

Before the
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
November 22, 2022
Part of
Public Record

STB Docket No. AB 1327X

FLATS INDUSTRIAL INC. D/B/A FLATS INDUSTRIAL RAILROAD COMPANY
- ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO

WERNER G. SMITH, INC. PETITION TO TOLL
PURSUANT TO 49 C.F.R. §1152.27(c)(2)(ii)(C)

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Counsel for Werner G. Smith, Inc.

Dated: November 22, 2022

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1327X

FLATS INDUSTRIAL INC. D/B/A FLATS INDUSTRIAL RAILROAD COMPANY
- ABANDONMENT EXEMPTION –
IN CLEVELAND, OHIO

WERNER G. SMITH, INC. PETITION TO TOLL
PURSUANT TO 49 C.F.R. §1152.27(c)(2)(ii)(C)

On November 10, 2022 Werner G. Smith, Inc. (“WGS”) submitted a Notice of Intent to File an Offer of Financial Assistance (“OFA”) to subsidize a segment of the rail line proposed for abandonment by the Flats Industrial Inc. d/b/a Flats Industrial Railroad Company (“FIR”). WGS subsequently submitted to FIR a request for information under 49 C.F.R. §1152.27(a)(1)(ii).

According to the Board’s OFA regulations at section 1152.27(c)(2)(ii)(B), a WGS offer is due November 30. However, under section 1152.27(c)(2)(ii)(C), WGS may petition the Board to toll the deadline if FIR requires additional time to respond to the WGS information request. FIR responded to the WGS information request stating that FIR will require additional time to gather the requested information.

WGS submits this petition to respectfully request that the Board toll the 30-day period for submitting offers of financial assistance for 60-days. FIR has authorized WGS to inform the Board that FIR does not oppose a WGS request for a 60-day extension. As required by section 1152.27(c)(2)(ii)(C), attached as Exhibit A, is a copy of the WGS request for information.

Respectfully submitted,



Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Counsel for Werner G. Smith, Inc.

Dated: November 22, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of November 2022, I served a copy of the foregoing on the parties of record in this proceeding and the attorneys for Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company: Crystal Zorbaugh (czorbaugh@bakerandmiller.com) and William Mullins (wmullins@bakerandmiller.com).



Justin J. Marks
CLARK HILL PLC
1001 Pennsylvania Ave. NW
Suite 1300 South
Washington, DC 20004
202.772.0916
jmarks@clarkhill.com

EXHIBIT A

Marks, Justin J.

From: Marks, Justin J.
Sent: Friday, November 18, 2022 4:55 PM
To: William Mullins; Crystal Zorbaugh
Cc: Hocky, Eric M.
Subject: Werner G. Services OFA Information Request

Bill/Crystal:

As a follow up to my email from last week, this is a request from WGS for FIR to provide information as provided under 49 CFR 1152.27(a) - an estimate of the annual subsidy that would be required on the segment of line identified in the Notice of Intent to file an OFA; FIR's most recent reports on the physical condition of the involved line; and an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards.

I understand that the Board has not issued a decision yet on whether WGS is preliminarily financially responsible, however under the Board's regulations at 49 CFR 1152.27(c)(1)(ii), for the purposes of obtaining information about a rail line, an offeror will be deemed to be preliminarily financially responsible by a Board decision or within 10 days of an offeror's filing the notice of intent to file an OFA. Considering that the ten-day period expires on Sunday and its nearly 5pm - Friday and we haven't yet received a decision from the Board, it appears that the Board will not be issuing a decision and is instead letting the ten day period lapse.

Please let me know how fast you think FIR can produce this information or whether we should toll the schedule to allow FIR time to collect it.

Thanks,

Justin

Justin J. Marks

Attorney at Law

Clark Hill

1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004
+1 202.772.0916 (office) | +1 703.215.6938 (cell) | +1 202.772.0930 (fax)
jmarks@clarkhill.com | www.clarkhill.com

From: Marks, Justin J.
Sent: Thursday, November 10, 2022 6:33 PM
To: William Mullins <wmullins@bakerandmiller.com>; Crystal Zorbaugh <czorbaugh@bakerandmiller.com>
Cc: Hocky, Eric M. <ehocky@clarkhill.com>
Subject: Notice of Intent to File an OFA - Subsidy

Bill/Crystal:

I intended to give you a call earlier but the day ran away from me. Attached is a Notice of Intent to file an OFA to subsidize continued service on the line of the Flats Industrial Railroad Company (FIR) on behalf of Werner G. Smith, Inc. (WGS). Also attached is a motion for protective order. We filed a Profit and Loss statement under seal.

Once the Board determines that WGS is preliminarily financial responsible or if it fails to issue a determination after ten days, we'd appreciate if FIR would provide the relevant information as provided under section 1152.27(a).

Thanks,

Justin

Justin J. Marks

Attorney at Law

Clark Hill

1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004

+1 202.772.0916 (office) | +1 703.215.6938 (cell) | +1 202.772.0930 (fax)

jmarks@clarkhill.com | www.clarkhill.com