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SERVICE DATE – FEBRUARY 27, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1327X

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

Decided: February 27, 2023

Flats Industrial Inc. d/b/a Flats Industrial Railroad Company (FIR), filed a verified 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 rail service over a portion of the Line. The filing of the notice of intent automatically stayed the effective date of the exemption until December 10, 2022.² On November 29, 2022, in response to WGS’s request for a 60-day extension of the OFA deadline, that deadline was extended to January 29, 2023.

On January 30, 2023, WGS filed an OFA to subsidize service over a portion of the Line, from the connection point with Norfolk Southern Railway Company at milepost 11.85 to the WGS facility, located near Abbey Avenue, a distance of approximately 1.2 miles. By decision served February 3, 2023 (February Order), WGS was found to be financially responsible, and the effective date of the abandonment exemption was postponed. See February Order, AB 1327X, slip op. at 2. The February Order set March 1, 2023, as the date by which WGS or FIR could request the Board to establish the terms and conditions of the subsidy. Id.

On February 13, 2023, FIR filed an appeal of the February Order. WGS filed a reply on February 23, 2023, in which it opposes the appeal.

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).

To allow the Board to consider FIR's appeal of the February Order, the date by which WGS or FIR may file a request that the Board establish the terms and conditions of the subsidy is extended to 30 days after the service date of the Board's decision ruling on the appeal of the February Order.

It is ordered:

1. The date by which WGS or FIR may file a request that the Board establish the terms and conditions of the subsidy is extended to 30 days after the service date of the Board's decision ruling on the appeal of the February Order, as explained above.

2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.