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January 30, 2023

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January 29, 2023

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Flats Industrial Inc. d/b/a Flats Industrial Railroad Company-Abandonment
Exemption-in Cleveland, Ohio
Surface Transportation Board Docket No. AB 1327X

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is an Offer of Financial Assistance submitted on behalf of Werner G. Smith, Inc.

The filing fee has been paid via pay.gov. If there are any questions pertaining to this filing, please let me know.

Sincerely,



Justin J. Marks
Counsel to Werner G. Smith, Inc.

Enclosure

FILED
January 30, 2023
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 30, 2023
SURFACE
TRANSPORTATION BOARD

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. OFFER OF FINANCIAL ASSISTANCE

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Counsel for Werner G. Smith, Inc.

Dated: January 29, 2023

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. OFFER OF FINANCIAL ASSISTANCE

Werner G. Smith, Inc. (“WGS”) hereby files this offer of financial assistance (“OFA”) to subsidize operations over a segment of rail line proposed for abandonment by the Flats Industrial Inc. d/b/a Flats Industrial Railroad Company (“FIR”). WGS is submitting its OFA in accordance with the Board’s regulations at 49 C.F.R. §1152.27, which require an offeror to show that its OFA is reasonable and that it is financially responsible.

On October 31, 2022 (corrected November 8), the Board issued a decision stating that FIR filed a notice of exemption 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 “FIR Line”).

On November 10, 2022, WGS filed a timely formal expression of intent to file an OFA to subsidize a portion of the line extending from milepost 11.85 to the WGS facility, and on November 18, 2022, WGS submitted a request for information under 49 C.F.R. §1152.27(a). Subsequently, FIR indicated that it required additional time to produce the information as required under 49 C.F.R. §1152.27(a). In a decision issued November 29, 2022, the Board extended the deadline for WGS to file its OFA to January 29, 2023 and postponed the effective date of the abandonment until February 8, 2023, to allow FIR to gather the information that WGS requested under 49 C.F.R. § 1152.27(a). FIR provided the requested information on January 19, 2023 (“FIR Information for Subsidy”).

WGS submits this OFA to subsidize a portion of the FIR Line subject to this proceeding extending from milepost 11.85 to the WGS facility. The WGS subsidy offer is \$5,333 per month or \$64,000 per year which does not include any additional revenue that FIR could generate from cars shipped and received at the WGS facility.

WGS respectfully requests that the Board accept the WGS OFA. WGS further requests that the Board, in accordance with 49 C.F.R. §1152.27(e)(2), postpone the effective date of the decision granting the FIR notice of exemption, partially revoke the notice of exemption, and institute negotiations.

Contents of the WGS Offer

WGS provides the following information in accordance with 49 C.F.R §1152.27(c)(1)(iv):

(A) Identify the line, or the portion of the line, in question;

WGS proposes to subsidize from the connection point with Norfolk Southern Railway Company (“NSR”) at Milepost 11.85 to the WGS facility, approximately 1.20 miles.

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations. Examples of documentation the Board will accept as evidence of financial responsibility include income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance or ability to obtain adequate insurance. Examples of documentation the Board will not accept as evidence of financial responsibility include the ability to borrow money on credit cards and evidence of non-liquid assets an offeror intends to use as collateral. Governmental entities will be presumed to be financially responsible;

Enclosed with this OFA, Exhibit A, is a Profit and Loss Statement – Reporting a Net Income of \$ [REDACTED] for January 1 – November 10, 2022 and a PNC Bank Line of Credit for \$ [REDACTED] demonstrating that WGS has the financial resources to fulfill its proposed contractual obligation to subsidize the 1.2-mile segment of the line for \$64,000 per year.

(C) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

The WGS offer is a \$64,000 annual subsidy for continued rail service, a lower amount than the FIR Subsidy.

The Board has stated that a “financial assistance offer need not be detailed.” The offeror “must show that it is financially responsible and that the offer is reasonable.” *Union Pac. R.R. Co. – Abandonment – In Polk Cnty, IA In the Matter of an Offer of Financial Assistance*, STB Docket No. AB-33 (Sub-No. 170)(served Jan. 30, 2002)(appeal granted in a decision served Mar. 22, 2002)(“MAR OFA”). An offeror’s subsidy is reasonable if it explains why the subsidy figures of the railroad are too high and its figure should be considered. *Conrail Abandonments Under Nersa*, 365 I.C.C. 472, 476 (I.C.C. 1981).

The Board does not consider the difference between a carrier’s subsidy and the offeror’s offer. The Board considers the reasonableness of the offer. In the MAR OFA, the Board found a \$5,000 offer to be reasonable for a 3.72-mile line of railroad for the parties to initiate negotiations even though Union Pacific valued the line at approximately \$1.6 million. Here, the Board should find that the WGS offer is reasonable.

1. The FIR Subsidy is Too High and the Board Should Consider the WGS OFA

The Board should find that the WGS offer is reasonable because the FIR subsidy of \$3,420,938.13 inflates all of the FIR costs, but specifically FIR inflates its rehabilitation costs (\$353,571.41) and net liquidation value (\$25,479, 439.61). An offeror’s subsidy is reasonable if it explains why the subsidy figures of the railroad are too high and its figure should be considered. *Conrail Abandonments Under Nersa*, 365 I.C.C. 472, 476 (I.C.C. 1981).

In order to develop its subsidy, FIR engaged the services of Mr. Bruce Carswell to “gather as much of the required information as possible, to analyze the material, and to develop the required subsidy amount and rehabilitation costs.”¹ FIR states that Mr. Carswell was assisted by “several financial, legal, and real estate advisors to the company” as well as FIR’s one part-time employee. Despite having all of FIR’s records available to him, (presumably) permission to physically inspect the subsidy portion of the FIR Line, and access to a team of advisors, Mr. Carswell had to rely on “other records, reports, and data in the possession of the carrier” as permitted by section 1152.27(d) instead of the “types of documents or accounts that would have been used in preparing Exhibit 1 (49 CFR 1152.36) had an abandonment or discontinuance application been filed.”²

According to FIR, the “other records” that Mr. Carswell had available to him included “conversations, photos, and inventory reports.”³ Of these three sources, FIR states that only the inventory reports have been produced. FIR did not produce a record of conversations, nor did FIR produce photographs to demonstrate the condition of the line. Further, FIR did not produce any evidence to suggest that Mr. Carswell physically inspected the 1.2 miles of the rail line himself.

- a. The FIR property evaluation is flawed because it includes rail segments outside of the WGS Formal Notice of Intent to File an OFA and because its property evaluation analysis is flawed.

The FIR subsidy estimates a net liquidation value of \$25,479,439.61 that incorporates land value. FIR’s calculation of this number is flawed because it incorporates a greater amount of FIR Line to be abandoned than WGS is seeking to subsidize. WGS seeks to subsidize from

¹ FIR Information for Subsidy at 4.

² FIR Information for Subsidy at 4, n.3 *citing* 49 C.F.R. §1152.27(d).

³ FIR Information for Subsidy at 6.

the connection point with NSR at Milepost 11.85 to the WGS facility, located near Abbey Avenue, a distance of approximately 1.2 miles. Yet, the FIR subsidy estimate incorporates a real estate evaluation of the FIR Line that extends north beyond the WGS facility without explaining why it has chosen to include this extra segment of line.⁴

The FIR methodology for its real estate subsidy estimate is flawed. Although time did not permit WGS to engage a real estate expert to provide an alternative valuation of the subsidy segment of the FIR Line, a simple review of the FIR exhibits indicates that FIR developed its real estate valuation by utilizing nearby real estate sales applying an [REDACTED].⁵

This method is flawed for two reasons. First, this method includes in its evaluation, the segment of rail line north of the WGS facility and outside of the WGS proposed subsidy. Second, this method is not effective in urban areas with a variety of land uses. If, for example, the FIR Line was surrounded by agricultural land, the FIR method may be appropriate because a partial acre of a rail right-of-way could nevertheless be use for planting a crop.⁶ But here, the FIR Line bisects an area of diverse uses. In FIR's analysis, a narrow rail line could attract the same price as a lot with a multi-family residential building. Of course, a narrow right-of-way would be incompatible for multi-family building construction. At best, portions of the WGS subsidy segment could be sold to abutting property owners if those abutting properties could utilize the extra space.⁷ But FIR does not appear to have considered that type of valuation.

⁴ FIR Information for Subsidy at Exhibit 3, FIR-H-0005 and Excel Spreadsheet, FIR-H-0006, [REDACTED]

⁵ See FIR Information for Subsidy at Exhibit 2, FIR-C-0011 and Exhibit 3 FIR-H-0005.

⁶ See FIR Information for Subsidy at Exhibit 4, FIR-P-0011-12.

⁷ See FIR Information for Subsidy at Exhibit 4, FIR-P-0011.

In addition, FIR reports an estimate of its property taxes to be \$2,215.28.⁸ On the one hand, FIR is listing a net liquidation value exceeding \$25 million, but only expects to pay approximately two thousand dollars in property taxes. Understanding that property taxes are not a perfect indicator of what price a piece of land may sell for, the fact that FIR estimates only \$2,215.28 is an indication that the FIR property value is substantially less than \$25,454,439.61.

b. The FIR Rehabilitation Costs are Too High

FIR's expert, Mr. Carswell, estimates that track rehabilitation is \$353,571.41. This figure is too high because in FIR's analysis of rehabilitation costs,⁹ FIR does not state which segments of the line require rehabilitation, if any. Considering FIR's incorporation of track segments outside of the WGS subsidy offer, it is reasonable to infer that track rehabilitation costs are also applied beyond the WGS subsidy segments.

In addition, FIR does not provide any supporting information for why FIR's track requires any rehabilitation. As stated in the FIR Information for Subsidy, Mr. Carswell did not develop this estimate based on "the most recent report on the physical condition of the involved line" because no such reports exist.¹⁰ Nor does FIR submit information to suggest that Mr. Carswell physically inspected the line and FIR does not produce photos or notes of conversations to support the FIR rehabilitation estimate.

Considering the inclusion of a segment of the FIR Line outside of the subsidy area, the methodology for property valuation, and the limited information available to Mr. Carswell to analyze the condition of the track, the FIR subsidy estimate is too high. FIR appears to understand the inadequacy of its own estimate because it had to caveat Mr. Carswell's subsidy

⁸ FIR Information for Subsidy at 5.

⁹ See FIR Information for Subsidy at Exhibit 2, FIR-C-0018.

¹⁰ FIR Information for Subsidy at 6.

analysis. FIR states that Mr. Carswell's subsidy estimate was calculated "as best he could using this available information" and "without the benefit of further analysis or studies."¹¹

2. The WGS Offer is reasonable because WGS utilizes the independent analysis of two experienced railroad companies' cost assessments for FIR.

The WGS subsidy offer is \$5,333 per month or \$64,000 per year. The OFA timeline did not provide WGS the opportunity to hire a railroad consultant to critique the FIR subsidy and develop this OFA. Instead, WGS solicited cost assessments from two experienced rail companies with knowledge and interest in operating a portion of the FIR Line serving the WGS facility: Railmark Rail Services Inc. ("Railmark") and Resourceful Rail, LLC ("Resourceful Rail").

WGS is offering this OFA to subsidize FIR for continued rail operations. As such, WGS is not offering (nor could WGS offer) Railmark or Resourceful Rail as potential operators in lieu of FIR. WGS selected Railmark and Resourceful Rail because both companies have railroad experience specific to Cleveland, understand how to operate a small short line, and specifically know the FIR rail line and the potential opportunities that the FIR Line presents.

Railmark and Resourceful Rail provided WGS with projected operation proformas for operations on FIR.¹² WGS used these projected operation proformas to develop its reasonable OFA of \$5,333 per month or \$64,000 per year.

Railmark's President and CEO, B. Allen Brown provided WGS with the Railmark projected operation proforma. Railmark is an international company that provides railroad services and products through its five business segments: track work, rail mechanical services, railroad operations, rail development, and its EcoRail® products and services. Railmark's

¹¹ Id.

¹² See Exhibit B.

railroad operations business owns and operates shortline railroads. Railmark drew on its experience and economy of scale to demonstrate that the FIR line could create revenue requiring a smaller subsidy than FIR proposes. Under the Railmark proposal, a \$63,496 yearly subsidy would be required from WGS for continued operations on the FIR Line.

Resourceful Rail has experience operating a short line railroad which includes daily operations, track inspection, and repair. Resourceful Rail and two partner companies control Davenport Industrial Railroad (DIR) which operates the City of Davenport, Iowa's three-mile long short line railroad and transload center. Resourceful Rail's, Steve Berish, has experience repairing and maintaining FIR railroad track as a contractor. In addition, he has traversed the FIR Line and toured the property. Under the Resourceful Rail proposal, a \$54,000 yearly subsidy would be required from WGS for continued operations on the FIR Line.

In the opinion of Railmark and Resourceful Rail, the FIR Line is not in need of \$353,571.47 rehabilitation costs. If FIR's consultant, Mr. Carswell can develop a rehabilitation estimate based on "conversations, photos, and inventory reports."¹³ Then it is reasonable for Railmark and Resource Rail to draw on their knowledge and experience in and around the FIR Line to conclude that the line is not in need of significant rehabilitation.

In consideration of the projected operation proformas offered by Railmark and Resourceful Rail, the WGS OFA is \$5,333 per month or \$64,000 per year. Although both of Railmark and Resource Rail assume operations over a slightly larger segment of the FIR Line than WGS is willing to subsidize, the WGS reliance on these proposed operation proformas is reasonable.

3. The Board Should Factor in the Limited Time that WGS had to Prepare its OFA in considering the reasonableness of the offer.

¹³ FIR Information for Subsidy at 6.

The Board should consider the reasonableness of WGS's OFA in the context of WGS having just ten days from receipt of the FIR Information for Subsidy until the January 29, 2023 due date, to analyze the FIR materials and develop its own offer. Conversely, FIR had from the date that WGS made its request for information on November 18, 2022,¹⁴ until it provided the information to WGS on January 19, 2023 — a total of 62 days.

In addition, FIR misidentified the confidentiality classification of its Exhibit 2. Instead of classifying it as "Confidential" as they stated in their pleading, FIR placed a "Highly Confidential" marking on every page. When the error was discovered on January 27, 2023, FIR counsel confirmed via email that it did not intend for the entirety of Exhibit 2 to be marked as Highly Confidential, leaving the WGS client team with only two days to access and review Exhibit 2 before the due date of this filing.

Adding to the confusion in the FIR filing, FIR duplicated some information in the "Highly Confidential" Exhibit 3 that was also included in the "Confidential" Exhibit 2. FIR's failure to provide service copies clearly identifying how FIR intended for the information to be treated hindered the ability of WGS to effectively analyze the FIR information.

Despite this compressed schedule and FIR's excessive "Highly Confidential" markings, WGS is providing this timely and reasonable Offer of Financial Assistance.

(D) Demonstrate that the offeror has placed in escrow with a reputable financial institution funds equaling 10% of the preliminary financial responsibility amount calculated pursuant to paragraph (c)(1)(ii) of this section. Governmental entities are exempt from this requirement;

¹⁴ See Werner G. Smith, Inc. Petition to Toll Pursuant to 49 C.F.R. §1152.27(c)(2)(ii)(C), Exhibit A.

The amount of funds required for escrow under this 49 C.F.R. §1152.27(c)(1)(iv)(D) is \$480 because WGS is proposing to subsidize approximately 1.2 miles of the FIR line. Enclosed with this Offer for Financial Assistance as Exhibit C is a verification from DL Meckes, President of WGS certifying that on January 26, 2023, Ms. Meckes contacted her financial institution, PNC Bank, and instructed PNC Bank to place \$720 into escrow to satisfy the obligations of this section 1152.27(c)(1)(iv)(D).

(E) Demonstrate that there is a continued need for rail service on the line, or portion of the line, in question. Examples of evidence to be provided include: Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible;

WGS is a family-owned and operated business that first opened in 1912 and incorporated in 1950 as Werner G. Smith, Inc. Since 1912, the company has been owned and operated by the descendants of the company's namesake. Over the course of the WGS corporate history, it has historically shipped commodities by rail cars. In the late 1990s and 2000s, the company's fortunes dipped and so did its use of rail transportation. The company's prospects began to change when the current owners, the granddaughter of the company's founder and her spouse, took control of the company in 2016. Understanding the importance of rail service, WGS invested in rail improvements on its property at that time in order to grow its business and with assistance of a grant from the Ohio Rail Development Commission ("ORDC").

In 2016, ORDC provided \$30,000 for WGS to improve its rail spur, rail concrete pad, and pump for unloading rail cars for a total project investment of \$146,923.71. The purpose of this investment was to capitalize on commercial opportunities requiring rail service. However, once WGS completed these improvements, vendor and customer need for rail service fell.

Fortunately, WGS sees new opportunities that require rail service. As previously stated in the WGS formal notice of intent to file an OFA, WGS is in negotiations to ship 44 cars per year and is pursuing another opportunity to ship an additional 14. Failure to retain rail service would result in a loss of business to WGS in one instance and having to switch over to motor carriage in another.

WGS sees value in continued rail service and is submitting this OFA to retain rail service.

In support of this WGS OFA, enclosed as Exhibit D is: 1) a letter of support from Matthew Dietrich, Executive Director of ORDC; 2) a joint letter of support from Ohio State Representatives Thomas F. Patton, Chair of the Finance Subcommittee on Transportation, and Michael J. Skindell, Ranking Member of the Finance Subcommittee on Transportation; and 3) a letter of support from State Senate Minority Leader Nickie J. Antonio.

(F) Identify the offeror and provide a mailing address, either business or personal, and other contact information including phone number and email address as available, for the offeror or a representative;

The Offeror's Representative is:

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

(G) If the offeror is a legal entity, include the entity's full name, state of organization or incorporation, and a description of the ownership of the entity; and

Legal Entity's Full Name: Werner G. Smith, Inc.

State of Organization or Incorporation: Delaware

A Description of the Ownership of the Entity: Corporation

(H) If multiple parties seek to make a single offer of financial assistance, clearly identify which entity or individual will assume the common carrier obligation if the offer is successful, and clearly describe how the parties will allocate responsibility for financing the subsidy or purchase of the line and, if purchased, the operation of the line.

Not Applicable. WGS is filing this OFA to subsidize FIR to continue rail service.

CONCLUSION

Based on the foregoing, WGS respectfully requests that the Board determine that WGS is financially responsible and that its OFA to subsidize the approximate 1.2-mile segment of line from the WGS facility to the NSR interchange is reasonable. WGS further requests that the Board, in accordance with 49 C.F.R. §1152.27(e)(2), postpone the effective date of the decision granting the FIR notice of exemption, partially revoke the notice of exemption, and institute negotiations.

Respectfully submitted,



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(215) 640-8523ehocky@clarkhill.com

Counsel for Werner G. Smith, Inc.

Dated: January 29, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January 2023, I served a copy of the foregoing Offer of Financial Assistance (Subsidy) via email on the parties of record in this proceeding.

Counsel for Flats Industrial Inc., d/b/a Flats Industrial Railroad Company:

Crystal Zorbaugh: czorbaugh@bakerandmiller.com

William Mullins: wmullins@bakerandmiller.com

Counsel for the City of Cleveland:

Jason Shachner: jshachner@clevelandohio.gov



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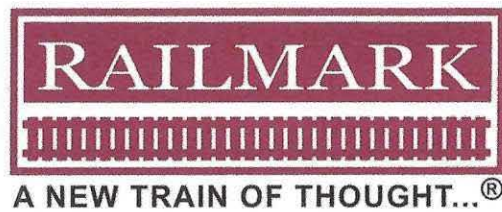
EXHIBIT A

**PROFIT AND LOSS STATEMENT
LINE OF CREDIT**

REDACTED

EXHIBIT B

RAILROAD OPERATING COST ASSESSMENTS



January 27, 2023

Ms. DL Meckes, President
Mr. Bill Grulich, CEO
Werner G. Smith, Inc.
1730 Train Avenue
Cleveland, OH 44113-4201

RE: Railmark Response To Request For A Proposed Operating Proforma

Ms. Meckes and Mr. Grulich,

Thank you for contacting **Railmark Rail Services Inc.** for our cost assessment of rail switching services and all associated FRA inspections and track maintenance, on the approximate two (2) miles of rail track running from the Norfolk Southern Interchange in Cleveland OH past the Werner G. Services, Inc. facility. As you know Railmark has a fully trained team located in the Cleveland area. We also have an immediately available FRA-Blue Carded locomotive nearby which combined, would enable Railmark to commence this operation as soon as it could be approved. Now in our 25th year of operation and having similar existing business, Railmark is able to utilize some cost efficiencies and economy of scale to provide a cost-effective service on the rail line serving your facility.

For all required services to provide rail operations and maintenance on this approximate two-mile line, Railmark is providing a rate of **“Actual COST Plus 15%”**. This equates to an estimated monthly cost of \$20,661. Railmark will have monthly revenue offsets of \$15,370 therefore costing Werner G. Smith, Inc. the additional sum of \$5,291 monthly (\$63,496 annually). Please see the enclosed Railroad Operation Proforma for details.

This cost assessment keeps costs low for operating this rail line for two reasons: (1.) Railmark has a robust operation in metro-Cleveland and our proposed operating plan benefits from cost efficiencies and economies of scale. (2.) Railmark has current business relationships that it will add to the operation of the line resulting in additional switch fees for approximately 400 cars. This is not speculation or wishful business, such as hopeful railcar storage, but rather existing Railmark relationships with freight railcar owners who contract with Railmark to perform a variety of mechanical services to their fleets. Finally Railmark has assumed a very small amount of transloading but this is an ultra-conservative number given Railmark performs transloading at two other locations within our network. Railmark is confident in its revenue offsets, which will combine to lower your cost of rail operations to a very manageable number of \$64,000 annually. And as Railmark exceeds its own revenue projections, these additional savings would pass through to even lower this rate.

Railmark has both Cleveland based operations and available locomotives making Railmark qualified to provide this service and your requested cost assessment. Railmark Rail Services Inc. is a wholly owned subsidiary of Railmark Holdings, Inc. Our sister companies are the Yreka Western Railroad and Railmark Industrial Railway Inc.

Railmark's monthly "NET" cost estimate of \$5,291 covers the following Operating Plan:

- The operation is staffed two days each week with two employees working eight hours each day. We have made some contingencies for occasional extra time and have structured the staffing of this operation at 70 hours per month with a two-man crew. (140 total monthly manhours). Railmark's plan provides for two days per week for all 52 weeks. This Operating Plan will allow the operation to be able to both receive any inbound cars and deliver any outbound cars within the same week. The days of the week that Railmark's crew will work will vary each week depending upon Werner G. Smith, Inc.'s needs. In short, Railmark will provide reliable and dependable rail service commensurate with Werner's needs.
- When the crew is not handling railcars, they will be performing the required track inspections, locomotive inspections, and performing maintenance to the track.
- This plan takes advantage of Werner G. Smith's offer of keeping our locomotive inside your secure fenced section behind your plant and the use of a railroad office in the back of your plant.
- Any non-Werner rail business revenues from the sources identified above will be used to offset the monthly estimated rate of \$20,661, although Railmark's 15% fee is still based on the actual gross costs.
- All required FRA programs and FRA records will need to be maintained onsite at the office space your company has offered to provide and could be subject to inspection by state and Federal agencies.

Railmark appreciates the opportunity to provide this cost assessment for rail services serving your facility.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Allen Brown II", with a stylized flourish at the end.

B. Allen Brown II, President & CEO
Railmark Holdings and Subsidiaries
(309) 370-5160, Cell
abrown@railmark.com

Enclosure

RRS - FLATS RAILROAD OPERATION PROFORMA

Operating Forecast, Cleveland OH - 2 Miles

(Page 1. Of 2.)

Date, January 27, 2023

REVENUES

MONTHLY

ANNUAL

Norfolk Southern Switch Fees on Warmer G. Smith Traffic (58)	\$3,870	\$46,440
Railmark Mechanical Services Customer Switch Fees (400)	10,000	120,000
Transloading & Other	<u>1,500</u>	<u>18,000</u>
TOTAL REVENUES:	\$15,370	\$184,440

MAINTENANCE OF WAY (MOW)

WAGES, MOW (2 Part Time Employees, 70 Hours Per Month)	\$3,500	\$42,000
MOW CREW FRINGES (35%)	1,225	14,700
TRACK MATERIALS	1,000	12,000
FUEL & OIL, MOW	500	6,000
SIGNAL & CROSSING MAINTENANCE	500	6,000
REPAIRS & MAINTENANCE, MOW	750	9,000
SAFETY EQUIPMENT-Hard Hats/Vests/Gloves	100	1,200
SUPPLIES FOR MOW	100	1,200
TRUCK EXPENSES - 1 F350 Service Truck	500	6,000
VEGETATION CONTROL	600	7,200
DEPRECIATION EXPENSES, MOW	<u>0</u>	<u>0</u>
TOTAL MAINTENANCE OF WAY EXPENSES:	\$8,775	\$105,300

MAINTENANCE OF EQUIPMENT (MOE)

WAGES, MOE (0 Carmen @ \$30 & 40/Hours)	\$0	\$0
MOE CREW FRINGES	0	0
CAR REPAIR PARTS & SUPPLIES	275	3,300
REPAIRS & MAINTENANCE, MOE	0	0
SAFETY EQUIPMENT-Hard Hats/Vests/Gloves	0	0
SUPPLIES FOR MOE	0	0
TRUCK EXPENSES - 0 F350 Service Truck	0	0
COMMUNICATIONS	0	0
DEPRECIATION EXPENSE, MOE	<u>0</u>	<u>0</u>
TOTAL MAINTENANCE OF EQUIPMENT:	\$275	\$3,300

TRANSPORTATION EXPENSES (TRANS)

WAGES, TRANS (Train Service Crew same as MOW)	\$0	\$0
TRANS CREW FRINGES	0	0
LOCOMOTIVE LEASE (1 UNIT)	3,875	46,500
FUEL & OIL	750	9,000
LOCOMOTIVE SUPPLIES	250	3,000
MECHANICAL PARTS & SUPPLIES	400	4,800
SAFETY EQUIPMENT-Hard Hats, Vests	0	0
OUTSIDE SERVICES, TRANSPORTATION	200	2,400
DEPRECIATION EXPENSES, TRANS	<u>0</u>	<u>0</u>
TOTAL TRANSPORTATION EXPENSES:	\$5,475	\$65,700

RRS - FLATS RAILROAD OPERATION PROFORMA

Operating Forecast, Cleveland OH - 2 Miles

(Page 2. Of 2.)

Date, January 27, 2023

	MONTHLY	ANNUAL
ADMINISTRATIVE EXPENSES (ADMIN)		
SALARIES, CLERICAL (0 Employee)	\$0	\$0
ADMIN CREW FRINGES	0	0
CORPORATE SUPPORT & TRAINING	0	0
LEGAL FEES	0	0
TRACK LEASE EXPENSE (Estimated)	1,000	12,000
MOBILIZATION / DEMOBILIZATION (3 Years) - LOCO	295	3,540
COMMUNICATIONS EXPENSES (2-Way Radios)	100	1,200
INSURANCE, LIABILITY (Allocation)	1,000	12,000
INSURANCE, VEHICLES (Allocation)	100	1,200
INSURANCE, WORKERS COMP.	92	1,104
TRAVEL BY CORPORATE OFFICE	0	0
UTILITIES	325	3,900
TELEPHONE (Management Cell Phones)	100	1,200
OFFICE SUPPLIES/EXPENSES	0	0
OTHER EXPENSES, ADMIN	125	1,500
DEPRECIATION EXPENSES, ADMIN	<u>0</u>	<u>0</u>
TOTAL ADMINISTRATIVE EXPENSES:	\$3,137	\$37,644
 SUBTOTAL DIRECT OPERATING EXPENSES:	 \$17,662	 \$211,944
 RAILMARK MANAGEMENT & OVERHEAD FEES		
RRS MANAGEMENT FEES (15% of Operating Expenses)	\$2,649	\$31,792
CORPORATE OVERHEAD (Accounting)	<u>350</u>	<u>4,200</u>
TOTAL RAILMARK MANAGEMENT & OVERHEAD FEES:	\$2,999	\$35,992
 <u>TOTAL BEFORE OPERATING SUBSIDY:</u>	 <u>(\$5,291)</u>	 <u>(\$63,496)</u>

FOOTNOTES:

1. Operation consists of 2, 8-Hour Work Days each week throughout the year.
2. When the Crews are not switching, they are performing track maintenance and FRA requirement
3. Operating Plan provides for crew availability when customer desires rail services.
4. All inspections and other FRA requirements have been addressed in this Operating Plan.
5. "Track Usage Fees" are estimated and need to be determined by the STB or negotiated.
6. Railmark has local crews and operations which provides for a cost effective operating plan.
7. Liability Insurance and other costs are allocated based on the size of this operation.
8. Attached proforma and financial model property of Railmark.

**Steve Berish, President
Resourceful Rail LLC
1047 Orchard Lane
Broadview Heights, OH 44147**

January 28, 2023

Bill Grulich, CEO
Werner G. Smith, Inc.
1730 Train Avenue
Cleveland, OH 44113

Dear Mr. Grulich,

Per your email dated January 27th, I am responding to your request for an analysis from Resourceful Rail LLC (formerly known as S.E. Berish Enterprises LLC) for a projected operating proforma if Resource Rail LLC had the opportunity to operate the Flats Industrial Railroad (FIR). Please find the paragraphs below as a demonstration of my knowledge, experience and ability to provide adequate rail service to your facility and any other customers along the FIR rail line.

Background

My railroad career began as civil engineer in the railroad construction industry. I worked for several years as an estimating engineer and project manager at two Cleveland area railroad construction and maintenance companies, Acme Construction Co., Inc., and Wintrow Construction Co. At both firms I gained extensive experience in how to repair and maintain railroad track and this included over a dozen projects for Flats Industrial Railroad and their former customer, Graincraft of Cleveland, between 2014 and 2020. During this time, I became extensively familiar with the FIR employees and operations.

In late 2019, Resourceful Rail and two partner companies created Davenport Industrial Railroad (DIR) which operates the City of Davenport, Iowa's three mile long shortline railroad and transload center. I have served as the General Manager and Managing Partner for DIR since its inception and have overseen all aspects of operation including daily operations and coordination, track inspection and repair, marketing, and more.

In January of 2020, DIR learned that FIR was for sale and extensively explored the opportunity but declined to make an offer at that time. DIR attempted to make an offer to purchase and operate the southern half of the railroad in August of 2020, however, this offer was rejected by the ownership. While discussions about the railroad did not bear any fruit, DIR did end up purchasing locomotive No. 1202 from FIR for use at DIR. Resourceful Rail attempted to make a separate offer on the southern half of the railroad in mid-2022, however this was once again rejected.

Throughout the past three years, I have made several trips to visit FIR, including several to inspect and make repairs to locomotive No. 1202 prior to its departure. These trips also included visiting with the FIR employees and touring the entire rail line. The last tour I took of the full property was in late 2021. Since then, I have driven along the railroad and observed its condition from public property almost every time I get to the downtown Cleveland area, with the most recent visit being the weekend after Thanksgiving of this past year.

Revenue and Expenses

Due to my experience on this railroad, I believe that I understand the current condition of the railroad and its potential. Below, I have prepared a table showing what a year's worth of expenses and revenue would look like if Resourceful Rail hypothetically became the FIR operator:

Resourceful Rail LLC Revenue & Expenses Proposal for Operation of FIR			
Projected Revenue for 12 Months	Year 1	Railcars/Yr	Notes
WGS Linehaul Revenue	23,200	58	Based on \$400/car, and 58 cars per WGS
Transload Customers Linehaul Revenue	12,000	30	Transload Customers, \$400/car
Transload revenue	3,000	30	Minimum transload fee of \$100 per car, with no RR equipment supplied
Storage car switching revenue	18,750	75	Assuming \$250/car switch fee
Railcar Storage	48,038	75	Assuming average of \$3.50/day, 183 days of storage
Financial Subsidy from WGS	54,000	N/A	\$4,500/mo, (Proposed by Resourceful Rail)
Other revenue	2,000	N/A	ROW leases for utilities, flagging, etc.
Total Gross Revenue			\$160,987.50
Projected Expenses for 12 Months			
Train & Engine and Administration Labor:			
Wages & Salaries (Part time Engineer)	3,900		one man at \$25.00/hr, 3 hrs/week, 52 weeks/year
Wages & Salaries (Part time Conductor)	3,120		one man at \$20.00/hr, 3 hrs/week, 52 weeks/year
Railroad Retirement	2,457		35% of wages & salaries
T&E and Administration Labor Sub-total			\$9,477.00
Locomotive Maintenance			
Fuel & Lubricants	7,500		operate 50 days/year; 3 hours/day; once/week; fuel, \$3.00/gal
Consumable parts	500		filters, headlight bulbs, etc.
Locomotive Mechanic	1,800		\$200/month for 12 months, (4 each 92-day and 1 each 368-day inspect.)
Locomotive Maintenance Sub-Total			\$9,800.00
Maintenance of Way:			
Wages & Salaries - Track Inspector (Lead)	1,200		\$100/month for 12 months
Fringe Benefits	420		35% of wages & salaries
Services - Herbicide application	750		In-house, application (cost of weed killer, etc.)
Hi-Rail Truck fuel, maintenance and insurance	1,200		Lease from Resourceful Rail (\$100/mo); fuel/oil (\$20/mo)
FRA Part 234 signal maintenance (1 xing)	2,400		Local Signal Contractor (\$200/mo)
Misc. MOW Consumables	400		switch graphite, track spikes, track bolts
Utilities	720		crossing electricity (\$60/mo)
Contractor Track Maintenance Budget	30,000		Hire out local track contractor to make minor repairs.
Maintenance of Way Sub-total			\$37,090.00
Administration:			
General Manager	10,000		Part-time, salary
Fringe Benefits	3,500		35% of wages & salaries
Insurance	28,000		RPL and Inland Marine Policies
Carhire software	1,800		Wabtec TMS, \$150/mo
Compliance & Regulatory	5,000		legal expenses, ASLRRRA dues
Office	1,200		Lease office from WGS for \$100/mo
Administration Sub-total			\$49,500.00
Other Items:			
Locomotive(s) lease	21,000		EMD GP7R, \$1,750/mo
Marketing Budget	3,150		Comm-trex/TDANA (Transload Marketing) Listings
Website/Emails	400		Email Domain/Website
Misc./Office	2,000		Misc. Expenses
Lease Payment to FIR/Land Owners	12,000		\$1,000/mo, for the lease of the railroad (Proposed by Resourceful Rail)
Accounting/Payroll Expense	5,000		Accounting Fees/Payroll Expenses per year
Other Items Sub-total:			\$43,550.00
Total Gross Operating Expenses:			\$149,417.00
Total Net Profit:			\$11,570.50

Resourceful Rail would seek to operate the railroad from the Norfolk Southern Interchange, to just past the WGS switch, including adequate headroom for switching the facility. In addition, Resourceful Rail would seek enough yard track in “DK Yard” to be able to one day propose rail access to the Great Lakes Brewing facility currently being constructed to the west of DK Yard but would not wish to operate the entirety of DK Yard. In the past, on other proposals, I have used the Carnegie Ave. bridge overhead as a rough dividing point for this proposed division point.

I have also included a chart showing the expected Start-up Expenses Resourceful Rail could expect while taking over FIR’s operations:

Resourceful Rail Projected Start-Up Costs	
Inbound Shipping for Locomotive	\$9,000.00
Small Tools/Shop Materials	\$6,000.00
Insurance downpayment	\$5,000.00
STB filing fee/legal expense	\$7,000.00
Track Repairs required to return to operation	\$17,000.00
Office Supplies/Setup	\$1,000.00
Financial Support until first invoices are paid 30+ days after start-up	\$20,000.00
Total Start-up Costs	\$65,000.00

These start-up costs are in line with what my experience is in starting a small shortline railroad. While it may take a bit more to tide the railroad over while transload and storage car business is generated, this is still well within the means of Resourceful Rail to fund until this business is acquired.

I will also add that from my own assessment, the railroad requires less than \$20,000 in repairs to operate. The last train movement on FIR was in March of 2021 when DIR’s No. 1202 was delivered to outbound interchange for shipment to Iowa. At that time, the railroad’s track was all in excepted condition, but with standard maintenance, it is ready to operate.

For the projected revenue of the railroad, WGS would generate an acceptable amount of traffic necessitating almost once a week service. Operations would still be on an as needed basis, with WGS’s traffic establishing the baseline for part-time crew basis. Through my work with DIR and other potential railroad projects, I have made many in roads with firms looking for transloading locations and railcar storage locations. From initial conversations I have had with some of these companies, some which date back to only six months ago, I am confident that Resourceful Rail could attract enough business to satisfy the volumes laid out in the proposal. Thirty cars a year of transload traffic is accomplished with one small contract, and a great potential candidate for this would be Crystal Clean, a former FIR customer and a company that Resourceful Rail has connections with, through our work at DIR.

While the storage car market remains incredibly soft, there are still companies looking for railcar storage in places like Northeast Ohio. In this proposal, I have only included filling roughly half of the estimated 120 total car spots that could be utilized for storage on the portion of the line Resourceful Rail is proposing to operate over. Furthermore, I have these seventy-five car spots

as only filled for roughly six months, which leaves more revenue to be had if a contract stretches for a longer period, or if a SIT (storage in transit) contract results in more cars being switched in and out on a regular basis.

In proposed expenses, it is important to note that all of the labor for the entire operation would come from a local Cleveland area pool of available part time employees, some of this includes past FIR employees, and others who are previously certified and wish to remain certified in their respective roles. For example, a former locomotive engineer who has moved onto a full-time position in banking would make an excellent part time locomotive engineer for Resourceful Rail and would allow this employee to keep paying into the Railroad Retirement system, while only requiring a part time commitment on evenings and weekends. This is the exact way that I have been able to operate DIR in Iowa and with much success. While it takes substantially more coordination and planning on the part of the General Manager (which would be myself) the savings from using a large pool of part time labor are massive, and truly make the difference in a small shortline operation being successful and profitable. For every single position listed in this proposal, I already have an individual in the Cleveland area that is available and ready to go to work should the need arise soon to begin operations.

Conclusion

In conclusion, I feel strongly that Resourceful Rail would be an effective operator on behalf of FIR, if the need were to arise. From our experience in railroad track maintenance and rehabilitation to our connections in the transloading and railcar storage areas of the industry, we feel that we have what it takes to continue serving WGS and operate a profitable small shortline railroad. I'm more than happy to answer any questions about this proposal, please feel free to reach out to me either on my cell or via email.

Thank you for the opportunity to share this proposal, and we look forward to discussing it with you in the future.

Sincerely,



Steve Berish

President, Resourceful Rail LLC
(440) 668-7808
Sberish2@live.com

EXHIBIT C

ESCROW

VERIFIED STATEMENT

Before the
SURFACE TRANSPORTATION BOARD

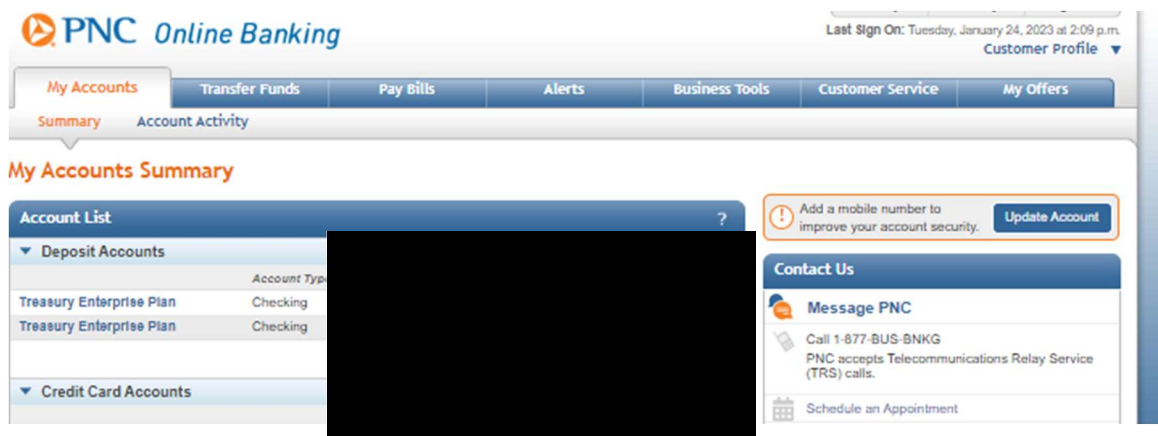
STB Docket No. AB 1327X

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

WERNER G. SMITH, INC. OFFER OF FINANCIAL ASSISTANCE

Verified Statement of DL Meckes

My name is DL Meckes, I am the president of Werner G. Smith, Inc. Under the Board's rules at 49 C.F.R. §1152.27(c)(1)(iv)(D), the amount of funds required for escrow is \$480 because WGS is proposing to subsidize approximately 1.2 miles of the FIR rail line. I certify that on January 26, 2023, I contacted my banker, Brian Skolny at our financial institution, PNC Bank, and instructed Mr. Skolny to place \$720 into escrow to satisfy the obligations of this section 1152.27(c)(1)(iv)(D). My instructions are to withdraw the money from PNC Bank # 42-4220-0445, which holds a current balance of \$66,331.48. A screenshot of this account verifying these funds is included below.



VERIFICATION

I hereby verify on behalf of Werner G. Service, Inc., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on January 29, 2023.

A handwritten signature in blue ink that reads "D.L. Meckes". The signature is written in a cursive style with a large, looped initial "D".

DL Meckes, President

EXHIBIT D

LETTERS OF SUPPORT



Rail Development Commission

Mike DeWine, Governor
Jon Husted, Lt. Governor

Scott Corbitt, Chair

January 27, 2023

Bill Grulich
CEO
Werner G. Smith, Inc.
Via email

Dear Mr. Grulich,

The Ohio Rail Development Commission (the “Rail Commission”) is an independent commission within the Ohio Department of Transportation which represents the state in non-regulatory interactions with the railroad industry. The Rail Commission funds safety improvements at railroad-highway grade crossings, supports rail-related economic development efforts, and undertakes strategic railroad capacity improvement projects. As part of the Rail Commission’s economic development duties, the Rail Commission supports companies that wish to access freight rail opportunities, whether they are new or existing users on Ohio’s rail system.

In 2016, the Rail Commission worked with Werner G. Smith (“WGS”) in Cleveland, Ohio, on a \$30,000 grant matched with approximately \$200,000 of WGS funding to reinstitute rail service to their facility on the Flats Industrial Railroad (“FIR”). The project was completed later that year. As part of the project WGS has ongoing rail maintenance requirements with the Rail Commission. The Rail Commission is concerned about the effect the FIR’s abandonment of the line may have on those obligations, and the ongoing ability of WGS to operate at their Cleveland location.

As Ohio’s rail development agency, the Rail Commission will support any solution which allows the existing customer of the FIR to maintain rail service. The Rail Commission hopes there are avenues available to effectuate this outcome.

Please let me know if we may be of any assistance in these efforts.

Sincerely,

Matthew Dietrich
Executive Director





January 27, 2023

Chairman Oberman
395 E Street SW
Washington, DC 20423

**RE: Flats Industrial Railroad Company-Abandonment Exemption-in Cleveland, Ohio
Surface Transportation Board Docket No. AB 1327X**

Dear Chairman Oberman and Members of the Surface Transportation Board,

We are writing in regards to Docket case AB_1327_X, the abandonment of the flats railroad line in Cleveland, Ohio. In a bipartisan effort, as members of the Ohio House Finance Sub.

Committee on Transportation, as well as State legislators in the city of Cleveland, we are urging you to not abandon this vital short line railroad. This 1.85 mile long rail line is essential to many small manufacturing companies, such as Werner G. Smith Inc.

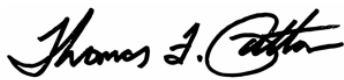
Werner G. Smith Inc. is a family owned and operated business that first opened in 1912 and is critical to the local manufacturing industry in Cleveland, Ohio. They produce ingredients for industrial and commercial use using renewable resources, such as soybean, canola, and linseed oils. They have also developed new products that replace petroleum additives with renewable products. Their new products include replacing harmful chemicals used in mining with soy-based alternatives and dust abatement alternatives. These type of innovative solutions are extremely important to cultivating new products that help to protect our environment. Most importantly, many vendors depend on Werner G. Smith Inc. to ship their products by short line rail. They cannot afford to have this rail line abandoned and would not be able to further grow and develop their business, that has been in their family for generations. Abandoning this rail

line could have a serious impact on not only various local manufacturing companies, but on the city of Cleveland as a whole.

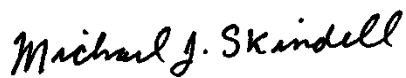
As you are aware, the short line railroad is immensely important and the abandonment of this rail line could set a dangerous precedent. The short line rail must be protected, to further safeguard the numerous companies that have continually relied on it for many years.

We appreciate you taking the time to read our thoughts on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Thomas F. Patton". The signature is written in a cursive style with a large, stylized 'P'.

Thomas F. Patton
State Representative
Ohio House District 17
Chair, Finance Sub. Committee on Transportation
614-466-4895

A handwritten signature in black ink that reads "Michael J. Skindell". The signature is written in a cursive style with a large, stylized 'M'.

Michael J. Skindell
State Representative
Ohio House District 13
Ranking Member, Finance Sub. Committee on Transportation
614-466-5921

Ohio Senate District 23

Senate Building
1 Capitol Square, Room 303
Columbus, Ohio 43215
Phone: 614.466.5123
Antonio@ohiosenate.gov

135th General Assembly

**Committees**

Transportation, *Ranking*
Health, *Ranking*
Rules & Reference, *Ranking*
Joint Legislative Ethics
Legislative Service Commission

Nickie J. Antonio
Senate Minority Leader

January 27, 2023

Chairman Oberman
395 E. Street SW
Washington, DC 20423

RE: Flats Industrial Railroad Company – Abandonment Exemption in Cleveland, Ohio
Surface Transportation Board Docket No. AB 1327X

Dear Chairman Oberman and Members of the Surface Transportation Board,

I am writing in regards to Docket case AB_1327_X, the abandonment of the flats railroad line in Cleveland, Ohio. As Ranking Democratic Member of the Senate Transportation Committee, as well as a State legislator in the city of Cleveland, I am urging you to not abandon this vital short line railroad. This 1.85 mile long rail line is essential to many small manufacturing companies, such as Werner G. Smith Inc.

Werner G. Smith Inc. is a family-owned and operated business that first opened in 1912 and is critical to the local manufacturing industry in Cleveland, Ohio. They produce ingredients for industrial and commercial use using renewable resources, such as soybean, canola, and linseed oils. They have also developed new products that replace petroleum additives with renewable products. Their new products include replacing harmful chemicals used in mining with soy-based alternatives and dust abatement alternatives. These type of innovative solutions are extremely important to cultivating new products that help to protect our environment. Most importantly, it is my understanding that many vendors depend on Werner G. Smith Inc. to ship their products by short line rail. They cannot afford to have this rail line abandoned and would not be able to further grow and develop their business, that has been in their family for generations. I believe that abandoning this rail line could have a serious impact on not only various local manufacturing companies, but on the city of Cleveland as a whole.

I ask that you give full and fair consideration to maintaining the short line railroad because the line is important and the abandonment of this rail line could set a dangerous precedent. The short line rail must be protected, to further safeguard the numerous companies that have continually relied on it for many years.

I appreciate you taking the time to read my thoughts on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nickie J. Antonio", with a stylized flourish at the end.

Nickie J. Antonio
Senate Minority Leader