

40440
EB

SERVICE DATE – MARCH 12, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35332 (Sub-No. 1)

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

Decided: March 8, 2010

By petition filed on December 1, 2009, Grainbelt Corporation (GNBC) requests that the Board partially revoke a class exemption to permit the supplemental 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 Central Railroad Company, STB Finance Docket No. 35332 (STB served Dec. 17, 2009) and published in the Federal Register on December 21, 2009 (74 FR 67951-2), to expire 10 years from the execution dates provided in the parties' supplemental trackage rights agreements.¹

In the notice of exemption, BNSF and SLWC each agreed to grant supplemental trackage rights to GNBC, which together will allow GNBC to operate between Snyder and Altus, OK, with the right to provide limited local service at Long, OK. Specifically, BNSF agreed to grant overhead trackage rights, with limited local service rights, over 19.27 miles of trackage between its connection with SLWC at milepost 668.73, east of Long, and milepost 688.00 at Altus (BNSF supplemental trackage rights). SLWC agreed to grant 4.73 miles of overhead trackage rights between milepost 664.0 at or near Snyder Yard and milepost 668.73, at or near Long, to allow GNBC to reach connecting BNSF trackage (SLWC supplemental trackage rights).

GNBC submits that, while 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 class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). GNBC adds that it is filing this petition, with the agreement of BNSF and SLWC, to enable the parties to realize the negotiated economic benefits of the supplemental rights and to allow expiration of those rights without the need for discontinuance authority at that time.

¹ A GNBC motion for protective order was granted by decision served December 17, 2009.

DISCUSSION AND CONCLUSIONS

Trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of contractual provisions to the contrary. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 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 supplemental trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Granting partial revocation in these circumstances will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the agreements expire, thereby promoting 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 will not result in an abuse of market power. Therefore, we will grant the petition and permit the supplemental trackage rights exempted in STB Finance Docket No. 35332 to expire 10 years from the execution dates provided in the parties' supplemental trackage rights agreements.²

In order to provide protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the statutorily mandated employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

This action 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 transaction described in STB Finance Docket No. 35332 is exempted, as discussed above, to permit the BNSF supplemental trackage rights to expire on October 16, 2019, and the SLWC supplemental trackage rights to expire on November 1, 2019, subject to the statutorily mandated employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

² For clarity, specific expiration dates will be set forth in the ordering paragraphs in lieu of GNBC's more general language

3. Notice will be published in the Federal Register on March 12, 2010.
4. This decision is effective on April 11, 2010. Petitions to stay must be filed by March 22, 2010. Petitions for reconsideration must be filed by April 1, 2010.

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