<sup>1</sup> 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BNSF Ry. and Stillwater Cent. R.R., FD 35332 (STB served Dec. 17, 2009). GNBC also requests that the Board extend the expiration date of these supplemental trackage rights, previously set for 2019 by the Board,<sup>2</sup> to February 1, 2023, so that the supplemental and amended trackage rights will expire simultaneously.

## DISCUSSION AND CONCLUSION

Although the parties have expressly agreed on the duration of the amended trackage rights arrangements, 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. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. *See, e.g., Norfolk S. Ry.—Temporary Trackage Rights Exemption—Grand Trunk W. R.R. and Wisconsin Cent. Ltd.*, FD 35715 (Sub-No. 1) (STB served Mar. 19, 2013); *Union Pac. R.R.—Trackage Rights Exemption—The Burlington N. & Santa Fe Ry.*, FD 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

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 it 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.

GNBC's amended trackage rights have already been authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7).<sup>3</sup> *See R.R. Consolidation Procedures—Trackage Rights Exemption*, 1 I.C.C.2d 270 (1985). Granting partial revocation in these circumstances would promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreements expire, thereby promoting the rail transportation policy goals at 49 U.S.C. § 10101(2), (4), (5), (7), and (15). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and would not result in an abuse of market power. This is because the amended trackage rights that are the subject of the exemption are being granted solely to allow GNBC to provide local service between the grain shippers located on GNBC and the grain shuttle facility located at Headrick in single line service. Therefore, we will grant the petition and permit the amended trackage rights exempted in Docket No. FD 35719 to expire on February 1, 2023. We will also grant GNBC's request that the Board extend the date to February 1, 2023, for expiration of the supplemental trackage rights previously granted in Docket No. FD 35332 and set to expire in 2019 in Docket No. FD 35332 (Sub-No. 1), so that the supplemental and amended trackage rights will expire simultaneously.

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<sup>2</sup> *See Grainbelt Corp.—Trackage Rights Exemption—BNSF Ry. and Stillwater Cent. R.R.*, FD 35332 (Sub-No. 1) (STB served Mar. 12, 2010).

<sup>3</sup> GNBC points out that, although the trackage rights are only temporary, because the rights include more than just overhead trackage rights and will remain in effect for more than one year, they do not qualify for the Board's exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8).

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of the amended trackage rights, we 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 (Oregon Short Line), 360 I.C.C. 91 (1979).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 35719 are exempted, as discussed above, to permit the trackage rights to expire on February 1, 2023, subject to the employee protective conditions set forth in Oregon Short Line.
3. GNBC's supplemental trackage rights granted in Docket No. FD 35332, previously set to expire in 2019 in Docket No. FD 35332 (Sub-No. 1), are permitted to expire on February 1, 2023, subject to the employee protective conditions set forth in Oregon Short Line.
4. Notice will be published in the Federal Register on May 22, 2013.
5. This decision will be effective on June 21, 2013. Petitions to stay must be filed by June 3, 2013. Petitions for reconsideration must be filed by June 11, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.