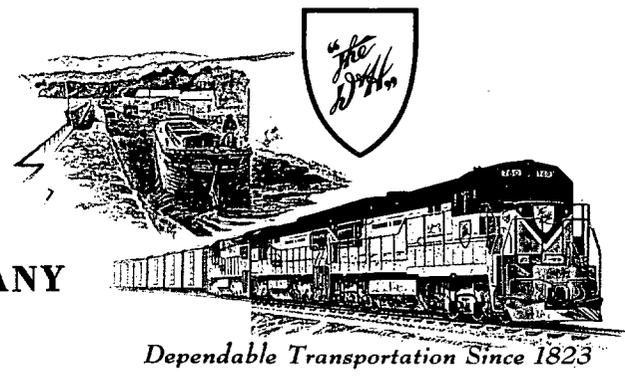


RECORDATION NO. 8241-I Filed 1982

JAN 11 1982 -4 00 PM

INTERSTATE COMMERCE COMMISSION



DELAWARE AND HUDSON RAILWAY COMPANY

ALBANY, NEW YORK 12207

Dependable Transportation Since 1823

D. D. MUIR
Vice President-Finance

January 7, 1982

2-011A121

No.
Date **JAN 11 1982**
Fee \$ 10.00

Hon. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

ICC Washington, D. C.

Dear Mrs. Mergenovich:

There are submitted herewith for recording pursuant to Title 49 U.S.C. §11303 and to the Commission's General Rules and Regulations, Part 1116 - Recordation of Documents, an original and two executed counterparts of Fifth Supplemental Indenture dated August 25, 1981, between the Mortgagor Delaware and Hudson Railway Company, 40 Beaver Street, Albany, New York 12207, and United States Railway Association, 2100 Second Street, S.W., Washington, D.C. 20595, and the United States of America acting through the Administrator of the Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, as Mortgagees under Mortgage dated March 15, 1976, of Delaware and Hudson Railway Company. The Fifth Supplemental Indenture has been acknowledged in a form authorized by the District of Columbia, the place where the document was executed.

The Mortgage dated March 15, 1976, was filed with the Commission at 9:15 A.M., March 19, 1976, Recordation Number 8241. The Supplemental Indenture dated January 11, 1978, was filed with the Commission at 3:45 P.M., January 30, 1978, Recordation Number 8241-A. The Second Supplemental Indenture dated February 9, 1978 was filed

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Hon. Agatha L. Mergenovich
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January 7, 1982

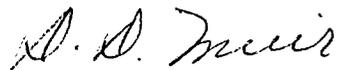
with the Commission at 1:45 P.M., March 15, 1978, Recordation Number 8241-B. The Third Supplemental Indenture dated January 7, 1980 was filed with the Commission at 1:35 P.M., February 8, 1980, Recordation Number 8241-E. The Fourth Supplemental Indenture dated December 29, 1980 was filed with the Commission at 10:25 A.M., May 2, 1981, Recordation Number 8241-H.

Included in the property covered by the foresaid Mortgage and Supplements is the equipment described in the letter of transmittal dated March 18, 1976.

A check of Delaware and Hudson Railway Company payable to the order of the Commission in the amount of \$10.00 is also enclosed to cover the required recordation fee.

The original document should be returned to the undersigned at 40 Beaver Street, Albany, New York 12207.

Very truly yours,



encl.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

D. D. Muir
Delaware & Hudson Railway Co.
Albany, New York 12207

1/11/82

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 1/11/82 at 4:00PM, and assigned re-
recording number(s). 8241-I

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 8241-I
FORM 1425

FIFTH SUPPLEMENTAL INDENTURE

JAN 11 1982 - 4 02 PM

DATED AUGUST 25, 1981

INTERSTATE COMMERCE COMMISSION

DELAWARE AND HUDSON RAILWAY COMPANY
TO
UNITED STATES RAILWAY ASSOCIATION
AND
UNITED STATES OF AMERICA

SUPPLEMENTING THE MORTGAGE
OF THE DELAWARE AND HUDSON RAILWAY COMPANY
DATED MARCH 15, 1976
TO AMEND THE EVIDENCE OF INDEBTEDNESS

THIS FIFTH SUPPLEMENTAL INDENTURE dated August 25, 1981, between the mortgagor, DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation having its principal office at 40 Beaver Street, Albany, New York, 12207, organized and existing under the laws of the State of Delaware (the "Corporation"), and the mortgagees, UNITED STATES RAILWAY ASSOCIATION ("USRA"), established pursuant to Section 201 of the Regional Rail Reorganization Act of 1973 as a nonprofit government corporation organized under the District of Columbia Non-Profit Corporation Act and having its principal office at 955 L'Enfant Plaza North, S.W., Washington, D. C. 20595, and the UNITED STATES OF AMERICA ("United States"), acting through the Administrator of the FEDERAL RAILROAD ADMINISTRATION, by a delegation of authority from the Secretary of Transportation published at 49 C.F.R. 1.49(u) ("Administrator").

WITNESSETH:

WHEREAS, the Corporation has heretofore made, executed and delivered to USRA, its Mortgage dated March 15, 1976, ("Mortgage") of properties of the Corporation therein described or mentioned to secure the due and punctual payment by the Corporation of the principal of and interest on the Corporation's notes ("Notes") issued pursuant to a loan agreement dated March 15, 1976 ("Loan Agreement") under which USRA agreed to loan the Corporation up to an aggregate amount of \$28,000,000 upon the terms and conditions set forth in the Loan Agreement;

WHEREAS, the Corporation delivered to USRA a Supplemental Indenture dated January 11, 1978 to secure the due and punctual payment by the Corporation of the principal of and interest on a Note issued pursuant to a supplement to the Loan Agreement dated December 29, 1977 under which USRA agreed to increase the maximum aggregate amount of the loan to the Corporation from \$28,000,000 to \$30,000,000;

WHEREAS, the Corporation delivered to USRA a Second Supplemental Indenture dated February 9, 1978 ("Second Supplemental Indenture") under which the Corporation made, executed and delivered to the United States its mortgage of the properties described in the Mortgage to secure the due and punctual payment by the Corporation of the principal and interest on a note dated February 9, 1978 and issued by the Corporation to the Federal Financing Bank ("FFB") in the principal amount of \$7,962,067 ("FFB Note"), and the obligations of the Corporation under a Financing Agreement between the Corporation and the United States dated February 9, 1978 ("Financing Agreement");

WHEREAS, the Corporation delivered to USRA a Third Supplemental Indenture dated January 7, 1980 to secure the due and punctual payment by the Corporation of the principal of and interest on a Note issued pursuant to a supplement to the Loan Agreement dated January 7, 1980 under which USRA agreed to increase the maximum aggregate amount of the loan to the Corporation from \$30,000,000 to \$34,000,000;

WHEREAS, the Corporation delivered to USRA a Fourth Supplemental Indenture dated December 29, 1980 to secure the due and punctual payment by the Corporation of the principal of and interest on a Note issued pursuant to a supplement to the Loan Agreement dated December 29, 1980 under which USRA agreed to increase the maximum aggregate amount of the loan to the Corporation from \$34,000,000 to \$37,500,000;

WHEREAS, the Corporation has submitted an application under Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, requesting the United States to guarantee its payment of principal and interest on a new note dated August 25, 1981 to be issued by the Corporation to FFB in the principal amount of \$861,011.36 ("New FFB Note"), which will be issued to FFB in full satisfaction of the amount due on the FFB Note on August 25, 1981; and

WHEREAS, the Corporation and the United States have entered into an amendment to the Financing Agreement effective August 25, 1981 ("Amendment One to Financing Agreement") pursuant to which the United States has agreed to guarantee the payment of principal and interest on the New FFB Note;

WHEREAS, the Board of Directors of the Corporation has duly authorized and directed the execution and delivery of this Fifth Supplemental Indenture; and

WHEREAS, all conditions and requirements necessary to make this Fifth Supplemental Indenture a valid, binding and legal instrument in accordance with its terms have been done, performed and fulfilled, and the execution and delivery hereof has in all respects been duly authorized.

NOW, THEREFORE, in consideration of the premises and of the sum of \$10 lawful money of the United States of America paid by USRA and the United States to the Corporation at or before the delivery of this Fifth Supplemental Indenture, and of other good and valuable considerations, the receipt of which is hereby acknowledged, the Corporation covenants and agrees with USRA and the United States as follows:

ARTICLE ONE

Section 1. The terms defined in Section 1.01 of the Mortgage whenever used in this Fifth Supplemental Indenture shall, unless the context shall otherwise require, have the respective meanings specified in Section 1.01 of the Mortgage and shall include the plural as well as the singular with the following modifications and additions:

"Mortgage" shall mean this Mortgage dated March 15, 1976, as subsequently amended by the Supplemental Indenture dated January 11, 1978, the Second Supplemental Indenture dated February 9, 1978, the Third Supplemental Indenture dated January 7, 1980, the Fourth Supplemental Indenture dated December 29, 1980, and the Fifth Supplemental Indenture dated August 25, 1981, by and between the Corporation, as Mortgagor, and USRA and, commencing February 9, 1978 the United States, as Mortgagees."

"New FFB Note" shall mean the Note dated August 25, 1981 issued by the Corporation to the FFB in the principal amount of \$861,011.36 pursuant to Amendment One to the Financing Agreement.

"Amendment One to the Financing Agreement" shall mean the Amendment to the Financing Agreement effective August 25, 1981.

"Financing Agreement" shall mean the financing agreement dated February 9, 1978 between the United States and the Corporation, including all amendments thereto.

"FFB Note" shall mean the note dated February 9, 1978 issued by the Corporation to the FFB in the principal amount of \$7,962,067.00 pursuant to the Financing Agreement.

ARTICLE TWO

Section 5.09 of the Mortgage, as amended by Article FOUR of the Second Supplemental Indenture, is hereby further amended to read as follows:

"Section 5.09. The purchase money, proceeds and avails of any such sale shall be applied as follows:

"First. To the payment of the costs and expenses of such sale, including reasonable compensation to the agents and attorneys of USRA and the United States, and of all expenses, liabilities and advances made or incurred by USRA and the United States under this Mortgage and to the payment of all taxes, assets and Prior Liens, except taxes, assessments, and Prior Liens, if any, subject to which the property shall have been sold;

"Second. In case the principal of the Class A Notes, the FFB Note, and the New FFB Note then outstanding shall not have become due and payable by declaration or automatically, to the payment of interest on the Class A Notes, the FFB Note, and the New FFB Note at the rates specified therein and to the payment of the principal of the Class A Notes, the FFB Note, and the New FFB Note in accordance with their terms;

"Third. In case the principal of the Class A Notes, the FFB Note, and the New FFB Note then outstanding shall have become due and payable by declaration or automatically, to the payment of the whole amount then owing and unpaid upon all Class A Notes, the FFB Note, and the New FFB Note then outstanding for principal and interest, and, in case such money shall be insufficient to pay in full the whole amount so due and payable, to the payment of such principal and interest ratably without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Note over any other Note;

"Fourth. To the payment in full of any other obligations of the Corporation under this Mortgage, the Loan Agreement, all other Loan Documents, and the Financing Agreement;

"Fifth. To the payment of the surplus, if any, to the Corporation, its successors or assigns, or to whosoever may be lawfully entitled to receive the same."

ARTICLE THREE

SECTION 1. Neither USRA nor the United States shall be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Fifth Supplemental Indenture or the due execution hereof by the Corporation or for or in respect of the recitals contained herein, all of which recitals are made by the Corporation solely.

No implied covenant or obligation shall be read into this Fifth Supplemental Indenture or the Mortgage against USRA or the United States, but the duties and obligations of USRA and the United States shall be determined solely by the provisions of the Mortgage and of the Fifth Supplemental Indenture. In general, each and every term and condition contained in the Mortgage shall apply to and form a part of this Fifth Supplemental Indenture with the same force and effect as if the same were herein set forth in full.

SECTION 2. This is a supplemental indenture to the Mortgage intended to secure the payment of the principal of and interest on the New FFB Note when and as the same shall become payable, and each and every part of this Fifth Supplemental Indenture and each and every covenant contained herein shall be and become a part of the Mortgage and each of the covenants and obligations of the Corporation herein contained shall be, except as herein otherwise provided, subject to the provisions of the Mortgage.

SECTION 3. This Fifth Supplemental Indenture may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

SECTION 4. The execution of this Fifth Supplemental Indenture shall not be construed as a consent to any borrowing by the Corporation, as may be required under any loan agreement with the Corporation.

SECTION 5. Nothing in the Mortgage or this Fifth Supplemental Indenture shall impair any rights of the United States as guarantor of USRA obligations incurred in connection with the Loan Agreement.

ARTICLE FOUR

Pursuant to Section 259 of the Tax Law of the State of New York, the Corporation hereby certifies that the principal amount which at the time of the execution and delivery of this Fifth Supplemental Indenture has been advanced or is secured hereby is the sum of \$57,898,310.68.

IN WITNESS WHEREOF, the said DELAWARE AND HUDSON RAILWAY COMPANY has caused this Fifth Supplemental Indenture to be signed in its Corporate name by D. D. MUIR, its Vice President, attested by RICHARD E. LONG, its Secretary, and RALPH T. MURRAY, its Assistant Secretary, and its corporate seal to be hereunder affixed, on the date first hereinabove set forth, and does hereby constitute and appoint D. D. MUIR, its true and lawful attorney-in-fact, for it and in its name to acknowledge and deliver these presents as, its act and deed; and the said UNITED STATES RAILWAY ASSOCIATION has caused these presents to be signed in its corporate name by Donald C. Cole, its President, attested by Peter J. Gallagher, its Secretary, and Edwin Rector, its Assistant Secretary, and its corporate seal to be hereunder affixed, on the date first hereinabove set forth, and does hereby constitute and appoint Donald C. Cole its true and lawful attorney-in-fact, for it and in its name to acknowledge and deliver these presents as its act and deed; and the United States has caused these presents to be signed by Richard J. Schiefelbein, Deputy Federal Railroad Administrator and attested by A. Kenneth Gradia and James W. Hanscom and does hereby constitute and appoint Richard J. Schiefelbein

its true and lawful attorney-in-fact, for it and in its name to acknowledge and deliver these presents as its act and deed.

(CORPORATE SEAL)

DELAWARE AND HUDSON RAILWAY COMPANY

ATTEST:

Richard T. Long

Ralph T. Murray

By D. D. Meier
Vice President

(CORPORATE SEAL)

UNITED STATES RAILWAY ASSOCIATION

ATTEST:

R. Kelley

Edwin Victor

By Donald P. Mc
President

ATTEST:

THE UNITED STATES OF AMERICA

A. Kenneth Gordin

James W. Hanscom

By Richard P. Sheple

MORTGAGEES' CERTIFICATE

The undersigned, the mortgagees described in the foregoing instrument, hereby certify that the precise residence of the mortgagees entitled to interest thereunder is:

(1) UNITED STATES RAILWAY ASSOCIATION, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595.

UNITED STATES RAILWAY ASSOCIATION

By 

(2) The UNITED STATES OF AMERICA acting through the Administrator, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

UNITED STATES OF AMERICA
By The
SECRETARY OF TRANSPORTATION
Acting Through
The Administrator of the
Federal Railroad Administration

