

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35831 (Sub-No. 1)

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

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.

Decided: August 20, 2014

By petition filed on May 27, 2014, Grainbelt Corporation (GNBC) requests that the Board partially revoke a class exemption to permit amended trackage rights agreements between grantee GNBC and grantors BNSF Railway Company (BNSF) and Stillwater Central Railroad, LLC, f/k/a Stillwater Central Railroad, Inc. (SLWC)<sup>2</sup> 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 will allow GNBC to provide local service to a grain shuttle facility in Eldorado, Okla. (between Altus and Quanah). Specifically, BNSF has amended its trackage rights with GNBC to permit local service over the connecting line between the connection with SLWC east of Long (milepost 668.73) and Quanah (milepost 723.30), and SLWC has amended its trackage rights with GNBC 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 35831, GNBC held overhead trackage rights granted by the predecessor of BNSF between Snyder Yard (milepost 664.00) and Quanah, Tex. (milepost 723.30). Pursuant to those rights GNBC may 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. Grainbelt Corp.—Trackage Rights Exemption—BNSF Ry. & Stillwater Cent. R.R., FD 35332 (STB served Dec. 17, 2009). The trackage rights were further amended in 2013 to allow GNBC to provide local grain service to a shuttle facility in Headrick, Okla.

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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).

<sup>2</sup> These agreements were originally exempted in Grainbelt Corp.—Trackage Rights Exemption—BNSF Railway & Stillwater Center Railroad, Docket No. FD 35831, served and published in the Federal Register on June 12, 2014 (79 Fed. Reg. 33,803).

Grainbelt Corp.—Trackage Rights Exemption—BNSF Ry. & Stillwater Cent. R.R., FD 35719  
(STB served Mar. 15, 2013).

## DISCUSSION AND CONCLUSIONS

Although the parties have expressly agreed on the duration of the amended trackage rights agreements, 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. Trackage rights may be acquired temporarily under 49 C.F.R. § 1180.2(d)(8). But that class exemption is limited to overhead rights which will remain in effect for less than one year.

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). See R.R. Consol. Procedures—Trackage Rights Exemption, 1 I.C.C. 2d 270 (1985). GNBC notes that, although the trackage rights are 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). 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 scope of the transaction previously exempted and would not result in an abuse of market power because the amended trackage rights are being granted solely to allow GNBC to provide local service between the grain shippers located on GNBC and the grain shuttle facility located in Eldorado in single line service. Therefore, we will grant the petition and permit the amended trackage rights exempted in Docket No. FD 35831 to expire on February 1, 2023.

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 35831 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. Notice will be published in the Federal Register on August 25, 2014.

4. This decision will be effective on September 24, 2014. Petitions to stay must be filed by September 4, 2014. Petitions for reconsideration must be filed by September 15, 2014.

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