

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1666  
CHICAGO, ILLINOIS 60604-1228  
TELEPHONE (312) 236-0204  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

November 22, 2017

244772

ENTERED  
Office of Proceedings  
November 28, 2017  
Part of  
Public Record

By e-filing

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

Re: Docket No. AB-33 (Sub-No. 327X), *Union Pacific Railroad Company --  
Abandonment and Discontinuance of Service Exemption -- in Cerro Gordo  
County, IA*

Dear Ms. Brown:

Hereby transmitted is an Appeal Of Decision Of Acting Director Of Office Of  
Proceedings, served November 20, 2017, for filing with the Board in the above referenced  
matter.

Very truly yours,



Thomas F. McFarland  
*Attorney for M&StL Group, LLC*

*TMcf:mg:enc\1778\ef\STB3*

cc: Jeremy M. Berman, Esq., Attorney for UP, *jmberman@up.com*  
Andrea Boulton, INHF, *lhein@inhf.org*

FILED  
November 28, 2017  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
November 28, 2017  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

|                             |   |                  |
|-----------------------------|---|------------------|
| UNION PACIFIC RAILROAD      | ) |                  |
| COMPANY -- ABANDONMENT AND  | ) | DOCKET NO. AB-33 |
| DISCONTINUANCE OF SERVICE   | ) | (SUB-NO. 327X)   |
| EXEMPTION -- IN CERRO GORDO | ) |                  |
| COUNTY, IOWA                | ) |                  |

---

**APPEAL OF DECISION OF ACTING DIRECTOR  
OF PROCEEDINGS, SERVED NOVEMBER 20, 2017**

---

M&StL GROUP, LLC  
2 Bunker Hill Square  
Mason City, IA 50401-4508

Appellant

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1666  
Chicago, IL 60604-1228  
(312) 236-0204  
mcfarland@aol.com

Attorney for Appellant

DATE FILED: November 22, 2017

BEFORE THE  
SURFACE TRANSPORTATION BOARD

|                             |   |                  |
|-----------------------------|---|------------------|
| UNION PACIFIC RAILROAD      | ) |                  |
| COMPANY -- ABANDONMENT AND  | ) | DOCKET NO. AB-33 |
| DISCONTINUANCE OF SERVICE   | ) | (SUB-NO. 327X)   |
| EXEMPTION -- IN CERRO GORDO | ) |                  |
| COUNTY, IOWA                | ) |                  |

**APPEAL OF DECISION OF ACTING DIRECTOR  
OF PROCEEDINGS, SERVED NOVEMBER 20, 2017**

Pursuant to 49 C.F.R. § 1152.27(e)(2) and 49 C.F.R. § 1011.2(a)(7), M&StL Group, LLC (MSL) hereby appeals from a decision of the Acting Director of the Office of Proceedings in the above proceeding (Director's decision), served November 20, 2017.

**DECISIONAL STANDARDS**

The Director's decision rejected a formal expression of intent to file an offer of financial assistance (Expression) filed by MSL on November 13, 2017 for failure to comply with the requirements of 49 C.F.R. § 1152.27(c)(2)(i). The intended Offer of Financial Assistance (OFA) was to be a purchase of a 2-mile segment of a 2.5-mile rail line owned by Union Pacific Railroad Company (UP) in Mason City, IA.

Authority for the Director to have taken that action appears to be included in the Director's authority under 49 C.F.R. § 1011.7(a)(2)(ii) to determine whether OFAs satisfy the standards of 49 U.S.C. § 10904(d). It is provided in 49 C.F.R. § 1152.27(e)(2) that appeals of the Director's action in that respect are governed by 49 C.F.R. § 1011.2(a)(7).

There are no decisional standards in the latter regulation, but presumably the decisional standards in 49 C.F.R. § 1011.6(b) also apply to 49 C.F.R. § 1011.2(a)(7), i.e., such an appeal will be granted “to correct a clear error of judgment or to prevent manifest injustice.”

The Director correctly rejected the Expression as not in compliance with the governing regulations. Accordingly, there was no clear error of judgment.

Instead, the governing decisional standard is whether it would be unjust in the circumstances to reject MSL’s Expression. MSL respectfully offers the following in support of a determination that it would be unjust to do so.

MSL hereby provides the information required by 49 C.F.R. § 1152.27(c)(2)(i):

**I. Preliminary Financial Responsibility Amount (PFRA)**

MSL estimates that the PFRA is \$55,600, calculated as follows:

|                                                           |                |
|-----------------------------------------------------------|----------------|
| Rail Steel Scrap Price Per Short Ton                      | \$150          |
| Short Tons Per Mile                                       | <u>x 132</u>   |
| Scrap Price Per Mile                                      | \$19,800       |
| Number of Miles                                           | <u>x 2</u>     |
| Scrap Price for 2-Mile Segment                            | \$39,600       |
| Two Years Of Operations<br>(at \$4,000 per mile per year) | <u>+16,000</u> |
| Total PFRA                                                | \$55,600       |

The rail scrap price per ton is based on information provided by Mr. Nick West, Manager of Scrap Processors, Inc., Webster City, Iowa, on November 21, 2017. A copy of the e-mail message from Mr. West providing that information is attached to this Appeal as Appendix 1.

Mr. West has included telephone contact information if verification is required. The scrap price referred to by Mr. West is for scrap rail delivered to Scrap Processors at Webster City, Iowa.

**II and III. MSL's Ability To Pay The PFRA And Escrow Requirement**

Attached to this Appeal as Appendix 2 is a copy of an Account Statement issued by Clear Lake Bank & Trust Co. that shows that as of November 20, 2017, MSL had a balance of \$64,000 in its Account No. xxx0900. That Account Statement is signed by Ms. Jean Mujica on behalf of Clear Lake Bank & Trust Co.

The balance in MSL's Account comfortably exceeds the PFRA estimated by MSL. Moreover, that entire amount is escrowed such that it is far more than the 10-percent escrow requirement in the Board's regulations. Appendix 2 thus satisfies the Board's regulations requiring a showing of MSL's financial responsibility and the Board's escrow requirement.

**IV. Need For Rail Service**

There have been no shipments by rail from points on the 2-mile segment in recent years, but not because of an absence of need for rail service. Attached to this Appeal as Appendix 3 is a copy of a letter from the President of Midwest Soya Intl., Inc. (Midwest). Midwest has a grain shipping facility located on the 2-mile segment. The prior owner of the segment never attempted to provide a competitive price for Midwest's shipments. Even when Midwest approached the prior owner about shipping unit trains on the inactive segment, Midwest received no response. (Appendix 3).

Midwest sees much potential for rail shipments to all parts of the country if the rail line were to be acquired and readied for shipment. One such potential is for over 100 cars per year to a receiver in the Los Angeles area. (Appendix 3).

Additional potential sources of rail traffic would be provided during a later phase of the OFA process, if required.

**V. Identity of Offeror**

The Offeror is M&StL Group, LLC, 2 Bunker Hill Square, Mason City, IA 50401. Offeror's representative is Thomas F. McFarland, Thomas F. McFarland P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604-1228, (312) 236-0204, mcfarland@aol.com.

**VI. Corporate Information**

The full name of the Offeror is M&StL Group, LLC (MSL). MSL is incorporated in Iowa. It is a closely held corporation, solely owned by Mr. David K. Johnson, 2 Bunker Hill Square, Mason City, IA 50401.

**VII. Multiple Parties To A Single OFA**

Not Applicable.

**BALANCE OF HARDSHIPS**

As shown in the foregoing, MSL is a financially sound entity who is offering in good faith to acquire the 2-mile segment, and to revive rail service over it following a long hiatus. MSL's intent to file an OFA is thus in furtherance of the national rail policy of 49 C.F.R. § 10101(4) to insure the development and continuation of a sound rail transportation system to meet the needs of the public and the national defense. In view of the information furnished in support of this Appeal, MSL's Expression now satisfies the requirements of 49 U.S.C. § 10904(d), as reflected in the new supporting regulations at 49 C.F.R. § 1152.27(c)(2)(i). Both MSL and the public interest in sound rail transportation would be harmed if this Appeal were to be denied.

UP would not be seriously harmed if this Appeal were to be granted. UP would not experience a loss from operation of the 2-mile segment because that segment is not being operated. It is likely that UP would experience a minimal opportunity cost as a result of the relatively short delay in the OFA process if this Appeal were to be granted. However, that short delay would not be material in the balance of hardships inasmuch as UP willingly incurred far greater opportunity costs as a result of years of ownership of the segment in an inoperable state.

UP has argued that the short delay that would result from granting MSL's Appeal should not be permitted to frustrate the desire of the Iowa National Heritage Foundation to acquire the rail line for trail use (UP Motion to Reject, Nov. 17, 2017, at 3). However, any such harm to INHF is not entitled to consideration in the balance of hardships because revival of rail service takes priority over trail use. *See Rail Abandonments -- Use of Rights-of-Way as Trails*, 2 ICC 2d 591 (1986), at 608, viz:

b. *Sections 10905 and 10906* - Offers of financial assistance to acquire rail lines. . .take priority over both interim trail use and public use conditions because retention of existing rail service is mandatory. . ., whereas. . .public use conditions and section 1247(d) trail use are voluntary.

#### **CONCLUSION AND REQUESTED RELIEF**

MSL apologizes to the Board for the added work occasioned by this Appeal. MSL has now complied with the new regulations governing OFAs. As shown, the balance of hardships strongly favors granting this Appeal. The Board is respectfully requested to grant this Appeal and to reinstate the OFA process.

Respectfully submitted,

M&StL GROUP, LLC  
2 Bunker Hill Square  
Mason City, IA 50401-4508

Appellant

*Thomas F. McFarland*

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1666  
Chicago, IL 60604-1228  
(312) 236-0204  
mcfarland@aol.com

Attorney for Appellant

DATE FILED: November 22, 2017

From: Nick West  
Sent: Tuesday, November 21, 2017 9:31 AM  
To: [cgwrrkid@mchsi.com](mailto:cgwrrkid@mchsi.com)  
Subject: Scrap rail quote

--

Nick West  
Manger  
Scrap Processors Inc.  
Webster City IA  
Cell 515 975 1229  
Office 515 832 5360

Scrap processors current price for random rail lengths for the month of November would be 150 dollars per net ton. Net ton would be per 2000 lbs of material. The market seems to be steady at this time. IF material is not delivered in the month of November price would be adjusted according to current market value for that month. This price is delivered to Scrap Processors Webster City IA.



## Account Activity Statement

**M&StL Group LLC**  
2 Bunker Hill Sq  
Mason City IA 50401

Customer Number: MAA5577  
Account Number: XXXXXXXXXXXX0900  
Interest Rate: 0.000000 %  
Previous Statement Balance: \$0.00  
Average Balance: \$4,000.00  
Overdraft Limit: \$0.00

| Date       | Description                             | Check/Ref # | Amount      | Balance     |
|------------|-----------------------------------------|-------------|-------------|-------------|
| 11/14/2017 | Deposit                                 |             | \$4,000.00  | \$4,000.00  |
| 11/20/2017 | Memo Credit<br>Phone/In-Person Transfer |             | \$60,000.00 | \$64,000.00 |

Clear Lake Bank & Trust Company  
425 Tiffany Drive  
Mason City, IA 50401

*Jean M. Musica*

This temporary statement from Clear Lake Bank & Trust Company is not a formal statement of your account.  
These items will be reflected again on your regularly scheduled statement.

OCT. 26, 2017

"Exporters of Soybeans and other Grains"  
"Food Grade Quality"

**Midwest Soya Intl., Inc.**  
Mason City, Nora Springs  
Clear Lake

KIM F PLEGGENKUHLE  
President

BUS: (641) 424-5669

HOME: (641) 357-6751

FAX: (641) 421-7701

Email: [midwestsoya@netconx.net](mailto:midwestsoya@netconx.net)



Dear Mr. Johnson,

Midwest Soya Intl. Inc., started business in 1974 and was located in Clear Lake Iowa, and expanded to Mason City in 1992. We shipped 100's of railroad cars in Clear lake during our time there, but after coming to Mason City, Ia. we shipped 0 cars from our present location, 500 3rd st. NE, Mason City, Ia. We have opportunities to ship more and more grain, but the rates given to MSI were never competitive enough for us to land the contracts. We did ship rail cars out of Mason City on the UP but had to handle the grain twice to load off site, but with there rates we made it work for our shipments. These were loaded No. of 12th street with portable conveyers. We also loaded cars on the old Milwaukee line near there depot with augers and make that work also, but never 1 car shipped from my location here in Mason City. They could not provide a competitive price and never tried too. In 1993 we approached the CNW loading unit trains on the main line here since it was never used and never got any responses.

If something or someone would get this line active again I believe there is much potential for rail shipments to all parts of the U.S. I had a customer in L.A. that is using over 100 cars per year but I cannot ship to him since I have no rail service and am getting beat up on price because of freight.

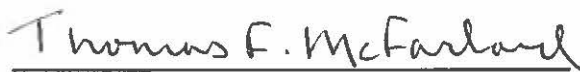
Any more info needed please contact me at 641 424 5669.

Best Regards,

  
Kim F Pleggenkuhle Pres. MSI

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2017, I served the foregoing document, Appeal Of Decision Of Acting Director Of Office Of Proceedings, Served November 20, 2017, on Jeremy M. Berman, Esq., Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179, by e-mail to [jmberman@up.com](mailto:jmberman@up.com) and on Ms. Andrea Boulton of INHF by e-mail to [lhein@inhf.org](mailto:lhein@inhf.org).

  
Thomas F. McFarland