

**Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Finance Docket No. 35133

**Milwaukee Industrial Trade Center, LLC, d.b.a. Milwaukee Terminal Railway—
Acquisition and Operation Exemption—Private Trackage at Milwaukee, WI**

**REPLY OF
THE REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE
TO MITC REPLY IN OPPOSITION TO PETITION TO REVOKE**

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TO REPLY BY MITC IN OPPOSITION TO PETITION TO REVOKE**

The Milwaukee Industrial Trade Center’s (“MITC”) Reply in Opposition to Petition to Revoke avoids discussion of the inconvenient facts which demonstrate that its attempt to characterize itself as a rail carrier was nothing more than a sham designed to avoid the use restrictions and processes of state and local law designed to promote the redevelopment and health and safety of a key area of the City of Milwaukee. MITC claims that its filing promotes the rail transportation policy of 49 U.S.C. § 10101, when nothing could be further than the truth.¹ MITC claims that it was not misleading to use the phrase “to be acquired” in connection with the trackage on the MITC parcel because, by the expiration of the notice period, the trackage would acquire that status of a rail carrier line of railroad.² The Redevelopment Authority of the City of Milwaukee (“RACM”) will show that the Notice of Exemption procedures of 49 C.F.R. § 1150.31, *et seq.* apply only to transactions involving lines of railroads – and not to schemes by

¹ See MITC Reply at 4-5.

² *Id.* at 7.

land owners to convert shipper switching track to a line of railroads solely for the purpose of preempting local land use regulations.

MITC says that it was not false and misleading to describe, in its Corrected Notice, limited rail transportation uses on the MITC Parcel, and then for MITC counsel to assert in a June 5, 2008 letter that the exemption obtained from the Board for local land use restrictions applied to all uses on the entire property. Counsel now claims that the June 5, 2008 letter was describing “potential uses of the Land Parcel,” and that it was not inconsistent with the Notice of Exemption.³ However, the June 5 letter is clear – it contends that those potential uses – even though not rail transportation – were exempt from land use controls because they would be performed on MITC’s railroad property. Counsel for MITC is out of touch with his client and its contentions over the scope of the Board’s preemption. As shown in the attached verified statement of Gregg Hagopian, MITC representatives, as recently as October 8 and 9, 2008, in the Wisconsin state lawsuit concerning the MITC Parcel, repeated the position expressed in their June 5 letter that the scope of the Board’s preemption extends to all portions of the MITC Parcel (all 84 acres) and to all uses contemplated there,⁴ and that Federal preemption applies today.

For these and other reasons set forth below, the Board should proceed promptly to rule on RACM’s petition.

³ *Id.* at 8.

⁴ *See* Hagopian Reply V.S. at ¶ 3. Notwithstanding these assertions, Judge Kahn ordered that RACM could conduct site inspections to assess the environmental conditions on the property, but that they were not permitted to perform environmental testing within eight feet of the rail tracks on the property.

I. MITC's Use of the Notice Exemption Process Is Not Consistent with the Rail Transportation Policy.

The class exemption process in 49 C.F.R. § 1150.31, *et seq.*, is designed to expedite transactions that involve the conveyance of rail lines from one party to another, where there is no change in use and existing preemption of state and local law. These procedures serve the rail transportation policies of reducing regulatory barriers of entry and exit from the industry, and promoting expeditious handling and resolution of such proceedings.

However, extension of these notice exemption procedures to after-the-fact decisions, in this case, 17 months after acquisition of industry trackage, by property owners to convert industrial spur tracks to rail lines for the purpose of avoiding local land use restriction does not promote the rail transportation policy or the public convenience and necessity. Rail operations are a permitted use under RACM's redevelopment plan, and the Wisconsin & Southern Railroad ("WSOR") most recently performed industry switching at this location.⁵ Prior to the filing of its Corrected Notice, MITC was already free to assume responsibility for that industrial switching service without any regulatory filing with the Board. Indeed, MITC can operate an intermodal rail transfer facility, unless it involves uses that contradict RACM's Redevelopment Plan, with WSOR picking up and setting off cars, without the need to create an inefficient and regulated rail carrier interchange of traffic. Filing with the Board under the notice of exemption regulations adds an additional regulatory burden, and is not necessary to promote any transportation interest. In fact, the only intended consequence of MITC's filing is not transportation related: to seek to obtain the preemption of state and local law. RACM understands that legitimate rail carrier

⁵ See Timm V.S. attached to RACM's Petition to Revoke at ¶ 10 and accompanying note. See also Hagopian V.S. attached to RACM's Petition to Revoke at ¶ 8.

transportation is entitled to Federal preemption under 49 U.S.C. § 10501(b), but RACM does indeed question whether use of the notice of exemption procedures is appropriate in the present circumstances, and disputes that the activities which MITC officials seek to shelter from local law constitute rail carrier transportation within any reasonable definition of that term. MITC in this case seeks to invoke STB jurisdiction to overturn state and local regulation of land use and the public health and safety, which does not support any element of the rail transportation policy.

In fact, there is at least one element of the transportation policy that MITC's actions contradict. The policy seeks "to encourage honest and efficient management of railroads...." The scam of embracing the rail carrier mantle as a means for avoiding enforcement of legitimate state and local regulation does not encourage honest behavior or efficient management. Forcing local jurisdictions to come running to the STB to undo alleged conversions of land use, of which they have no actual notice, does not reduce the burden of unnecessary regulation, or encourage efficient management of railroads. Interposing a formal interchange at the junction of a collection of 31 shipper spurs with the CP/WSOR main line is not efficient or honest. MITC's behavior as established on this record is contemptible, and the Board should not countenance it.

II. MITC's Corrected Notice of Exemption is False and Misleading.

Counsel for MITC claims that upon filing the initial Notice of Exemption, STB staff informally informed him that the notice of the exemption regulations at section 1150.31 *et seq.* speak in terms of transactions involving rail lines. In order to squeeze his square peg into the round hole, he was told he needed to use the words "to be acquired." There is nothing in section 1150.31 that suggests that re-designations of non-carrier tracks into rail carrier lines are

encompassed within the notice of exemption procedures, and the use of the “acquisition” language is misleading in this case because there is no transaction involving a rail line.

MITC management, after battling RACM for 17 months over permissible uses and the right of RACM to gain access to the property to conduct inspections, came to a realization – all it had to do to get around its problems with RACM was to create a railroad out of these industrial spurs it had acquired, and to buy or lease a few rail cars and an inoperable locomotive to dress it up like a railroad. These tactics should not be encouraged or called “rail line acquisitions,” and the Board’s regulations should not be abused to defeat legitimate local government regulation when not transportation policy is served.

MITC counsel claims that his description of the intended rail activities at the MITC Parcel in his Corrected Notice was not misleading, and that the statements by MITC’s local counsel in the June 5 letter to City of Milwaukee attorneys “are not inconsistent” with its Corrected Notice.⁶ The June 5 letter starts out by asserting that RACM’s right of access to the MITC “Property,” which counsel clearly defines as including the entire 84 acre MITC Parcel, under Wisconsin law “is pre-empted by the federal Interstate Commerce Commission Termination Act... and therefore RACM is without authority to access the Property to perform the work [environmental testing] set forth in its motion.”⁷

MITC counsel refers to an earlier withdrawal of the offers to sell that property to RACM or the City, and observes that “RACM must now attempt to condemn it. However, RACM’s

⁶ MITC Reply at p. 8.

⁷ Exhibit F to Hagopian V.S. attached to RACM’s Petition to Revoke,

right to condemn the Property is preempted under ICCTA.”⁸ There is no effort to limit the scope of the preemption conveyed by the exemption to alleged rail lines on the 84 acre “Property.”

The description in MITC’s Corrected Notice’s is vague as to the location and scope of the transloading operation on the 84 acre MITC Parcel, but the June 17 letter from MITC local counsel to City attorneys informs the City of its plans “for the Tower Automotive Facility (“the Property”) as it relates to a railroad facility.”⁹ MITC announces its redevelopment plan “for the Property.” It describes the expansion of its affiliated rail related industries, including scrap and recycling. It is clear that MITC was defining the scope of its railroad operations very broadly to encompass those operations of these suppliers and contractors to the rail industry. RACM’s redevelopment plan was irrelevant to MITC’s plan for its new fiefdom. That broad statement in defining the scope of Federal preemption continues to this day.¹⁰

In MITC’s Reply, counsel states that its failure to describe the course of dispute, sales negotiations and litigation between RACM and MITC and “RACM’s potential litigation strategy in connection with that Land Parcel” was not required by the Board’s regulations, and that that failure was not misleading to anyone.¹¹ RACM believes it is material for the Board to understand what really was going on between the parties. Transportation factors did not drive this attempted conversion of industry tracks to rail lines – preemption of threatened condemnation processes did, and the Board should have been made aware of that in the

⁸ *Id.*

⁹ Exhibit I to the Hagopian V.S. attached to RACM’s Petition to Revoke.

¹⁰ *See* Hagopian Reply V.S. at ¶ 3 (indicating that MITC’s attorneys in the state lawsuit, as recently as October 8 and 9, informed the judge that Federal preemption exists and extends to all 84 acres of MITC’s parcel, regardless of the location of any rail track).

¹¹ *See* MITC Reply at pp. 8-9.

Corrected Notice. The Board has found fault with other petitioners seeking notice of class exemptions pursuant to 49 C.F.R. § 1150.31 but, upon filing, failing to inform the Board that the land parcel containing the affected track was the subject of a condemnation action.¹²

MITC counsel further attempts to defend its representation of anticipated rail revenues based upon the distinction between the rail operating revenues and the losses claimed in state court litigation of not being able to use the MITC Parcel as a whole.¹³ However, as shown above, MITC was taking the position with the City and in state court that they were one in the same.

III. MITC Has Stated that it Intends to Transport C&D Debris and other Solid Waste to and from the MITC Parcel.

MITC now claims that it “will not transport C&D by rail to or from the Land Parcel” and that “[t]here is no evidence that MITC ... intends to do so.”¹⁴ RACM witness Benjamin Timm states in his Verified Statement in support of the Petition that:

Following the publishing of MITC’s Notice in the Federal Register, MITC has stated that it intends to process and allow tenants to process Construction and Demolition waste (“C&D”) onsite, notwithstanding the denial of the permit for indoor scrap processing based on the Redevelopment Plan’s prohibition of such

¹² See, e.g., *Jefferson Terminal Railroad Company—Acquisition and Operation Exemption—Crown Enterprises, Inc.*, STB Finance Docket No. 33950, Mar. 15, 2001 (where, in granting the City of Detroit’s petition to reopen and revoke the notice of exemption filed by Jefferson, the Board stated that it was “troubled by Jefferson’s failure to disclose that the property was about to be condemned”). *Id.* at p. 5. The Board further stated that “[t]he timing and failure to inform us of the condemnation proceedings suggest an effort by [the petitioners] to use our exemption process to insulate the property from the condemnation process by invoking our jurisdiction to bolster Jefferson’s claim that the property is a rail line beyond the reach of state or local condemnation authority.” *Id.*

¹³ See MITC Reply at pp. 9-10.

¹⁴ See *id.* at p. 11.

use of the land. I was present at meetings at which Gerry Blomberg of MITC stated words to the effect that he was expecting to receive contracts or jobs from Canada that would involve importing C&D to the MITC Parcel for separating and salvage operations. * * * Blomberg and [his MITC colleague] Bjodstrup both have indicated at different meetings that they are considering moving a concrete crushing operation (Milwaukee Materials)...onto the MITC Parcel. Richard Hawkins, who is part owner of MITC, is the registered agent for Milwaukee Materials. The current concrete crushing operation does not have an occupancy permit and would require Board of Zoning Appeals...approval under the Redevelopment Plan.¹⁵

This is evidence, and Mr. Bjodstrup's Verified Statement attached to MITC's Reply does not contradict Mr. Timm's testimony. Moreover, the representation by MITC counsel that MITC will not transport C&D by rail to or from the Parcel does not address other forms of solid waste that may be transported by rail to or from the Parcel.

The significance of these facts relates to a limitation on the scope of the Board's jurisdiction created by the Consolidated Appropriations Act of 2008, which limited the STB's jurisdiction and hence the scope of the preemption conferred to rail carriers under 49 U.S.C. § 10501(b). Since the filing of the Petition to Revoke, Congress has taken another significant step on this issue rail transfer operations involving solid waste by passing H.R. 2095, which as part of a combined reauthorization of the rail safety and Amtrak programs included the Clean Railroad Act of 2008. The bill has been sent to the President for signature, and according to statements by the Secretary of Transportation, the President will sign the bill in the coming days.¹⁶

The Clean Railroad Act of 2008 limits the Board's jurisdiction over Solid Waste Rail Transfer Facilities, except to the extent provided in two new sections of ICCTA. The new

¹⁵ Timm V.S. attached to RACM Petition to Revoke at ¶ 14.

¹⁶ See Statement from U.S. Transportation Secretary Mary E. Peters on Rail Legislation, Oct. 2, 2008, available at <http://www.dot.gov/affairs/dot14608.htm>.

§10908 (a) declares that such rail transfer facilities shall comply with all applicable Federal and State requirements, both substantive and procedural,

respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, including laws governing solid waste, to the same extent as required for any similar solid waste management facility...that is not owned or operated by on behalf of a rail carrier, except as provided for in section 10909.

Subsection 10908(b) addresses existing solid waste rail transfer facilities “operating as of the date of enactment.” There are no current rail transfer operations at the MITC Parcel. The new section 10909 creates a procedure by which the Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed under two circumstances: (1) if the state or local law discriminates against railroad solid waste transportation or facilities; or (2) for existing facilities, if the Governor of the State petitions the Board to initiate a site permit proceeding.

As a practical matter, upon enactment this statute will eliminate any question about the processing or transfer of solid waste at the MITC Parcel. The only remaining question is whether there is a rail carrier operating there, and RACM maintains that there is not.

IV. The *Jefferson Terminal* Case Does Govern this Case.

MITC contends that because RACM had not commenced condemnation proceedings by the time MITC filed its Corrected Notice, the *Riverview Trenton* governs this proceeding, not the Board’s decision in *Jefferson Terminal*. RACM maintains that the Board’s decision in *Jefferson Terminal* turns on an analysis of the good faith and bona fide transportation related objectives of the applicant invoking the notice exemption procedures – not on a mechanical determination of whether or not the final stage of the condemnation process had been initiated. In fact, RACM’s initiation of procedures to gain access to the MITC Parcel to conduct environmental tests was the first step towards condemnation.

Notwithstanding MITC's regulatory counsel's effort to supply legitimate transportation objectives to his clients' actions, the behavior and actions of MITC demonstrate that it was concerned with only one objective – circumventing the local restrictions on the planned activities of its affiliates, which *its* redevelopment plan contemplated.

The verified statement of Mr. Bjodstrup claims that “MITC offers freight rail service to multiple customers as a common carrier.”¹⁷ That is not clear from its website (www.MITCGroup.com). Under the services tab as of October 13, 2008, it lists “Rail loading – unloading” and “Rail car scaling.” Under the location tab, it provides a map of the MITC Parcel, and under “Rail Access” it states that, “MITC is served by the Wisconsin & Southern Railroad Company,” and provides a link to WSOR's website. There is no reference to Milwaukee Terminal Railway.

V. Transloading and Storage of Bulk Commodities Do Not in and of Themselves Constitute Rail Common Carrier Services.

MITC quibbles over whether, given the course of conduct and the nature of the rail trackage at the MITC Parcel detailed in the Petition to Revoke, there should be a presumption against characterizing a transloading operation as a rail common carrier activity. The fact is that not all transloading and storage service providers are rail common carriers, and the *Florida East Coast*, and *Tri-State Brick and Stone* cases cited by RACM in its Petition to Revoke are not disputed by MITC. Rather, MITC quotes a lengthy segment of the Board's *Bulkmatic* decision,¹⁸ which carefully analyzes the facts of that case, hoping that the detailed findings on the facts of that case will apply to all future conversions of shipper spurs to alleged rail common carrier

¹⁷ Bjodstrup V.S. attached to MITC Reply at p. 2.

¹⁸ See *Bulkmatic Railroad Corporation—Acquisition and Operation Exemption—Bulkmatic Transport Company*, STB Finance Docket No. 34145, Nov. 18, 2002.

lines. The facts of that case are not the facts of this case, and RACM has shown that the effort to declare a rail common carrier here had little or no relationship to the provision of common carrier service.

In *Bulkmatic*, a motor carrier Bulkmatic Transport Company (“BRT”) subleased rail tracks to two non-carrier entities, Chicago Heights Switching Company and Bulkmatic Railroad Corp. (“BRC”), and they filed notices of exemption. The notices were challenged by a labor union representing employees of the Union Pacific Railroad that performed switching services on the tracks prior to the notices. The BRC was affiliated with BRT, an entity engaged in common carrier transportation services. Preemption of state and local law was not the reason for the transaction, and there was no allegation to that effect. The labor union challenged the transaction on the grounds that: (1) BRC was set up to service BRT exclusively and that BRC was not holding itself out as a common carrier; and (2) that it was beyond the licensing power of the Board to convert excepted industrial spur tracks to lines of railroad.

In the present case, RACM has shown that the principal motive of MITC in filing its petition was to preempt state and local law. MITC’s Mr. Bjodstrup now claims, in contrast to prior statements he made to RACM officials, that it “will not produce or receive any goods as the former owners did.”¹⁹ What has happened to that redevelopment plan announced by his attorneys in the June 17 letter?²⁰ The MITC redevelopment plan called for expansion of the businesses MITC affiliates, including Knapp Railroad Builders, Midwest Rail and Dismantling and West Milwaukee Recycling, the latter entity is describing as dealing in the railroad scrap and recycling business. MITC attorneys represent that, “After expanding to the Property, [West

¹⁹ Bjodstrup V.S. attached to MITC Reply at p. 2.

²⁰ See Exhibit I to Hagopian V.S. attached to RACM Petition to Revoke.

Milwaukee Recycling] will ship extensively by rail to markets throughout the United States and Canada.”²¹

Mr. Bjodstrup claims now that,

It is necessary for MITC to be a railroad to provide these services to our customers. Our ability to enter into interchange agreement with other railroads and build relationships with other terminal railroads throughout the country will give use economic viability. The profitability of our rail-car fleet will be dependent on our ability to use Rule 5 to return our cars from remote locations.²²

There is no identification of any customers, and the two tenants at the facility which occupy at total of about 3,000 square feet of the MITC Parcel²³ are not likely candidates. It is not clear why MITC could not operate a transloading business for any number of third parties without becoming a carrier, just like the aggregate shipper in *Florida East Coast* or the transload operators in *Tri-State Brick and Stone*. WSOR has multiple interchange relationships, but MITC will never have multiple interchange agreements. A shipper at the MITC Parcel will have only one serving railroad (WSOR), but that carrier connects with the remainder of the freight rail network. As for building relationships with other terminal railroads around the country, it is unclear what purpose that could possibly serve “to give MITC economic viability.” Any operator a transload facility can build marketing relationships with other similar carrier or non-carrier facilities around the country to apprise them of its capabilities, and becoming a carrier does not advance that objective. As with all shipper-owned rail cars, MITC rail-car fleet will be returned to the MITC Parcel by WSOR from even the remotest of locations.

²¹ *Id.*

²² Bjodstrup V.S. attached to MITC Reply at p. 2.

²³ See Timm V.S. attached to RACM Petition to Revoke at ¶ 9.

VI. The Decisions in Effingham and Bulkmatic are Distinguishable from the Present Case.

MITC claims that “MITC will be competing with Wisconsin & Southern Railroad (WSOR) and Canadian Pacific Railroad (CP) in the sense that MITC will replace WSOR and/or CP as the rail carrier providing rail switching service with the Land Parcel.”²⁴ In fact, there will be no competition with WSOR or CP in any sense. Their operations are entirely end-to-end. MITC is simply seeking to replace WSOR in its former role as the industrial switching entity at the MITC Parcel. There is no evidence that WSOR or CP will also switch the facility. As the Board correctly noted in *Bulkmatic*, “the intended use test” is “subject to the qualification that the focus on use must not obscure the larger purpose and effect of the transaction at issue.”²⁵ As RACM has shown, the larger purpose here has nothing to do with rail competition; rather, the purpose is to preempt local law.

VII. To the Extent the Class Exemption Regulations are Construed to Apply to a Redesignation of Industrial Switching Tracks, They are Arbitrary and Capricious.

RACM understands that by virtue of publication of the Corrected Notice in the *Federal Register* it received official notice of proposed transaction. As stated in the Petition to Revoke, RACM did not obtain actual notice of the transaction to the June 5, 2008 meeting among counsel. As stated above, RACM contends that the Notice of Exemption procedures of 49 C.F.R. § 1150.31 *et. seq.* do not apply to non-transactions where a party simply decides to re-designate industry switching tracks as rail lines. However, should the Board conclude that these procedures do apply to those circumstances, then RACM respectfully suggests that its omission

²⁴ MITC Reply at p. 16.

²⁵ *Bulkmatic*, supra note 18, at p. 6, note 12 (citing *Texas & Pac. Ry. v. Gulf, Etc., Ry.*, 270 U.S. 266 (1926)).

from these Notice of Exemption procedures of the requirements for actual governmental notice, similar to those contained in its line construction and abandonment procedures, is arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C § 706. RACM recognizes that this argument is not a reason for granting the Petition to Revoke, but refers to it in this pleading to preserve the argument in the event of an appeal from an adverse ruling on the Petition.

Respectfully submitted,



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Dated and filed this 16th day of October, 2008

**Before the
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Finance Docket No. 35133

**Milwaukee Industrial Trade Center, LLC, d.b.a. Milwaukee Terminal Railway—
Acquisition and Operation Exemption—Private Trackage at Milwaukee, WI**

HAGOPIAN REPLY V.S.

**VERIFIED STATEMENT OF
GREGG HAGOPIAN
IN SUPPORT OF REPLY OF
THE REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE**

1. My name is Gregg Hagopian. I am an Assistant City Attorney for the City of Milwaukee (“City”). My office address is 841 North Broadway, 7th Floor, Milwaukee, Wisconsin, 53202. I am licensed to practice law in the State of Wisconsin and my job duties include representing the City and the Redevelopment Authority of the City of Milwaukee (“RACM”). In that capacity, I have been representing the City and RACM in a Wisconsin lawsuit (the “State Lawsuit”) commenced by Milwaukee Industrial Trade Center, LLC (“MITC”) against the City and RACM (Milwaukee County Circuit Court Case No. 2008-CV-001772, Judge Kahn) involving the following parcels in Milwaukee, Wisconsin, comprising about 84 acres, herein called the MITC Parcel.

ADDRESS (all in City of Milwaukee)	TAX KEY NUMBER
2900 West Hopkins Street	269-0252-112
3010 West Hopkins Street	269-0259-000
2926 Adj. West Melvina Street	269-0261-100
2823 West Vienna Avenue	269-0305-111
3533 North 27 th Street	269-9993-110
2642 West Hopkins Street	270-0144-111
3424 North 27 th Street	285-1724-111
2537 West Hopkins Street	285-1704-110

2. This is my second Verified Statement in this matter. I give it in support of RACM's Reply in this matter.

3. In the State Lawsuit, I was present at hearings on October 8 and 9, 2008 before Judge Kahn, and at those hearings, it is my recollection from being personally present, that MITC's attorneys (Murn and Martin, by attorneys Jack Bode and Don Murn) argued or represented to Judge Kahn: that MITC is a railroad; that federal law preempts state and local regulation of MITC and the MITC Parcel (except police powers such as typical plumbing inspections); that the preemption MITC enjoys preempts RACM use of eminent domain against MITC and the MITC Parcel; that the railroad status of MITC conferred by STB and its federal preemption extend to all of the 84 acres of the MITC Parcel - regardless of where rail track may exist on those 84 acres; and that this federal preemption currently is the case. I have spoken with Court Reporters for Judge Kahn and have ordered the Court-hearing transcripts for the October dates and have requested that the preparation and delivery of those transcripts be expedited. The foregoing is to the best of my belief. I am waiting for the transcripts.

VERIFICATION

I, Gregg Hagopian, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this verified statement.

Executed on October ¹⁴, 2008.

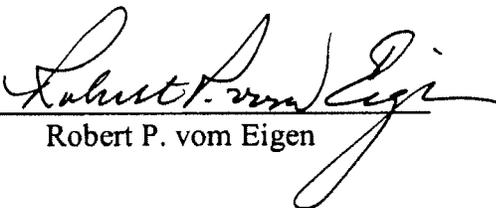

Gregg Hagopian

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Reply of The Redevelopment Authority of The City of Milwaukee to be served by email *tmcfarland@ameritech.net*, this 16th day of October, 2008 on:

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