

1 5167

MANWELL & WELLS RECORDATION NO. _____ Filed & Recorded

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FEB 9 1987 12-4 C PM

INTERSTATE COMMERCE COMMISSION

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February 6, 1987

VIA FEDERAL EXPRESS

Ms. Noreta R. McGee
Secretary of the Interstate
Commerce Commission
Washington, D.C. 20423

1 5167 /A
RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

Enclosed please find, for filing and recordating pursuant to Section 11303 of Title 49 of the United States Code and the regulations promulgated thereunder, one fully executed copy and six certified copies of a Memorandum of Lease of Railroad Equipment and related Assignment of Lease (with Consent and Agreement).

I. Document: Memorandum of Lease dated as of January 1987. This document is a primary document and has not been previously filed.

A. Parties:

Lessor: HM Joint Venture
Lessee: Virginia Electric and Power Company

B. Addresses:

Lessor: c/o Helm Equipment Leasing Corporation
One Embarcadero Center
Suite 3320
San Francisco, CA 94111
Attn: Vice President
Lessee: Virginia Power, OJRP-7
P. O. Box 26666
Richmond, VA 23261-6666
Attn: Manager, Transportation

C. Equipment: 300 Hundred-ton bottom-dump coal hopper cars bearing road numbers VEPX 87000 - 87499

msp/

ICC OFFICE OF THE SECRETARY
FEB 9 12 32 PM '87
OPERATING UNIT

Ms. Noreta R. McGee
February 6, 1987
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II. Document: Assignment of Lease (with Consent and Agreement) dated as of December 23, 1986. This document is a secondary document related to the above Lease, and has not been previously filed.

A. Parties:

Assignor: HM Joint Venture
Assignee: First National Bank of
Louisville

B. Addresses:

Assignor: c/o Helm Equipment Leasing
Corporation
One Embarcadero Center
Suite 3320
San Francisco, CA 94111
Attn: Vice President
Assignee: P. O. Box 36040
Louisville, KY 40232
Attn: Senior Vice President

C. Equipment: Same as in I.C. above.

Please cross-index the Lease with the following document:

Recordation No. _____; Security Agreement dated as of December 23, 1986 between First National Bank of Louisville and HM Joint Venture, filed simulataneously herewith.

Enclosed is a check of this firm in the amount of \$20.00 to cover the filing fee for the two related documents (\$10.00), and the fee for the cross-indexing (\$10.00).

A short summary of the documents to appear in the Index is as follows:

Lease and Agreement of Lease of Three Hundred (300) 100-ton bottom-dump coal hopper cars, Lessee's Numbers: VEPX 87000-87499.

Ms. Noreta R. McGee
February 6, 1987
Page Three

Once the filing has been made, please return the stamped copies of the documents not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

The undersigned certifies that she is acting as counsel to H. M. Joint Venture and that she has knowledge of the matters set forth in the above-described documents.

Sincerely,

A handwritten signature in cursive script that reads "L. Celeste H. Blumer". The signature is written in dark ink and is positioned to the right of the typed name.

L. Celeste H. Blumer

LCHB:msp
Enclosures

msp/

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss.

1 5167
RECORDATION NO. _____ Filed & Recorded

FEB 9 1987 12-40 PM

INTERSTATE COMMERCE COMMISSION

AFFIDAVIT

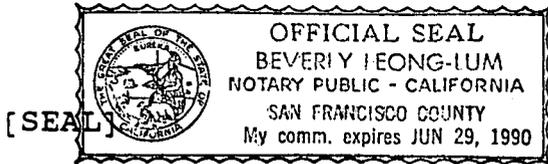
I, Celeste H. Blumer, being first duly sworn, depose and say:

1. I am an attorney, licensed to practice in the State of California.

2. I have reviewed the attached copy of the Lease of Railroad Equipment dated as of December 8, 1986 between HM Joint Venture and Virginia Electric and Power Company and compared said copy with the original document and found the copy to be complete and indetical in all respects to the original document.


L. Celeste H. Blumer

Subscribed and sworn to before me this 6th day of February, 1987 at San Francisco, California.




Notary Public

FEB 9 1987 12:40 PM

MEMORANDUM OF
LEASE OF RAILROAD EQUIPMENT

INTERSTATE COMMERCE COMMISSION

THIS MEMORANDUM OF LEASE OF RAILROAD EQUIPMENT is intended to evidence the Lease of Railroad Equipment, dated as of December 8, 1986 (the "Lease") between HM Joint Venture, a California joint venture (the "Lessor") and Virginia Electric and Power Company, a Virginia public service corporation (the "Lessee"), for the purposes of satisfying the requirements of recordation with the Interstate Commerce Commission under Section 49 U.S.C. 11303. The Lessor is the owner of three hundred (300) 100-ton bottom-dump coal hopper cars more fully described in Annex A hereto (the "Cars"). The Lessee leased from the Lessor all the Cars at the rentals and upon the terms and conditions provided in the Lease, attached hereto as Annex B.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have executed this Memorandum of Lease as of this 9th day of January, 1987.

"Lessor"

HM JOINT VENTURE

BY: HELM EQUIPMENT LEASING
CORPORATION

Attest:

William H. [Signature]

Title: SECRETARY

By: *[Signature]*
Title: Executive Vice President

"Lessee"

VIRGINIA ELECTRIC AND POWER CO.

Attest:

[Signature]
Title: ASST. CORP. SEC.

By: *[Signature]*
Title: [Signature]

ANNEX A
to
Memorandum of
Lease of Railroad Equipment
Dated as of December 8, 1986

Equipment Description

Three hundred (300) 100-ton
bottom-dump coal hopper cars

Lessee's Numbers

VEPX 87000 - 87499

LEASE OF RAILROAD EQUIPMENT
BETWEEN
VIRGINIA ELECTRIC AND POWER COMPANY
AND
HM JOINT VENTURE

DECEMBER 9, 1986

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LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT ("the Lease"), dated as of December 8, 1986, between HM JOINT VENTURE, a joint venture organized under the laws of the State of California (hereinafter called the "Lessor") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation (hereinafter called the "Lessee").

RECITALS

WHEREAS, the Lessor owns or will acquire the Cars (as hereinafter defined) more fully described in Schedule 1 hereof;

WHEREAS, the Lessor will grant a security interest in the Cars with First National Bank of Louisville (the "Lender");

WHEREAS, the promissory note to be issued by the Lessor to Lender in connection with the financing of its acquisition of the Cars evidencing the amount of such financing will be secured by the Cars and this Lease pursuant to the Security Agreement and an assignment to the Lease (the "Lease Assignment") (the Security Agreement and the Lease Assignment being herein called, collectively, the "Security Documents"), Lessee having consented and agreed to such assignment pursuant to a certain Consent and Agreement (the "Consent and Agreement"); and

WHEREAS, the Lessee desires to lease from the Lessor all the Cars at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the promises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Cars to the Lessee upon the following terms and conditions:

1. Definitions. In this Agreement, unless the context otherwise requires:
 - a. AAR - the Association of American Railroads or any successor organization having similar functions with respect to the establishment of maintenance standards for railroad cars.
 - b. Interchange Rules - the Field Manual of the Interchange Rules adopted by the AAR or any successor publication issued by the AAR to replace such Interchange Rules, in effect from time to time during the term of this Agreement.

- c. Cars - collectively, the bottom dump coal hopper railroad cars identified in Schedule 1, attached hereto and made a part hereof, as the same may be amended, modified or supplemented in writing from time to time hereunder with all additions, modifications and accessions thereto,
- d. Effective Date - with respect to each Car the later of the date of delivery and acceptance hereunder, or December 15, 1986.
- e. FRA - the Federal Railway Administration or any successor having similar jurisdiction.
- f. Good Operating Condition - that the Cars will be suitable, fit, and: (1) operable in conformity with the Interchange Rules, the requirements of any other governmental or nongovernmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars and, (2) acceptable, in Lessee's reasonable judgment, for the use in hauling coal, coke, iron ore, stones or aggregates, (3) acceptable for interchange use, and (4) legibly marked with those marks reasonably necessary for purposes of identification to meet AAR or other requirements.

2. Lease. Lessee hereby leases from Lessor, and Lessor hereby leases to Lessee, the Cars of the number of units, model, type, construction and such other description as described in Schedule 1 attached hereto (which is hereby incorporated by reference).

3. Rental Payments. Monthly lease rate per Car is * plus * per mile per Car for miles traveled in excess of * miles annually (hereinafter referred to as "Lease Charges"). Lease Charges shall become effective, with regard to each of the Cars, upon the date of the delivery and acceptance of each of the Cars as hereafter provided in Article 5, and shall continue in effect, with regard to each of the Cars, until returned to Lessor at the end of the term of this Agreement, as hereafter provided in Article 18. Payment of Lease Charges shall be made to Lessor at the address specified in Article 16, or to such other place as Lessor may direct in writing on reasonable prior notice, on * , with the * payment due on * following the month the last Car is delivered and accepted as provided in Article 5. Lease charges for any Car for any partial shall be prorated on a daily basis. Any costs incurred by Lessor in collecting Lease Charges wrongfully withheld

* THE TERMS AND CONDITIONS ARE SET FORTH IN THE ORIGINAL LEASE DOCUMENT.

by Lessee, including reasonable attorney fees, will be paid by Lessee.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense 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 in Articles 8, 17, 18 and 21 below or except when cars are improperly repaired by the Lessor; nor shall this Lease 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 Car or damage to or loss of possession or loss of use or destruction of all or any of such Cars from whatever cause and of whatever duration, except as otherwise provided in Articles 8 and 18 below, or the prohibition of or other restriction against Lessee's use of all or any such Cars, or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Lease or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee. Nothing in this agreement shall be deemed to preclude Lessee from otherwise enforcing in a separate action any rights it may have against Lessor or any consignee of Lessor.

Lessor covenants and warrants that it is the Owner of the Cars and that so long as Lessee is not in default hereunder, Lessee shall have and enjoy an unconditional right quietly to enjoy and use all Cars free from any disturbance or interruption of possession arising as a result of any action or inaction, failure of title, or conduct of or by Lessor, or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessor, or of or by any assignee of its rights hereunder or person claiming through Lessor.

4. **Term.** This Lease shall remain in full force and effect, with regard to each of the Cars, for a period of forty-eight (48) months from the first day of the month following the delivery and acceptance of the 300th Car ("Lease Commencement Date"). Lease charges on any Cars delivered as provided in Article 5 before the Lease Commencement date will be prorated on a daily basis as provided in Article 3.

The obligations of the Lessee hereunder shall survive the expiration or sooner termination of this Lease. Except as provided elsewhere herein, all rights and obligations of

the Lessee under this Lease and in and to the Cars are subject to the rights of the Lender under the Security Documents. If any Event of Default should occur under the Security Documents, the Lender may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (1) no Event of Default exists hereunder, (2) the Lessee is complying with the provisions of the Consent and Agreement, and (3) the Lender is entitled to apply the "income and proceeds from the Equipment" (as defined in the Security Agreement) in accordance with the Security Documents, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under Article 13 hereof. Lessor covenants that Lessee shall lawfully, peaceably and quietly hold, possess and enjoy the Cars covered by the Lease, without any hindrance, dispossession or interference by Lessor or any one lawfully claiming by, through or under Lessor, except pursuant to the provisions of the Lease.

5. Delivery of Cars. Any and all transportation, switching, and/or storage charges associated with the movement of Cars from a CSX System interchange point to the Lessor's designated repair facility in Ashland, Kentucky, and from this repair facility to the initial loading point shall be for the account and responsibility of the Lessee. All Cars shall be delivered to the repair facility hereunder, shall undergo a repair program to insure they are in Good Operating Condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in Schedule 1.

Lessor shall give Lessee reasonable advance notice that Cars are ready for joint inspection and acceptance at the repair facility. Representatives or agents of the Lessor and Lessee will perform and execute a joint inspection certificate, similar in format to that found in Schedule 2. Lessee, or its agent, may reject cars as to condition at the time of this joint inspection.

Each Car not rejected shall be deemed to be delivered and accepted by Lessee the day following the execution of the joint inspection certificate. Rent shall commence (with respect to each 75 car group) upon the delivery and acceptance by Lessee of the 75th, 150th, 225th and 300th Car(s) respectively.

6. Use and Possession. Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to uninterrupted possession of each Car from the date the Lease becomes effective as to such Car. Lessee agrees that the Cars shall at all times

be used (a) in conformity with Interchange Rules, (b) in compliance with the terms and provisions of this Lease, (c) in a careful and prudent manner, solely in the use, service and manner for which they were designed, and (d) only within the continental limits of the United States of America or in temporary or incidental use in Canada.

7. Licenses. Lessor shall procure and maintain in effect all licenses, registrations, certificates, permits and approvals (collectively referred to as "Licenses") required by applicable federal, state and local laws, rules, regulations and ordinances in connection with the ownership, delivery, use and operation of the Cars. Lessee shall inform and assist Lessor, as necessary, to procure and maintain such Licenses.

8. Maintenance and Repairs

- a. Lessor agrees to maintain at its own expense each of the Cars in good condition and repair, in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards except for the following:
- (1) Repairs or maintenance required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party as prescribed in Rule 95, Section A of the Field Manual of AAR Interchange Rules; or
 - (2) Repairs or maintenance required because of damage caused to the Cars by any corrosive or abrasive substance loaded therein or used in connection therewith other than normal wear and tear caused by loading and unloading of coal; or
 - (3) Repairs or maintenance required because of damage caused to the Cars by open flames, vibrators, sledges or other similar devices during loading or unloading operations; or
 - (4) Repairs or maintenance required because of excessive or unbalanced loading.
- b. Lessee will make the Cars available to Lessor or its contractors at any facility specified by Lessor at any reasonable time on request for the purpose of maintenance or repairs. Lessee shall pay all transportation charges for moving any Car to the repair or inspection facility designated by Lessor if such facility is located on the lines of the CSX System in Kentucky, West Virginia, Virginia,

Maryland and North Carolina. Lessor shall pay the transportation charges to repair facilities located on or off the lines of CSX System outside of the states named above unless otherwise mutually agreed upon. Rent shall abate for any Car requiring repairs or inspection that are Lessor's responsibility after 5 days from the date the Car is delivered to the repair or inspection facility designated by Lessor; rent shall resume as of the date that such Car is returned to the CSX System in Good Operating Condition.

- c. In the case of damage caused to any of the Cars which is the responsibility under AAR Rules of the railroad and not repaired by such railroad, Lessor will perform the necessary repairs and will prepare and submit such documents as are necessary to recover the cost of such repair in accordance with AAR Rules and will perform all necessary administrative tasks in connection with such counterbilling. Lessor will be solely entitled to any sum so recovered. In such event Lessor shall not hold Lessee responsible for such repairs in any manner.
- d. Lessee will, at Lessor's request, take such reasonable action as Lessor may specify to modify operating conditions within Lessee's control which in Lessor's reasonable opinion are causing undue and avoidable wear or damage to the Cars.
- e. Neither party to this Lease will alter materially the physical structure of any of the Cars without the other party's prior written consent.
- f. Lessor reserves the right to retire any car that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Car retired by Lessor as of the date on which it is retired or when such Car is delivered to Lessor's repair or inspection facility or elsewhere as provided in this Lease, whichever occurs first.
- g. Lessor may from time to time subcontract with others to perform maintenance, but such subcontracts shall not relieve Lessor of its obligation hereunder to perform such services.
- h. Any and all additions to any Car and any replacements thereto and or parts thereof made by the Lessee shall constitute accessions to such Car and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same

interest therein as the interest of the Lessor in such Car.

- i. Lessor shall be responsible for maintaining Cars, (except as otherwise provided herein) to the standards set forth in the AAR Interchange rules. In the daily operation of the Cars, Lessee may be requested by railroads to perform maintenance work on the Cars. Lessee shall not authorize such work unless the repair work is approved in advance by Lessor (not to be unreasonably withheld) or unless the repairs are for running maintenance that is necessary to keep the Cars in safe working order. Any maintenance repairs performed by railroads shall be done in accordance with AAR interchange rules and at the standard charges established under those rules. If a railroad which has requested performance of maintenance on a Car or Cars and subsequently neglects to move the Cars as per Lessee's instructions and consequently the maintenance work is performed by the railroad, then Lessor will pay for the maintenance work at the rate Lessor would have incurred if the work had been done in Lessor's designated home shop.

9. Warranties. Unless otherwise specified herein, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE CARS 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 CARS PURSUANT TO THIS LEASE 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 CARS; 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 CARS, EXCEPT WHERE DAMAGE OR LIABILITY RESULTS FROM LESSOR'S NEGLIGENT REPAIR OF CAR AS SPECIFIED IN THIS AGREEMENT. Lessor does, however, warrant that the Cars will be suitable, fit, and in Good Operating Condition for the ordinary movement of coal, coke, iron ore, stones or aggregates.
10. Insurance. The Lessee will at all times during the term of this Lease, at its own expense, cause to be carried and maintained insurance in respect of the Cars in amounts and against risks customarily insured for.
11. Indemnity. The Lessee agrees to indemnify and save harmless the Lessor and Lender against any charges or claims made against the Lessor, and against any expense, loss or

liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur (except to the extent resulting from the Lessor's negligence or as otherwise provided herein) which may arise in any manner out of or as a result of the use, operation, condition, delivery, rejection, storage or return of, any Car until such Car is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor and Lender against any charge, claim, expense, loss or liability on the account of any accident (except to the extent resulting from the Lessor's negligence and otherwise provided herein) in connection with the operation, use, condition, possession or storage of such Car resulting in damage to property or injury or death to any person, including claims, losses or damages referred to in paragraph 21 hereof.

Notwithstanding the foregoing, Lessor shall indemnify and hold Lessee harmless from and against any and all expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) (except those listed below) to the extent such arise out of the negligence, recklessness, or willful misconduct or breach of warranty of Lessor including the performance of maintenance under this Agreement, but excluding such losses for which a repair shop (other than one maintained by Lessor) is responsible or for which any hauling railroad is responsible under any law, rule, regulation, ordinance or applicable rule of the AAR.

Neither party shall be liable for lost profits or loss of income of Lessee, Lessor or Lender or any other special, incidental, or consequential damages arising in contract, tort (including negligence and strict liability) or otherwise, except as provided elsewhere in this agreement. Regarding any losses, charges or claims, the parties shall use their best efforts to mitigate damages and shall permit an investigation, in such manner and at such place as may be reasonably requested, of the facts upon which any such losses, charges or claims are made or based.

12. **Default.** If Lessee fails to pay any rental payment or any other amount herein provided within ten days after the same is due and payable, or if Lessee fails to perform any other term, covenant, obligation or provision hereof, or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against Lessee or any guarantor hereof or the property of either, or if Lessee or any guarantor makes any assignment for the benefit of its creditors, or if a meeting of creditors is called by

Lessee or any guarantor to discuss its financial obligations, or if judgements or judicial liens have been secured against the Lessee and its property and not released within a period of 30 days after the effective date thereof, or upon the insolvency or financial irresponsibility of any guarantor or other person, firm or corporation having obligations to Lessor for Lessee's performance hereunder, or if Lessee uses the Car(s) for any unlawful purpose (such events described herein shall be the exclusive meaning of the phrase "Events of Default" with regard to Lessee), Lessor shall have the right to exercise any one or more of the following remedies:

- a. To accelerate the terms of this Lease and declare the full amount of the remaining rental payments immediately due and payable and to sue for and recover all payments and other amounts then due or thereafter accruing under this lease;
- b. To take possession of any or all of the Car(s), wherever it (they) may be located, without demand or notice and without any court order or other process of law;
- c. To terminate this Lease as to any or all Car(s);
- d. In the event Lessor elects to terminate this Lease as to any or all Car(s), to recover from Lessee, if any, of the remaining rental payments for the Car(s) for the balance of the Term of this Lease over the then reasonable lease value of the Car(s) for the same period of time;
- e. To pursue any other remedy Lessor may have at law or in equity.

Lessor recognizes its duty to use reasonable efforts to mitigate damages hereunder. If either party defaults under this lease, the defaulting party agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred in exercising any of the parties rights hereunder.

13. Assignment and Subleasing. Lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this Lease in whole or in part or (b) sublet or lend the Car(s) without Lessor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Lessee may assign or sublet the Car(s) to any person who, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control of with, Lessee, provided that Lessee shall

continue to be primarily liable for its obligations hereunder notwithstanding any such assignment or sub-leasing. Lessee acknowledges and understands that Lessor may, without notice to Lessee, assign its interest under this Lease and in and to the Cars to a bank or other lending institution as security for one or more loans. Lessee agrees, in the event of any such assignment and upon notice thereof from Lessor, and only in the event of such assignment to one or more such assignees: (1) to recognize such assignment; (2) to make all payments of Lease Charges and other amounts due under the Lease as so assigned directly to the assignee identified in such notice or to its designee; (3) to accept the directions or demands of such assignee in place of those of the Lessor; (4) to surrender the Cars to such assignee upon termination of this Lease; (5) that, in the event of such assignment and except as otherwise provided in Articles 8, 17, 18 or 20, Lessee's obligations hereunder with respect to payment of Lease Charges shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever; (6) except as otherwise provided in Articles 5, 17 (with respect to any Car which becomes Lessee's property), 8, 18 and Article 12, not to terminate this Lease; provided, however, nothing contained in this Article 13 shall relieve Lessor from its obligations to Lessee hereunder, nor shall any assignee hereof be relieved of the obligation to release its interest in any Car to facilitate Lessor's obligation contained in the second paragraph of Article 17 hereof. Nothing in this agreement shall be deemed to preclude Lessee from otherwise enforcing in a separate action any rights it may have against Lessor or any consignee of Lessor.

14. Ownership. The Car(s) is, and shall at all times remain, the property of Lessor, and Lessee shall not have right, title or interest therein or thereto except as expressly provided by this Lease. Lessor shall have the right at any time and from time to time to inspect the Car(s) and any records pertaining thereto wherever the same may be located and at any time to demand and receive from Lessee a statement as to the location thereof.
15. Lettering - Inventory. The Lessee will cause each car to be kept numbered with the identifying number as set forth in Schedule 1 hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Car in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect

the title of the Lessor and the Lender and the rights of the Lessor and such the Lender under the Lease. The Lessee will not place any such Car in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Car to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Cars as a designation that might be interpreted as a claim of ownership.

16. **Notice.** Any written notice to be given to a party under this Agreement shall be given by certified mail in the following manner:

a. Notices from Lessor to Lessee shall be sent to:

Manager, Transportation
Virginia Power, OJRP-7
P.O. Box 26666
Richmond, Virginia 23261-6666

b. Notices from Lessee to Lessor shall be sent to:

President
Helm Financial Corporation
One Embarcadero Center, Suite 3320
San Francisco, California 94111

c. Notices from either Lessor to Lessee or Lessee to Lessor shall be sent to:

Leasing Department
First National Bank of Louisville
P.O. Box 36040
Louisville, KY 40233

17. **Responsibility for Destruction of Cars.** If any of the Cars are lost, destroyed, or damaged beyond economic repair (except when the Car is in the possession of Lessor), Lessee agrees to pay Lessor the settlement value of the Car computed under Rule 107 of the Interchange Rules adopted by the Association of American Railroads (hereafter "AAR Code of Rules") within 30 days of such occurrence. Lease Charges with respect to any Car shall

abate upon the date Lessor is advised that such Car has been lost, destroyed, or damaged beyond economic repair.

Upon payment by Lessee to Lessor of the settlement value of any Car as hereinabove provided, so long as Lessee is not in default hereunder, such Car and/or devices shall become the property of the Lessee. In order to facilitate the sale or other disposition of any Car which becomes Lessee's property as hereinbefore provided, Lessor shall, upon request of Lessee, execute and deliver to Lessee or to Lessee's vendee, assignee or nominee, a bill of sale for such Car, warranting title free and clear of all liens, security interests, and other encumbrances (except such as may have arisen by, through and under Lessee during the term of this Agreement) and such other documents as may be required to release such Car from the terms and scope of this Lease and from any other lien or encumbrance of Lessor's making, undertaking or sufferance, including the Security Documents in such forms as may be reasonably required by the Lessee.

18. Return of Cars. The Lessee agrees, immediately upon the expiration or termination of this Lease without demand by Lessor, to return each of the Cars to Lessor uncontaminated (except as inherent in previous use as a coal car) and in the same condition as received, less reasonable wear and tear and conditions for which Lessor is responsible hereunder, and free of liens arising by, through or under Lessee, to an interchange point on the CSX System, and to pay rent on each Car until such return. Rent for each Car shall cease when each such Car is returned in the above condition, as determined by a joint inspection by Lessor and Lessee, or their agents, to the point referenced above, or are placed in storage at the request of Lessor as stipulated below. Lessee shall use best efforts but is not obligated to provide up to sixty (60) days free storage for all or less than all Cars at the request of the Lessor at the expiration or termination of this Agreement. During such storage period all rent shall cease and Lessor will assume responsibility for the Cars during storage. Lessor will recall Cars from storage all at the same time or in blocks of not less than seventy-five Cars.

19. Compliance with Laws. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated to the best of Lessee's knowledge under and in compliance with the laws of the jurisdiction in which the Cars may be located and in compliance with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or to supervise the use of such Cars, except that either Lessor or Lessee may in

good faith and by appropriate proceeding, contest the application of any such act, rule, regulation or order in any reasonably manner at the expense of the contesting party.

Lessor shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of the work hereunder, including but not limited to all laws, rules, regulations and ordinances governing the practice of engineering. Lessor shall also comply, and shall require its employees to comply, with all rules, regulations and requirements pertaining to access to Virginia Electric and Power Company property and facilities that it is advised of by Virginia Electric and Power Company.

Lessor agrees to comply with all applicable provisions of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; and implementing regulations set forth in 41 C.F.R. Sections 60-1, 60-250, and 60-741. Lessor agrees that the equal opportunity clause set forth in 41 C.F.R. Section 60-1.4 and the affirmative action clauses set forth in 41 C.F.R. Section 60-250.4 and 41 C.F.R. Section 60-741.4 are hereby incorporated by reference and made a part of this Order. Lessor certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner and that it does not and will not permit its employees to perform their services at any location under Lessor's control where segregated facilities as are required by 41 C.F.R. Section 60-1.8. The provisions of this paragraph shall apply to Lessor only to the extent that (a) such provisions are required of Lessor under existing law, (b) Lessor is not otherwise exempt from said provisions and (c) compliance with said provisions is consistent with and not violative of 42 U.S.C. Section 2000e et. seq., 42 U.S.C. Section 1981 et. seq., or other acts of Congress.

Any fines or other penalties incurred by Lessor or its agents, employees or subcontractors for noncompliance with such laws, rules, regulations or ordinances shall not be reimbursed by Virginia Electric and Power Company but shall be the sole responsibility of Lessor. If fines, penalties or legal costs are assessed against Virginia Electric and Power Company by any government agency or court due to noncompliance by Lessor with any of the laws, rules, regulations or ordinances referred to in the two preceding paragraphs above or any other laws, rules, regulations or ordinances with which compliance is required herein, or if the work of Lessor or any part

thereof is delayed or stopped by order of any government agency or court due to Lessor's noncompliance with any such laws, rules, regulations or ordinances, Lessor shall indemnify and hold harmless Virginia Electric and Power Company against any and all losses, liabilities, damages, claims and costs (including reasonable attorneys' fees) suffered or incurred because of the failure of Lessor to comply therewith. Lessor shall reimburse Virginia Electric and Power Company for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Virginia Electric and Power Company in connection with such losses, liabilities, damages or claims.

20. Responsibility for Taxes. Lessor agrees to pay all personal property taxes associated with the Cars. Lessee agrees to assume responsibility for, and to pay, all other taxes, costs, fines and assessments of every kind upon the Cars, and to file all reports relating thereto; provided, however, that Lessee shall not be responsible for federal and state taxes based upon the income of Lessor.
21. Responsibility for Lading. Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Cars, however such loss or damage shall be caused, or shall result, except to the extent caused by Lessor's sole negligence, recklessness or willful misconduct or breach of warranty.
22. Freight and Other Charges. Lessor shall not be obligated for the payment of any switching, freight, or other charges incurred by the movement or the holding of the Cars, either loaded or empty, during the term of this Lease, all of which, if incurred by Lessee's action, will be paid by Lessee. Lessor shall have no right or claim to any per diem, demurrage or other Car hire chargeout of the use of the Cars and all such charges, as applicable, shall belong and be payable to Lessee.
23. Recording. Prior to the delivery and acceptance of the Cars, and in connection with any sublease or assignment permitted by Paragraph 13 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file register, record and deposit (and will refile, reregister, rerecord, and re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Lender, for the purpose of proper protection to the satisfaction of the Lessor of its title to the Cars or for the purposes of carrying out the intention of this Lease

or to maintain to the satisfaction of the Lender the security interest of the Lender in and to this Lease and the Cars under the Security Documents.

24. Option to Purchase. The Lessor hereby grants to the Lessee an exclusive right, exercisable at the discretion of the Lessee, to purchase all of the Cars for a purchase price equal to the fair market value thereof but not to exceed * for any one Car. This purchase option shall be exercisable by the Lessee giving written notice (the "Purchase Notice") to the Lessor not later than 120 days prior to the Purchase Date (as hereinafter defined) of its intent to purchase all the Cars, which notice shall specify the identity of the Cars and proposed Purchase Date which shall be the last day of this Lease. If the Lessor accepts the proposed purchase price, it shall so notify the Lessee to that effect in writing within 30 working days after receipt of the Purchase Notice, and this shall constitute an agreement as to the price of the cars to be purchased. If the Lessor does not accept the purchase price proposed by the Lessee, the Lessor within 30 days after receipt of the Purchase Notice shall propose a purchase price for the Cars, and the Lessee shall be obligated to accept or reject orally or in writing such purchase price within 10 days after receipt of Lessor's proposal. If such price is accepted, then an agreement shall be deemed to exist with respect to the sale price of the Cars to be purchased. If such price is rejected, the Lessee shall withdraw at that time its offer to purchase the Cars.

Payment for the Cars to be purchased shall be in immediately available funds, due within 30 days of invoice, but not earlier than the last day of the term hereof. Lessee is responsible for all transportation and switching charges to the Chesterfield Power Station, Wheelwright, Virginia. All Cars delivered for purchase shall be free and clear of all liens, charges and encumbrances, and shall be in good and usable condition, normal wear and tear for Cars of their respective vintages excepted.

The parties acknowledge that the * maximum purchase price per Car represents the current best estimate of the maximum fair market value of the Cars on November 1, 1990.

25. Law to be Applied; Severability; Binding Effect. This Lease shall be governed by the construed in accordance with the laws of the State of California. In the event any provisions hereof shall be held invalid by any court or administrative agency, the invalidity of such provision shall not affect any other provisions hereof. This Lease shall be binding upon the successors and permitted assigns

* THE NUMBERS WERE SET FORTH IN THE ORIGINAL AGREEMENT

of Lessee and Lessor and shall inure to the benefit of the successors and assigns of each.

26. Execution. This Lease may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract. This Lease may be signed in separate counterparts as long as each party hereto shall have signed at least one counterpart.
27. True Lease. It is the intent of the parties that this Lease is, and be construed and interpreted as, a true lease of personal property and that the Lessee shall have none of the incidents of title to or ownership of the Cars, other than as expressly provided for in this Lease. This Lease is not intended to represent a financing mechanism or a debt instrument, and shall not be interpreted as such.
28. Late Charges. Delinquent installments of rent shall bear interest at the rate of * per month if not prohibited by law, otherwise at the highest lawful contract rate.
29. Entire Agreement. This Lease constitutes the entire agreement between Lessor and Lessee with respect to the Car(s). A provision may be added or a provision hereof may be waived, altered, varied or modified only by a writing signed and made a part hereof by mutual agreement of the parties. Waiver by either party of any provision hereof in one instance shall not constitute a waiver as to any other instance.

* THE NUMBERS ARE SET FORTH IN THE ORIGINAL LEASE DOCUMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized representative as of the day and year first written.

VIRGINIA ELECTRIC AND POWER
COMPANY (Lessee)

By: *T. B. Sauer*

Title: *VP*

HM JOINT VENTURE (Lessor)
a California joint venture

By: Helm Equipment Leasing
Corporation,
a general partner

By: *W. R. Eld*

Title: *Executive Vice President*

and

By: Mansbach Realty Company, [SEAL]
a general partner

By: *Arnold Mansbach*

Title: *President*

My Commission Expires September 5, 1968

Schedule 1

SPECIFICATIONS OF EQUIPMENT

This Equipment Schedule is pursuant to and subject to the terms and conditions of the Lease of Railroad Equipment between HM JOINT VENTURE ("Lessor") and VIRGINIA ELECTRIC AND POWER COMPANY ("Lessee"), effective November 15, 1986.

Description of Car(s). Lessor agrees to lease and Lessee agrees to rent the following Car(s):

<u>Quantity</u>	<u>Description</u>	<u>Car Numbers</u>
300	Steel reconditioned cars with 100 net ton capacity and hopper bottoms. Empty car height shall not exceed 12'5" ATR.	VEPX 87000 - 87499

VEPCO
JOINT INSPECTION CERTIFICATE

Date of Inspection: _____ Company Issuing: _____

Location: _____ Date of Preparation: _____

The Undersigned Have Personally Inspected (Initials): _____

Car Number: _____ Kind: _____

Condition

<u>END</u>	<u>REPAIRS REQUIRED</u>	<u>NATURE OF DEFECTS</u>
¶		¶
¶		¶
¶		¶
¶		¶
¶		¶
¶		¶
¶		¶
¶		¶
¶		¶
¶		¶

Signature: _____ Inspected for: _____

Signature: _____ Inspected for: _____

STATE OF VIRGINIA)

COUNTY OF Richmond)
City)

I, Lee A. Roesser, a Notary Public in and for the state and county aforesaid, do hereby certify that T. L. Bacon of VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he is Vice President, he 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 his 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 notarial seal this 4 day of February, 1987.

Lee A. Roesser
Notary Public

My commission expires

My Commission Expires September 5, 1988

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

I, NANCY L. HOFFNER, a Notary Public in and for the state and county aforesaid, do hereby certify that DAVID R. ECKLES and _____ of HELM EQUIPMENT LEASING, a CALIFORNIA corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such EXECUTIVE VICE PRESIDENT 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.

1988 Given under my hand notarial seal this 15th day of December.

Nancy L Hoffner
My Commission Expires 1-9-90



CONSENT AND AGREEMENT

The undersigned, Virginia Electric and Power Company, a Virginia public service corporation (the "Lessee"), under a Lease of Railroad Equipment dated December 2, 1986 (the "Lease") referred to in an Assignment of Lease between HM Joint Venture, a California joint venture consisting of Helm Equipment Leasing Corporation, a California corporation and Mansbach Realty Company, Inc., a Kentucky corporation and First National Bank of Louisville dated December __, 1986 (the "Assignment"), hereby (a) acknowledges receipt of a copy of the Assignment and the Security Agreement referred to therein (the "Security Agreement"), and (b) consents to all the terms and conditions of the Assignment and, intending to be legally bound hereby, agrees that:

1. the Lessee will pay directly by check or wire transfer to FIRST NATIONAL BANK OF LOUISVILLE, Post Office Box 36040, Louisville, Kentucky 40233 (the "Assignee"), to the attention of Leasing Department, its successors and assigns, without setoff, counterclaim, deduction or abatement, except as expressly provided in the Lease, of (i) all rent and sums due or to become due from the undersigned under the Lease, (ii) all amounts payable by reason of damage, destruction or loss of the equipment described in the Lease (the "Cars") or by reason of the acceleration of any liability of the undersigned for rent or other sums payable thereunder, and (iii) all other amounts at any time owing by the undersigned to HM Joint Venture (the "Lessor") under the Lease;

2. the Assignee shall be entitled to the benefits of, and, except as otherwise provided in the Assignment or the Security Agreement, to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Assignee were named therein as the Lessor;

3. the Assignee shall not, by virtue of the Assignment, be or become subject to any liability or obligation under the Lease or otherwise, and all obligations and warranties of the Lessor contained in the Lease shall be and remain enforceable by the Lessee against the Lessor and its successors and assigns other than Assignee under the foregoing Assignment;

4. Lessee represents that the Lease is the sole agreement between Lessor and Lessee respecting the Cars and the rentals and other sums due thereunder, and without the prior written consent of the Assignee, Lessee shall not terminate, amend or modify the Lease, nor shall any action be taken or omitted by the Lessee in contravention of the terms of the Lease, the taking or omission of which might result

in an alteration or impairment of the Lease or the Assignment, or of any of the rights created by either thereof, and any such action, without the prior written consent of the Assignee, shall be void;

5. any material consent or waiver under the Lease given by Lessor, or any release of any obligations of the Lessee by Lessor thereunder without the prior written consent of Assignee shall be void, except as may be permitted pursuant to or consented to by Assignee under the Security Agreement referred to in the Lease;

6. the Lessee agrees to indemnify and save harmless the Assignee against any charges or claims made against the Assignee, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Assignee may incur which may arise in any manner out of or as a result of the use, operation, condition, delivery, rejection, storage or return of, any Car until such Car is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Assignee against any charge, claim, expense, loss or liability on the account of any accident (except to the extent resulting from the Lessor's negligence and otherwise provided in the Lease) in connection with the operation, use, condition, possession or storage of such Car resulting in damage to property or injury or death to any person, including claims, losses or damages referred to in paragraph 21 of the Lease. Notwithstanding the negligence of Lessor, Lessee agrees to defend Assignee in any legal proceeding for civil damages brought against Assignee by a party other than Lessor or Lessee for injury or death to persons or damage to property; and

7. any provision of the Lease to the contrary notwithstanding, Lessee agrees at all times to keep the Cars free and clear of all liens, claims and other encumbrances resulting from claims against the Lessor not related to the ownership of the Cars (but excluding the lien of the Assignee under the Security Documents, and arising from or in connection with an act of Lessor) and the Lessee confirms that the existence of any such lien, claim or other encumbrance from claims against Lessor shall not entitle the Lessee to any setoff, counterclaim, deduction or abatement of the rent and other sums due or to become due under the Lease; provided, however, that nothing herein shall constitute

a waiver of any rights which Lessee may have as a separate claim against the Lessor under the Lease or otherwise in respect of any such lien, charge or other encumbrances against Lessor.

This Consent and Agreement shall be deemed to be a contract made and effected under the laws of the Commonwealth of Kentucky, and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

IN WITNESS WHEREOF, this Consent and Agreement has been duly executed and delivered as of this 8 day of December 1986.

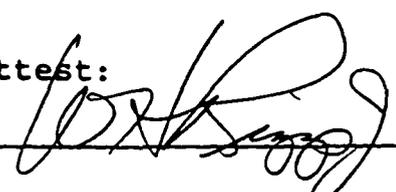
(Corporate Seal)

VIRGINIA ELECTRIC AND POWER COMPANY

By: 

Title: VP

Attest:



My Commission Expires September 5, 1988