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SERVICE DATE – NOVEMBER 8, 2022

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1327X]

Flats Industrial Inc. d/b/a Flats Industrial Railroad Company—Abandonment

Exemption—in Cleveland, Ohio

Flats Industrial Inc. d/b/a Flats Industrial Railroad Company (FIR) has 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.¹ The Line traverses U.S. Postal Service Zip Code 44113.

FIR has certified that: (1) during the past two years, FIR has provided no local or overhead traffic over the Line; (2) overhead traffic, if there were any, could be rerouted over other Lines; (3) no formal complaint filed by a user of rail service on the Line (or by state or local government on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 C.F.R. §§ 1105.7(b) and 1105.8(c) (notice of environmental and historic reports),

¹ This is a republication of the notice of exemption originally served and published in the Federal Register on October 31, 2022 (87 Fed. Reg. 65,640). This notice contains corrected information.

49 C.F.R. § 1105.12 (newspaper publication), and 49 C.F.R. § 1152.50(d)(1) (notice to government agencies) have been met.

Where, as here, the carrier is abandoning its entire system, the Board does not normally impose labor protection under 49 U.S.C. § 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations, or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Honey Creek R.R.—Aban. Exemption—in Henry Cty., Ind., AB 865X (STB served Aug. 20, 2004); Wellsville, Addison & Galetton R.R.—Aban., 354 I.C.C. 744 (1978); and Northampton & Bath R.R.—Aban., 354 I.C.C. 784 (1978). According to FIR, after abandonment FIR’s parent company and corporate affiliate will not continue similar operations, nor will FIR’s parent company realize substantial financial benefits over and above relief from the burden of its subsidiary railroad. Therefore, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,² this exemption will be effective on November 30, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 C.F.R. § 1152.27(c)(2), and

² Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase) and demonstrating that they are preliminarily financially responsible. See 49 C.F.R. § 1152.27(c)(2)(i).

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board’s Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption’s effective date. See Exemption of Out-of-Serv. Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay

interim trail use/rail banking requests under 49 C.F.R. § 1152.29 must be filed by November 10, 2022.⁴ Petitions to reopen or requests for public use conditions under 49 C.F.R. § 1152.28 must be filed by November 21, 2022.

All pleadings, referring to Docket No. AB 1327X, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on FIR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

FIR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 4, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245-0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Filing fees for OFAs and trail use requests can be found at 49 C.F.R. § 1002.2(f)(25) and (27), respectively.

Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), FIR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by FIR's filing of a notice of consummation by October 31, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at www.stb.gov.

Decided: November 3, 2022.

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