

230316

NEVADA CENTRAL RAILROAD

BASE OF OPERATIONS: 2741 - Pinewood Avenue, Henderson, Nevada 89074
(702) 914-7796



ROBERT ALAN KEMP, D/B/A:

NEVADA CENTRAL RAILROAD

VIA - IMMEDIATE FAX FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 - E. Street, S. W., Room: 100
Washington, D.C. 20423-0001

- CERTIFIED -
[IITLS: PROTOCOL - 2000 .TM.]

BY EMERGENCY FAX FILING: 202-245- 0461 - 0464

RE: Docket No. EX PARTE - 705 (Wednesday), June 22, 2011

PETITIONERS PRELIMINARY ORAL EXHIBIT: 1-A.

COMPETITION IN THE RAILROAD INDUSTRY

Ms. Brown:

Despite the unlawful failure by the Board on June 21st, 2011 to Grant Petitioner sufficient time with which to Testify June 23rd, 2011, I have e-filed an original copy of: ROBERT ALAN KEMP, D/B/A; NEVADA CENTRAL RAILROAD's (PETITIONERS PRELIMINARY ORAL EXHIBIT: 1-A.), along with this cover sheet specifically relating to the provision of testimony within the hearing on June 22nd, thru June 23rd, 2011, noticed within STB Docket: EX-705.

If You or Your Staff have any questions or comments, please feel free to contact me personally.

Very truly yours,

Robert Alan Kemp (702) 914- 7796
Sole Proprietor D/B/A, NEVADA CENTRAL RAILROAD, Henderson, NV 89074

ENTERED
Office of Proceedings

JUN 23 2011

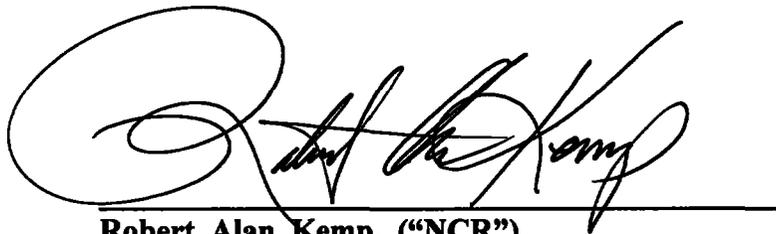
Part of
Public Record

Enclosures: Petitioners Preliminary Oral Exhibit: 1-A., Certification of Service

cc Mr John T Digiho, Jr. Vice Chairman - Director/President, IITLS
Mr Joseph Anthony McNulty, III - Director/Vice President, IITLS

CERTIFICATE OF SERVICE

I, **Robert Alan Kemp**, hereby certify that (3-EA.) copies of the instant (47 -Page): **PETITIONERS PRELIMINARY ORAL EXHIBIT: 1-A.**, along with the enclosed Proof of Service Sheet filed by Robert Alan Kemp to the **SURFACE TRANSPORTATION BOARD**, was personally mailed by the undersigned this 22nd., day of June, 2011, via First Class US-Mail.

A handwritten signature in black ink, appearing to read 'Robert Alan Kemp', is written over a horizontal line. The signature is stylized with large loops and a long tail.

**Robert Alan Kemp, ("NCR")
(702) 914- 7796**

COPY

1 Robert Alan Kemp
9084 - East Arbab Court
2 Tucson, AZ 85747
(520) 574 - 2262

3
4 **In the United States Court of Appeals**
5 **for the Ninth Circuit**

6 **ROBERT ALAN KEMP - D/B/A:**

) No. **09 - 70576**

7 **NEVADA CENTRAL RAILROAD**

) STB No. **AB-33 (Sub-No.230X)**

8 **Appellant/Petitioner**

9
10 **vs.**

) **APPELLANT'S (INFORMAL)**

11
12 **SURFACE TRANSPORTATION**
13 **BOARD**

) **OPENING BRIEF**

14 **Respondent**

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24
25 **COMES NOW** Petitioner [Robert Alan Kemp, D/B/A: NEVADA CENTRAL
26 **RAILROAD**, hereinafter ("APPELLANT" or "Appellant," and or "PETITIONER" or
27 "Petitioner")] as a non learned ignorant individual person Pro-Per, the undersigned, as and
28 **against the United States Surface Transportation Board, and therefore hereby respectfully files**
his INFORMAL OPENING BRIEF in the instant proceeding as follows.

2
3 **1. JURISDICTION**

4
5 a. The instant appeal was timely filed within 30-Calender Days of the rendering
6 and service of a Final Decision by the Surface Transportation Board, hereafter
7 (“STB”).

8
9 (i) Entry of Judgment by the STB denying both of Petitioners appeals was
10 executed January 27th., 2009. [SEE ATTACHED EXHIBIT - M]

11
12 (ii) No Motions were filed by any Party subsequent to Entry of Judgment identified
13 as Docket Entry: # 53., by the STB. [SEE ATTACHED EXHIBIT - N]

14
15 (iii) Notice of Appeal along with the applicable Fee in the amount of: \$ 450.00 was
16 filed by this Petitioner on February 26th., 2009, and was subsequently docketed
17 by the Clerk of the Court, one working day later on February 27th., 2009.

18
19 (iv) Petitioner obtained an Extension of time to file the instant Opening Brief from
20 the Court by Telephone following oral notification to opposing Counsel at the
21 STB, resulting in a mutual stipulation to extend time, thereby extending the Due
22 Date for filing to: April 22nd., 2009.

23 **2. BACKGROUND AND FACTS LEADING UP TO THIS CASE**

24
25 Petitioner doing business as: NEVADA CENTRAL RAILROAD hereafter (“NCR”),
26 has engaged continuously for the last 34-Years to develop the necessary combined elements in
27 terms of Financing, Configuration, and Technology, to construct a Heavy High Speed
28

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3 Mainline Freight/PAX (North-South) Railroad System within the state of Nevada, extending
4 into California and Arizona south to the Mexican border, then further north through the states
5 of Oregon, Washington, finally terminating in Vancouver, Canada. Most important is the fact
6 that the entire NCR - Rail Track and Rail Car Configuration will be technologically superior
7 to any Railroad System ever constructed in any country of the world. Critically important is
8 the fact that the New COMPLETELY PROVEN and COMPLETELY SCALABLE High
9 Technology Rail System, now publically identified as the: NCR-By-Pass-™. construction
10 project, is virtually Pollution-less and will initially utilize 68% Less Fossil Fuel, and within 5-
11 Years 100% Less Fossil Fuel to operate, while traveling 300% faster than a any conventional
12 Diesel Locomotive powered Freight train currently in operation. As a byproduct of its own
13 power production technology and configuration, it will render the Majority of (all) Coal
14 Powered Generating Systems within the United States as virtually Obsolete essentially
15 eliminating over 30% of all US emissions, as well as an additional 20% of total overall National
16 emissions now created resulting from the operation of the National Railroad/Truck System,
17 itself. Bottom Line is that it will effectively eliminate at least 85% of the requirement for the
18 Transportation of Heavy High Polluting Coal by the entire National Railroad System once the
19 NCR Railroad and its Power Generating Technology is integrated into all Class-I and Class-II
20 Railroad operations, and will convert all remaining distributed Coal based Electrical Power
21 Generation Systems solely to Local Power Production as facilities located adjacent to specific
22 Coal Production Sites. The PROVEN NCR Proprietary Electrical Power Production and
23 Transmission Technologies will effectively eliminate the current critical construction
24 requirement for the majority of all New ecologically devastating High Voltage AC-Electrical
25 Power Generating Power Line Transmission Systems within the entire United States.

25 This current case of National Security and Critical National Public Interest now before
26 this Honorable Circuit Court involves one of the most Essential Initial Key Elements of the
27 initial overall development of the NCR-By-Pass-™. Railroad Construction Project by this
28 Petitioner. For over 29-Years Petitioner has been planning and analyzing the most

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3 **ABSOLUTELY CRITICAL ROUTING REQUIREMENTS** for the construction of the NCR-
4 **By-Pass-TM (North-West Fork)**, and by 1989 had identified a historic abandoned Western
5 **Pacific Railroad route running in a Northwest direction from the Town of Tonopah, NV,**
6 **through Wadsworth, and then continuing further Northwest to an intersection with the Union**
7 **Pacific Railroad National Main Line System in Northwest Nevada, to a location Point identified**
8 **as: ("FLANIGAN").**

9 **Unfortunately, as part of an unlawful criminal covert plan by Union Pacific Railroad**
10 **Company, acting in conjunction with the BNSF as a means to completely eliminate ALL**
11 **Alternative Clean Burning Power Production Facilities in the US that don't require the Heavy**
12 **Transportation of massive amounts of Heavy-High Polluting Coal, based on a Strategic Theory**
13 **violating long standing Anti Trust precedents identified within the NORTHERN SECURITIES**
14 **CO. Vs. U.S. Case, decided March 14th, 1904, UP decided to Defraud Petitioner and thus**
15 **execute unlawful actions within the scope of the UP Abandonment Petition identified as: AB-33**
16 **(Sub No. 230X) filed by UP October 10th, 2006, for which to abandon an Appx: 21.77-Mile Rail**
17 **Line from Flanigan, Nevada, to Wendell, California, so that the New High Technology**
18 **Railroad owned by this Petitioner, "NEVADA CENTRAL RAILROAD," could Never**
19 **Successfully Acquire this ABSOLUTELY CRITICAL existing Essential Rail Route Connection**
20 **to the historic ("MODOC") Line, extending due North from Wendell, CA, through Oregon and**
21 **Washington State, to Vancouver, Canada, as well as to block the NCR from connecting its New**
22 **Heavy High Speed, High Technology Mainline (Electrified) Railroad System, to the existing**
23 **clean Alternative Fuel/Geothermal ("HL-ELECTRIC POWER-PRODUCTION PLANT")**
24 **facility, also located in Wendell, CA. As part of multiple Predicate Criminal Acts in**
25 **Racketeering, Union Pacific proceeded to criminally engage in a number of unlawful acts**
26 **including but not limited to, the Interference of Interstate Commerce by Rail, as well as**
27 **violations of the "Supremacy Clause" within the United States Constitution by failing to**
28 **operatively comply with all of the provisions of STB Regulations under section: 1152.27-(a)(2),**
and -(a)(3), as a direct means to effectively terminate Petitioners ability to obtain necessary

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3 financing to support his OFA for the acquisition of the Entire (21.77-Mile) Rail Line, as well
4 as the further execution of multiple acts of FRAUD, by virtue of the provision of Knowingly
5 False Information and False Assertions. documented by UP within the subject: AB-33 (Sub.No.
6 230X) abandonment docket, as and about Petitioner, D/B/A: NEVADA CENTRAL
7 RAILROAD, and further as necessary to operatively destroy Petitioners Offer of Financial
8 Assistance, ("OFA"). The bottom line, is that in order to successfully destroy (NCR) and all of
9 its New Transportation and Non-Polluting Electrical Generating Technology, that is **Not**
10 based on the Mining, Transportation, and Utilization of Heavy-High Polluting Coal, UP very
11 well knew that it had to secretly take any and all action necessary to ultimately include the
12 execution of multiple criminal acts within the scope of a Federal Railroad Abandonment
13 Proceeding, in order to Target and Destroy any and all **NON: Heavy-High Polluting Coal**
14 **Fired Power Plants**, specifically in the instant case in the form of the **RELATIVELY CLEAN**
15 **BURNING** and or **VIRTUALLY POLLUTION-LESS** Alternative Electrical Power Generating
16 Facilities within the Unites States, such as but not limited to, the **HL-Power Plant in Wendell,**
17 **CA.**, that this Petitioner is presently in the process of Lawfully Condemning, that require Rail
18 Access to the National Railroad Transportation Network, thus UP proceeded to systematically
19 abandon strategic Rail Lines, and thus Salvage these Critical Tracks to the Alternative Power
20 Plants, and in this case effectively through their unlawful acts, to Terminate the only connection
21 to the **MODOC Route by NCR**, as a means to Permanently Terminate and thus Destroy the
22 entire **NCR-By-Pass-TM., Railroad Construction Project**. However in the instant case, **None**
23 **of the Criminal Objectives by the Union Pacific Railroad Company could ever have been**
24 **accomplished**, without first obtaining the expressed cooperation of individuals employed within
25 the **STB: Office of Proceedings, and Office of General Counsel**, as well as specific Members of
26 the Board. UP, ultimately requires Significant Exclusive Insider Assistance at the highest levels
27 within the STB, in order to operatively and financially destroy this Petitioner, and as such All
28 **Future Competition in the form of the: NEVADA CENTRAL RAILROAD.**

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3 **ORIGINAL REQUESTS BY PETITIONER WITHIN PREVIOUS APPEALS TO STB**
4 **AND**
5 **PREVIOUS MOTION PRACTICE**
6

7 Petitioner on behalf of the NEVADA CENTRAL RAILROAD corporation, "a Railroad
8 Corporation of Nevada," initially engaged in the (Offer of Financial Assistance) Process,
9 hereafter the ("OFA") Process, concerning the Union Pacific Railroad Abandonment Case
10 Filing publically conducted by the STB within AB-33 (Sub. No. 230X); on (Friday), October
11 30th., 2006 by first filing by Certified US-Mail, NCR's **PUBLIC NOTICE OF INTENT TO**
12 **ACQUIRE AND PROVIDE FOR THE MAINTENANCE OF INTERSTATE COMMERCE**
13 **AND OPERATION OF RAIL TRANSPORTATION SERVICES IN WASHOE COUNTY,**
14 **NEVADA, AND LASSEN COUNTY, CALIFORNIA,** thereby lawfully Noticing the STB of the
15 Intent by NCR, and I quote as further described in the same Notice; " to initially institute and
16 maintain Class - III Railroad Operations on the subject lines for which the Union Pacific
17 Railroad Company wishes to dispose, publically described by the Union Pacific Railroad
18 Company as identified for ABANDONMENT in Washoe County, Nevada, and Lassen County,
19 California, within the Union Pacific Railroad Company's, hereinafter (UP or UP's) Petition for
20 Exemption Docket: AB-33 (Sub-No. 230X)." Please see Petitioners EXHIBIT: [A], attached
21 hereto which is a copy of the: NCR Public Comment Letter of: October 13, 2006. This same
22 Public Comment Letter was subsequently lawfully ENTERED by the STB: Office of
Proceedings, on October 30, 2006, as part of the: "Public Record."

23 Petitioner on behalf of NCR, timely filed **NOTICE OF INTENT TO FILE OFA** on
24 (Wednesday), November 8th., 2006. As quoted within NCR's Notice,: "NCR, pursuant to 49
25 C.F.R. 1152.27(a), asks the Union Pacific Railroad Company to provide it with copies of the
26 most recent report on the physical condition of the line, the carriers estimate of the net
27 liquidation value of the line, with supporting data including, but not limited to identification
28 of the parcels of land underlying the rights-of-way which are owned in fee and those which are

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3 easement grants including [US-Government Granted Rights of Way], the lengths, weight, age
4 and condition of the relay, reroll and scrap rails, the reusable and scrap ties, the speed limits
5 on the line, and any other restrictions which pertain to use of the line by Milepost, and any
6 other information including Engineering Diagrams and Drawings, or Maps, deemed relevant
7 to enable NCR to calculate the net liquidation value of the line and the minimum purchase price
8 which the Union Pacific Railroad seeks for the property." Please see Petitioners EXHIBIT: [B],
9 attached hereto which is a copy of the: NCR NOTICE OF INTENT TO FILE OFA of:
10 November 8th, 2006

11 Petitioner on behalf of NCR, timely filed MOTION TO STRIKE on (Tuesday), April
12 29th, 2008. Within the Motion, NCR provided incontrovertible evidence that UP had been
13 deliberately engaging in the Unlawful Salvaging and Alteration of the subject 21.77-Mile rail
14 line, following UP's action to file for Abandonment of same. In a Nut Shell, UP was using a
15 Subcontractor to come in on the line and pick up all of the most valuable rail and switch
16 material on the system, then systematically replace same with "TRASH, in terms of what
17 would be needed in the case of an Operating Railroad, factually defrauding NCR. This Age
18 Old Rail Scheme is based on most cases in within the Mainline Railroads ability to (first);
19 knowingly lure in an Interested Party that they already know are going to file an OFA for a
20 specific line of rail, and (second); to then covertly come in for purposes of deny-ability with a
21 "SPECIAL" Sub-Contractor Hit Team like: Kern Schumacher/Fritz Kahn at A&K - Railroad
22 Materials, or RTI/John Heffner; (in an attempt to generate and thus be capable of then
23 claiming an omission), and direct the Sub-Contractor to criminally Rob the Interested Party
24 under Hobbs, (18 - U.S.C. 1951), and Civil-RICO (18 - U.S.C. 1962c & 62d), by unloading all
25 of the Mainline Railroad's TRASH RAIL in the form of Worn Out Rail Sections by first
26 picking up all of the Useful Rail from a specific targeted rail line, and then replacing same with
27 the TRASH after the OFA is filed. The result is that STB staff within the Office of Proceedings,
28 will knowingly RUN COVER, and authorize the sale of the line based on the Price of Salvage
by virtue of Weight, as opposed to Useful Rail in terms of useful sections of rail for which a

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3 Railroad may factually operate, thus defrauding the entity executing the OFA as the Interested
4 Party must then automatically complete the salvage operation previously initiated, and
5 rehabilitate the entire line thus experiencing a Massive Financial and Operational Loss, (All
6 within long established STB rules for Abandonments), unless of course in the case of NCR
7 where NCR uncovers the Criminal Cartel and catches UP in the Criminal Act of Racketeering.
8 This is precisely why UP could never have provided a Condition Report to NCR in accordance
9 with the mandatory STB Rules under 1152.27, and instead filed, and as such Pawned Off, an
10 Operational Exception Report used as the basis with which to generate a Speed Chart, that
11 would of course: NOT IDENTIFY (ANY) of the necessary details of the Actual Condition of the
12 TRACK, TIE'S, TIE PLATES, SPIKES, ROADBED, BRIDGES, and any and all other
13 remaining Railroad Materials related thereto. UP already knows that NCR can utilize the
14 information contained within the Condition Report as sufficient incontrovertible evidence in
15 the NCR Federal Court Action, as and against UP, thus "No Condition Report" can ever be
16 provided to NCR in direct contravention of Board Regulations, by UP. This is precisely
17 why the Director of Proceedings documented the Key Words within his Original Decision to
18 Reject the NCR OFA, when he states: "It Appears" that UP has provided NCR with the
19 Condition Report. No matter what, the Director just as in the case of UP, also needs to generate
20 the basis of an omission on behalf of himself and the Board, thus the inclusion of the words; "It
21 Appears" as opposed to a simple statement of confirmation of Fact. Please see Petitioners
22 EXHIBIT: [C], attached hereto which is a copy of the: NCR MOTION TO STRIKE of: April
29, 2008.

23 Petitioner on behalf of NCR, timely filed MOTION TO STRIKE on (Tuesday), May
24 13th, 2008. Within the Motion, Petitioner confirmed to the Board, through the provision of
25 incontrovertible evidence, that UP on May 5th, 2008, had filed a Procedurally Impermissible
26 SUPPLEMENT to their previous Reply filed 25-Days Prior, on April 11th, 2008. Even UP in
27 their own filing on May 5th, 2008 documented that the information contained within the same
28 filing, was a (SUPPLEMENT) to their own previous Reply of: April 11th, 2009. NCR clearly

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3 and precisely pointed out to the Board the incontrovertible fact that virtually NONE of the
4 Information provided in the May 5th., filing by UP, addressed nor in any way even remotely
5 related as a Reply, to the NCR - MOTION TO STRIKE previously filed on April 29th., 2008.
6 The most important Point of the inclusion by Petitioner of this element of evidence, is the
7 **ABSOLUTE FACT** that the Board knowingly and deliberately extended time to UP, and as
8 such the opportunity by UP, to file a SUPPLEMENT unlawfully disguised as a Reply even
9 beyond the Statutory and Administrative Practice of the 21-Day Time Limit for filing of any
10 such motion. UP effectively filed: ABSOLUTELY - NO SUBSTANTIVE RESPONSE to the
11 NCR - MOTION TO STRIKE on April 29th., 2008, and yet, All of the Totally Unsubstantiated
12 and Unrelated Information contained within the UP filing of May 5th., 2008 was accepted by
13 the Board. Please see Petitioners EXHIBIT: [D], attached hereto which is a copy of the: NCR -
14 MOTION TO STRIKE of: May 13th., 2008.

15 Petitioner on behalf of NCR, timely filed NOTICE OF SUBSTITUTION on
16 (Wednesday), August 27th., 2008. Petitioner notified the STB that the NEVADA CENTRAL
17 RAILROAD Corporation of Nevada, had transferred Assets in the form of: Title, Name, and
18 All Rights of the NCR as a "Railroad" to Petitioner, thus Petitioner assumed legal possession
19 and ownership to all STB; filings, applications, petitions, motions, and business development
20 activities presently and active on file by the STB specifically but only relating to the Railroad
21 operated under the name of NEVADA CENTRAL RAILROAD, as previously owned by the
22 Nevada Corporation. The ownership of the Original Corporate Entity as an independent
23 distinct qualified legal entity within the state of Nevada as a wholly owned subsidiary division
24 of AVIATION TECHNOLOGIES LTD., hereafter ("ATL") was Not Conveyed as a result of
25 the Substitution by Petitioner to the STB. Petitioner lawfully conveyed a license to the distinct
26 Corporate Entity in Nevada, owned by ATL, to continue to contemporaneously utilize
27 Petitioners intellectual property in the form of the Trade Mark/Name: NEVADA CENTRAL
28 RAILROAD. Following receipt of the NOTICE OF SUBSTITUTION by the STB, the STB
Granted the Substitution by Petitioner, and therefore

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3 Petitioner lawfully proceeded within the scope of AB-33 (Sub. No. 230X), in Person D/B/A:
4 NEVADA CENTRAL RAILROAD, as the lawful owner of the NCR. All equipment presently
5 in possession through contractual agreement by the Independent Nevada Corporation,
6 operating through License Agreement under the name and style of: NEVADA CENTRAL
7 RAILROAD, is owned by: AVIATION TECHNOLOGIES LTD. Please see Petitioners
8 EXHIBIT: [E], attached hereto which is a copy of the: NCR - NOTICE OF SUBSTITUTION
9 of: August 27th., 2008.

10 Petitioner, D/B/A: NCR, timely filed OFFER OF FINANCIAL ASSISTANCE
11 (PURCHASE) on (Monday), September 15th., 2008. Petitioner also contemporaneously by and
12 through contractual agreement with the Banks Family Trust, filed his NOTICE OF
13 FINANCIAL GUARANTEE on September 15th., 2008. The Financial Guarantee provided by
14 the Banks Family Trust was a legally qualified Verified Financial Guarantee that met All
15 Requirements of the STB., and was issued by the "TRUSTEE" of the Banks Family Trust: by
16 Kevin M. Banks, as further verified by his lawfully Notarized Signature. The Guarantee was
17 specifically executed to Guarantee Immediate Funds in the amount of: \$ 13,000.00, (Thirteen
18 Bonafide Offer for the (220-Linear Feet) of rail North-West of the UP Switch at Flanigan.
19 The Financial Guarantee was specifically designed to provide immediate funds in the amount
20 of: \$ 5,750.00 for the acquisition of the 220' line of rail from UP, as well as to provide additional
21 funds in the amount of: \$ 7,250.00 to rehabilitate the 220' line, into Operable Condition, so
22 Petitioner could immediately proceed to lawfully obtain an FRA Railroad Operating
23 Certificate, and Pass FRA Track Inspection. The \$ 7,250.00 funds to Rehabilitate the Track,
24 would also cover the installation of any necessary Replacement Ties, Signals, Markers, and
25 Support Equipment, to render the 220' line of rail as Operationally Safe, especially considering
26 the fact that Petitioner has already identified such excess material as available at NO COST,
27 but for fuel/oil to transport and materials to install same, for which Petitioner would personally
28 engage with the Truck and Trailer Equipment already owned by the NCR, and or

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3 **ATL, Nevada Corporations. The subject Financial Guarantee, specifically guaranteed**
4 **“ADDITIONAL FUNDS” as necessary to maintain operation of the line, for a (5-Year) period**
5 **in addition to the: \$ 13,000.00, as previously identified therein. Please see Petitioners**
6 **EXHIBIT: [F], attached hereto which is a copy of the: NCR - OFFER OF FINANCIAL**
7 **ASSISTANCE (PURCHASE) and NOTICE OF FINANCIAL GUARANTEE of: September**
8 **15th, 2008.**

9 **Petitioner, D/B/A: NCR, timely filed an APPEAL on (Monday), September 29th, 2008.**
10 **Within Petitioners APPEAL, Petitioner clearly explained in a precisely detailed manner, that**
11 **UP on September 17th, 2008, had in fact filed a MOTION as opposed to a REPLY as then**
12 **stated by the STB. Petitioner also requested in his APPEAL that the information presented**
13 **therein be included, and by AMENDMENT be made part of the Original OFA filed by**
14 **Petitioner on September 15th, 2008, as a result of the fact that Petitioner did NOT have the**
15 **ability to file any RESPONSE to what was in fact for reasons stated therein, was in fact a**
16 **MOTION filed by UP, nor at a Minimum an allocation of time to have filed a MOTION TO**
17 **STRIKE the false information contained within the UP filing of September 17th, 2008.**
18 **Further, Petitioner clearly explained that he had already called Mr. Rudy St. Louis at the STB.,**
19 **in order to obtain instructions for which to file a SUPPLEMENT to the OFA the very next**
20 **day. This was before UP had responded on September 17th, 2008, as well as before the response**
21 **in the form of the Decision by the Board was entered as and against Petitioner on September**
22 **19th, 2008. Petitioner also notified the Board within his APPEAL that UP deliberately**
23 **FAILED to identify the fact that the HL-Power Plant was located within 1-Mile of the end of**
24 **the 21.77-Mile rail line at Wendell, California, who's operation is critically impacted by it's**
25 **ability to receive Fuel Deliveries via Rail, as opposed to Overland Truck.**

26 **Petitioner also clearly and precisely identified the Fact that the case DEFECTIVELY**
27 **cited by both UP and the Board did Not Apply to the 220' rail line that was being acquired by**
28 **Petitioner in the instant case at Flanigan. Petitioner clearly and precisely identifies potential**
shippers that will be supplied by NCR following the acquisition of the 220' rail line, as well as

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3 upon the completion of the appx: 21+ Mile Extension to the 220' rail line at Flanigan.

4 Petitioner also clearly notified the Board that the 220' rail line existed as a Critical Link
5 and Connection to the National Railway System.

6 Petitioner clearly and precisely indicated to the Board the specific characterization and
7 structure of the BANKS FAMILY TRUST, constituting the more than reasonable basis upon
8 which the subject Investment Partnership in the form of a "TRUST" is Financially Capable.

9 Petitioner stipulated to the provision of any additional information required by the
10 Board as necessary proof in the event that the Board requested same, within 10-Days following
11 the granting of a Protective Order to Petitioner and the BANKS FAMILY TRUST, to ensure
12 that Petitioner does Not experience further damage resulting from the execution of further
13 unlawful acts by UP.

14 Petitioner agreed to if necessary: Actually BOND FUNDS to the STB, as
15 Incontrovertible Proof of his Financial Responsibility. Petitioner also identified the inclusion
16 of All Filings within the instant proceeding in direct support of his APPEAL.

17 Petitioner cited another OFA proceeding in: STB AB-1081X as evidence in support of
18 his APPEAL, as a result of the fact that the Board accepted the Alleged Financial Guarantee
19 in the case of Sonora, regardless of the fact that the subject Guarantee in that case, knowingly
20 did Not Exist as a Direct Financial Guarantee to Sonora, but instead was an INDIRECT
21 alleged Financial Guarantee to an Independent Partner for which Sonora only "Inferred" was
22 supporting his Program to acquire the rail line. In actual practice, said support was rendered
23 through an unlawful: Enterprise. Further and critically important, is the fact that Petitioner
24 clearly and precisely identified the fact within his STB Appeal, that the Board accepted the
25 Financial Information alleged by Sonora to be sufficient for purposes of determining Financial
26 Responsibility, NOT BASED on the FACT that it was confirmed, but rather that it passed what
27 the Director of Proceedings described, as the so called: "ON ITS FACE" Appearance Test,
28 which was a completely different standard as directly applied to Petitioner within the instant
case by the very same: STB - Director of Proceedings. In the case of Sonora, the Board

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3 determined Financial Capability, based "on the Face" of the appearance of documents, as
4 opposed to the provision of a Direct, Verified and Legally Certified: FINANCIAL
5 GUARANTEE by a reputable financial organization as in the case of this Petitioner, D/B/A:
6 NCR. Petitioner just discovered last week, while executing research necessary to complete the
7 instant APPEAL to the Ninth Circuit Court using the Computer Driven Search Function of the
8 Public STB Web Site that a MOTION TO REJECT OFA was also filed to the STB
9 confirming direct statements by witnesses employed by the very same Bank, for which the
10 alleged Letter of Credit was indicated to have been confirmed, clearly indicating that the said
11 Letter of Credit submitted by Sonora was in fact a False Forged Document and did Not in fact
12 comport in any way with the established format utilized by the same Bank. Most important
13 was the fact that the Director of Proceedings had already confirmed receipt of this same
14 MOTION TO REJECT OFA, one day PRIOR to his decision on behalf of the Board, to
15 officially render Sonora as Financially Responsible within the scope of an OFA. It is also
16 important to note that the Principal of Sonora had executed a Telephone Conversation with
17 Petitioner subsequent to the date and his possession of the alleged Multi Million Dollar "Letter
18 of Credit" and personally confirmed to this Petitioner that he did Not have sufficient financing
19 to support the provision of his OFA. What the STB failed to mention within its decision
20 relating to the Sonora OFA is that the Director, then acting as the Covert ARM of the
21 NEVADA-UP/REID Cartel, was Criminally Motivated to ensure that Sonora would gain
22 control of the subject 73-Mile Line in Arizona, as the Board already knew that this was the
23 Southern Link of the NCR-ByPass, to an absolutely vital connection with the Pacific National
24 Railroad of Mexico. Ultimately in precise compliance with the Plan hatched by the NEVADA-
25 UP/REID Cartel, that upon information and belief was coordinated from an unknown secret
location in Salt Lake City, Utah, the Vital 73-Mile rail line was: SALVAGED.

26 Petitioner also clearly and precisely identified to the Board that his appeal was made
27 with the inclusion of All information Published as Public Record by the Board concerning the
28 Execution, Standards, and Acceptance of OFA's, as well as All Documents filed within the

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2
3 proceeding. Please see Petitioners EXHIBIT: [G], attached hereto which is a copy of the:
4 NCR - APPEAL of: September 29th., 2008.

5 Petitioner, D/B/A: NCR filed a MOTION TO STRIKE on (Monday), October 27th.,
6 2008. Within Petitioners MOTION, Petitioner clearly and precisely confirmed to the Board
7 that UP was deliberately deceiving the Board, with at best, the provision of a False Assessment,
8 and at worst, a Misleading Assessment of the Operational Viability of the subject 220' rail line,
9 for which Petitioner identified within his OFA in comparison to another abandoned line by UP
10 located in Los Angeles, California, identified by UP within STB AB-409 (Sub. No. 5X). In this
11 Motion to Strike, Petitioner Factually Confirmed that the information provided by UP in their
12 previous Reply was ABSOLUTELY FALSE based on the incontrovertible evidence provided
13 by Petitioner to include FACTUAL Confirmation of Prospective Shippers that have a critical
14 necessity to use the subject line, before and after it is extended back North-West to the town of
15 Wendell, California. Most important is that Petitioner confirmed that the Current Power
16 Generating Customer for which Petitioner already possess a lawful binding contract, can be
17 successfully serviced with the existing 220' rail line being acquired by Petitioner, as this
18 Customer only requires a Maximum of (3)-Rail Cars to be delivered at any time by UP to the
19 UP/NCR rail connecting point to enable NCR to take delivery of same and switch said rail cars
20 back in a North-West direction back onto the NCR 220' Mainline Track System. None of the
21 Rail Cars accepted by NCR at the UP/NCR connecting point will ever need to be switched as
22 they are downloaded by virtue of individual Flexible High Pressure Hose Systems that are
23 simply Reeled Out and Remain Connected to each individual Tanker Car, thus extracting said
24 Fuel Products contained within each Car when needed. Once the Cars are Emptied, the NCR
25 Electrified Switch Locomotive simply travels Appx: 185' and returns the Cars back to the UP
26 Line at the UP/NCR connecting point. UP then accepts the Empty Cars and comes back with
27 three additional Rail Cars that are Full. The Total Cost incurred by NCR to operate on the
28 subject line, is more than covered by the operation of the Electrical Power Generating Facility
co-located adjacent to the 220' Mainline System, as the Electric Locomotive does Not consume

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2
3 Any Fuel as an expense. The Power Generating Customer has already agreed to construct a
4 drive through Engine House/Locomotive Barn that will be located on the North-West end of
5 the subject 220' Main Line, and this will enable NCR to Permanently Secure the Locomotive
6 from Vandalism, in addition to the Secured Fencing that will be utilized to protect the Entire
7 Power Generating Facility encompassing the Entire 220' Main Line. Funds for the
8 Construction of the High Technology Blended Fuel Power Plant co-located over the NCR
9 Mainline have already been appropriated by Congress, and as such will exist as funds to totally
10 eliminate the initial cost of construction of the New High Technology Pollution-less Electrical
11 Power Generating Facility, thus virtually All Monies generated from the Operation of the
12 Power Generating Facility are virtually Pure Profit and will more than permanently cover the
13 Continuing Operation of the 220' line, including the permanent operation of the future 21-Mile
14 extension all the way back to the Town of Wendell, to then service the HL-Power Plant which
15 Petitioner clearly identified as pending Condemnation by NCR. Petitioner has clearly
16 identified Existing Shippers ready to fully utilize the line being acquired by NCR. Please see
17 Petitioners EXHIBIT: [H], attached hereto which is a copy of the: NCR - MOTION TO STRIKE of: October 27th., 2008.

18 Petitioner, D/B/A: NCR, filed a MOTION TO STRIKE on (Tuesday), November 11th.,
19 2008. Within Petitioners MOTION, Petitioner clearly and precisely notified the Board that
20 documented statements by UP contained in their October 21st., 2008 Reply, were False,
21 Defective, and or Misleading, specifically relating to the continued assertion by UP that it had
22 provided NCR with a Condition Report. Petitioner clearly and precisely explained to the
23 Board, precisely what UP had FACTUALLY provided, which was a SPEED CHART, as
24 opposed to a CONDITION REPORT, within this MOTION TO STRIKE. The documented
25 information provided by Petitioner in the form of Incontrovertible Facts, was Not based on
26 Speculation, but Confirmed FACTS. Please see Petitioners EXHIBIT: [I], attached hereto
27 which is a copy of the: NCR - MOTION TO STRIKE of: November 11th., 2008.

28

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2
3 Petitioner, D/B/A: NCR, filed a MOTION TO STRIKE on (Monday), November 24th.,
4 2008. Petitioner's authorized warranted Financial Agent, (BANKS FAMILY TRUST) also
5 contemporaneously filed EVIDENCE on (Monday), November 24th., 2008, as part of and in
6 direct support of Petitioners MOTION TO STRIKE, in the form of a lawfully Certified
7 Verification Statement to the Board, confirming AUTHORIZATION by the Board; (to only
8 be exercised at the option of the Board), to Draw and thus Transfer Funds in the amount of:
9 \$ 5,750.00, to be held in TRUST for NCR, for future Payment to UP for the acquisition of the
10 220' Rail Line at Flanigan, Nevada. This EVIDENCE in the form of an AUTHORIZATION
11 FOR IMMEDIATE CONVEYANCE OF BOND TO THE STB., was - Only - an
12 "AUTHORIZATION" lawfully contemporaneously filed by Petitioners Agent, in the form of
13 admissible EVIDENCE in direct support of Petitioners MOTION TO STRIKE. Petitioner
14 clearly and precisely entered Incontrovertible Evidence of his Financial Capacity in the
15 form of the submission of the Certified Verification Statement to the Board, confirming the
16 **ABSOLUTE FACT**, that Petitioner was at all times Financially Responsible within this
17 proceeding, in order to confirm the MOTION TO STRIKE filed on November 24th., 2008.
18 Please see Petitioners EXHIBIT: [J], attached hereto which is a copy of the: NCR - MOTION
19 TO STRIKE of: November 24th., 2008.

20 Petitioner's authorized warranted Financial Agent, (BANKS FAMILY TRUST) again
21 filed EVIDENCE on (Wednesday), December 3rd., 2008, as part of and in direct support of
22 Petitioners previously filed MOTION TO STRIKE of November 24th., 2008, in the form of a
23 second lawfully Certified Verification Statement to the Board, confirming AUTHORIZATION
24 by the Board; (to only be exercised at the option of the Board), to Draw and thus Transfer
25 Funds in the amount of: \$ 5,750.00, to be held in TRUST for NCR, for future Payment to UP
26 for the acquisition of the 220' Rail Line at Flanigan, Nevada. This EVIDENCE in the form of
27 an AUTHORIZATION FOR IMMEDIATE CONVEYANCE OF BOND TO THE STB., was -
28 Only - an "AUTHORIZATION" lawfully contemporaneously filed by Petitioners Agent, in the
form of admissible EVIDENCE in direct support of Petitioners MOTION TO STRIKE.

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2
3 **Petitioner clearly and precisely entered Incontrovertible Evidence of his Financial**
4 **Capacity in the form of the submission of the Certified Verification Statement to the Board,**
5 **confirming the ABSOLUTE FACT that Petitioner was at all times Financially Responsible**
6 **within this proceeding in order to confirm the MOTION TO STRIKE filed on November 24th.,**
7 **2008. Please see Petitioners EXHIBIT: [K], attached hereto which is a copy of the:**
8 **EVIDENCE filed by the BANKS FAMILY TRUST on: December 3rd., 2008.**

9 **Petitioner, D/B/A: NCR, timely filed an APPEAL on (Tuesday), December 16th., 2008.**
10 **Within Petitioners APPEAL, Petitioner clearly explained in a precisely detailed manner, the**
11 **FACT that the EVIDENCE filed by the BANKS FAMILY TRUST was first filed for the**
12 **specific purpose of confirming Petitioners Financial Capacity, and second, for the expressed**
13 **purpose of providing the Board with the Authorization to Affirmatively and Administratively**
14 **Draw and thus Transfer Funds to the Board as necessary to be held in TRUST for NCR as**
15 **payment to UP, or at the option of the Board, to Not Draw and thus Transfer Funds within**
16 **the SCOPE of Petitioners OFA. Regardless of the decision by the Board to Affirmatively**
17 **Draw, or (Freely Not Draw), funds as a result of the provision of the Authorization by BANKS**
18 **FAMILY TRUST, the submission by the TRUST of this filing in the form of EVIDENCE was**
19 **at a minimum lawfully submitted for evidentiary purposes. Please see Petitioners EXHIBIT:**
20 **[L], attached hereto which is a copy of the: APPEAL filed by PETITIONER on: December**
21 **16th., 2008.**

22 **PETITIONERS REQUEST FOR RELIEF**

23 **AND**

24 **SUPPORTING POINTS AND AUTHORITIES**

25
26 **Petitioner hereby requests that the following Specific listed Defects and or False**
27 **Information, as contained within the Docket Filed by the Acting Secretary of the STB, Anne**
28 **Quinlan recently submitted within the instant proceeding, as further identified below, be**

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2
3 corrected by Lawful Court Order of this Honorable Court, to accurately read as follows;

4
5 A. Docket Entry Line # 20. NCR - [Request to Remove Tolling Period], is
6 **FACTUALLY Defective**, and should be corrected to read: REPLY TO UP REQUEST TO
7 REMOVE TOLLING PERIOD FOR FILING SUBMISSIONS OF OFFERS OF FINANCIAL
8 ASSISTANCE

9
10 B. Docket Entry Line # 23. UP - [Reply to Motion to Strike], is **FACTUALLY**
11 **Defective**, and should be corrected to read: REPLY TO NCR REPLY AND MOTION TO
12 SUPPLEMENT

13
14 C. Docket Entry Line # 33. NCR - [Notice of Financial Guarantee], was
15 **DEFECTIVELY DOCKETED** on September 16th., 2008, and should have been Docketed as
16 received on September 15th., 2008.

17 D. Docket Entry Line # 39. NCR - [Letter to Inform Board], is **FACTUALLY**
18 **Defective**, and should be corrected to read: NOTICE OF INTENT TO FILE MOTION TO
19 STRIKE

20
21 E. Docket Entry Line # 44. UP - [Reply to Motion to Strike], was **DEFECTIVELY**
22 **DOCKETED** on November 3rd., 2008, and should have been Docketed as received on November
23 4th., 2008.

24
25 F. Docket Entry Line # 48. NCR - [Evidence of Provision of Bond], is **FACTUALLY**
26 **Defective**, and should be corrected to read: EVIDENCE

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2
3 **G. Docket Entry Line # 52. NCR - [Appeal to Reject Evidence filed on November**
4 **24th, 2008], is FACTUALLY Defective, and should be corrected to read: APPEAL OF**
5 **DECISION TO REJECT EVIDENCE**

6
7 **H. Docket Entry Line # 53. STB - DECISION: DECISION DENIED AN APPEAL**
8 **OF A DECISION WHICH REJECTED ROBERT ALAN KEMP'S OFFER OF FINANCIAL**
9 **ASSISTANCE IN THE PROCEEDING, BECAUSE: (1) THE RECORD SHOWS NO**
10 **CURRENT OR FUTURE TRAFFIC TO SUPPORT CONTINUED RAIL SERVICE; AND (2)**
11 **KEMP FAILED TO SHOW THAT HE WOULD BE ABLE TO FINANCE THE PURCHASE**
12 **AND OPERATION OF THE SEGMENT. ALSO, THIS DECISION REJECTS ANOTHER**
13 **APPEAL FILED BY KEMP AND ADDRESSES SEVERAL MOTIONS FILED BY KEMP.]**
14 **is FACTUALLY Defective, and should be corrected to read: DECISION: DECISION**
15 **DENYING APPEAL OF A DECISION WHICH REJECTED ROBERT ALAN KEMP'S**
16 **OFFER OF FINANCIAL ASSISTANCE IN THE PROCEEDING, AND DECISION**
17 **DENYING APPEAL OF A DECISION REJECTING KEVIN M. BANKS FILING OF**
18 **EVIDENCE IN THE PROCEEDING, AND DECISION DENYING APPEAL OF A**
19 **DECISION DENYING SPECIFIED MOTIONS FILED BY ROBERT ALAN KEMP IN THE**
20 **PROCEEDING**

21 **A. Petitioner on behalf of the NEVADA CENTRAL RAILROAD corporation, "a Railroad**
22 **Corporation of Nevada," initially engaged in the (Offer of Financial Assistance) Process,**
23 **hereafter the ("OFA") Process, concerning the Union Pacific Railroad Abandonment Case**
24 **Filing publically conducted by the STB within AB-33 (Sub. No. 230X); on (Friday), October**
25 **30th, 2006 by first filing by Certified US-Mail, NCR's PUBLIC NOTICE OF INTENT TO**
26 **ACQUIRE AND PROVIDE FOR THE MAINTENANCE OF INTERSTATE COMMERCE**
27 **AND OPERATION OF RAIL TRANSPORTATION SERVICES IN WASHOE COUNTY,**
28 **NEVADA, AND LASSEN COUNTY, CALIFORNIA, thereby lawfully Noticing the STB of the**

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2
3 Intent by NCR, and I quote as further described in the same Notice; " to initially institute and
4 maintain Class - III Railroad Operations on the subject lines for which the Union Pacific
5 Railroad Company wishes to dispose, publically described by the Union Pacific Railroad
6 Company as identified for ABANDONMENT in Washoe County, Nevada, and Lassen County,
7 California, within the Union Pacific Railroad Company's, hereinafter (UP or UP's) Petition for
8 Exemption Docket: AB-33 (Sub-No. 230X)." Please see Petitioners EXHIBIT: [A], attached
9 hereto which is a copy of the: NCR Public Comment Letter of: October 13, 2006. This same
10 Public Comment Letter was subsequently lawfully ENTERED by the STB: Office of
11 Proceedings, on October 30, 2006, as part of the: "Public Record." Union Pacific Railroad
12 did Not file any objections and or opposition to any information contained within
13 NCR's PUBLIC NOTICE OF INTENT TO ACQUIRE AND PROVIDE FOR THE
14 MAINTENANCE OF INTERSTATE COMMERCE AND OPERATION OF RAIL
15 TRANSPORTATION SERVICES IN WASHOE COUNTY, NEVADA, AND LASSEN
16 COUNTY, CALIFORNIA, thus according to long accepted Board Practices under APA, All
17 information as contained within said Public Notice filed by NCR was accepted by the Board
18 within the instant proceeding as FACT, for which any and all subsequent decisions must then
19 be considered. Petitioner now requests that the information provided within NCR's Public
20 Notice of Intent dated: October 13th., 2006 be adjudicated and declared by the Court, as
21 uncontested and be made part of the record in this proceeding as the factual declared and
22 factually accepted and confirmed record of facts and intent of NCR, as neither the Board, nor
23 UP objected at time of filing, to any element of and or any information as contained therein.

24 B. Petitioner on behalf of NCR, timely filed NOTICE OF INTENT TO FILE OFA on
25 (Wednesday), November 8th., 2006. Within NCR's Notice: NCR, pursuant to 49 C.F.R.
26 1152.27(a), asks the Union Pacific Railroad Company to provide it with copies of the most
27 recent report on the physical condition of the line, the carriers estimate of the net liquidation
28 value of the line, with supporting data including, but not limited to identification of the parcels

2
3 of land underlying the rights-of-way which are owned in fee and those which are easement
4 grants including [US-Government Granted Rights of Way], the lengths, weight, age and
5 condition of the relay, reroll and scrap rails, the reusable and scrap ties, the speed limits on the
6 line, and any other restrictions which pertain to use of the line by Milepost, and any other
7 information including Engineering Diagrams and Drawings, or Maps, deemed relevant to
8 enable NCR to calculate the net liquidation value of the line and the minimum purchase price
9 which the Union Pacific Railroad seeks for the property." Please see Petitioners EXHIBIT: [B],
10 attached hereto which is a copy of the: NCR NOTICE OF INTENT TO FILE GFA of:
11 November 8th., 2006. Petitioner now requests that the information provided within NCR's
12 Notice of Intent to File OFA dated: November 8th., 2006 be adjudicated and declared by the
13 Court, as uncontested and be made part of the record in this proceeding as the factual
14 confirmed request for specific defined information by NCR within Board Rules as defined by
15 1152.27(a), as neither the Board, nor UP objected at time of filing, to any element of and or any
16 information as contained therein.

17 C. - Petitioner on behalf of NCR, timely filed MOTION TO STRIKE on (Tuesday), April
18 29th., 2008. Within the Motion, NCR provided incontrovertible evidence that UP had been
19 deliberately engaging in the Unlawful Salvaging and Alteration of the subject 21.77-Mile rail
20 line, following UP's action to file for Abandonment of same. In a Nut Shell, UP was using a
21 Sub-Contractor to come in on the line to pickup all of the most valuable rail and switch
22 material on the system and systematically replace same with TRASH, in terms of what would
23 be needed in the case of an Operating Railroad, factually defrauding NCR. This Age Old Rail
24 Scheme is based in most cases on the Mainline Railroads ability to (first); knowingly lure in an
25 Interested Party, that they already know are going to file an OFA for a specific line of rail, and
26 (second); to then covertly come in for purposes of deny-ability with a "SPECIAL" Sub-
27 Contractor Hit Team like Kern Schumacher/Fritz Kahn at A&K - Railroad Materials, or
28 RTI/John Heffner, (in an attempt to generate and thus be capable of then claiming an

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2
3 omission), and direct the Sub-Contractor to criminally **Rob** the Interested Party under Hobbs,
4 (18 - U.S.C. 1951), as a defined Predicate Act within the scope of Civil-RICO (18 - U.S.C. 1962c
5 & 62d), by unloading all of the Mainline Railroad's TRASH RAIL in the form of Worn Out
6 Rail Sections, by first picking up all of the Useful Rail from a specific targeted rail line, and
7 then replacing same with the TRASH after the OFA is filed. The result is that STB staff within
8 the Office of Proceedings, will knowingly RUN COVER, and authorize the sale of the line based
9 on the Price of Salvage by virtue of Weight, as opposed to Useful Rail in terms of useful sections
10 of rail for which a Railroad may factually and safely operate, thus defrauding the entity
11 executing the OFA, as the Interested Party must then automatically complete the salvage
12 operation previously initiated, and rehabilitate the entire line thus experiencing a Massive
13 Financial and Operational Loss, (All within long established STB rules for Abandonments),
14 unless of course in the case of NCR where NCR uncovers the Criminal Cartel, and catches UP
15 in the Criminal Act of Racketeering. This is precisely why UP could never have provided a
16 Condition Report to NCR, in accordance with the mandatory STB Rules under 1152.27, and
17 instead filed, and as such Pawned Off, an Operational Exception Report used as the basis with
18 which to generate a Speed Chart, that would of course: NOT IDENTIFY (ANY) of the
19 necessary details of the Actual Condition of the TRACK, TIES, TIE PLATES, SPIKES,
20 ROADBED, BRIDGES, and any and all other remaining Railroad Materials related thereto.
21 UP already knows that NCR can utilize the information contained within the Condition Report
22 as sufficient incontrovertible evidence in the NCR Federal Court Action, as and against UP,
23 thus "No Condition Report" can ever be provided to NCR in direct contravention of Board
24 Regulations. This is precisely why the Director of Proceedings documented the Key Words
25 within his Original Decision to Reject the NCR OFA, when he states: "It Appears" that UP has
26 provided NCR with the Condition Report. No matter what, the Director just as in the case of
27 UP, also needs to generate the basis of an omission on behalf of himself and the Board, thus the
28 inclusion of the words; "It Appears" as opposed to a simple statement of confirmation of Fact.
Please see Petitioners EXHIBIT: [C], attached hereto which is a copy of the: NCR MOTION

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2
3 **TO STRIKE of: April 29, 2008. Petitioner requests that the Court accept entry of Exhibit C.,**
4 **into the record as Evidence confirming the basis upon which Petitioner asserts UP has failed**
5 **to ever comply with Board Regulations and provide a Condition Report regarding the subject**
6 **21.77-Mile line of rail. If procedurally permissible, Petitioner requests that the Court also**
7 **REVERSE the factually defective decision of the Board to Deny NCR's MOTION TO**
8 **STRIKE, and as a result to thereby Direct the STB to Affirmatively Strike UP's Reply of April**
9 **11th., 2008, and Supplement of April 4th., 2008. Further to Remand and order the Board to**
10 **Direct UP to fully comply with the requirements of 1152.27(a)., and provide a Complete**
11 **Comprehensive Condition Report as opposed to an Operational Exception Report, for which**
12 **a Speed Chart is based by UP engineering division.**

13
14 **D. Petitioner on behalf of NCR, timely filed MOTION TO STRIKE on (Tuesday), May**
15 **13th., 2008. Within the Motion, Petitioner confirmed to the Board, trough the provision of**
16 **incontrovertible evidence, that UP on May 5th., 2008, had filed a Procedurally Impermissible**
17 **SUPPLEMENT to their previous Reply filed 25-Days Prior, on April 11th., 2008. Even UP in**
18 **their own filing on May 5th., 2008 documented that the information contained within the same**
19 **and precisely pointed out to the Board, the incontrovertible fact that virtually NONE of the**
20 **Information provided in the May 5th., filing by UP, addressed nor in any way even remotely**
21 **related as a Reply, to the NCR - MOTION TO STRIKE previously filed on April 29th., 2008.**
22 **The most important Point of the inclusion by Petitioner of this element of evidence, is the**
23 **ABSOLUTE FACT, that the Board knowingly and deliberately extended time to UP, and as**
24 **such the opportunity by UP, to file a SUPPLEMENT unlawfully disguised as a Reply, even**
25 **beyond the Statutory and Administrative Practice of the 21-Day Time Limit for filing of any**
26 **such motion. UP effectively filed: ABSOLUTELY - NO SUBSTANTIVE RESPONSE to the**
27 **NCR - MOTION TO STRIKE on April 29th., 2008, and yet, All of the Totally Unsubstantiated**
28 **and Unrelated Information contained within the UP filing of May 5th., 2008, was accepted by**

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2
3 the Board. Please see Petitioners EXHIBIT: [D], attached hereto which is a copy of the: NCR -
4 MOTION TO STRIKE of: May 13th., 2008. Petitioner requests that the Court REVERSE
5 the factually defective decision by the Board to Deny NCR's Motion to Strike, and as such
6 Remand and affirmatively Direct the Board to Strike the UP Reply of: May 5th., 2008. Not only
7 was the UP filing an impermissible: Reply to Reply, but it also contained information
8 specifically identified by UP in the form of a Supplement, that could Not be entered after the
9 prescribed 21-Day Period for such a Motion to be submitted by UP. In addition, Petitioner
10 requests that the unlawful alleged Reply be entered into the instant proceeding as Evidence
11 indicating that the Board Arbitrarily and Capriciously Granted UP the ability to both enter a
12 Supplement to a Prior Filing past the date for provision of such Supplement, as well as the Fact
13 that UP Replied within the alleged Reply specifically to information submitted by NCR in its
14 previous Reply, which under Board Rules and APA, is administratively impermissible.

15 E. Petitioner on behalf of NCR, timely filed NOTICE OF SUBSTITUTION on
16 (Wednesday), August 27th., 2008. Within the Notice of Substitution, Petitioner notified the STB
17 that the NEVADA CENTRAL RAILROAD Corporation of Nevada, had transferred Assets in
18 the form of: Title, Name, and All Rights of the NCR as a "Railroad" to Petitioner, thus
19 Petitioner assumed legal possession and ownership to all STB; filings, applications, petitions,
20 motions, and business development activities presently and active on file by the STB specifically
21 but only relating to the Railroad operated under the name of NEVADA CENTRAL
22 RAILROAD, as previously owned by the Nevada Corporation. The ownership of the Original
23 Corporate Entity as an independent distinct qualified legal entity within the state of Nevada as
24 a wholly owned subsidiary division of AVIATION TECHNOLOGIES LTD., hereafter
25 ("ATL") was Not Conveyed as a result of the Substitution by Petitioner to the STB. Petitioner
26 lawfully conveyed a license to the distinct Corporate Entity in Nevada, owned by ATL, to
27 continue to contemporaneously utilize Petitioners intellectual property in the form of the Trade
28 Mark/Name: NEVADA CENTRAL RAILROAD. Following receipt of the NOTICE OF

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2
3 **SUBSTITUTION** by the STB, the STB Granted the Substitution by Petitioner, and therefore
4 Petitioner lawfully proceeded within the scope of AB-33 (Sub. No. 230X), in Person D/B/A:
5 **NEVADA CENTRAL RAILROAD**, as the lawful owner of the NCR. All equipment presently
6 in possession through contractual agreement by the Independent Nevada Corporation,
7 independently operating through License Agreement under the name and style of: **NEVADA**
8 **CENTRAL RAILROAD**, is owned by: **AVIATION TECHNOLOGIES LTD.** Please see
9 Petitioners **EXHIBIT: [E]**, attached hereto which is a copy of the: **NCR - NOTICE OF**
10 **SUBSTITUTION** of: August 27th., 2008. Petitioner requests that the Court declare and thus
11 confirm the Boards previous decision as legally complaint with Board Regulations to Grant
12 Robert Alan Kemp's Motion for Substitution, thereby enabling Robert Alan Kemp to proceed
13 within the scope of Exclusive Federal Preemption under 49 U.S.C. 10101 and 10901, as an
14 individual person and railroad owner, D/B/A: **NEVADA CENTRAL RAILROAD**, ("NCR").

15 F. Petitioner, D/B/A: NCR, timely filed **OFFER OF FINANCIAL ASSISTANCE**
16 **(PURCHASE)** on (Monday), September 15th., 2008. Petitioner also contemporaneously by and
17 through contractual agreement with the Banks Family Trust, filed his **NOTICE OF**
18 **FINANCIAL GUARANTEE** on September 15th., 2008. The Financial Guarantee provided
19 by the Banks Family Trust was a legally qualified **Verified Genuine Financial Guarantee**
20 that met All Requirements of the STB., and was issued by the "TRUSTEE" of the Banks Family
21 Trust: by Kevin M. Banks, as further verified by his lawfully Notarized Signature. The
22 Guarantee was specifically executed to Guarantee Immediate Funds in the amount of:
23 \$ 13,000.00, (Thirteen Thousand-USD.), which would more then cover the: \$ 5,750.00 identified
24 by Petitioner in his **Bonafide Offer** for the (220-Linear Feet) of rail North-West of the UP
25 Switch at Flanigan. The Financial Guarantee was specifically designed to provide immediate
26 funds in the amount of: \$ 5,750.00 for the acquisition of the 220' line of rail from UP, as well
27 as to provide additional funds in the amount of: \$ 7,250.00 to rehabilitate the 220' line, into
28 **Operable Condition**, so Petitioner could immediately proceed to lawfully obtain an **FRA**

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2
3 **Railroad Operating Certificate, and Pass FRA Track Inspection. The \$ 7,250.00 funds to**
4 **Rehabilitate the Track, would also cover the installation of any necessary Replacement Ties,**
5 **Signals, Markers, and Support Equipment, to render the 220' line of rail as Operationally Safe,**
6 **especially considering the fact that Petitioner has already identified such excess material as**
7 **available at NO COST, then for fuel/oil for transportation of and materials to install same, for**
8 **which Petitioner would personally engage to undertake with Truck and Trailer Equipment**
9 **already owned by the NCR, and or ATL, Nevada Corporations. The subject Financial**
10 **Guarantee, specifically guaranteed "ADDITIONAL FUNDS" as necessary to maintain**
11 **operation of the line, for a (5-Year) period in addition to the: \$ 13,000.00, as previously**
12 **identified therein. Please see Petitioners EXHIBIT: [F], attached hereto which is a copy of the:**
13 **NCR - OFFER OF FINANCIAL ASSISTANCE (PURCHASE) and NOTICE OF FINANCIAL**
14 **GUARANTEE of: September 15th., 2008. Following the review by the Court of Petitioners**
15 **Motions, for which Petitioner has Appealed in the instant proceeding which had a Material**
16 **Effect on the previously adjudicated Substance and Procedural Compliance of said OFA and**
17 **the subsequent Decisions related thereto, Petitioner hereby requests that the Court declare and**
18 **thereby confirm, that Petitioner's OFA filed contemporaneously along with the Certified**
19 **Genuine Verified Financial Guarantee filed by the BANKS FAMILY TRUST, was fully**
20 **compliant with Board Regulations, as it also specified therein as being filed along with the**
21 **provision of All filings within the Record of Proceedings, and would have included additional**
22 **information to have been provided by Petitioner in the event that the Director of Proceedings**
23 **had Not Unlawfully Interfered in the Proceeding, and knowingly and deliberately entered a**
24 **Premature Decision, thus Procedurally Preempting Petitioners Ability to Perfect any Potential**
25 **Defects. The OFA as written when taken into consideration with the Certified Financial**
26 **Guarantee, met and exceeded ALL of the requirements under ICA and ICC regulations now**
27 **administered by the STB, of what constitutes an OFA under Exempt Proceedings Rules. NCR**
28 **is a Class-III Railroad, and as such is thus Exempt from Class-I and Class-II. OFA Standards.**
The Guarantee specifically and in the instant Case FACTUALLY ASSURED the funds for

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2
3 the Acquisition Price, and Costs to place the rail into Operation, as well as providing an
4 Additional Open Ended Funding Guarantee, above and beyond the specific stated amount of:
5 \$ 13,000.00 to ensure that NCR can Sustain Operations for a 5-Year Time Period, which is well
6 beyond the Minimum 2-Year statutory requirement. Petitioners OFA in financial terms, was
7 a Reactive Mirror Image of and thus Precisely Accounted for, the Operational Estimates
8 necessary to meet STB requests for Financial Proof's relating to Operations under the 2-Year
9 Statutory Congressional Requirement. Under the ICA and ICC Regulations, US-CONGRESS
10 intended that the Exempted OFA process was very carefully designed with "the specific
11 purpose to foster continued common carrier rail service on lines that otherwise would be
12 abandoned, the OFA rules are construed liberally in favor of the offeror, and this precisely why
13 US-CONGRESS determined that offers need not be detailed." "An offeror need only show that
14 it is financially responsible and that its offer is Bona fide." Further, "the standard for finding
15 of financial responsibility is that the offeror has, or within a reasonable period of time will have,
16 the financial resources to fulfil contractual obligations related to the intended acquisition or
17 subsidy of the subject line." In the instant case, Petitioners OFA was Not Only Bona fide, but
18 was factually Financially Guaranteed beyond the shadow of any doubt. It must be noted, that
19 at No Time, did UP in its alleged efforts to investigate the validity of the BANKS FAMILY
20 TRUST - FINANCIAL GUARANTEE, ever even attempt to establish direct contact with the
21 TRUSTEE for same, in order to substantiate availability of funds as extended by the TRUSTEE
22 on behalf of the Investment Partnership to Petitioner despite the fact that the TRUSTEE'S Cell
23 Phone Number was listed right on the Genuine Documented Verified Financial Guarantee.
24 This is because, if UP did in fact at any time establish contact with the TRUSTEE, they very
25 well knew that they would be confirming the FACT that the Guarantee was GOOD.

26 G. Petitioner, D/B/A: NCR, timely filed an APPEAL on (Monday), September 29th., 2008.
27 Within Petitioners APPEAL, Petitioner clearly explained in a precisely detailed manner, that
28 UP on September 17th., 2008, had in fact filed a MOTION as opposed to a REPLY as then

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3 stated by the STB. Petitioner also requested in his **APPEAL**, that the information presented
4 therein be included, and therefore by **AMENDMENT** be made part of the Original OFA filed
5 by Petitioner on September 15th., 2008, as a result of the fact that Petitioner was not afforded
6 sufficient time to file any **RESPONSE** to what was in fact for reasons stated therein, a
7 **MOTION TO REJECT OFA** filed by UP, nor at a Minimum a sufficient allocation of time
8 to have filed a **MOTION TO STRIKE** false information contained within the UP filing of
9 September 17th., 2008, prior to the Decision by the Board to **REJECT OFA**. Petitioner
10 requests that the Court to **REVERSE** the STB Decision Denying Petitioners **APPEAL** filed
11 on September 29th., 2008, for reasons previously stated herein and as follows;

12 Petitioner clearly explained that he had called Mr. Rudy St. Louis at the STB., in order
13 to obtain instructions for which to file a **SUPPLEMENT** to the OFA filed on September 16th.,
14 2008. This was before the discovery by Petitioner of the Decision by the Board entered as and
15 against Petitioner on September 19th., 2008. Petitioner also notified the Board within his
16 **APPEAL**, that UP knowingly and deliberately **FAILED** to identify the fact that the HL-Power
17 Plant was located within 1-Mile of the end of the subject 21.77-Mile rail line at Wendell,
18 California, who's operation is critically impaired by it's inability to receive Fuel Deliveries
19 via Rail, as opposed to Overland Truck.

20 Petitioner also clearly and precisely identified the Fact that the case **DEFECTIVELY**
21 cited by both UP and the Board in AB-409 (Sub. No. 5X), did Not Apply to the 220' rail line that
22 was being acquired by Petitioner in the instant case at Flanigan.

23 Petitioner clearly and precisely identifies potential shippers that will be supplied by NCR
24 following the acquisition of the 220' rail line, as well as Additional Shippers upon the
25 completion of the appx: 21+ Mile Extension to the 220' rail line at Flanigan.

26 Petitioner also clearly notified the Board that the 220' rail line existed as a Critical Link
27 and Connection to the National Railway System.

28 Petitioner clearly and precisely indicated to the Board, the specific characterization and
structure of the **BANKS FAMILY TRUST**, constituting the more then reasonable basis upon

2
3 which the subject Investment Partnership in the form of a "TRUST" is Financially Capable.

4 Petitioner stipulated to the provision of any additional information required by the
5 Board as necessary proof in the event that the Board required same, within 10-Days following
6 the granting of a Protective Order to Petitioner and the BANKS FAMILY TRUST, to ensure
7 that Petitioner does Not experience further damage, resulting from the execution of further
8 unlawful acts by UP. It is most Critical to Note at this juncture, that at NO-TIME has the
9 Board uttered even a Single Sentence, and in Fact Not even a Single Word, in response to the
10 CONSISTENT DOCUMENTED REQUESTS BY PETITIONER for a Decision or
11 Communication by the Board for the provision by Petitioner of ANY NECESSARY
12 ADDITIONAL INFORMATION THAT MAY BE REQUIRED BY THE BOARD, nor any
13 communication what so ever regarding Petitioners continuing requirement and requests for a
14 Protective Order. Petitioner requests that the Court Remand and Direct the Board to Grant
15 a Protective Order so that Petitioner can lawfully SUPPLEMENT his OFA without incurring
16 additional damage as a direct and proximate result of criminal actions taken by UP.

17 Petitioner agreed to if necessary within his APPEAL; to Actually BOND FUNDS to the
18 STB, as Incontrovertible Proof of his Financial Responsibility. Petitioner also identified the
19 inclusion of All Filings within the instant proceeding in direct support of his APPEAL.
20 Petitioner requests that the Court Declare that Petitioner provided the STB as TRUSTEE, with
21 the Option to Receive Funds as BOND for Cash Payment to UP within the scope of his OFA on
22 September 29th, 2008 to demonstrate Financial Responsibility necessary to acquire the subject
23 220' rail line.

24 Petitioner cited another OFA proceeding in: STB AB-1081X, as evidence in support of
25 his APPEAL, as a result of the fact that the Board accepted the Alleged Financial Guarantee
26 in the case of Sonora, regardless of the fact that the subject Guarantee in that case knowingly
27 did Not Exist as a Direct Financial Guarantee to Sonora, but instead was an INDIRECT alleged
28 Financial Guarantee to an Independent Partner for which Sonora only "Inferred" was
supporting Sonora's Program to acquire the rail line. In actual practice, said support was

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3 rendered through an unlawful: Enterprise. Further and critically important, is the fact that
4 Petitioner clearly and precisely identified the fact within his STB Appeal, that the Board
5 accepted the Financial Information alleged by Sonora to be sufficient for purposes of
6 determining Financial Responsibility, NOT BASED on the FACT that it was confirmed, but
7 rather that it passed what the Director of Proceedings described, as the so called: "ON ITS
8 FACE" Appearance Test, which was a completely different standard as directly applied to
9 Petitioner within the instant case by the very same: STB - Director of Proceedings. In the case
10 of Sonora, the Board determined Financial Capability, based "on the Face" of the appearance
11 of documents, as opposed to the provision of a Direct, Verified and Legally Certified:
12 GENUINE FINANCIAL GUARANTEE, by a reputable financial organization, as in the case
13 of this Petitioner, D/B/A: NCR. Petitioner just discovered last week, while executing research
14 necessary to complete the instant APPEAL to the Ninth Circuit Court using the Computer
15 Driven Search Function of the Public STB Web Site, that a MOTION TO REJECT OFA was
16 also filed to the STB, essentially identical to that filed by UP September 17th., 2008 in the instant
17 case, confirming direct statements by witness's employed by the very same Bank, for which the
18 alleged Letter of Credit was indicated to have been confirmed in Sonora, clearly indicating that
19 the said Letter of Credit submitted by Sonora, in fact APPEARED as a False Forged
20 Document, and did Not in fact comport in any way with the established format utilized by the
21 same Bank. Most important, was the fact that the Director of Proceedings, had already
22 confirmed receipt of this same MOTION TO REJECT OFA, one day PRIOR to his decision
23 on behalf of the Board, to officially render Sonora, as Financially Responsible within the scope
24 of an OFA. It is also important to note, that the Principal of Sonora, had executed a Telephone
25 Conversation with this Petitioner, subsequent to the date and his possession of the alleged Multi
26 Million Dollar "Letter of Credit" and personally confirmed to this Petitioner that he did NOT
27 have sufficient financing to support the provision of his OFA. What the STB failed to mention
28 within its decision relating to the Sonora OFA, is that the Director then acting as the Covert
ARM of the Criminal NEVADA-UP/REID Cartel, was Criminally Motivated to ensure that

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3 **Sonora would gain control of the subject 73-Mile Line in Arizona, as the Board already knew**
4 **that this was the Southern Link of the NCR-ByPass, to an absolutely vital connection with the**
5 **Pacific National Railroad of Mexico. Ultimately in precise compliance with the Plan hatched**
6 **by the Criminal NEVADA-UP/REID Cartel, that upon information and belief was coordinated**
7 **from an unknown secret location in Salt Lake City, Utah, the Vital 73-Mile rail line was:**
8 **SALVAGED. Petitioner requests that the Court declare that the actions by the Board in the**
9 **instant case in AB-33 (Sub. No. 230X) to REJECT on APPEAL, the provision by Petitioner of**
10 **the Certified Genuine Verified Financial Guarantee from the BANKS FAMILY TRUST, using**
11 **a completely different standard as that applied in Sonora, was Arbitrary and Capricious.**

12 **Petitioner also clearly and precisely identified to the Board, that his appeal was made**
13 **with the inclusion of All information Published as Public Record by the Board concerning the**
14 **Execution, Standards, and Acceptance of OFA's, as well as All Documents filed within the AB-**
15 **33 (Sub. No. 230X) proceeding. Please see Petitioners EXHIBIT: [G], attached hereto which**
16 **is a copy of the: NCR - APPEAL of: September 29th, 2008. Petitioner submits to the Court in**
17 **support of this Appeal the assertion that both UP and the Board are Barred by Collateral**
18 **Estoppel as a function of procedure within this proceeding from making any claim or assertion**
19 **that Petitioner does Not Intent to Operate the subject 220' rail line, based on both the Board**
20 **and UP's previous actions for which they are both bound, when they Failed To Object In Any**
21 **Way, to the stated intent of NCR as clearly and precisely described within NCR's PUBLIC**
22 **NOTICE OF INTENT TO ACQUIRE AND PROVIDE FOR THE MAINTENANCE OF**
23 **INTERSTATE COMMERCE AND OPERATION OF RAIL TRANSPORTATION SERVICES**
24 **IN WASHOE COUNTY, NEVADA, AND LASSEN COUNTY, CALIFORNIA, a copy of which**
25 **is attached hereto and as previously identified as Exhibit A.**

26 **H. Petitioner, D/B/A: NCR, filed a MOTION TO STRIKE on (Monday), October 27th,**
27 **2008. Within Petitioners MOTION, Petitioner clearly and precisely confirmed to the Board,**
28 **that UP was deliberately deceiving the Board, with at best, the provision of a False Assessment,**

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3 and at worst, a Deliberate Misleading Assessment of the Operational Viability of the subject
4 220' rail line, for which Petitioner identified within his OFA in comparison to another
5 abandoned line by UP located in Los Angeles, California, identified by UP within STB AB-409
6 (Sub. No. 5X). In this Motion to Strike, Petitioner Factually Confirmed that the information
7 provided by UP in their previous Reply was ABSOLUTELY KNOWINGLY FALSE by UP,
8 based on the incontrovertible evidence provided by Petitioner, to include FACTUAL
9 Confirmation of Prospective Shippers that have a critical necessity to use the subject line,
10 before and after it is extended back 21+ Miles North-West to the town of Wendell, California.
11 Most important, is that Petitioner confirmed that the Current Power Generating Customer for
12 which Petitioner already possess a lawful binding contract, can in Fact, be Operationally
13 Served without the necessity to execute any Switching Operations on the subject 220' Mail Line
14 being acquired by Petitioner, as this Customer only requires a Maximum of (3)-Rail Cars to be
15 delivered at any time by UP, to the UP/NCR rail connecting point to enable NCR to then take
16 delivery of same, and transport said rail cars back in a North-West direction onto the NCR
17 220' Mainline Track System. None of the Rail Cars accepted by NCR at the UP/NCR
18 connecting point, will ever need to be switched as they are downloaded by virtue of individual
19 Flexible High Pressure Umbilical Hose Systems, that are simply Reeled Out and Remain
20 Connected to each individual Tanker Car, thus automatically extracting said Fuel Products
21 contained within each Car when needed. Once the Cars are Emptied, the NCR Electrified
22 Switch Locomotive, simply travels Appx: 185' and returns the Cars back to the UP Line at the
23 UP/NCR connecting point. UP then simply accepts the Empty Cars, and comes back with three
24 additional Rail Cars that are Full. The Total Cost incurred by NCR to operate on the subject
25 line, is more then covered by the operation of the Electrical Power Generating Facility co-
26 located adjacent to the 220' Mainline System, as the Electric Locomotive does Not consume Any
27 Fuel as an operating expense. The Power Generating Customer has already agreed to construct
28 a drive through Engine House/Locomotive Barn, that will be located on the North-West end of
the subject 220' Main Line, and this will enable NCR to Permanently Secure its Electric Switch

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3 Locomotive from Vandalism, in addition to the Secured Fencing that will be utilized to protect
4 the Entire Power Generating Facility encompassing the Entire 220' Main Line. Funds for the
5 Construction of the High Technology Blended Fuel Power Plant co-located over the NCR
6 Mainline, have already been appropriated by Congress, and as such will exist as funds to totally
7 eliminate the initial cost of construction of the New High Technology Pollution-less Electrical
8 Power Generating Facility, thus virtually All Monies generated from the Operation of the
9 Power Generating Facility are Profit, and thus the generated revenue will more then
10 permanently cover the Continuing Operation of the 220' line, including the permanent
11 operation of the future 21-Mile extension all the way back to the Town of Wendell, to then
12 service the HL-Power Plant which Petitioner clearly identified as pending Condemnation by
13 NCR. Bottom Line, is that Petitioner has clearly identified Existing Shippers ready to fully
14 utilize the line being acquired by NCR. Please see Petitioners EXHIBIT: [H], attached hereto
15 which is a copy of the: NCR - MOTION TO STRIKE of: October 27th., 2008. Petitioner
16 requests that the Court Declare that the subject 220' Main Line at Flanigan, is Not Physically
17 Constrained as described by UP, as in the case of AB-409 (Sub. No. 5X). And further to
18 Declare that this Petitioner can in fact Physically Operate the subject 220' Mail Line, just as in
19 the case of: 1999 United Transportation Union - Vs. - STB Decision in 7th. U.S. Court of Appeals
20 concerning Effingham, wherein the Federal Appeals Court factually determined from both a
21 Legal and Operational Standpoint, that the 216-Foot line of rail acquired in the STB
22 Effingham docket constitutes a sufficient rail line necessary to institute the execution of
23 Interstate Commerce by Rail, and further in that same decision that said initial 216-Foot rail
24 line was both Legally and Operationally Sufficient to constitute a MAIN LINE of rail, precisely
25 as now in the instant case. Petitioner further requests that the Court REVERSE the
26 DEFECTIVE, ARBITRARY and CAPRICIOUS Decision to Deny Petitioners MOTION TO
27 STRIKE dated: October 27th., 2008.

28 I. Petitioner, D/B/A: NCR, filed a MOTION TO STRIKE on (Tuesday), November 11th.,

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3 **2008. Within Petitioners MOTION, Petitioner clearly and precisely notified the Board that**
4 **documented statements by UP contained in their October 21st., 2008 Reply, were False,**
5 **Defective, and or Misleading, specifically relating to the continued assertion by UP that it had**
6 **provided NCR with a Condition Report. Petitioner clearly and precisely explained to the**
7 **Board, precisely what UP had FACTUALLY provided, which was a SPEED CHART, as**
8 **opposed to a CONDITION REPORT, within the MOTION TO STRIKE. The documented**
9 **information provided by Petitioner in the form of Incontrovertible Facts, was Not based on**
10 **Speculation, but Confirmed FACTS. Please see Petitioners EXHIBIT: [I], attached hereto**
11 **which is a copy of the: NCR - MOTION TO STRIKE of: November 11th., 2008. Petitioners**
12 **request that the Court Declare that RTI had never intended to operate the line as a Common**
13 **Carrier executing Interstate Commerce by Rail, and that UP knew the operative intent of RTI**
14 **to SALVAGE the entire 22-Mile rail line in direct contravention of the intent for which the STB**
15 **institutes and authorized the OFA Process as a means to preserve a Federally Active Line of**
16 **Railroad. Further Petitioner requests that the Court Declare that UP has never provided the**
17 **Condition Report as requested by Petitioner as clearly confirmed within the MOTION TO**
18 **STRIKE dated November 11th., 2008, and to REVERSE the DEFECTIVE, ARBITRARY and**
19 **CAPRICIOUS Decision by the Board to Deny Petitioners MOTION TO STRIKE.**

20 **J. & K. Petitioner, D/B/A: NCR, filed a MOTION TO STRIKE on (Monday),**
21 **November 24th., 2008. Petitioner's authorized warranted Financial Agent, (BANKS FAMILY**
22 **TRUST) also contemporaneously filed EVIDENCE on (Monday), November 24th., 2008, as part**
23 **of and in direct support of Petitioners MOTION TO STRIKE, in the form of a lawfully**
24 **Certified Verification Statement to the Board, confirming AUTHORIZATION by the Board;**
25 **(to only be exercised at the option of the Board), to Draw and thus Transfer Funds in the**
26 **amount of: \$ 5,750.00, to be held in TRUST for NCR, for future Payment to UP for the**
27 **acquisition of the 220' Rail Line at Flanigan, Nevada. This EVIDENCE filed in the form of an**
28 **AUTHORIZATION FOR IMMEDIATE CONVEYANCE OF BOND TO THE STB., was -**

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3 **Only - an "AUTHORIZATION" lawfully contemporaneously filed by Petitioners authorized**
4 **Agent, in the form of admissible EVIDENCE in direct support of Petitioners MOTION TO**
5 **STRIKE. Petitioner clearly and precisely entered Incontrovertible Evidence of his**
6 **Financial Capacity in the form of the submission of the Certified Verification Statement to**
7 **the Board, confirming the ABSOLUTE FACT, that Petitioner was at all times Financially**
8 **Responsible within this proceeding, in order to confirm the MOTION TO STRIKE filed on**
9 **November 24th., 2008. Please see Petitioners EXHIBIT: [J], attached hereto which is a copy**
10 **of the: NCR - MOTION TO STRIKE of: November 24th., 2008. Petitioner's authorized**
11 **warranted Financial Agent, (BANKS FAMILY TRUST) again filed EVIDENCE on**
12 **(Wednesday), December 3rd., 2008, as part of and in direct support of Petitioners previously**
13 **filed MOTION TO STRIKE of November 24th., 2008, in the form of a second lawfully Certified**
14 **Verification Statement to the Board, confirming AUTHORIZATION by the Board; (to only**
15 **be exercised at the option of the Board), to Draw and thus Transfer Funds in the amount of:**
16 **\$ 5,750.00, to be held in TRUST for NCR, for future Payment to UP for the acquisition of the**
17 **220' Rail Line at Flanigan, Nevada. This EVIDENCE in the form of an AUTHORIZATION**
18 **FGR IMMEDIATE CONVEYANCE OF BOND TO THE STB., was - Only - an**
19 **"AUTHORIZATION" lawfully contemporaneously filed by Petitioners Agent, in the form of**
20 **admissible EVIDENCE in direct support of Petitioners MOTION TO STRIKE. Petitioner**
21 **clearly and precisely entered Incontrovertible Evidence of his Financial Capacity in the**
22 **form of the submission of the Certified Verification Statement to the Board, confirming the**
23 **ABSOLUTE FACT, that Petitioner was at all times Financially Responsible within this**
24 **proceeding, in order to confirm the MOTION TO STRIKE filed on November 24th., 2008.**
25 **Please see Petitioners EXHIBIT: [K], attached hereto which is a copy of the: EVIDENCE filed**
26 **by the BANKS FAMILY TRUST on: December 3rd., 2008. Petitioner requests that the Board**
27 **REVERSE the DEFECTIVE, ARBITRARY and CAPRICIOUS Decision to Deny Petitioners**
28 **MOTION TO STRIKE, the Reply of UP dated November 4th., 2008, and to note within the**
Order, that UP did Not file any OBJECTIONS nor OPPOSITION to Petitioners MOTION

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3 **TO STRIKE**, lawfully filed November 24th., 2008.
4

5 **L. Petitioner, D/B/A: NCR, timely filed an APPEAL on (Tuesday), December 16th., 2008.**
6 **Within Petitioners APPEAL, Petitioner clearly explained in a precisely detailed manner, the**
7 **FACT that the EVIDENCE filed by the BANKS FAMILY TRUST was first filed for the**
8 **specific purpose of confirming Petitioners Financial Capacity, and second, for the expressed**
9 **purpose of providing the Board with the Authorization to Affirmatively and Administratively**
10 **Draw and thus Transfer Funds to the Board as necessary to be held in TRUST for NCR as**
11 **payment to UP, or at the option of the Board, to Not Draw and thus Transfer Funds within**
12 **the SCOPE of Petitioners OFA. Regardless of the decision by the Board at its Option to**
13 **Affirmatively Draw, or (Freely Not Draw), funds as a result of the provision of the**
14 **Authorization by BANKS FAMILY TRUST, the submission by the TRUST of this filing in the**
15 **form of lawfully Admissible EVIDENCE, was at a minimum lawfully submitted for**
16 **evidentiary purposes. Please see Petitioners EXHIBIT: [L], attached hereto which is a copy of**
17 **the: APPEAL filed by Petitioner on: December 16th., 2008. Petitioner requests that the Court**
18 **REVERSE the DEFECTIVE, ARBITRARY and CAPRICIOUS Decision by the Board to**
19 **Deny Petitioners APPEAL of: December 16th., 2008, and to also note within said Order, that UP**
20 **Failed to file any Objections and or Opposition to Petitioners APPEAL.**

21 **M. Petitioner requests that the Court REVERSE the DEFECTIVE, ARBITRARY &**
22 **CAPRICIOUS Decisions of January 27th., 2009, Denying both of Petitioners previous Appeals**
23 **of September 29th., 2008, and December 16th., 2008. Petitioner have already established the Fact**
24 **that UP has NEVER provided all of the information for which they are required to provide to**
25 **any potential Offeror upon request within the scope of STB 1152.27(a), including but not**
26 **limited to a Condition Report of the rail line. This deliberate act by UP to knowingly violate**
27 **Board Regulations was motivated as previously stated herein, by the fact that in the event that**
28 **UP were to document the actual Condition of each section of; Length, Weight and Age of Relay,**

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3 **Re-roll, Scrap Rail, Re-usable Rail, Re-usable and Scrap Ties, Rail and Joint Bars, Spikes,**
4 **Ballast, Drainage, Bridges, Tie Bars, Frogs, Switches, Tie Plates, Rail Anchors, Gauge Rods,**
5 **Crossings, and Track Bolts, then Petitioner could take that Documented Report and literally**
6 **HANG Union Pacific Railroad Company. Further, UP deliberately Refused to provide the**
7 **Condition Report as they very knew that Petitioner could utilize the Report, in order to**
8 **substantiate the true value existing of the existing line of rail as collateral in order to obtain**
9 **financing sufficient to acquire the entire line, thus No Report, just a Lie based on the provision**
10 **of an Operational Exception Report, and Speed Chart. This action by the Board to knowingly**
11 **enable UP to ignore and thus fail to comply with the requirements of 1152.27(a) exists as a**
12 **Fatally Defective Error in Mandatory Procedure under the ICA and ICC Regulations,**
13 **absolutely barring the STB from having ever proceeded with the decision to compel Petitioner**
14 **to file his OFA. This is precisely what happens when the Director of Proceedings, becomes a**
15 **willing participant within the Scope of Criminal-RICO. The Board states in its Decision that**
16 **UP was negotiating with RTI for the Sale of the Line for a period of Appx: 18-MOS., when in**
17 **fact UP Legal-Staff have already personally confirmed that UP at all relevant times, intended**
18 **to sell the subject line based on RTI's stated intent as confirmed personally by telephone to this**
19 **Petitioner, to SALVAGE the line, thus the statement that UP was negotiating with RTI within**
20 **the Scope of the OFA Process by the Board in its Decision of: January 27th., 2009, was**
21 **Absolutely Knowingly FALSE.**

22 **On September 12th., 2008, the Board stated that it had Reviewed the Additional**
23 **Information submitted by UP, and that UP appeared to have met the requirements in 49**
24 **1152.27(a), which this Petitioner has already proven was a Complete and Utter Lie by the**
25 **Director of Proceedings. For example, where in any of the information submitted by UP can**
26 **the Board now convey to this Petitioner, the Condition of the; Ties at Mile Point 338.35, the Tie**
27 **Plates at 339.50, the Ballast and Drainage at 344.63, and All of the Bridges on the line.**
28 **Petitioner can go on and on and on, with the explanation of Incontrovertible Proof that the**
Director of Proceedings was acting as part of the NEVADA-UP/REID Criminal Cartel, working

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3 **24/7 to Destroy Petitioner and the NCR.**

4 **The Board in its Defective Decision, incorrectly based its findings that Petitioner based**
5 **the Price of his OFA on the NLV previously provided by UP. In Fact, Petitioner did Not base**
6 **his OFA on the UP-NLV, as Petitioner already knew that the NLV provided by UP was a**
7 **Criminal Fraud, that Knowingly Mis-characterized the Value of the Line, as that as based on**
8 **the value of a viable rail line, as opposed to 22-Miles of SALVAGE Steel by Weight. This is**
9 **precisely why, Petitioner clearly and precisely confirmed in effect that the Price for which his**
10 **OFA was set in order to Exceed the Deliberate Inflated Price provided by UP for the Track**
11 **System, only to ensure that the OFFER as set within the Petitioners OFA, would be statutorily**
12 **deemed as Bona-Fide by both the Board, and the Ninth Circuit Court.**

13 **Petitioner hereby respectfully directs the Circuit Court to carefully note that the Boards**
14 **Decision on September 19th., 2008, ONLY cited a single Case in Los Angeles, California in**
15 **relation to the Operational Capacity of NCR on the subject 220' rail line as: AB-409 (Sub. No.**
16 **5X). Later in the Decision of January 27th., 2009, the La Case in AB-409 is No Where to be**
17 **found. This is precisely because Petitioner has already filed incontrovertible evidence of his**
18 **ability to Factually Operate the subject 220' rail line, as a Main Line of Rail by citing**
19 **Effingham in 1999 United Transportation Union - Vs. - STB in 7th. U.S. Court of Appeals.**
20 **Effingham Railroad successfully obtained Board Approval for an Operating Exemption within**
21 **FD-33468 to operate 206.05-Linear Feet of railroad line. Effingham Railroad then continued**
22 **to eventually successfully maintain and operate in excess of 2-Miles of railroad line, through**
23 **a combination of Extensions linking multiple sections of Existing rail lines. Bottom line, is that**
24 **the Board could No Longer Hang Its Hat on the fabricated story previously proffered by UP**
25 **upon which the Board had in SIGNIFICANT PART already based its Decision to Defectively**
26 **execute the Wholesale Adoption of the impermissible disguised UP MOTION TO REJECT**
27 **OFA., filed on September 17th., 2008. This issue was also factually defused within one of**
28 **Petitioners previously executed MOTIONS TO STRIKE, prior to the Execution by the Board**
to Deny both of Petitioners Board APPEALS.

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3 **Petitioner prior to the Decision by the Board to Deny both of Petitioners APPEALS, had**
4 **clearly provided more then sufficient information as necessary to confirm Existing and Future**
5 **Shippers for use fo the 220' rail line, as well as the 21-Mile line extension back to the Town of**
6 **Wendel, California. The Decision by the Board to Deny both APPEALS by Petitioner as well**
7 **as Critical MOTIONS TO STRIKE, was not only Defective, but was Arbitrary and Capricious,**
8 **as the Board failed to either cite nor base its Decisions for Denial on any facts what so ever**
9 **other than bare unsupported assertions of characterization. Virtually No Relevant Facts were**
10 **relied upon by the Board as the basis upon which to Deny Petitioners APPEALS. The only**
11 **actual facts as contained within the Decision that have absolutely No Bearing on Petitioners**
12 **APPEAL, were the Recent Traffic Statistics that were supplied by UP. Petitioner has already**
13 **confirmed within previous Motions, that UP did Not Engage in discussions with the HL-Power**
14 **Plant concerning the provision of Rail Service, despite that fact that the Power Plant is the**
15 **largest Employer in Lassen County, and literally ship's Millions of Tons of Fuel Products**
16 **annually to its facility. At No Time did UP ever agree to extend its Track in Wendel, California**
17 **just one mile in order to serve the Power Plant, as UP in FACT does Not Want TO Rail Serve**
18 **the Power Plant, as the Plant is Not Powered By Heavy Polluting COAL, for which UP obtains**
19 **more then [5-X] in Revenue based on Volume, as opposed to Renewable Wood Products as in**
20 **the case of the Power Plant. The Truth in this case is Not based on Complex Rocket Science.**
21 **This is PRECISELY why UP just Abandoned another 11-Mile Rail Line, less then 15-Miles**
22 **from the Plant in Wendel, in the town of Loyaltan, California to another CLEAN BURNING**
23 **Renewable Fuel Power Generating Plant. This case is about Public Corporate Fraud, on the**
24 **grandest Scale since the construction of the Transcontinental Railroad.**

25 **Within the Boards Decision of January 27th., 2009, the Board states (in effect), that**
26 **Petitioner Failed to PROVIDE JUSTIFICATION to Strike the UP Reply of October 7th., 2008,**
27 **but No Where in the Decision by the Board, does the Board refer to any Specific Element as**
28 **Factually Identified within Petitioners MOTION TO STRIKE wherein Petitioner Fails to**
Provide Justification, other then the bare unsupported assertion by the Board that Petitioner

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3 simply attempts to provide a Rebuttal to UP's Reply. This is a disturbing TREND throughout
4 the entire Case, as it Begs the Question: Where are ANY FACTS for which the Board bases
5 Any Decision as contained within the Denial of both of Petitioners APPEALS. The only Party
6 within this Case that provided ANY RELEVANT FACTS, was Petitioner/NCR. Procedurally
7 and Factually Speaking, VOID any Relevant Substantive Facts in Objecting in Opposition to
8 Petitioners Motions in the instant case, the FACTS as stated in Petitioners Motions will
9 absolutely Prevail in terms of both Fact, as well as Procedure. These Facts alone exist as
10 further evidence that the Decisions by the Board in the instant case were at best DEFECTIVE,
11 and at worst ARBITRARY and CAPRICIOUS. The Incontrovertible FACTS as contained
12 within Petitioners MOTIONS TO STRIKE filed on November 10th., 12th., and 24th., 2008, were
13 NEVER DIS-PROVED by the Board nor UP, and thus must in terms of Fact and Procedure
14 Stand as Valid Facts upon which Petitioners MOTIONS TO STRIKE should have been
15 GRANTED. Petitioner again requests that the Decisions by the Board to Deny each of
16 Petitioners MOTIONS TO STRIKE be REVERSED and that the case be Remanded back to
17 the Board with an Order to GRANT All of Petitioners MOTIONS TO STRIKE.

18 The Boards Decision to Deny Petitioners request to AMEND his OFA was as previously
19 discussed. Fatally Defective in terms of both Substance and Board Procedure. Petitioner has
20 already Clearly Established that FACT that the UP filing of September 17th., 2008, was only an
21 Un-cleverly Disguised: MOTION TO REJECT OFA, and was Not a Reply as cited by the
22 Board in its January 27th. Decision to Deny Petitioners request to AMEND his OFA. The
23 decision of the Board in this instance is another clear example of Defective, Arbitrary and
24 Capricious behavior, as the Director of Proceedings Deliberately Preempted Petitioners ability
25 to Supplement his OFA, within the well established time period with which to do so. Most
26 important is the Fact that by the Decision to Deny both of Petitioners Appeals on January 27th.,
27 2009, that Board had already accepted incontrovertible EVIDENCE from Petitioner and or
28 Petitioners Authorized Direct Agents, Confirming every issue of Financial Responsibility, as
well as the Operational Viability of Petitioners plan to place the 220' rail line into sustained

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3 operation for 50 to 100-Years as a Critical element of the only dedicated Pollution-less North-
4 South Heavy High Speed Transcontinental Railroad in the world, let alone the 30 to 50-Year
5 Viability of sustained Local Class-III Operations.

6 In the January 27th. Decision, the Board explains its Decision to Deny the APPEAL filed
7 by Petitioner on December 16th., 2008, but FAILS to explain that it only received an
8 AUTHORIZATION to access funds for the expressed purpose of establishing BOND, as
9 opposed to the actual provision by Petitioner of funds to post BOND. The filing of EVIDENCE
10 on November 24th., by Petitioners Direct Authorized Agent, BANKS FAMILY TRUST as
11 precisely addressed within this APPEAL to the Court, was executed (First) in the Form of
12 EVIDENCE, and (Second) in the form of Authorization to the Board, ONLY AT THE OPTION
13 OF THE BOARD, to execute same and thus access funds in the form of a BOND. NO ONE
14 HELD A GUN TO THE HEAD OF THE BOARD, and said TAKE THE MONEY OR ELSE.
15 This is another PERFECT example of how the Board is Twisting the Truth with its seemingly
16 clever Staff Attorneys, in order to BARR Petitioner from the execution of Interstate
17 Commerce by Rail. What is MOST disturbing about the Decision on the Point of the Financial
18 Guarantee filed in the form of EVIDENCE, is that the Board in its own Decision admits that
19 Petitioner by and through BANKS FAMILY TRUST, has Factually Incontrovertibly
20 Demonstrated his Financial Capability as revealed in Footnote (2)., prior to the Boards Decision
21 to Deny Petitioners OFA, on the alleged basis that Petitioner failed to prove Financial Capacity.

22 As to the argument by the Board that there is NO CURRENT or FUTURE TRAFFIC,
23 Petitioner points out to the Court, that No Where in the ICA and ICC Regulations, is an
24 Offeror required to Divulge the Specific Details of his Contracts and of Future Prospective
25 Shippers for which he has worked diligently for more than 33-Years to Develop on the subject
26 rail line, to a Criminal Competitor such as Union Pacific Railroad. This is precisely why
27 CONGRESS has explicitly stated; "that Offers Need Not Be Detailed." The Board states that
28 Petitioner has Failed to address a number of issues, including how the line ending at Wendel,
is going to be Connected to the HL-Power Plant, but this is ABSOLUTELY FALSE.

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3 **Petitioner clearly explained in his Motion Practice, that NCR would file for an Exempted**
4 **Construction Authority from the Board to Re-Construct the Line back to the Town of Wendel,**
5 **but No Where did Petitioner state nor imply that NCR would Not Construct the Line to the HL**
6 **Power Plant, which is Factually Located In Wendel, California. Obviously the Legal-Staff**
7 **supporting the Director of Proceedings and within the General Counsel's Office, are literally**
8 **Scrapping the Barrel for any potential to Mis-Characterize the stated intent of this Petitioner.**

9 **Most Important, is that Petitioner is Not Required to divulge the Fact that Petitioner has**
10 **already Noticed the HL-Power Plant as well as affected Land Owners for more than a Year**
11 **Prior to Board Decision, of Petitioners action to lawfully Condemn both the Power Plant, as**
12 **well as the necessary property for a Right of Way for Track Construction. If he Board**
13 **required additional information from Petitioner, all the Board had to do was to Respond with**
14 **a Request for Additional Information, as well as the Multitude of Documented Stipulations by**
15 **Petitioner for the necessity for the Granting of a Protective Order by the Board, and Petitioner**
16 **would have immediately provided further Details. Petitioner is Not Required by virtue of the**
17 **OFA Process to literally HAND UP the most Confidential and Proprietary elements of his**
18 **business development activities further threatening the Legal Viability of his Patented New**
19 **Heavy High Speed Railroad Technology.**

20 **Pctitioner only stated that Parallel Tracks could be constructed adjacent to the existing**
21 **220' Main Line of rail, that did Not relate in any way to the 21+ Mile Extension of same back**
22 **to the Town of Wendel. The Board absolutely knows that Side Tracks can be constructed**
23 **within an existing Right of Way, so long as they don't expand the reach of the Main Line of rail.**
24 **I wonder how long it took for a high paid Federal Civil Servant to devise the knowingly FALSE**
25 **Mis-Characterization of Petitioners intent as to the construction of Parallel Tracks adjacent to**
26 **the existing 220' Main Line of Rail.**

27 **The Board very well knows that NCR has factually executed its Pre-Construction Notice**
28 **within FD-34382, and has met with STB Staff for the last 5-Years in Las Vegas, Reno, and**
Washington D.C., in order to lawfully confirm the definition and notice requirements for

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3 **Construction of the NCR-ByPass. Petitioner is now preparing to execute the Deposition of STB**
4 **Staff, including specific Legal-Staff in order to confirm that the STB is being utilized as an**
5 **Enterprise within the scope of RICO, as further defined under 18 U.S.C. 1961.**

6 **Petitioner hereby submits to the Court, that his evidence lawfully submitted to the Board**
7 **as contained within his Motion Practice to the Board, more then confirms that ALL Issues**
8 **brought up by the Board in its Defective Decision of January 27th., 2008, are in Fact FALSE.**
9 **As an Example, the Board goes on to state that Petitioner has FAILED to Show that he could**
10 **finance the purchase and operation of the subject 220' rail line, as well as the Extensions. This**
11 **is Absolutely FALSE, as Petitioner has already clearly confirmed to the Board that Petitioner**
12 **has a Contract Guaranteeing funding for the Construction of the 21+ Mile Extension, as well**
13 **as the Acquisition and Operation of the 220' rail line, which was clearly explained with the**
14 **provision of Incontrovertible Evidence by prior submissions to the Board within the Scope of**
15 **prior Motion Practice. Just because the Board denied Petitioners Motions to Strike, the**
16 **Documented Incontrovertible Factual Evidence provided by Petitioner entered into the Record,**

17 **must still be considered by the Board prior to its Decision.**
18 **Petitioner asserts that the issues raised by the Board in opposition to the submission of**
19 **his OFA can be compared and determined as False, through the citation of a number of Case's**
20 **for which the Board has previously decided. He STB was charged by CONGRESS as a**
21 **FINDER OF FACT, NOT CONVOLUTED MYTH, COMPOUNDED BY PREDICATE ACTS**
22 **OF CRIMINAL CONSPIRACY AND FRAUD.**

23 **Petitioner asserts that his OFA is essentially in most critical aspects, explained and**
24 **sustained by previous actions taken by the Board, in; STB FD-33468, Redmond-Issaquah**
25 **Railroad Preservation Association - Vs. - STB., Borough of Columbia; Shawnee Run**
26 **Greenway, Inc. - Vs. - STB., and STB AB-1081X.**

27 **As in the case of Effingham STB FD-33468 as previously stated, Effingham was found**
28 **to be a viable line of Rail, that did Not have any Confirmed Shipper located within its 206.50'**
of line, as in the case of the NCR on the 220' line. Effingham could only have proceeded to

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3 engage in Interstate Commerce by Rail, with the subsequent execution of an Extension to its
4 206.50' line. Never the less, the Board approved Effingham, and a Federal Court upheld the
5 decision of the Board, and further Declared that the 206.50' line acquired by Effingham was
6 sufficient in terms of length, physical access, and operational characterization, to exist as a
7 Main Line of rail. In Redmond-Issaquah Railroad Preservation Association - Vs. - STB., the
8 Board despite the provision of Evidence of Potential Shippers on the Line, Denied the OFA
9 proffered by the Home Owners Association, on the basis of Evidence that overwhelmingly and
10 factually proved that the Home Owners Association did Not In Fact, intent to Operate the line,
11 as is Absolutely the Precise Opposite in the instant case of the 220' Main Line, at Flanigan. In
12 the instant case, the Board has every indication of Petitioners intent to institute Class-III
13 Operations on the subject 220' Line, as well as to MASSIVELY EXPAND those Operations
14 following the Re-Construction of the line back to the HL-Power Plant in Wendel, California.
15 Plaintiff has already within this filing, asserted that neither the STB nor UP had executed the
16 provision of any Objections in Opposition to Petitioners Stated Intent to operate the line of rail
17 as clearly described in his Very First Filing, within AB-33 (Sub. No. 230X). In Borough of
18 Columbia; Shawnee Run Greenway, Inc. - Vs. - STB., the STB approved the OFA proffered
19 by Sahd, despite the fact that Sahd admitted that the potential use of the Rail was purely
20 speculative on specific directed shipments, and that No Action would be taken by Sahd to
21 immediately place the line into operation. In the instant case, Petitioner is ready this very
22 second to access Guaranteed Federal Funds to immediately construct a Critical Pollution-less
23 High Technology Power Generating Facility on the 220' line of rail. In STB AB-1081X, the San
24 Pedro filed in Motion Theory, a Virtually Identical MOTION TO REJECT OFA, as was
25 factually filed by UP on September 17th., 2008, and at no time did the Board Deny the MOTION
26 TO REJECT OFA, based on the fact that the STB characterized the MOTION TO REJECT
27 BY San Pedro, as a REPLY. The decision by the Board to Deny both of Petitioners APPEALS
28 to the Board, published on January 27th., 2009, was Blatantly DEFECTIVE, ARBITRARY and
CAPRICIOUS. Attorney Thomas McFarland in the: Redmond-Issaquah Railroad

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3 **Preservation Association case correctly summed it all up, in that the actions by the Board to go**
4 **beyond the Statutory Requirements of the ICA and ICC Regulations for OFA Procedures were**
5 **actions to FACTUALLY CONSTRUCT BARRIERS TO ENTRY, as opposed to actions by**
6 **which the Board, by which the Board could confirm the intent and capability to acquire and**
7 **operate a line of rail. In the instant Case, Petitioner has more then demonstrated that the**
8 **Board is simply in this case, using its own concocted Requirements beyond Statutory Authority**
9 **as a Barrier to Entry, as the Record is Replete with Massive Material Defects, and Arbitrary**
10 **and Capricious Activity by the Board, further compounded by the fact that the Board fails to**
11 **ever GRANT Petitioner nor Petitioners Direct Agent a Protective Order based on Petitioners**
12 **unfailing requests for same, as well as lawfully binding stipulations for the provision of**
13 **additional information should the Board Require Same. In this case, the Board REMAINED**
14 **SILENT as to any requirement for the provision of additional information, as well as**
15 **Petitioners Motion to Supplement his OFA within the APPEAL PROCESS which is a Well**
16 **Established Long Standing Practice by the Board. In summary, the Entire Regulatory Process**
17 **by the Board in this case, is a Total and Complete Closely Coordinated CRIMINAL FRAUD.**
18 **This Petitioner defies the Court to identify any OFA case's laced with Fraud by both a Class-I**
19 **Railroad with the Full Assistance and Internal Criminal Cooperation of Internal Board-Staff,**
20 **then exists within the instant case.**

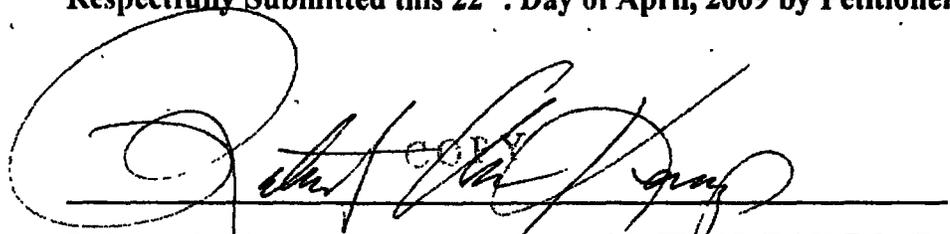
21 **For reasons as clearly stated herein and above, Petitioner respectfully requests that the Court**
22 **REVERSE the Board Decisions to Deny both of Petitioners Board APPEALS, as well as the**
23 **Decisions to Deny the MOTIONS TO STRIKE included within those Board Appeals, and to**
24 **REMAND this case back to the STB along with an Order Directing the Board to Reopen the**
25 **Abandonment Case, and Proceed with and order the sale of the line to Petitioner, D/B/A:**
26 **NEVADA CENTRAL RAILROAD within 60-Days of the rendering of said Decision by the**
27 **Court, and for any and all further relief as this honorable Court may deem appropriate**
28 **including but not limited to the Return by the Board of any and All Filing Fee's for APPEALS**
as were assessed by the Board in this case back to Petitioner, upon submission of necessary

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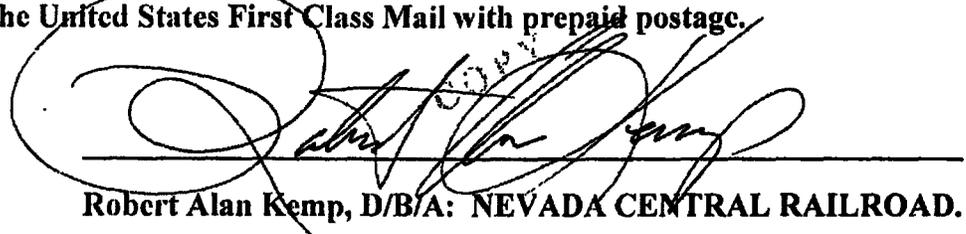
Proofs of same by US-MAIL upon notice for submission from the Court.

Respectfully Submitted this 22nd. Day of April, 2009 by Petitioner Pro-Per:


Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD.

CERTIFICATE OF SERVICE

I, Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD certify that on this 22nd. day of April, 2009, I made service of the attached original Informal Opening Brief and Attached Exhibits, upon the United States Court of Appeals for the 9th Circuit at: PO Box: 193939, San Francisco, CA, 94119 and upon the Surface Transportation Board, (STB), C/O: Ronald Molteni, 395 E Street, SW, 12th Floor, Washington, D.C. 20423-0011 by depositing same into the United States First Class Mail with prepaid postage.


Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD.

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