

LAW OFFICES OF

DECHERT PRICE & RHOADS

1730 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006

(202) 783-0200

477 MADISON AVENUE
NEW YORK, NY 10022
(212) 308-4400

3400 CENTRE SQUARE WEST
1500 MARKET STREET
PHILADELPHIA, PA 19102
(215) 972-3400

38 SQUARE DE MEEUS, BTE 1
1040 BRUSSELS, BELGIUM
(02) 511 80 40

52 BEDFORD SQUARE
LONDON WC1B 3EX, ENGLAND
01. 631. 3383

800 NORTH THIRD STREET
HARRISBURG, PA 17102
(717) 233-7947

March 18, 1985

5-080A067

No.

MAR 21 1985

Date

Fee \$

10.00

ICC Washington, D. C.

HAND DELIVERED

MAR 21 1985 -4 15 PM

James H. Bayne, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Secretary Bayne:

Pursuant to 49 U.S.C. § 11303 and the Commission's rule and regulations, I enclose for filing and recordation the following document:

Locomotive Lease Agreement dated November 1, 1984, by and between Ridge Leasing Company and Eureka Southern Railroad Company, Inc.

The names and addresses of the parties to the aforementioned document to be filed are:

(a) Lessor:

Ridge Leasing Company
c/o Lease Financing Corporation
3 Radnor Corporate Center
Radnor, PA 19087

(b) Lessee:

Eureka Southern Railroad Company, Inc.
Second and A Streets
Eureka, CA 95502

The document relates to the following locomotives:

Two (2) General Motors (Electro Motive Division) GP38, 2,000 H.P. Diesel Electric Locomotives bearing Conrail markings CR7667 and CR7668.

Chun-Lyuan
Lee H. Bayne

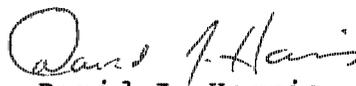
MAR 21 5 10 PM '85

James H. Bayne, Secretary
March 18, 1985
Page Two

Please file this Locomotive Lease Agreement, cross-indexing it under the names of the Lessor and Lessee. A check for \$10.00 is enclosed as prescribed pursuant to 49 C.F.R. § 1177.3(c).

Please stamp all of the copies of the document and the transmittal letter with your official recording stamp. You will wish to retain one original and one copy of the Lease Agreement and the original of the transmittal letter for your file. Please return the remaining copies to the bearer of this letter.

Sincerely,


David J. Harris

DJH:dcj

Enclosures

14598

MAR 21 1985 -4 15 PM

INTERSTATE COMMERCE COMMISSION

LOCOMOTIVE LEASE AGREEMENT

THIS LEASE made and entered into as of this 1st day of November, 1984, by and between Ridge Leasing Company, a Pennsylvania partnership, hereinafter called "Lessor", and Eureka Southern Railroad Company, Inc., a California corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessee agrees to Lease from Lessor the locomotives described in Exhibit A, together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotives"). All Locomotives presently bear Conrail reporting marks. The Lessee may stencil its name on the units.

2. Rent: The Lease shall commence with respect to each Locomotive when said Locomotive is interchanged off Consolidated Rail Corporation's property, and shall continue until the final rental payment is made. Rent will commence on the date Lessee places each Locomotive in service, but not later than fourteen (14) days after said Locomotive is interchanged to the Lessee, which date is herein called the "Rent Commencement Date" and shall continue for sixty (60) months. The monthly rental shall be \$2,560.00 per month per Locomotive, payable monthly in advance.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessee will settle all claims, defenses, set-offs and counterclaims it may have of any nature against the Locomotive manufacturer, including but not limited to defects in the Locomotives and like claims, directly with the Locomotive manufacturer and not set up any such claim, defense, set-off or counterclaim against Lessor or its assigns. Lessee acknowledges that: Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives; and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, set-offs or counterclaims it may now or hereafter have against the Locomotive manufacturer.

3. Warranties and Representations: LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN,

ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVES. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

4. Place of Payment of Rent: Lessee shall direct payment of the monthly rent to the following address:

Ridge Leasing Company
c/o Lease Financing Corporation
3 Radnor Corporate Center
Radnor, Pennsylvania
Attention: Henry A. Lyczak

5. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

6. Loss or Destruction: In the event that any Locomotive during the term hereof shall become lost; stolen; destroyed; irreparably damaged; permanently rendered unfit for use; or, in the reasonable opinion of the Lessee, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by the Lessee for a period of 60 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall notify Lessor of such Casualty Occurrence. On the payment date next following the date of such Casualty Occurrence, Lessee shall pay to Lessor the Casualty Value of such Locomotive, determined as of such payment date, together with any unpaid amount due on or prior to such date, whereupon Lessee's obligation to pay further amounts for such Locomotive shall cease, but Lessee's obligation to pay for all other Locomotives shall remain unchanged. The Casualty Value shall be an amount determined on the casualty schedule attached hereto as Schedule

7. Insurance: (a) Subject to the limitations set forth in Section 6, all risk of loss of, damage to or destruction of the Locomotives shall at all times be on Lessee except for loss, damage or destruction resulting from a negligent act or omission of Lessor, its officers, employees, agents, representatives, assignees, and/or successors.

(b) Buyer shall provide (i) insurance against loss, theft, and destruction or damage of the Equipment, and (ii) comprehensive public liability insurance against claims for personal injuries, death and property damage in no event less comprehensive in amounts and against risk customarily insured against by Lessee in respect of similar equipment owned or leased by it. Lessee shall pay applicable premiums for insurance. Lessee shall have the right to insure the Locomotives for its own account, for the amount by which its fair market value exceeds the coverage required hereunder.

(c) All insurance policies required hereunder shall (i) be issued by insurance carriers of recognized responsibility, (ii) cover the interests of Lessee and Lessor and protect Lessee and Lessor in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Locomotives, (iii) provide that the insurance carrier give at least 30 days' prior notice in the event of cancellation or material alteration in coverage, (iv) provide, as to such physical damage insurance, that the losses, if any, shall be payable to the Lessor under a standard long form loss payable clause, (v) provide that in respect of the interest of the Lessor in such policies, the insurance shall not be invalidated by an action or inaction of Lessee and shall insure Lessor's interest as it appears regardless of any breach or violation by Lessee of any warranty, declaration or condition contained in such policies, and shall include coverage against liability which lessor might incur by reason of the operation of the Locomotives, and (vi) not require co-insurance.

(d) The proceeds of any physical damage insurance received by Lessor shall be paid to Lessee: (i) in the case of a Casualty Occurrence with respect to any Locomotive upon payment by Lessee of the Casualty Value of such Locomotive, or (ii) upon the loss, damage or destruction of any Locomotive which does not constitute a Casualty Occurrence, upon the receipt from Lessee of a certificate to the effect that such Locomotive has been repaired, restored or replaced, as the case may be (which certificate shall be accompanied by satisfactory evidence of such repair, restoration or replacement), provided that so long as any default by Lessee or event of default shall be continuing hereunder, Lessor shall be entitled to apply such proceeds against Lessee's obligations hereunder or under any other obligation of Lessee to Lessor. Lessee shall furnish Lessor with certificates or other evidence of compliance with this Section 7 as may reasonably be requested.

8. Indemnity: Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify and save Lessor harmless from and against any and all liability, loss, damage, expense, causes of action, suits, claims or judgments arising from or caused directly or indirectly by: (a) Lessee's failure to promptly perform any of its obligations under the provisions of Sections 2, 6, 7, and 16 of this Lease, or (b) injury to person or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any or all of the Locomotives or its location or condition, or (c) inadequacy of the Locomotives, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or

any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action or actions, provided, however, that Lessor shall give Lessee written notice of any such claim or demand. This indemnity shall survive the expiration or termination of this lease.

9. Compliance with Law; Repair and Maintenance: Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Locomotives in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

10. Purchase Option: As long as Lessee is not in default hereunder, Lessee shall have the option to purchase all but not less than all of the Locomotives covered by the Lease at the expiration of the 84 month term for \$1.00 each or at any time during the term of the Lease for the amount specified in Exhibit B for that rental period. 7 cc?

11. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice is given of such assignment in accordance with Section 12.

12. Notice: Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Eureka Southern Railroad
P.O. Box N
Eureka, California 95502
Attention: Mr. Bryan R. R. Whipple, President

or to such other address as Lessee may from time to time indicated by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

Ridge Leasing Company
c/o Lease Financing Corporation
3 Radnor Corporate Center
Radnor, Pennsylvania 19087
Attention: Henry A. Lyczak

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

13. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

14. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof.

15. Late Charges: Delinquent instalments of rent shall bear interest at the rate of 1-1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate.

16. ICC Recording: Lessee will promptly cause this Lease to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act or other places within or without the United States as Lessor may reasonably request for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

17. Taxes: Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Sections 2, 6 and 11, hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

18. Performance Obligations of Lessee by Lessor: In the event that the Lessee shall fail duly and promptly to perform any of its obligations under the provisions of this Lease, the Lessor may, at its option, perform the same for the account of Lessee without thereby waiving such default, and any amount paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by the Lessor in such performance, together with interest at the rate

-6-

of 1-1/2% per month thereon until paid by the Lessee to the Lessor, shall be payable by the Lessee upon demand as additional rent hereunder.

19. Further Assurance: Lessee shall execute and deliver to Lessor, upon Lessor's request such instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of this lease and Lessor's right hereunder.

20. Lessee's Covenants: Lessee will: (a) defend at Lessee's own cost any action, proceeding or claim affecting the Locomotives; (b) do everything necessary or expedient to preserve or perfect the Lessor's interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or without the prior written consent of Lessor, and notwithstanding Lessor's claim to proceeds, sell, rent, lend, encumber or transfer any of the Locomotives, except as provided in Subsection (e) of this Section; (d) agree that Lessor may enter upon Lessee's premises or whatever the Locomotives may be located at any reasonable time and upon reasonable notice to inspect the Locomotives; (e) notwithstanding any provision to the contrary Lessee may, without the consent of Lessor, lease or permit the use of the Locomotives or Locomotive (such lease or use to be subject to the rights and remedies of the Lessor hereunder) to or by a lessee or user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such lessee or user or by a railroad company or companies have trackage rights or railroad of connecting and other carriers in the usual interchange of traffic or in through or non-through service, but only upon and subject to all the terms and conditions hereof; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any lease that is for a term longer than six months; provided, further, however, that the Lessee shall not lease or permit the sublease or use of any Locomotive for service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada is de minimis and does not involve regular operation and maintenance outside the United States.

21. Default: An event of default shall occur if: (a) Lessee fails to pay when due any instalment of rent and such failure continues for a period of 10 days; (b) Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure continues uncured for 15 days after written notice thereof to Lessee by Lessor; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action looking to its dissolution or liquidation; (d) within 60

days after the commencement of any proceedings against Lessee seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 60 days after the appointment without Lessee's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated; or (e) Lessee attempts to remove, sell, transfer, encumber, part with possession or sublet the Locomotives or any item thereof.

Upon the occurrence of an event of default, Lessor, at its option, may: (a) declare all sums due and to become due hereunder immediately due and payable; (b) proceed by appropriate court action or actions or other proceedings either at law or equity to enforce performance by the Lessee of any and all covenants of this lease and to recover damages for the breach thereof; (c) demand that Lessee deliver the Locomotives forthwith to Lessor at Lessee's expense at such place as Lessor may designate; and (d) Lessor and/or its agents may, without notice or liability or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where the Locomotives may be or by Lessor is believed to be, and repossess all or any item thereof, disconnecting and separating all thereof from any other property and using all force necessary or permitted by applicable law so to do, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for injuries suffered through or loss caused by such repossession; but the Lessor shall, nevertheless, be entitled to recover immediately as liquidated damages for loss of the bargain and not as a penalty any unpaid rent that accrued on or before the occurrence of the event of default plus an amount equal to the difference between the aggregate rent reserved hereunder for the unexpired term of this lease and the then aggregate rental value of all equipment for such unexpired term, provided, however, that if any statute governing the proceeding in which such damages are to be proved specifies the amount of such claim, Lessor shall be entitled to prove as and for damages for the breach an amount equal to that allowed under such statute. The provisions of this paragraph shall be without prejudice to any rights given to the Lessor by such statute to prove for any amounts allowed thereby. Should any proceedings be instituted by or against Lessor for monies due to Lessor hereunder and/or for possession of any or all of the equipment or for any other relief, Lessee shall pay a reasonable sum as attorneys' fees.

In addition to any remedies provided in this Lease, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provisions thereto.

22. Choice of Law: This Lease shall be governed in all respects by the law of the State of Pennsylvania.

23. Security Deposit: Lessee shall pay to Lessor prior to delivery of the Locomotives, a security deposit of two months rental (\$5,120.00) per Locomotive. This security deposit can be used to pay the last two (2) rental payments under this lease.

24. Miscellaneous: All transportation charges shall be borne by Lessee. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee waives all rights under all exemption laws. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement.

LESSOR:
RIDGE LEASING COMPANY

Attest:

By Lee A. Edwards

Date Dec 13, 1984

By M. M. Gennick

Title General Partner

Date Dec 13, 1984

LESSEE:
EUREKA SOUTHERN RAILROAD

Attest:

By B. R. Whipple
Secretary

Date NOVEMBER 12, 1984

By Bryan R. R. Whipple
Bryan R. R. Whipple

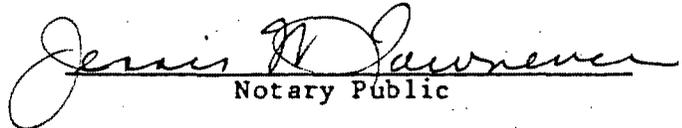
Title President

Date November 12, 1984

STATE OF CALIFORNIA)
) ss.
COUNTY OF HUMBOLDT

I, Jerris Lawrence a Notary Public in and for the State and County aforesaid, do hereby certify that Bryan Whipple and _____ of _____, a _____ corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ and _____ respectively, they signed, sealed and delivered the aforesaid instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority of its Board of Directors, as their free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of November, 1984.


Notary Public

My Commission expires March 7, 1986

EXHIBIT A

to

Locomotive Lease Agreement

dated as of November 1, 1984

<u>Locomotive Description</u>	<u>Quantity</u>	<u>Conrail Markings</u>
General Motors (Electro Motive Division) GP38, 2,000 H.P. Diesel Electric Locomotive built in 1969.	2	CR 7667 CR 7668

EXHIBIT B

to

Locomotive Lease Agreement

dated as of November 1, 1984

Casualty Schedule

<u>After Payment Number</u>	<u>Casualty Value</u>	<u>After Payment Number</u>	<u>Casualty Value</u>
		38	49387.62
1	108723.33	39	47403.81
2	107431.77	40	45396.85
3	106125.14	41	43366.48
4	104803.27	42	41312.42
5	103465.97	43	39234.40
6	102113.07	44	37132.13
7	100744.39	45	35005.34
8	99359.74	46	32853.74
9	97958.94	47	30677.03
10	96541.79	48	28474.93
11	95108.11	49	26247.14
12	93657.70	50	23993.36
13	92190.37	51	21713.28
14	90705.92	52	19406.60
15	89204.16	53	17073.01
16	87684.88	54	14712.20
17	86147.87	55	12323.84
18	84592.93	56	9907.62
19	83019.85	57	7463.21
20	81428.41	58	4990.28
21	79818.41	59	2488.50
22	78189.62		
23	76541.83		
24	74874.82		
25	73188.36		
26	71482.22		
27	69756.18		
28	68010.00		
29	66243.45		
30	64456.29		
31	62648.28		
32	60819.18		
33	58968.74		
34	57096.71		
35	55202.84		
36	53286.87		
37	51348.55		