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November 17, 2017

VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

RE: Union Pacific--Aban. Exemption--In Cerro Gordo County, Iowa, AB 33 (Sub-No. 327X)

Dear Ms. Brown:

Union Pacific Railroad Company ("Union Pacific") hereby replies in opposition to the formal expression of intent to file an offer of financial assistance ("Expression of Intent") filed by M&StL Group, LLC ("MSL") on November 13, 2017. The Expression of Intent should be rejected because it does not comply with the requirements of 49 C.F.R. § 1152.27 and is untimely. Union Pacific requests that the Board reject the Expression of Intent and allow the exemption sought in this proceeding to become effective as scheduled on December 1, 2017.

The Expression of Intent should be rejected because it does not contain the information required by 49 C.F.R. § 1152.27. Effective July 29, 2017, the Board adopted changes to its regulations governing offers of financial assistance ("OFA"). *Offers of Financial Assistance*, Docket No. EP 729 (STB served June 29, 2017). These changes included new requirements with respect to demonstrating financial responsibility that must now be submitted with an expression of intent to file an OFA. The Expression of Intent is deficient because it does not comply with these new requirements.

The Expression of Intent was filed pursuant to 49 C.F.R. § 1152.27(c)(2)(i), which provides:

(i) Expression of intent to file offer. Persons with a potential interest in providing financial assistance must, no later than 10 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, submit to the carrier and the Board a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase) and *demonstrating that they are preliminarily financially responsible as described in paragraph (c)(1)(ii) of this section. ...*

(emphasis added.)

Paragraph (c)(1)(ii), referenced in § 1152.27(c)(2)(i), provides:

(ii) Preliminary financial responsibility. Persons submitting an expression of intent to file an offer of financial assistance as described in paragraph (c)(1)(i) or paragraph (c)(2)(i) of this section must *demonstrate that they are financially responsible, under the definition set forth in paragraph (c)(1)(iv)(B) of this section*, for the calculated preliminary financial

responsibility amount of the rail line they seek to subsidize or purchase.

...

If they seek to purchase, the preliminary financial responsibility amount shall be the sum of the rail steel scrap price per ton (dated within 30 days of the submission of the expression of intent), times 132 short tons per track mile or 117.857 long tons per track mile, times the length of the line in miles, plus \$ 4,000 times the number of miles of track times two. Persons submitting an expression of intent must provide evidentiary support for their calculations. ...

(emphasis added.)

Paragraph (c)(1)(iv)(B), referenced in § 1152.27(c)(1)(ii), provides:

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations. Examples of documentation the Board will accept as evidence of financial responsibility include income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance or ability to obtain adequate insurance. ...

The Expression of Intent is deficient because it does not demonstrate MSL's financial responsibility. Specifically, the Expression of Intent failed to include the calculation of the preliminary financial responsibility amount and failed to include documentation that MSL has or within a reasonable time will have the financial resources to meet this amount. The Board should reject the Expression of Intent because it does not comply with § 1152.27. In the alternative, the Board could find that MSL failed to demonstrate preliminary financial responsibility by not providing the required information and therefore MSL cannot proceed with its OFA.

The Expression of Intent should also be rejected because it is untimely. Notice of Union Pacific's exemption was served by the Board and published in the *Federal Register* on November 1, 2017 (82 FR 50729) (the "Decision"). As provided in the Decision, formal expressions of intent to file an offer of financial assistance ("OFA") were to be *filed* by November 9, 2017.

On November 9, 2017, Union Pacific received the Expression of Intent, which is dated November 9, 2017. On November 10 2017, Union Pacific received a notice, dated November 10, 2017, that the Expression of Intent had been served on the Iowa National Heritage Foundation ("INHF") ("Notice of Service"). The Expression of Intent and Notice of Service were not filed with the Board until November 13, 2017, four days after the filing deadline.

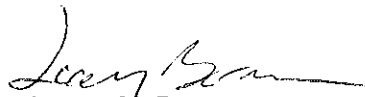
The Expression of Intent does not provide an explanation for the late filing. Nor does it supply a reason the filing deadline should be extended. The Notice of Service requests a *one day* extension, but provides no explanation for why the Expression of Intent was filed four days late and provides no reason why the deadline should be extended. Late filing alone is a sufficient reason for the Board to reject the Expression of Intent when the prospective offeror does not provide a reason for extending the filing

deadline.¹ The Expression of Intent should be denied because it is untimely and does not provide a reason for being untimely.

While MSL failed to provide a reason for extending the deadline, there exists a very good reason to not extend it. INHF, on behalf of the City of Mason City, filed a timely for public use condition and request for interim trail use/rail banking on October 16, 2017. INHF desires to construct a recreational trail on the part of the line to be abandoned. Union Pacific is supportive of this effort and has engaged in negotiations with INHF for acquisition of the line. MSL's untimely and deficient Expression of Intent should not be allowed to frustrate INHF's desire to use the line for public benefit.

For the foregoing reasons, Union Pacific requests that the Board reject MSL's Expression of Intent and allow the exemption sought in this proceeding to become effective as scheduled on December 1, 2017.

Respectfully Submitted,



Jeremy M. Berman

Cc: Thomas McFarland (counsel for MSL)
Andrea Boulton (INHF)

¹ See e.g. *General Railway Corporation D/B/A Iowa Northwestern Railroad--Aband. Exemption--In Osceola And Dickinson Counties, Iowa*, AB 1067 (Sub-No. 2X) (STB served October 24, 2008).