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SERVICE DATE – NOVEMBER 29, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1327X

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

Decided: November 29, 2022

Flats Industrial Inc. d/b/a Flats Industrial Railroad Company (FIR), filed a notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon approximately 1.85 miles of rail line, extending from milepost 10 to milepost 11.85, near West 41st Street in Cleveland, Ohio (the Line), which constitutes FIR’s entire railroad system. Notice of the exemption was served and published in the Federal Register on October 31, 2022 (87 Fed. Reg. 65,640).¹

The exemption was scheduled to become effective on November 30, 2022, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Werner G. Smith, Inc. (WGS), to subsidize a portion of the Line, from milepost 11.85 to the WGS facility. The filing of the notice of intent automatically stayed the effective date of the exemption until December 10, 2022.² On November 22, 2022, WGS filed a petition to toll the OFA filing deadline, stating that FIR required additional time to gather the information WGS had requested under 49 C.F.R. § 1152.27(a). WGS requests that the Board toll the period for submitting OFAs for 60 days and states that FIR does not oppose the extension request.

The Board considers requests to toll the period for filing an OFA when additional time is needed for a railroad to provide a potential offeror with the information necessary to the development of an OFA and that information is not contained in the notice of exemption. See 49 C.F.R. § 1152.27(c)(2)(ii)(C). Accordingly, the request for an extension of the OFA filing deadline will be granted and WGS’s OFA will be due by January 29, 2023. The effective date of the exemption is postponed until February 8, 2023.³

¹ A corrected notice was served and published on November 8, 2022 (87 Fed. Reg. 67,532).

² See 49 C.F.R. § 1152.27(c)(2)(i).

³ Environmental conditions, requests for public use conditions, and requests for issuance of notices of interim trail use and rail banking under the National Trails System Act, 16 U.S.C. § 1247(d), if any, will be addressed in a future decision.

It is ordered:

1. This proceeding is reopened.
2. The deadline for WGS to file its OFA is extended to January 29, 2023.
3. The effective date of the exemption is postponed until February 8, 2023.
4. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.