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November 10, 2022

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 a Notice of Intent to File an Offer of Financial Assistance to Subsidize rail service submitted on behalf of Werner G. Smith, Inc. If there are any questions pertaining to this filing, please let me know.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

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

Enclosure

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

NOTICE OF INTENT TO FILE AN OFFER OF FINANCIAL ASSISTANCE
TO SUBSIDIZE RAIL SERVICE OF WERNER G. SMITH, INC.
PURSUANT TO 49 C.F.R. §1152.27

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Counsel for Werner G. Smith, Inc.

Dated: November 10, 2022

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

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TO SUBSIDIZE RAIL SERVICE OF WERNER G. SMITH, INC.
PURSUANT TO 49 C.F.R. §1152.27

Pursuant to 49 C.F.R. §1152.27 and the Board’s decision served October 31, 2022,¹ Werner G. Smith, Inc. (“WGS”) hereby provides a formal expression of its intent to file an Offer of Financial Assistance (“OFA”) to subsidize a segment of the rail line proposed for abandonment by the Flats Industrial Inc. d/b/a Flats Industrial Railroad Company (“FIR”), and demonstrates its preliminary financial responsibility to subsidize rail service on the line. 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, OH (the “FIR Line”). 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.²

IDENTITY AND INTEREST OF WGS

WGS is a manufacturer of bio-based specialty chemicals. The WGS manufacturing process utilizes seed oils such as soybean, linseed, and canola as well as other commodities.

¹ The Board subsequently served a corrected decision on November 8, 2022.

² The distance is approximate and is calculated utilizing the Board’s National Rail Networking Map.

The WGS facility is located along the FIR Line at 1730 Train Ave, Cleveland, Ohio 44113.

WGS is filing this OFA to subsidize rail service to receive rail tank cars of commodities from its vendors and to ship its products to its customers. WGS has already invested in rail improvements on its property and a subsidy will ensure that this investment does not go to waste. In 2016, with a \$30,000 grant from the Ohio Rail Development Commission, WGS improved 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. Over the last two-years, vendor and customer requirements for rail service directly to WGS has waned, but interest is returning.

WGS requires rail service to grow its business. If WGS can retain rail service, it is in negotiations with customers to ship 44 cars per year and is pursuing another opportunity to ship an additional fourteen. 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 instance.

As evidenced by its rail investments, WGS is a likely user of this line if it can retain rail service. Considering its rail infrastructure investments and its interest from vendors and potential customers that would prefer shipping by rail, WGS has a legitimate interest in the continued rail service over the approximately 1.20-mile segment of the FIR line extending from the WGS facility to the NSR Company interchange.

PRELIMINARY FINANCIAL RESPONSIBILITY AMOUNT

Under 49 C.F.R. §1152.27(c)(1)(ii), a person submitting an expression of intent to file an OFA must demonstrate that the person is financially responsible, under the definition of 49 CFR §1152.27(c)(1)(iv)(B), for the calculated preliminary financial responsibility amount (“PFRA”). Under this section, an offeror is deemed to be financially responsible if the offeror “has or within

a reasonable time will have the financial resources to fulfill proposed contractual obligations.”

Here, the question is whether WGS will have the financial ability to pay the PFRA to subsidize rail service from its facility to the NSR interchange.

The PFRA for a rail line subsidy, under 49 C.F.R. §1152.27(c)(1)(ii), is \$4,000 (representing a standard annual per-mile maintenance cost) times the number of miles of track. The approximate distance that WGS seeks to subsidize is 1.2 miles. The PFRA that WGS must demonstrate an ability to pay is \$4,800.

THE WGS ABILITY TO PAY

Enclosed with this Notice of Intent to file an OFA as Exhibit A is a year-to-date Profit and Loss Statement that demonstrates, on Page 7, WGS’s Net Income to date. This information is adequate to demonstrate WGS’s preliminary financial ability to subsidize rail operations over the segment of the line from the NSR switch to the WGS facility.

CONCLUSION

Based on the foregoing and the attached exhibit, WGS respectfully requests that the Board find it to be preliminarily financially responsible to subsidize the segment of the FIR Line from the WGS facility to the NSR interchange.

Respectfully submitted,



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Counsel for Werner G. Smith, Inc.

Dated: November 10, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November 2022, I served a copy of the foregoing Notice of Intent to File an Offer of Financial Assistance (Subsidy) and Demonstration of Preliminary Financial Responsibility via email on the attorneys for Flats Industrial Inc., a Delaware corporation doing business as Flats Industrial Railroad Company: Crystal Zorbaugh (czorbaugh@bakerandmiller.com) and William Mullins (wmullins@bakerandmiller.com).



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EXHIBIT A

REDACTED