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April 7, 2010

*By e-filing*

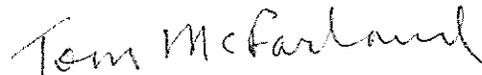
Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

Re: Finance Docket No. 35359, *Pacific Rim Railway Company, Inc. -- Acquisition and Operation Exemption -- City of Keokuk, Iowa*

Dear Ms. Brown:

Hereby transmitted is a Reply In Opposition To Motion To Reject Or Revoke for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland  
*Attorney for Pacific Rim  
Railway Company, Inc.*

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PACIFIC RIM RAILWAY COMPANY, )  
INC. -- ACQUISITION AND ) FINANCE DOCKET  
OPERATION EXEMPTION -- CITY OF ) NO. 35359  
KEOKUK, IOWA )

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**REPLY IN OPPOSITION  
TO MOTION TO REJECT OR REVOKE**

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PACIFIC RIM RAILWAY COMPANY, INC.  
1515 East Tudor Road, Suite 5  
Anchorage, AK 99507

Applicant

THOMAS F. McFARLAND  
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Attorney for Applicant

DATE FILED: April 7, 2010

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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PACIFIC RIM RAILWAY COMPANY,	)	
INC. -- ACQUISITION AND	)	FINANCE DOCKET
OPERATION EXEMPTION -- CITY OF	)	NO. 35359
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**REPLY IN OPPOSITION  
TO MOTION TO REJECT OR REVOKE**

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Pursuant to 49 C.F.R. § 1104.13(a), PACIFIC RIM RAILWAY COMPANY, INC. (PRIM) hereby replies in opposition to a Motion to Reject or Revoke (Motion) filed by Keokuk Junction Railway Co. (KJRY) on April 6, 2010.

**BACKGROUND**

KJRY's Motion is directed at a Notice of Class Exemption from 49 U.S.C. § 10901 (Notice) filed by PRIM under 49 C.F.R. § 1150.31 *et seq.* on March 8, 2010. The exemption would permit PRIM to acquire from the City of Keokuk, Iowa (the City), and to have the ability to operate, a railroad bridge over the Mississippi River that connects trackage at Keokuk, Iowa with trackage at Hamilton, Illinois (the Keokuk-Hamilton Bridge). KJRY currently operates the trackage over that Bridge as well as the trackage on both sides of the Bridge, and would continue to do so after PRIM's acquisition of the Bridge. PRIM does not propose to operate the trackage over the Bridge unless it is required to do so by virtue of its residual common carrier obligation in the event that KJRY discontinues such operation.

By virtue of 49 C.F.R. § 1150.32(b), the class exemption for PRIM's acquisition and operation became effective on April 7, 2010. KJRY's Motion is filed under 49 C.F.R.

§ 1150.32(c) on the ground that PRIM's Notice contains false or misleading information, and thus is void from its inception.

### **LEGAL STANDARDS**

In order to warrant rejection or revocation of a Notice of Class Exemption under 49 C.F.R. § 1150.32(c), the information that is allegedly false or misleading must be material to the validity of the transaction. *See Central Illinois R. Co. - Oper. Exempt. - Rail Line of the City of Peoria, et al.*, 2005 STB LEXIS 113 at \*9-12 (Finance Docket No. 34518, decision served Feb. 23, 2005). For example, if the street address of an Applicant were to be incorrectly stated, the Notice would contain false information, but that would not warrant rejection or revocation of the Notice notwithstanding the literal terms of § 1150.32(c) because the false information would not be material to the validity of the transaction to be exempted. As will be shown below, that is the situation in regard to KJRY's Motion.

### **REPLY**

The information in PRIM's Notice that is alleged by KJRY to be false or misleading are the following statements at page 5 of the Notice:

An agreement in principle has been reached between the City of Keokuk, Iowa and PRIM for sale of the Bridge by the City to PRIM. A signed purchase and sale agreement is expected shortly following compliance with certain municipal requirements of the City.

As support for that allegation, KJRY has submitted a copy of a letter to the Board from the Mayor of the City, dated March 30, 2010, stating that there is no agreement in principle for sale of the Bridge by the City to PRIM.

The principal of PRIM was of the mistaken impression that PRIM and the City had reached an agreement in principle for PRIM's acquisition of the Bridge. The letter from the City's Mayor establishes that such is not the case. Thus, the first sentence quoted above is false. However, the statement in that sentence is not material to the validity of PRIM's acquisition of the Bridge. The applicable regulation at 49 C.F.R. § 1150.33(c) does not require that there be an agreement in principle in place at the time of filing of the Notice. Instead, that regulation requires (emphasis added):

A statement that an agreement has been reached or details about when an agreement will be reached.

The second sentence quoted above complies with the underscored portion of that regulation. Thus, PRIM reasonably expects that the City will agree to sell the Bridge to PRIM after the City conducts proceedings to satisfy municipal requirements for sale of City assets. That provides sufficient detail about when an agreement will be reached. Thus, PRIM's Notice as a whole complies with Board regulations notwithstanding PRIM's inaccurate, but immaterial, statement that an agreement in principle has been reached. Of course, if the City were to refuse to sell the Bridge to PRIM following such municipal proceedings, the status quo would continue whereby the City would own the Bridge. However, that would be a matter of contract and property law, not transportation law. KJRY has not provided any plausible argument from the standpoint of transportation law why PRIM should not be authorized to acquire the Bridge.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, KJRY's Motion should be denied.

Respectfully submitted,

PACIFIC RIM RAILWAY COMPANY, INC.  
1515 East Tudor Road, Suite 5  
Anchorage, AK 99507

*Applicant*



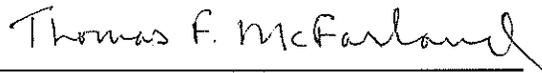
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*Attorney for Applicant*

DATE FILED: April 7, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2010, I served the foregoing document, Reply In Opposition To Motion To Reject Or Revoke, by e-mail and U.S. first-class mail, postage prepaid, on Daniel A. LaKemper, Esq., General Counsel, Keokuk Junction Railway Co., 1318 S. Johanson Road, Peoria, Illinois 61607, [lakemper@mtco.com](mailto:lakemper@mtco.com).



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Thomas F. McFarland