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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

GRAINBELT CORPORATION

- TRACKAGE RIGHTS EXEMPTION -

BNSF RAILWAY COMPANY AND
STILLWATER CENTRAL RAILROAD COMPANY

PETITION FOR PARTIAL REVOCATION
TO PERMIT EXPIRATION OF
SUPPLEMENTAL TRACKAGE RIGHTS

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Dated: November 30, 2009

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- TRACKAGE RIGHTS EXEMPTION -
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On December 1, 2009, Grainbelt Corporation (“GNBC”), a Class III railroad, will be 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 supplemental local trackage rights by BNSF Railway Company (“BNSF”) and Stillwater Central Railroad Company (“SLWC”) to GNBC.¹ The supplemental trackage rights agreements provide that the rights granted will expire on the tenth anniversary of the execution of the agreements.² GNBC is filing this Petition for Partial Revocation seeking authority to allow the expiration of the trackage rights upon the negotiated termination date, without the need to seek discontinuance authority at that time. BNSF and SLWC agree with the relief requested. Revocation is consistent with the rail transportation policy as set forth in 49

¹ The two supplements are to the same original underlying trackage rights agreement which was between GNBC and BNSF’s predecessor. A portion of the subject trackage was subsequently sold by BNSF to SLWC.

² A “public” version of each of the supplemental trackage rights agreements which reflects the negotiated termination date was attached to the Notice of Exemption being filed with the Board on December 1, 2009.

U.S.C. §10101, is of limited scope and regulation is not required to protect shippers from abuse of market power.

Background

GNBC has entered into written supplemental trackage rights agreements with BNSF and SLWC under which GNBC was granted certain local trackage rights over connecting lines of SLWC and BNSF between Snyder, Oklahoma, and Altus, Oklahoma, a total distance of less than 25 miles. Based on the negotiated commercial terms, the parties agreed that the supplemental trackage rights would terminate on the tenth anniversary of their execution. GNBC will be filing a Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) with the Board on December 1, 2009, and the supplemental trackage rights will be effective as of January 1, 2010. The purpose of this petition is to partially revoke the trackage rights exemption that GNBC is obtaining in order to allow the supplemental trackage rights to expire on the termination date negotiated by the parties.

Discussion

Although GNBC on the one hand, and BNSF and SLWC, respectively on the other hand, expressly agreed in the written agreement governing these supplemental trackage rights that they should expire on their tenth anniversary, the supplemental 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 a term of ten years, 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.

The grant of this Petition is necessary for the parties to realize the negotiated economic benefits of the supplemental trackage rights, and BNSF and SLWC would not have granted the rights if not for their limited nature. The relief requested is clearly limited in scope in that the underlying transaction only involves less than 25 miles of supplemental trackage rights that grant only limited local rights, in addition to the existing overhead 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, it should allow the supplemental trackage rights in this proceeding 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 supplemental trackage rights to expire on the tenth anniversary of their execution, in accordance with the terms of the written trackage rights agreements between the respective parties.

Respectfully submitted,



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