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May 1, 2023

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
May 1, 2023
Part of
Public Record

Re: Flats Industrial Railroad Company – Abandonment Exemption – In
Cleveland, OH AB-1327X

Dear Ms. Brown:

On February 3, 2023, the Director's order ("OFA Decision") permitted the Offer of Financial Assistance ("OFA") process under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 to proceed¹ and postponed the effective date of the exemption.² On February 13, 2023, FIR filed an appeal of the Directors' Decision, asserting that given the circumstances presented, the Director did not make the correct decision. Werner G. Smith, Inc. ("WGS") filed a reply on February 23, 2023, opposing the appeal. Given the appeal, on February 27, 2023, the Board extended the date by which WGS or FIR may file a request that the Board establish the terms of the conditions of the subsidy to 30 days after the service date of the Board's decision ruling on FIR's appeal.³ More than two months since FIR submitted its appeal, the Board has yet to rule, and this abandonment proceeding continues to be unduly delayed.⁴

FIR is mindful of the Board's busy and complex docket; however, the delay in issuing a decision on the appeal is preventing FIR from proceeding either with an abandonment or a timely process by which FIR's operations can be subsidized. This means that FIR, a small privately-

¹ The complete background of the AB 1327X proceeding is outlined in the OFA Decision.

² See OFA Decision at p. 3.

³ See Flats Industrial, AB-1327X (STB served February 27, 2023).

⁴ Collectively, the OFA process and the Board's delayed decision on FIR's appeal have thus far postponed the original effective date of the abandonment exemption, November 30, 2022, nearly five months. See 87 Fed. Reg. 67,532. And it has been approximately 6½ months since the abandonment notice of exemption was originally filed.

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owned Class III railroad is burdened unnecessarily by continued ownership of an unprofitable line⁵ which has not provided common carrier service in over five years and for which, WGS, the offeror of the OFA, has only demonstrated at best a speculative need for continued rail service.⁶

Abandonment and OFA proceedings are to be concluded in a timely manner. See, e.g., Norfolk Southern Railway Company – Abandonment Exemption – In Roanoke, VA., AB 290 (Sub-No. 389X) at p. 1 (STB served May 25, 2017) (denying offerors request to toll the OFA filing period for 14 business days and noting that these “strict statutory deadlines... reflect Congressional intent that rail carriers not be burdened with unprofitable lines for *any longer than necessary*.”). (Emphasis added).⁷ Indeed, the notice of exemption process, which was the process used here, is intended to be “the quickest and least burdensome way to abandon a line.” See R.J. Corman Railroad Property, LLC – Abandonment Exemption – In Scott, Campbell, and Anderson Counties, Tenn., AB 1296X (STB served November 16, 2022) at pp. 6-8 (Board Member Hedlund, in concurrence, stating that “I agree with [Board Member Fuchs and Schultz] that the burden on RJC Railroad Property in this case has been excessive” and that, “I look forward to considering these and other prospective improvements to all of our processes in due course.”) Here, being now approximately 6½ months since the abandonment notice of exemption was filed, it is in the best interest of FIR, WGS, and the Board that a decision on the appeal be issued.

For planning purposes, FIR and the public need to know whether abandonment may proceed allowing for the subsequent redevelopment of the area, or whether that redevelopment will be delayed by a proceeding to set terms and conditions of a subsidy, and then, once that subsidy is set, a yearlong subsidy period where, at the end, the abandonment authority will become effective anyway. Accordingly, FIR respectfully requests that the Board rule on FIR’s appeal so that this proceeding does not go on ‘*any longer than necessary*’ and cause FIR and Mrs. Fournier to be further burdened with an out of service and unprofitable rail line and whose existence is preventing the redevelopment of a former industrial area into a vibrant part of the community.

⁵ Rather than being forced to hold a common carrier obligation for a line with no demonstrable need for rail service, FIR could be disposing of property for re-development and contributing to the City of Cleveland’s vision of commercial and residential development. See Flats Industrial, AB-1327X at p. 11 (STB served January 31, 2023).

⁶ Id. at pp. 15-19.

⁷ ICCTA at 49 USC 10904(c) sets the max timeline to 4 months (Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner. See Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311, 313 (1997), aff’d, Nat’l Ass’n of Reversionary Prop. Owners v. STB, 158 F.3d 135 (D.C. Cir. 1998); 49 CFR 1152.27(b)(2).

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Respectfully Submitted,

/s/ **William A. Mullins**

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corporation doing business as Flats Industrial
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cc: Parties of Record