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**Before the**  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36486 (Sub-No. 7)

**GRAINBELT CORPORATION**  
**- TRACKAGE RIGHTS EXEMPTION -**  
**BNSF RAILWAY COMPANY**

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

ERIC M. HOCKY  
CLARK HILL PLC  
Two Commerce Square  
2001 Market St.  
Suite 2620  
Philadelphia, PA 19103  
(215) 640-8523  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

JUSTIN J. MARKS  
CLARK HILL PLC  
1001 Pennsylvania Ave. N.W.  
Suite 1300 South  
Washington, DC 20004  
(202) 772-0916  
[jmarks@clarkhill.com](mailto:jmarks@clarkhill.com)

*Counsel for Grainbelt Corporation*

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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.<sup>1</sup> This 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, 2025, as specified in the amendment.<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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 and 2023, the Board approved notices of exemption permitting BNSF and GNBC to enter into amendments to extend the PCCA Trackage Rights for each of those years. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 2) (served March 8, 2022); *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 4) (served March 9, 2023).

As it did previously, in 2022 and 2023, 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 and March 31, 2024 respectively. *See Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 3) (served April 6, 2022); *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 5) (served May 15, 2023).

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 and 2023. 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, 2025, 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 Exemption 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 three 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); *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 3) (served April 6, 2022); and *Grainbelt Corporation – Trackage Rights Exemption – BNSF Railway Company*, STB Docket No. FD 36486 (Sub-No. 5) (served May 15, 2023).

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, 2025, in accordance with the terms of the written trackage rights amendment negotiated by the parties.

Respectfully submitted,



ERIC M. HOCKY  
CLARK HILL PLC  
Two Commerce Square  
2001 Market St.  
Suite 2620  
Philadelphia, PA 19103  
(215) 640-8523  
ehocky@clarkhill.com

JUSTIN J. MARKS  
CLARK HILL PLC  
1001 Pennsylvania Ave. N.W.  
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