

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

600 GRANT STREET P. O. BOX 536

8792 A

PITTSBURGH, PA. 15230

RECORDATION NO.

April 26, 1977

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APR 27 1977 - 10 23 AM '77

~~INTERSTATE COMMERCE COMMISSION~~

Interstate Commerce Commission
Washington, D. C. 20423

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RECEIVED

Gentlemen:

APR 27 1977 - 10 30 AM

Washington, D. C.

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and six (6) counterparts of a Conditional Sale Agreement and the original and six (6) counterparts of the Finance Agreement dated as of February 1, 1977.

The general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Investor-Seller under the
Conditional Sale Agreement:

Mellon Bank, N. A.
Mellon Square
Pittsburgh, Pennsylvania 15230

Railroad-Purchaser under the
Conditional Sale Agreement:

Elgin, Joliet and Eastern Railway Company
P. O. Box 880
Joliet, Illinois 60434

The undersigned consents to the above Conditional Sale Agreement and Finance Agreement and has knowledge of the matters set forth in the enclosed documents.

Please return the original and five (5) copies of the Conditional Sale Agreement and Finance Agreement to Paul M. Willard, Esq., Elgin, Joliet and Eastern Railway Company, P. O. Box 536, Pittsburgh, Pennsylvania 15230.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY

By

Assistant Secretary

Paul M. Willard

RECORDATION NO. ~~.....~~ FILE & RECORD
RECORDATION NO. 8792 #
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~~INTERSTATE COMMERCE COMMISSION~~ INTERSTATE COMMERCE COMMISSION

FINANCE AGREEMENT

Dated as of February 1, 1977

Between

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

and

MELLON BANK, N. A.

Re:

\$5,744,000 Maximum Principal Amount
Conditional Sale Indebtedness due 1985

of

Elgin, Joliet and Eastern Railway Company

FINANCE AGREEMENT

THIS FINANCE AGREEMENT dated as of February 1, 1977 between MELLON BANK, N. A. (the "Investor" sometimes hereinafter called "Investor-Seller") and ELGIN, JOLIET AND EASTERN RAILWAY COMPANY (the "Railroad" sometimes hereinafter called "Railroad-Purchaser");

WITNESSETH:

WHEREAS, the Railroad-Purchaser proposes to enter into a Conditional Sale Agreement substantially in the form attached hereto as Exhibit A (the "Conditional Sale Agreement") with Investor-Seller, covering the sale of security title on the conditions therein set forth by the Investor-Seller and the purchase of security title by the Railroad-Purchaser in and to the railroad equipment described in Schedule A to the Conditional Sale Agreement (the "Equipment"); and

WHEREAS, the Investor is willing and does hereby agree to acquire the right and interest of the Railroad in and to the security title to the Equipment covered thereby for a consideration which is equal to the Conditional Sale indebtedness set forth in the Conditional Sale Agreement, and upon and subject to the terms and conditions hereinafter set forth:

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

SECTION 1. Investor's Acquisition of Railroad's Rights. The Investor will and does hereby agree to acquire from the Railroad and Railroad hereby agrees to transfer and set over to the Investor, subject to the terms and conditions hereinafter set forth, the Railroad's right and interest in and to the security title to the Equipment. The aggregate consideration payable by the Investor for such acquisition shall be equal to the aggregate principal amount of the Conditional Sale Indebtedness under the Conditional Sale Agreement.

SECTION 2. Payments by Investor. (a) The acquisition by the Investor from the Railroad of the security title to the Equipment shall take place on May 5, 1977 or such other date not later than May 30, 1977 as may be agreed upon by Investor and Railroad. Such date shall be designated as the Closing Date under Section 3.4 of the Conditional Sale Agreement. On the Closing Date the Railroad shall cause to be delivered the documents referred to in Section 3 hereof.

(b) Not later than 11:00 A. M., Pittsburgh time, on the Closing Date and provided the conditions set forth in Section 3 hereof have been satisfied, the Investor will make payment to the Railroad by initiating transfer

of immediately available funds to the account of the Railroad in an amount equal to the Conditional Sale Indebtedness under the Conditional Sale Agreement for security title to the Equipment specified in Schedule A of the Conditional Sale Agreement.

SECTION 3. Conditions Precedent to Payment by Investor. As a condition precedent to the obligation of the Investor to initiate transfer of funds as provided in Section 2(b) of this Agreement, there shall have been delivered to the Investor the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Investor:

(a) Bill or Bills of Sale from the Railroad to the Investor, transferring to the Investor security title to the Equipment and warranting to the Investor that at the time of delivery thereof to the Investor (i) the Railroad has good title to such Equipment, free of all claims, liens and encumbrances of any nature except only the rights of the Investor, and has the good and lawful right to deliver, transfer and set-over to the Investor security title to the Equipment; (ii) security title to the Equipment is validly vested in the Investor free of all claims, liens, and encumbrances of any nature, and (iii) the design and quality of the Equipment and material used in the manufacture of such Equipment conforms to all Department of Transportation requirements and specifications for such Equipment, and to all standards recommended by the Association of American Railroads, interpreted as being applicable to such railroad equipment of the character of such Equipment as of the date of this Agreement.

(b) Opinion of counsel for the Railroad addressed to the Investor, dated as of the Closing Date, stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and is duly qualified to do business as a foreign corporation in all states where the character of its properties or the nature of its activities makes such qualification necessary; (ii) the Conditional Sale Agreement and the Finance Agreement have each been duly authorized, executed and delivered on behalf of the Railroad and are valid and binding instruments enforceable against the Railroad in accordance with their respective terms; (iii) the execution and delivery by the Railroad of the Conditional Sale Agreement and the Finance Agreement do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Railroad, or any indenture, agreement, or other instrument to which the Railroad is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Railroad; (iv) the Railroad has good title to the Equipment, free of all claims, liens and encumbrances of any nature other than the security title of the Investor, and security title to the Equipment is validly vested in the Investor, free of all claims, liens and encumbrances; (v) no approval of

the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement or the carrying out of the terms thereof; and (vi) the Conditional Sale Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Investor in the United States of America.

(c) Certificate of a Vice President of the Railroad to the effect that no Event of Default as specified in the Conditional Sale Agreement or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute such an Event of Default, has occurred and is continuing, and to the effect that, since December 31, 1976, there has been no adverse change in the affairs or financial condition of the Railroad.

In giving the opinion specified in the preceding subparagraph (b), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The Investor shall not be obligated to make the above mentioned payment at any time while an Event of Default, or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement.

SECTION 4. Investment Representation. The Investor represents that its interest in the Agreement and in the Conditional Sale Agreement and any interest represented hereby or thereby is for its own account for investment and not with a view to distribution or resale thereof, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control. The Investor also acknowledges that neither its interest in this Agreement or in the Conditional Sale Agreement nor any interest evidenced thereby or hereby has been registered under the Securities Act of 1933, as amended, and that it is not contemplated, or legally required, that any such registration be filed.

SECTION 5. Transfer of Interest by Investor. The Investor hereby agrees that, pending full performance of the Conditional Sale Agreement by the Railroad, any transfer or assignment of all or any part of its interest therein shall be upon the express condition that the transferee or assignee thereof shall be bound by the terms hereof.

SECTION 6. Further Assignments. Subject to the terms and provisions of this Agreement, the Investor may assign in the entirety all of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad-Purchaser thereunder. In the event of any such assignment each such subsequent or successive assignee shall, to the

extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

SECTION 7. Notices; Delivery of Documents. (a) All notices, instructions, directions and approvals to be delivered hereunder to any party shall be in writing signed by a duly authorized officer.

(b) All documents deliverable hereunder to the Investor shall be delivered to it at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention: C. Talbott Hiteshew, Jr., Vice President. All documents deliverable to the Railroad hereunder shall be delivered to it at its address at Post Office Box 880, Joliet, Illinois 60434, Attention: J. H. Mayberry, Comptroller, with a copy to V. W. Kraetsch, Vice President-Finance, Post Office Box 536, Pittsburgh, Pennsylvania 15230.

SECTION 8. Financial Reports and Inspection Rights. The Railroad agrees that it will furnish to the Investor, at Investor's request, and to any other holder of 10% or more of the Conditional Sale Indebtedness which shall make written request therefor, the following:

(a) As soon as available, copies of each Quarterly Condensed Balance Sheet - Railroads (Form CBS), Quarterly Report of Revenues, Expenses and Income - Railroads (Form RE&I) and Annual Report (Form R S/B R1) filed by the Railroad with the Interstate Commerce Commission; and

(b) Such additional information as the Investor may reasonably request concerning the Railroad, in order to enable such party to determine whether the covenants, terms and provisions of the Conditional Sale Agreement have been complied with by the Railroad.

The Railroad agrees to permit the Investor and any holder of 10% or more of the Conditional Sale Indebtedness (or such persons as the Investor or any such holder may designate) to visit and inspect, under the Railroad's guidance, the equipment described under the Conditional Sale Agreement and to examine the records or books or account of the Railroad with respect to such equipment and to discuss the affairs, finances and accounts of the Railroad with its officers all at such reasonable times and as often as the Assignee or any such Investor or any such holder may desire.

SECTION 9. Governing Law. The terms of this Agreement and all rights and obligations of the parties hereto hereunder shall be governed by the laws (including its rules with respect to conflicts of laws) of the Commonwealth of Pennsylvania.

SECTION 10. Amendments. This Agreement cannot be amended or terminated except with the written consent of the Investor.

SECTION 11. Execution in Counterparts. This Agreement may be executed in any number of counterparts all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the day, month and year first above written.

MELLON BANK, N. A.

(Corporate Seal)

Attest:



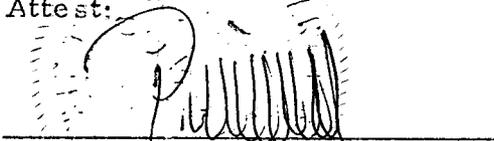
Banking Officer

By C. V. Hatcher
its Vice President

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY

(Corporate Seal)

Attest:



Assistant Secretary

By M. Kraetsch
Its Vice President - Finance