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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

May 25, 2018

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 a Motion To Compel Production Of Purchase And Sale Agreement,
for filing with the Board in the above referenced matter.

Very truly yours,

/s/ Thomas F. McFarland

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

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

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	)	

**MOTION TO COMPEL PRODUCTION
OF PURCHASE AND SALE AGREEMENT**

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

Offeror

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 Offeror

DATE FILED: May 25, 2018

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	)	

**MOTION TO COMPEL PRODUCTION
OF PURCHASE AND SALE AGREEMENT**

Pursuant to 49 C.F.R. § 1114.31(a), Offeror M&StL Group, LLC (M&StL) hereby seeks an order that compels Union Pacific Railroad Company (UP) and Iowa Natural Heritage Foundation (INHF) to provide a signed copy of a Purchase Agreement between them that purportedly provides that INHF will purchase the subject rail line from UP for \$1.7 million.

BACKGROUND

It is not necessary for an adequate understanding of the issue presented by this Motion to describe its extensive background except to say that M&StL has expressed an intent to file an Offer of Financial Assistance (OFA) to purchase the subject rail line, and that in response to M&StL's request under 49 C.F.R. § 1127.1(a)(ii)(3) for valuation information, UP alleged that the fair market value of the land in the rail line right-of-way is \$1.7 million, based on a signed Purchase Agreement whereby INHF would purchase the line from UP for that amount.

Such a signed Purchase Agreement would presumptively establish the fair market value of the right-of-way land. In view of the obvious relevance of that Purchase Agreement to the net liquidation value-purchase price of the subject rail line, M&StL asked UP to provide a copy of that Agreement for review. When making that request, M&StL explicitly offered to sign a

confidentiality or non-disclosure agreement as to the Purchase Agreement, or to agree to a protective order. UP responded that INHF refused to permit UP to provide a copy of that Agreement.

INHF is a party to this proceeding by virtue of having filed a request for railbanking and interim recreational trail use of the subject right-of-way under the National Trails System Act, 16 U.S.C. § 1247(d).

Being unable to verify the alleged purchase price in the signed Purchase Agreement, M&StL now requests that the Board compel INHF and UP to provide a copy of that Agreement to M&StL.

ARGUMENT

The legal obligation to provide this Purchase Agreement is so apparent that little argument is needed to confirm it. A party cannot say that a finding is warranted by evidence contained in a document, but then be heard to say that the document cannot be viewed to verify the evidence.

Discovery under Board regulations is available as to any non-privileged matter that is relevant to the subject matter of a proceeding. The subject matter of the valuation phase of this OFA proceeding includes the fair market value of the land in the rail line right-of-way. The INHF-UP Purchase Agreement is not only relevant to that subject matter, it may well be controlling as to that matter. That being the case, there is no legal justification for INHF's refusal to provide a copy of that Purchase Agreement for review.

WHEREFORE, the Board should enter an order that compels INHF and UP to provide a signed copy of the Purchase Agreement for review by M&StL.

Respectfully submitted,

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

Offeror

/s/ Thomas F. McFarland

THOMAS F. McFARLAND
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208 South LaSalle Street, Suite 1666
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Attorney for Offeror

DATE FILED: May 25, 2018

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I served the foregoing document, Motion To Compel Production Of Purchase And Sale Agreement, on Jeremy M. Berman, Esq., Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179, by e-mail to jmberman@up.com and on Ms. Andrea Boulton, Iowa Natural Heritage Foundation, 505 Fifth Avenue Insurance Exchange Building, Suite 444, Des Moines, IA 50309 by e-mail to lhein@inhf.org.

/s/ Thomas F. McFarland

Thomas F. McFarland