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No. 10-00
 Date June 11, 1985
 Fee \$ 10.00
 ICC Washington, D.C.

S-164A071

June 11, 1985

14706
 RECORDATION NO. _____ Filed 1425

JUN 13 1985 1:53 PM
 INTERSTATE COMMERCE COMMISSION

MOTOR OPERATING UNIT
 JUN 13 1 53 AM '85
 ICC OFFICE OF THE SECRETARY

Mr. James H. Bayne
 Secretary
 Interstate Commerce Commission
 Washington, DC 20423

Dear Mr. Bayne:

In accordance with 49 U.S.C. §11303 and the Commission's rules, I submit herewith for recording with the Commission four (4) original counterparts described below. I request that three of the counterparts be returned to the undersigned.

(1) This document is a Temporary Use Agreement dated as of June 1, 1985, between General Electric Company and Norfolk and Western Railway Company.

(2) This document is a "primary document" under 49 C.F.R. §1177.1.

(3) The equipment covered by the document is generally described as follows:

<u>Number of Units</u>	<u>General Description</u>	<u>AAR Symbol</u>	<u>Identifying Numbers (both inclusive)</u>
25	Diesel Electric Locomotives, Model C39-8	C-C	NW 8589-8613

Each unit of equipment will be marked in letters not less than one inch in height with the words:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION

or other appropriate words of similar import.

Phyllis J. Leber
Christy

(4) The names and addresses of the parties executing the Temporary Use Agreement are as follows:

BAILOR: General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16530

BAILEE: Norfolk and Western Railway Company
8 North Jefferson Street
Roanoke, Virginia 24042

(5) After recordation, please return three original counterparts of the document, stamped with the Commission's recordation data, to the undersigned at Norfolk Southern Corporation, One Commercial Place, Norfolk, Virginia 23510

(6) The recordation fee of \$10.00 is enclosed.

(7) A short summary of the Temporary Use Agreement for use in the index follows:

This is a Temporary Use Agreement dated as of June 1, 1985, between General Electric Company, 2901 East Lake Road, Erie, Pennsylvania, as Bailor, and Norfolk and Western Railway Company, 8 North Jefferson Street, Roanoke, Virginia, as Bailee, and covering 25 diesel electric locomotives, numbered NW 8589-8613, inclusive.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,


J. Gary Lane

JGL/dps

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

6/13/85

OFFICE OF THE SECRETARY

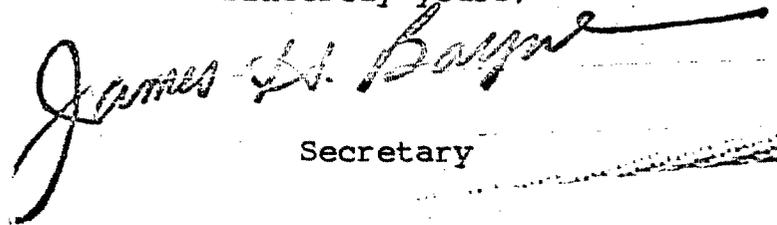
J. Gary Lane
Norfolk Southern Corp.
One Commercial Place
Norfolk, Virginia 23510

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/13/85 at 1:40pm and assigned re-
recording number(s).

14706

Sincerely yours,

A handwritten signature in cursive script, reading "James H. Bayne", with a long horizontal flourish extending to the right.

Secretary

Enclosure(s)

SE-30
(7/79)

TEMPORARY USE AGREEMENT

REGISTRATION NO. 14706
JUN 13 1985 1 42 PM
INTERSTATE COMMERCE COMMISSION

Dated as of June 1, 1985

between

GENERAL ELECTRIC COMPANY

and

NORFOLK AND WESTERN RAILWAY COMPANY

TEMPORARY USE AGREEMENT, dated as of June 1, 1985, between GENERAL ELECTRIC COMPANY, a New York corporation (the "Vendor"), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (the "Railroad").

RECITALS

The Vendor has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule A hereto (the "Equipment").

In order that the Equipment may be delivered to and put to use by the Railroad pending consummation of permanent financing arrangements for acquisition of the Equipment, the Vendor has agreed that the Railroad may acquire temporary possession of and the right to use the Equipment in accordance with and subject to the terms of this Agreement.

* * * * *

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Vendor and the Railroad hereby agree as follows:

1. The Vendor will deliver the Equipment to the Railroad f.o.b. at the point or points and in accordance with the delivery schedule set forth in Schedule A hereto. The Vendor's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Vendor's reasonable control. Upon delivery of each unit of the Equipment to the Railroad, an authorized representative of the Railroad will execute and deliver to the Vendor a certificate of acceptance certifying, if such be the case, that such unit has been built in accordance with the specifications therefor and acknowledging receipt of delivery thereof under this Agreement, whereupon the Railroad shall assume the responsibility and risk of loss with respect to such unit so accepted.

2. The rights of the Railroad hereunder in respect of each unit of the Equipment numbered from 8589 to 8609, inclusive, shall commence on the date of acceptance of such unit hereunder and end on September 26, 1985, or earlier as hereinafter provided. The rights of the Railroad hereunder in respect of each unit of the Equipment numbered from 8610 to 8613, inclusive, shall commence on the date of acceptance of such unit hereunder and end on October 31, 1985, or earlier as hereinafter provided. Title to the Equipment shall remain in the Vendor, and the Railroad's right and interest therein is and shall be solely that of temporary possession, custody and use under this Agreement. The Railroad or any third party acquiring an interest in the Equipment by reason of the contemplated permanent financing of the purchase price of the

Equipment by the Railroad shall not by virtue of this Agreement or the temporary possession and use of the Equipment by the Railroad under or pursuant to this Agreement or of anything permitted to be done by the Railroad hereunder in respect of the Equipment, acquire any title to or ownership of the Equipment, or any unit thereof, and the title to or ownership of the Equipment shall remain solely in the Vendor. Transfer of title to the Equipment to the Railroad or to a trustee or agent under a permanent financing agreement shall be effected only at the time of delivery by the Vendor of a bill of sale of the Equipment either hereunder or under such permanent financing arrangement. The terms of this Agreement shall automatically be terminated and canceled without further action by or notice to any party concerned as to each unit of the Equipment upon the payment to the Vendor of the full purchase price by, and upon transfer of title to, the Railroad or a trustee or agent under a permanent financing arrangement covering such unit, except the terms of paragraphs 4, 7, and 9 hereof to the extent not covered by permanent financing arrangements.

This "Temporary Use Agreement" is a financial arrangement, under which Railroad will have temporary custody, possession and use of the Equipment to be purchased from Vendor, and the risk of loss of the Equipment is on the Railroad. At the time of delivery of the Equipment, the Railroad shall be entitled, as between Railroad and Vendor, to the investment tax credit under Section 48 and accelerated cost recovery under Section 168, or amortization under Section 184

of the Internal Revenue Code of 1954, and the Vendor shall not be entitled to such investment tax credit, cost recovery or amortization.

3.(a) The estimated initial unit price and estimated initial total price of the Equipment are set forth in Schedule A hereto. Such initial prices shall be subject to such increase or decrease as may be agreed to by the Vendor and the Railroad, and the term "purchase price" as used herein shall mean such initial prices as so increased or decreased. The Railroad hereby acknowledges itself to be indebted to the Vendor, and hereby promises to pay or cause to be paid to the Vendor, on or before September 26, 1985, with respect to each unit of equipment numbered from 8589-8609, inclusive, and on or before October 31, 1985 with respect to each unit of equipment numbered from 8610-8613, inclusive, in cash the full purchase price of each unit of the Equipment delivered to and accepted by the Railroad hereunder. Any security deposits advanced to the Vendor by or on behalf of the Railroad to secure payment of the purchase price may be retained and used by Vendor until payment of the purchase price is made, and such deposits shall, at the election of the Railroad, either be applied toward payment of the purchase price or be returned to the Railroad at the time such payment is made.

(b) The Railroad will deposit or cause to be deposited with the Vendor pursuant to the Vendor's instructions an amount which (together with amounts theretofore deposited by Railroad with the Vendor) shall equal the purchase price in respect of each group of units of

Equipment delivered hereunder. These deposits will constitute security deposits securing the ultimate payment of the purchase price upon transfer of title to the Equipment. Such security deposits in respect of a group of units will be made not later than ten days after the date of receipt by the Railroad of a proper invoice for such group of units, accompanied by a duly executed certificate of acceptance of each unit covered by such invoice in substantially the same form as set forth in Schedule B hereto. The Vendor agrees that it will not submit to the Railroad for payment of security deposits invoices accompanied by certificates of acceptance for groups of less than five (5) units of the Equipment.

4. The Railroad agrees that it will permit no lien of any kind to attach to the Equipment and that it will pay promptly all taxes and assessments which may accrue or be imposed upon or in respect of the Equipment by reason of or in connection with the Railroad's possession, use or operation thereof under this Agreement. The Railroad's obligations contained in this paragraph 4 shall survive the termination of this Agreement.

5. The Railroad shall, at its own expense, keep and maintain the Equipment in good order and repair at all times. The Railroad shall pay to the Vendor the purchase price of each unit of the Equipment lost, destroyed or irreparably damaged during the term of this Agreement.

6. Prior to delivery of each unit of the Equipment to the Railroad, it will be numbered with the appropriate road number set forth in Schedule A hereto. In contemplation of subsequent delivery of the Equipment under permanent financing arrangements, the Railroad will, throughout the term of this Agreement, keep and maintain plainly, distinctly, permanently and conspicuously marked in stencil, on each side of each unit of the Equipment, in letters not less than one inch in height, the following legend:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED
WITH THE INTERSTATE COMMERCE COMMISSION

The Railroad may also cause the Equipment to be lettered "Norfolk and Western," "N&W," "NW," or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

7. The Railroad shall indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including reasonable counsel fees, arising out of retention by the Vendor of title to the Equipment or out of the possession, use and operation thereof by the Railroad during the period when title thereto remains in the Vendor (except claims or liabilities based on or arising out of any breach of warranty or any defect in the Equipment). This

covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price of the Equipment, as provided in paragraph 3 hereof, and the conveyance of the Equipment, as provided in paragraph 2 hereof, or the termination of this Agreement in any manner whatsoever. The Railroad shall hold harmless the Vendor from all liabilities, claims and demands arising out of the imposition or assessment of sales taxes in respect of any unit or units of Equipment.

8. All or any of the rights benefits or advantages of the Vendor, including the right to receive the purchase price of any unit of the Equipment or any other payments under this Agreement, may be assigned by the Vendor 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 Vendor's obligations contained in this Agreement relating to the Equipment. In the event the Vendor assigns its right to receive the payments to be made by the Railroad under this Agreement and the Railroad receives written notice thereof from the Vendor, 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 the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee against receipt therefor.

9. In the event of any assignment by the Vendor of its right to receive any payments under this Agreement, 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 abatement, defense, setoff, counterclaim or recoupment whatsoever arising by reason of any obligations, indebtedness or liability at any time now or hereafter owing to the Railroad by the Vendor. Any and all such obligations, indebtedness or liability, howsoever arising, shall be or remain enforceable by the Railroad against the Vendor only.

10. The Vendor agrees that, upon receipt of all payments to be made or caused to be made to it by the Railroad under this Agreement, it shall upon request execute and deliver to or upon the order of the Railroad a bill of sale of the Equipment in customary form with full warranty of title, free and clear of all liens and encumbrances.

11. The Railroad will cause this Agreement, any assignment hereof, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of protection of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

12. The term "Vendor" whenever used in this Agreement means, before any assignment of any of its rights hereunder, General Electric Company and any successor or successors for the time being to its manufacturing business and after any assignment any assignee for the time being of such particular assigned rights as regards such rights and any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment.

13. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of the Interstate Commerce Act and by the recordation provisions of any other Act pursuant to which this Agreement is recorded.

14. The parties incorporate by reference and make a part of this Agreement their letter agreement dated November 29, 1984, except as modified hereby, and the Railroad's Purchase Orders numbered HN9572-HN9576. This Agreement, which is dated for convenience as of June 1, 1985, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument.

IN WITNESS WHEREOF, the Vendor and the Railroad have caused this instrument to be signed and acknowledged by their proper officials and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

GENERAL ELECTRIC COMPANY

W. Scott Butts

Attest:

James H. [Signature]
Secretary

NORFOLK AND WESTERN RAILWAY COMPANY

[Signature]
BY

Attest:

Debra M. Martin
ASSISTANT Secretary

COMMONWEALTH OF PENNSYLVANIA)

)ss.:

COUNTY OF ERIE)

On this *5th* day of *June*, 1985, before me personally appeared *W. Scott Butler*, to me personally known, who, being by me duly sworn, says that he is *Mgr. Local Field Sales & Service Operation* of GENERAL ELECTRIC 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 Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Betty A. Manucci

Notary Public

My commission expires: _____

BETTY A. MANUCCI, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE COUNTY
MY COMMISSION EXPIRES NOV. 29, 1986
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF VIRGINIA)

) ss.:

CITY OF *Roanoke*)
~~NORFOLK~~)

On this *3d* day of *June*, 1985, before me personally appeared *R. F. Dunlap*, to me personally known, who, being by me duly sworn, says that he is *President* of NORFOLK AND WESTERN RAILWAY 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 Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Judy A. DeLaune

Notary Public

My commission expires: _____

March 7, 1989

SCHEDULE A
to
TEMPORARY USE AGREEMENT
Dated as of June 1, 1985
between
GENERAL ELECTRIC COMPANY
and
NORFOLK AND WESTERN RAILWAY COMPANY

<u>Type of Equipment</u>	<u>AAR Symbol</u>	<u>Place of Manufacture</u>	<u>Quantity</u>
Diesel Electric Locomotives, Model C39-8	C-C	Erie, PA	25
<u>Railroad Road Numbers (both inclusive)</u>	<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
8589-8613	\$1,270,457	\$31,761,425	At Erie, PA from July 1 to October 31, 1985

SCHEDULE B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Norfolk and Western Railway Company (the Railroad"), hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description:

Manufacturer:

Quantity:

Road Numbers:

Delivered at:

have been completed in accordance with the requirements and provisions of

have been delivered to the Railroad and have been inspected and accepted on behalf of the Railroad as of the date indicated below.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment at the time of its acceptance the following legend, in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED
WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this certificate shall not in any way reduce, limit, alter or affect the Railroad's right to pursue any claim, in warranty or otherwise, against the Manufacturer of the Equipment for any defect, whether latent or patent.

Authorized Representative of
Norfolk and Western Railway Company

Dated: