

Robert F. Hochwarth
General Attorney



Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
~~216-881-2200~~
216-623-2405
January 17, 1977

REGISTERED MAIL
Return Receipt Requested

2071
JAN 21 1977
INTERSTATE COMMERCE COMMISSION

RECEIVED
JAN 21 4 23 PM '77
FEE OPERATION E.R.

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
12th Street and Constitution Ave. N.W.
Washington, D.C. 20423

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations, I enclose for filing and recording six counterparts of an Agreement dated as of February 1, 1977 between General Motors Corporation (Electro-Motive Division) and The Baltimore and Ohio Railroad Company. The Agreement is an interim user agreement allowing B&O to use the locomotives pending completion of permanent financial arrangements.

Set out below are the names and addresses of the parties to the transaction:

Bailor: General Motors Corporation
(Electro-Motive Division)
LaGrange, Illinois 60325

Bailee: The Baltimore and Ohio Railroad Company
2 North Charles Street
Baltimore, Maryland 21201

The equipment covered by the enclosed documents consists of 10 3000 HP Model GP 40-2 diesel electric locomotives, to bear Bailee's road numbers 4247 - 4256, inclusive, AAR mechanical designation BB, and 20 3000 HP Model SD 40-2 diesel electric locomotives, to bear Bailee's road numbers 7600 - 7619, inclusive, AAR mechanical designation CC.

The equipment will be lettered "Baltimore and Ohio", "B&O", "Chessie", "Chessie System", or in some other appropriate manner and will also be marked:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977,
FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR"

7-021A118

58-



Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

January 17, 1977

Also enclosed is this Company's draft in the amount of \$50 representing the required recordation fee. Please return four recorded counterparts to the undersigned.

Please note: It will be greatly appreciated if you will telephone me collect (216) 623-2405 promptly upon receipt of the enclosed documents.

Very truly yours,



R. F. Hochwarth
General Attorney

RFH:ef
Encls.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

1/
2/3/77

Robert F. Hochwarth
Chessie System
Law Dept.
Terminal Tower
P.O.Box 6419
Cleveland, Ohio 44101
Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 1/21/77 at 4:25pm and assigned recordation number(s) 8671

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

FILED IN 8071
JAN 31 1977
FEDERAL COMMERCIAL COMMISSION

AGREEMENT

Dated as of February 1, 1977

Between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

Covering

30 3000 HP Diesel Electric Locomotives

THIS AGREEMENT, dated as of February 1, 1977, by and between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (Manufacturer), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (B&O);

W I T N E S S E T H :

The Manufacturer and B&O heretofore entered into Locomotive Proposals Nos. 767033 and 767034, both dated August 23, 1976 and accepted by B&O on October 15, 1976 (copies of which Locomotive Proposals are made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to B&O, and B&O agreed to accept and pay for the following locomotives:

- 10 3000 HP Model GP 40-2 diesel electric locomotives, to bear B&O's road numbers 4247 - 4256, inclusive; and
- 20 3000 HP Model SD-40-2 diesel electric locomotives, to bear B&O's road numbers 7600 - 7619, inclusive, ("Locomotives").

Delivery of the Locomotives by the Manufacturer to B&O is scheduled to begin on or about February 1, 1977. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to an Equipment Trust Agreement or otherwise), it is not in a position to accept delivery of and pay for the Locomotives under the terms of the Locomotive Proposals at this time. B&O represents that such financing arrangements will be consummated, however, on or before April 1, 1977. B&O (in order that it may use the Locomotives pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the

Locomotives on their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O and B&O hereby accepts from the Manufacturer the Locomotives as of the date each of them is delivered to B&O at Barr Yard, Chicago, Illinois, or other such place as may be specified by B&O, for the period ending on the earlier of April 1, 1977 or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Locomotives shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, B&O shall do such other acts as may be required by law or reasonably requested by the Manufacturer for the protection of the Manufacturer's title to and interest in the Locomotives.

B&O agrees that it will permit no liens of any kind to attach to the Locomotives, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Locomotives of the

Manufacturer because of its ownership or because of the use, operation, management, or handling of the Locomotives by B&O during the term of this Agreement.

B&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Locomotives in good order and running condition, and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to B&O under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Locomotive, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977,
FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR"

B&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives.

In case, during the effective period of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Locomotive, B&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives

as provided in the Locomotive Proposals, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the Locomotive Proposals relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Locomotive Proposals, and B&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in a form satisfactory to B&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Locomotive Proposals, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Manufacturer. Any and all of such obligations howsoever arising shall be and will remain enforceable by B&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits, or advantages assigned pursuant to this Agreement).

B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Locomotives, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Locomotive Proposals, or impair any of the Manufacturer's rights under the Locomotive Proposals.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

[Corporate Seal]

By



Vice President

ATTEST:


Assistant Secretary

THE BALTIMORE AND OHIO RAILROAD COMPANY

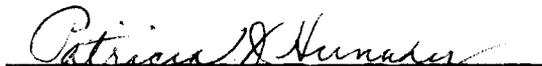
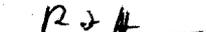
[Corporate Seal]

By



Assistant Vice President
and Treasurer

ATTEST:


Assistant Secretary
General Attorney

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this ~~17th~~ day of January, 1977, before me personally appeared P. K. HOGLUND, to me personally known, who being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

My Commission Expires January 15, 1979

[Notarial Seal]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this ~~17th~~ day of January, 1977, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of The Baltimore and Ohio Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



CLARA MASUGA

Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979

[Notarial Seal]