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SERVICE DATE - MARCH 14, 2003

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Docket No. AB-845X

CHS HOLDINGS, INC.—ABANDONMENT EXEMPTION—IN PEMBINA COUNTY, ND

Decided: March 12, 2003

By petition filed on November 25, 2002, CHS Holdings, Inc. (CHS), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon its entire line of railroad extending from milepost 177.44 to the end of the line at milepost 179.55, a distance of 2.11 miles, in Pembina County, ND.<sup>1</sup> We will grant the exemption, subject to an environmental condition.

### BACKGROUND

The line proposed for abandonment has been used primarily to serve a single shipper, Cenex Harvest States Cooperatives (Cenex Harvest), the owner of CHS. According to CHS, occasionally it has switched cars to and from the adjacent facility of J. R. Simplot Company (J. R. Simplot). CHS states that, following abandonment, the line will be used by Cenex Harvest as an industrial spur. The line connects with The Burlington Northern and Santa Fe Railway Company at Joilette, ND, and Cenex Harvest will bring empty hopper cars to, and pick up loaded hopper cars from, the interchange. In addition, Cenex Harvest will occasionally serve the J. R. Simplot facility under a contract. CHS submits letters in support of the abandonment from Cenex Harvest and J. R. Simplot.

### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on December 13, 2002 (67 FR 76774-75).

Detailed scrutiny of the proposed abandonment under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. The only shippers that have used the line support the abandonment. Nevertheless, to ensure that these shippers are informed of our action, we will require CHS to serve a copy of this decision on Cenex Harvest and J. R. Simplot within 5 days from the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, we do not normally impose employee protective conditions when a carrier abandons its entire line unless the evidence shows the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.—Abandonment, 354 I.C.C. 784 (1978) (Northampton). CHS proposes to abandon its entire line. According to CHS, the line of railroad proposed for abandonment is not part of a system of railroad lines which would benefit from the proposed abandonment. Further, there is no evidence to show that the situation for imposing labor protection in entire line abandonments under Northampton exists in this case. Under the circumstances, we will not impose labor protective conditions.

CHS has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on January 24, 2003, and requested comments by February 23, 2003.

In the EA, SEA indicated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has identified two geodetic station markers, A-59 and Z-58, that may be affected by the proposed abandonment. SEA therefore recommended that the following condition be imposed on any decision granting abandonment authority to alleviate the concern of NGS: that CHS notify NGS at least 90 days prior to any salvage activities that may disturb or destroy the geodetic markers on the line, so that plans can be made for their relocation.

No comments in response to the EA were received. Accordingly, we will impose the condition recommended by SEA in the EA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that, following the abandonment, the right-of-way may be suitable for other public use. We note, however, that no one has sought a public use condition and none will be imposed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to the condition that CHS shall notify NGS 90 days prior to any salvage activities that may disturb or destroy the geodetic markers, A-59 and Z-58, on the line so that plans can be made for their relocation.
2. CHS is directed to serve a copy of this decision on Cenex Harvest and J. R. Simplot within 5 days after the service date of this decision and to certify to the Board that it has done so.
3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by March 24, 2003, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).
4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"
5. Provided no OFA has been received, this exemption will be effective April 13, 2003. Petitions to stay must be filed by March 31, 2003, and petitions to reopen must be filed by April 8, 2003.
6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CHS shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CHS's filing of a notice of consummation by March 14, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will

automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams  
Secretary