

9-107A009

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PHILADELPHIA, PENNSYLVANIA 19103 RECORDATION NO 16287 FILED 1425

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WASHINGTON
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REBECCA A. CRAFT
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APR 17 1989 - 10:25 AM

INTERSTATE COMMERCE COMMISSION

April 14, 1989

16287/A
RECORDATION NO FILED 1425

APR 17 1989 - 10:25 AM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC

Date _____
Fee \$ _____

ICC Washington, D.C.

APR 17 10 40 AM '89
MOTOR OPERATING UNIT

Re: Lease of Locomotives from NBB Pennsylvania
Lease Co., Ltd. to Consolidated Rail
Corporation

Dear Ms. McGee:

Enclosed are an original and two originally
executed counterparts of the document described below, to be
recorded pursuant to Section 11303, Title 49, of the United
States Code.

This is a Purchase Agreement Dtd 12-15-88

This document is an Assignment Agreement, a
secondary document, dated as of April 14, 1989. The primary
document to which this Assignment Agreement is connected is
a Purchase Agreement attached as ~~Exhibit 1~~ to the Assignment.
This primary document is ~~not~~ being presented for filing.

The names and addresses of the parties to the
Assignment Agreement are as follows:

Assignor:
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, PA 19103

Assignee:
NBB Pennsylvania Lease Co., Ltd.
1-12-11 Nihonbashi, Chuo-ku
Tokyo 103, Japan

Consolidated Rail Corp - Buyer wh
General Electric Co. - Seller wh

Countersigned Lisa M. Jansa

Ms. Noreta R. McGee
April 14, 1989
Page 2

A description of the equipment covered by this document follows:

Twenty-five (25) General Electric Dash 8-40C diesel electric locomotives marked on the sides with the words "Ownership Subject to Documents Filed with the Interstate Commerce Commission" and bearing a nameplate with the legible inscription "TITLE TO THIS LOCOMOTIVE IS HELD BY NBB PENNSYLVANIA LEASE CO., LTD., THE LESSOR, WHICH HAS LEASED THIS LOCOMOTIVE TO CONSOLIDATED RAIL CORPORATION" and the twenty-five (25) locomotives bear the road numbers 6025 through 6049 inclusive.

A fee of Thirteen Dollars (\$13.00) is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Rebecca A. Craft, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103

A short summary of the document to appear in the index follows:

Assignment between Consolidated Rail Corporation, 6 Penn Center Plaza, Room 1310, Philadelphia, PA 19103 and NBB Pennsylvania Lease. Co., Ltd., 1-12-11 Nihonbashi, Chuo-ku, Tokyo 103, Japan dated as of April 14, 1989 relating to the purchase of twenty-five (25) General Electric Dash 8-40C diesel electric locomotives.

Interstate Commerce Commission
Washington, D.C. 20423

4.17.89

OFFICE OF THE SECRETARY

Rebecca A Craft, Esq.
Morgan, Lewis & Bockius
2000 One Logan Square
Phila. PA. 19103

Dear: Ms. Craft:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4.17.89, at 10:55am, and assigned recordation number(s). 16287&16287-A, 16288 & 16288-A
16289

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

Exhibit 1
16287

PA-1-PHW-GE

REGISTRATION NO. _____ FILED 6428

APR 17 1989 - 10:25 AM

INTERSTATE COMMERCE COMMISSION

PURCHASE AGREEMENT
DATED DECEMBER 15, 1988

Consolidated Rail Corporation (the "Buyer") hereby agrees, subject to the following terms and conditions, to purchase and the General Electric Company (the "Seller") hereby agrees to sell Twenty-five (25) diesel locomotives with options and modifications as specified herein (the "Locomotives").

TERMS AND CONDITIONS

1. Manufacture of the Locomotives. The Locomotives are to be manufactured in accordance with the specifications which are attached hereto as Appendix I and incorporated by reference (the "Specifications").

2. Price. The price of the locomotives, including all of the modifications and options contained in the Specifications, will be such prices as are set forth below unless otherwise agreed to by Seller and Buyer.

<u>MODEL</u>	<u>CONRAIL SPEC</u>	<u>NO. OF UNITS</u>	<u>UNIT PRICE</u>	<u>DELIVERY</u>
Dash 8-40C	2008-C including Addendum C dated 10/05/88 with the exception noted in Appendix II.	25	\$1,280,860	1st Quarter 1989

These prices are subject to the following:

(a) The prices set forth above shall remain firm for Locomotives delivered in accordance with the delivery schedule set forth above.

(b) Price changes with respect to options and modifications not included in the Specifications shall be agreed upon in writing in advance by Buyer and Seller.

3. Installation of Buyer's Equipment. Seller agrees to install Harmon Select-A-Power ("Equipment") owned and supplied by Buyer on the Locomotives. It is understood and agreed that such Equipment which is readily removable without damage to the Locomotive shall at all times remain the property of Buyer and shall not be included in the purchase price. It is further agreed that the warranties of Seller set forth in Sections 14 and 15 hereof shall not apply to the Equipment.

4. Delivery. Time is of the essence regarding delivery of the Locomotives to Buyer. The Locomotives shall be delivered F.O.B. at Erie, Pennsylvania on the tracks of the East Erie Commercial Railroad not later than the close of business on June 30, 1989. Buyer shall have no obligation to purchase any locomotives delivered after such date and shall not be liable to Seller for any amount with respect to such locomotive unless such delay in delivery was solely and directly caused by an act

or omission on the part of Buyer (other than in the reasonable exercise of Buyer's rights pursuant to Section 6 hereof) ("Buyer Caused Delay"), provided, however, that if: (i) delivery of any Locomotives is delayed due to causes beyond the control of Seller, such as act of God, acts of the Government of the United States or of any State or political subdivision thereof, fires, explosions or other catastrophes, epidemics and quarantine restrictions, acts of a public enemy, any strikes, slowdowns or labor shortages of any kind, any utility shortage or curtailment or delays of a supplier due to any of the foregoing causes; and (ii) Seller promptly notifies the Buyer thereof in writing (but in no event later than thirty (30) business days prior to June 30, 1989), and (iii) Buyer agrees to accept delivery after June 30, 1989, then extended from June 30, 1989 until the first to occur of: (x) a period of time equal to the period of delay, or (y) August 31, 1989.

5. Cancellation Charges. If Buyer cancels its purchase of any Locomotive due to a delay in delivery resulting from a Buyer Caused Delay, Buyer shall be liable to Seller for reasonable and proper cancellation charges.

6. Inspection. Buyer shall have the right to inspect each Locomotive prior to its execution of a Certificate of Acceptance (as contemplated in Section 7 hereof) and payment of the purchase price. Buyer shall have the opportunity, at the

time and place of inspection, to observe all tests and to determine whether each Locomotive and modifications thereto conform to the Specifications. Inspection and acceptance of delivery by Buyer will not release Seller from any obligations it has under any warranty or other undertaking. Buyer shall have the right to reject any Locomotive or modification thereto that does not conform to the Specifications or changes thereto subsequently agreed to in writing by Buyer and Seller.

7. Certificate of Acceptance. After inspection and acceptance of delivery of each Locomotive, Buyer will furnish Seller a certificate, in quadruplicate, executed by its authorized agent, stating that such Locomotive has been delivered and, when appropriate, that such Locomotive is accepted without reservation on its behalf.

8. Payment of Purchase Price. Upon execution of the Certificate of Acceptance in accordance with Section 7 of this Agreement and receipt of Seller's invoice, Buyer will be obligated to pay the full purchase price of the Locomotive in accordance with the terms of this Agreement. Buyer will assume and not be released from its obligation to pay such purchase price in the event of any damage, loss or destruction of the Locomotive caused by Buyer after acceptance of delivery by Buyer.

9. Title and Bill of Sale. Legal title in and to the delivered Locomotive is retained by Seller until receipt of the full purchase price in accordance with the provisions of Section 8 hereof. Upon payment of the purchase price by Buyer, Seller will deliver to Buyer a bill of sale evidencing the transfer to Buyer of title to the Locomotive and warranting that at the time of delivery Seller has legal title to the Locomotive and good and lawful right to sell such Locomotive and that title to such Locomotive is free of all claims, liens and encumbrances of any nature.

10. Taxes. In addition to the purchase price, Buyer agrees to pay all lawfully applicable taxes including sales and use taxes and/or gross receipts or gross income taxes in the nature of sales taxes (other than State or Federal Income and Excess Profits Taxes) levied or imposed and arising out of the sale, use or delivery of the Locomotives, except those taxes the imposition or levy of which are in good faith contested by Buyer.

11. Servicing. When required by Buyer, Seller will provide service representatives to assist Buyer, in a consulting capacity, and at no additional cost to Buyer, in placing the Locomotive into operating condition during the warranty period in Section 14.

12. Conditions Precedent to Buyer's Obligation. The obligations of Buyer under this Agreement are specifically and expressly conditioned upon and subject to the following:

(i) Seller delivering the Locomotives in accordance with the provisions of Section (4) hereof.

(ii) the delivery by Seller of representations satisfactory in form and substance to Buyer and any party providing external financing to Buyer to the effect that Seller holds no opinions contrary to the capability of each Locomotive to have:

(a) an estimated useful life of not less than 18 years.

(b) a fair market value at the end of 15 years (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such 15 year period and determined after subtracting from such value the cost, if any, for removal and redelivery of possession to a third party at the end of such period) equal to at least 20% of the capitalized cost of each such Locomotive, and;

(c) a commercially feasible use, at the end of such 15 year period (to a party other than Buyer), within the meaning of Revenue Procedure 75-21, 1975-1 Cum. Bull. 715, as modified in Revenue Procedure 75-28, 1975-1 Cum. Bull. 752 and Revenue Procedure 76-30, 1976-2 Cum. Bull. 647.

(iii) the execution and delivery by Seller of such reasonable representations, warranties and indemnification agreements with respect to the price of the Locomotives as may be required by Buyer to obtain external financing on acceptable terms.

13. Assignment of Purchase Agreement. Buyer shall have the right to assign its obligations, rights and interests in this Purchase Agreement to any person or persons, in connection with any external financing.

14. Warranty. Seller warrants to Buyer that each Locomotive manufactured by it hereunder will be free from defects in material, workmanship and title under proper normal use and service, and will be of the kind and quality designated or described in this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). THE STATUTORY WARRANTIES OF MERCHANTABILITY AND OF

FITNESS FOR PURPOSE SHALL NOT APPLY. If it appears within two (2) years from the date of shipment by the Seller or within 250,000 miles of operation, whichever event shall occur first, that the Locomotive delivered hereunder does not meet the warranties, specified above, and Buyer notifies Seller promptly, Seller, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to Seller, or by making available at Seller's plant or warehouse, a repaired or replacement part. If requested by Seller, Buyer will ship the defective part or parts, with shipping charges prepaid by Buyer, to the plant or warehouse designated by Seller.

The liability of Seller to Buyer (except as to title) arising out of the supplying of any Locomotive hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Locomotive as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate, except with respect to those items of which Seller has been previously notified. After delivery of the Locomotives to Buyer, Seller shall have no liability for any Locomotive or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation,

maintenance, repairs or alterations on the part of Buyer, or any third party other than Seller. The foregoing shall constitute the sole remedy of Buyer and the sole liability of Seller under this warranty.

It is understood that Seller has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at Seller's expense, the same on other Locomotives sold by Seller.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise shall Seller or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the Locomotives or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of Buyer's customers for such damages. If Buyer transfers title to or leases the products sold hereunder to any third party, Buyer shall obtain from such third party a provision affording Seller and its suppliers the protection of the preceding sentence. The sole remedy of Buyer with respect to the provisions of Section 4 hereof shall be cancellation and the sole remedy of Seller for cancellation shall be as set forth within Section 5 hereof.

Except as provided in Section 15 hereof, in no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall Seller's liability to Buyer for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the products or services furnished hereunder, exceed the price of the specific products or service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the warranty period specified in this section of the Purchase Agreement. If Seller furnished Buyer with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, tort (including negligence) or otherwise. The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this Section.

15. Patents. Except in cases of designs by Buyer and not developed or purported to be developed by Seller, and articles and materials specified by Buyer and not manufactured by Seller, Seller warrants that the Locomotives, and any part thereof, shall be delivered free of any rightful

claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, Seller shall defend or settle, at its expense, any suit or proceeding against Buyer so far as based on a claimed infringement which would result in a breach of this warranty and Seller shall pay all damages and costs awarded therein against Buyer due to such breach. In case any Locomotive or part thereof is in such suit or proceeding found to constitute such an infringement and the use of the Locomotive or part thereof is enjoined, Seller shall, at its expense and option, and within a reasonable period of time, either procure for Buyer the right to continue using said Locomotive or part thereof, or replace same with a non-infringing Locomotive or part thereof acceptable to the Buyer, or modify same so it becomes non-infringing, or remove the Locomotive or part thereof and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by Buyer, but in each case without impairing the operational capability of such Locomotive or part thereof.

The preceding warranty shall not apply where patent liability is specifically purported to result from Buyer's use of any Locomotive or part thereof furnished hereunder in conjunction with any other product not furnished by Seller hereunder. As to any such combination, Seller assumes no

liability whatsoever for patent infringement and Buyer will hold Seller harmless against any infringement claims arising therefrom. The foregoing states the entire liability of Seller for patent infringement by the Locomotives or any part thereof. Seller will give notice to Buyer of any claim known to Seller from which liability may be charged against Seller hereunder.

Seller shall obtain from its suppliers and contractors indemnification agreements protecting Buyer against liability for patent infringement arising from or related to designs specified by Buyer and not developed or purported to be developed by Seller and articles and materials specified by Buyer and not manufactured by Seller to the same extent that Seller has obtained for itself such indemnification from such persons.

16. Compliance with Regulations. Seller certifies that it is in compliance with President's Executive Orders #11246 and #11375 which prohibit discrimination in employment, price control policies and regulations, and that the Locomotives will be at the time of delivery in compliance with all other applicable Federal regulatory standards as of the date of execution of this Agreement including, but not limited to air and noise pollution. As a condition to the execution of this Agreement by Buyer, Seller will be required

to sign the certificate required by the regulations published by the Federal Railroad Administration in 49 CFR 265.11. The Seller will comply with all of the Nondiscrimination Clauses contained in Appendix I hereto.

17. Accidents and Indemnity. If it becomes necessary for Seller, either as principal or by agent or employee, to enter upon the premises or property of Buyer, in order to remanufacture, repair, replace, inspect or deliver the Locomotives, Seller shall take, use, provide and make all reasonable and proper precaution against the occurrence of any accident or injury to any person or property during the progress of the work herein covered, and shall be responsible for, and shall indemnify and save harmless Buyer from the payment of all sums of money and costs and expenses incurred by reason of all, or any, such accident or injury that may happen or occur upon or about such work, to the extent caused by the act or omission of Seller or its agents or employees (excluding the negligence of any officer, employee, agent or authorized representative of Buyer), and all fines, penalties and loss incurred for or by reason of the violation of any state, county, municipal or local ordinance or regulation, or the law of any state or the United States, to the extent caused by said act or omission while the said work is in progress; and further shall obtain the insurance required by any compensation act, plan or legislative enactment.

18. Successors and Assigns. As used herein, the terms Buyer and Seller shall be deemed to include the successors and assigns of Buyer and Seller. Seller may not assign its rights under this Agreement without the prior written consent of Buyer which shall not be unreasonably withheld.

19. Complete Agreement. This Agreement shall constitute the complete agreement between Buyer and Seller and any amendments thereto, including any changes or modifications in the Specifications, must be in writing and executed by Buyer and Seller. Although for convenience this Agreement is dated as of the date first above set forth, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates set forth below.

Accepted this 28 day of
December, 1988

Accepted this 30 day of
December, 1988

GENERAL ELECTRIC COMPANY

CONSOLIDATED RAIL CORPORATION

By: W. Scott Butler
W. Scott Butler
General Manager-Marketing
Transportation Systems

By: Jeremy T. Whatmough
Jeremy T. Whatmough
Vice President-
Purchasing, Materials &
Quality Assurance

STATE OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS

On this, the 14th day of April, 1989, before me, a notary public, the undersigned officer, personally appeared Thomas J. McFadden, who acknowledged himself to be the Manager - Financing of Consolidated Rail Company, a corporation, and that he, as such Manager - Financing, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Manager - Financing.

In witness whereof, I hereunto set my hand and official seal.

(NOTARIAL SEAL)


Notary Public

My Commission Expires:

NOTARIAL SEAL
LYNN A. McDOWELL, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES OCT. 28, 1992

Member, Pennsylvania Association of Notaries

CONRAIL

APPENDIX II

The following list are exception to Revision C, Spec. 2008. They have not been accepted at this time for inclusion in this contract.

ADDENDUM

<u>NO.</u>	<u>ITEM</u>	<u>DESCRIPTION</u>
C	1.4.2	WABCO #650268 BRAKE PIPE FLOW INDICATOR + WABCO L19 ADAPTER VALVE
C	1.11.3	TWO HORN SNOW BONNETS
A	1.12.6	PROVISIONS FOR PADLOCKING CUTOUT COCKS (PROVIDING LOCKING BRACKET)
C	1.12.7	ADD ENFORCED ACKNOWLEDGMENT OF CAB SIGNAL/ATC (SALEM 912-941)
C	1.13.1	ADD LOCOMOTIVE SPEED LIMITER SYSTEM (LSL) THIS IS IN LIEU OF ATC.
A	1.15.1	PROVISION FOR PADLOCKING ALERTER CUTOUT COCK
C	5.5.1	TRACTION MOTOR SUSPENSION BEARING TO BE ROLLER BEARING ON LAST FIVE UNITS
	6.3.1	BRUSHLESS MOTOR - DRIVER GEAR FUEL PUMP
C	6.7.4	LAST LOCOMOTIVE TO HAVE MECHANICALLY BONDED RADIATORS (YOUNG) ON FIELD TEST BASIS
C	7.5.2	TRUCKS TO HAVE NYLATRON CENTER BOWL WEAR LINERS ON A FIELD TEST BASIS
C	8.2.1	3 SEATS TO BE COACH AND CAR #3276300 (HEAVY FRAME)
	8.4.1	CAB HEATER BRUSHLESS FAN MOTOR
C	8.7.1	SIDE DROP DOORS TO HAVE HANDLES OPPOSITE HINGES
B	10.12.3	COUPLER CARRIER WEAR PLATES TO BE PLASTIC (HOLLAND CO. #WE 4015-1)
C	10.23.1	CHANGE SNOWPLOW CONTOUR
C	14.3.1(D)	HORN TEST TO BE PERFORMED ON ALL UNITS

AMENDMENT NO. 1

DATED FEBRUARY 28, 1989

TO

PURCHASE AGREEMENT

DATED DECEMBER 15, 1988

The Purchase Agreement is hereby amended to include Conrail Specification 2008-D, including Addendum D dated January 8, 1989. The unit price is changed to \$1,298,760 each and Appendix II. to the Contract is hereby deleted from the Contract. Appendix III is hereby added to the contract.

Accepted this 3rd day of
March, 1989

Accepted this 3rd day of
March, 1989

GENERAL ELECTRIC COMPANY

CONSOLIDATED RAIL CORPORATION

By: Frank A. Aptacy
Frank A. Aptacy
Manager, Northeast Region
Locomotive Marketing
Division

By: Philip H. Wilson
Philip H. Wilson
Director
Purchasing

CONRAIL

APPENDIX III

The following list has been accepted for inclusion in this contract.

<u>ADDENDUM NO.</u>	<u>ITEM</u>	<u>DESCRIPTION</u>	<u>COMMENTS</u>
C	1.4.2	WABCO #650268 BRAKE PIPE FLOW INDICATOR & WABCO L19 ADAPTER VALVE	
NEW	1.1._	1/4 in. IN-LINE FILTER, WITH BLEED NORGREN PART NO. F11-200-M3TA	
C	1.11.3	TWO HORN SNOW BONNETS	
A	1.12.1	GE TO FURNISH CAB SIGNAL	
B	1.12.6	PROVISION FOR PADLOCKING CUT OUT COCKS FOR CAB SIGNAL	
C	1.12.7	ADD ENFORCED ACKNOWLEDGMENT OF CAB SIGNAL/ATC (SALEM 912-041)	
C	1.13.1	ADD LOCOMOTIVE SPEED LIMITER SYSTEM (LSL). THIS IS IN LIEU OF ATC.	
C	1.13.2	PROVISION FOR PADLOCKING AIR SUPPLY CUTOUT COCK FOR LSL.	
C	1.13.5	PROVIDE CONNECTOR BETWEEN LOCOMOTIVE WIRING AND LSL LOGIC UNITS.	
A	1.15.1	PROVISION FOR PADLOCKING ALERTER CUTOUT COCK	
C	5.5.1	TRACTION MOTOR SUSPENSION BEARING TO BE ROLLER BEARING. PROVIDED ON THE LAST FIVE (5) UNITS. \$30,000.00 PER LOCOMOTIVE [(\$30,000 X 5) /25]	
C	5.8.2	DEKA BATTERIES TO BE PROVIDED	
C	6.3.1	BRUSHLESS MOTOR FOR FUEL PUMP LAST FIVE (5) LOCOMOTIVES	FIELD TEST
C	6.7.4	LAST FIVE (5) UNITS TO HAVE MECHANICALLY BONDED RADIATORS (5-YOUNG SUPPLIED BY GE)	FIELD TEST

<u>ADDENDUM NO.</u>	<u>ITEM</u>	<u>DESCRIPTION</u>	<u>COMMENTS</u>
C	7.5.2	NYLATRON CENTER BOWL LINERS ON TRUCKS	FIELD TEST
C	8.2.1	3 SEATS TO BE COACH & CAR #3276300 ("HEAVY FRAME" SEATS)	
C	8.4.1	BRUSHLESS MOTOR FOR CAB HEATER FAN (LAST LOCOMOTIVE)	FIELD TEST
C	8.7.1	SIDE DROP DOORS TO HAVE SAFETY PIN AT HINGES	
D	9.1.1	RADIO TO BE AEROTRON MODE # AL 1700CR	
C	10.23	CHANGE SNOWPLOW CONTOUR (LONGER BRACKETS)	
D	10.24	1 EXTRA GRAB IRON ON #2 END	

Annex A

CONSENT, AGREEMENT AND LIMITED JOINDER

THIS CONSENT, AGREEMENT AND LIMITED JOINDER, dated as of April 14, 1989, among GENERAL ELECTRIC COMPANY (the "Manufacturer"), a New York corporation, CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Assignor"), and NBB PENNSYLVANIA LEASE CO., LTD., a Japanese corporation (the "Assignee").

In connection with the Assignment Agreement dated as of April 14, 1989 between Assignor and Assignee attached hereto (the "Assignment," capitalized terms used but not defined herein shall have the meanings given to them in the Assignment), the Manufacturer hereby acknowledges notice of and consents to all of the terms of the Assignment Agreement to the extent relating to the assignment by the Assignor of its rights and interests under the Purchase Agreement and hereby confirms to the Assignee that:

(i) all representations, warranties, indemnities and agreements of the Manufacturer under the Purchase Agreement with respect to the Items of Equipment will (subject to the terms and conditions thereof and of the Assignment) inure to the benefit of the Assignee to the same extent as if originally named the "Buyer" therein, except as otherwise provided in Section 2 of the Assignment;

(ii) the Assignee will not be liable for any of the obligations or duties of the Assignor under the Purchase Agreement, nor will the Assignment give rise to any duties or obligations whatsoever on the part of the Assignee owing to the Manufacturer except for the Assignee's agreement in the Assignment to pay the Purchase Price and to the effect that in exercising any right under the Purchase Agreement with respect to any Item of Equipment or making any claims with respect to any Item of Equipment or the goods and services delivered and to be delivered pursuant to the Purchase Agreement, the terms and conditions of such Purchase Agreement relating to such Item of Equipment will apply to, and be binding upon, the Assignee to the same extent as the Assignor;

(iii) the Manufacturer will continue to pay to the Assignor all payments that the Manufacturer may be required to make in respect of each Item of Equipment under the Purchase Agreement unless and until the Manufacturer has received written notice from the Assignee that the Assignee has declared the Lease Agreement to be in default, whereupon the Manufacturer will, until the Assignee notifies the

Manufacturer in writing that no Event of Default exists under the Lease Agreement, make any and all payments that Manufacturer may be required thereafter to make in respect of each Item of Equipment under the Purchase Agreement and the right to receive which has been assigned under the Assignment, directly to the Assignee;

(iv) the Manufacturer agrees promptly to notify the Assignee in writing of any assignment of the Manufacturer's rights and obligations under the Purchase Agreement, or the Manufacturer's title to the Items of Equipment, to a third party in accordance with Section 18 of the Purchase Agreement; and

(v) from and after the delivery of the Items of Equipment and payment in full therefor pursuant to the terms of the Purchase Agreement, the Manufacturer will not assert any lien or claim that arose prior to such delivery or payment against the Items of Equipment or any part thereof.

The Manufacturer hereby represents and warrants that:

(a) the Manufacturer is a corporation duly organized and validly existing in good standing under the laws of the State of New York;

(b) the execution, delivery and performance of the Purchase Agreement and this Consent, Agreement and Limited Joinder have been duly authorized by all necessary corporate action on the part of the Manufacturer, do not require any shareholder approval and do not contravene the Manufacturer's Articles of Incorporation or By-laws or any indenture, credit agreement or other contractual agreement to which the Manufacturer is a party or by which it is bound; and

(c) the Purchase Agreement constitutes a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms and this Consent, Agreement and Limited Joinder is a binding obligation of the Manufacturer enforceable against the Manufacturer in accordance with its terms.

Any notices, demands, requests, consents, approvals, other communications or payments required under this Consent, Agreement and Limited Joinder shall be given or made in accordance with Section 3.4 of the Assignment.

It is agreed that "Purchase Price" means \$32,485,325.00.

It is understood that the execution by the Manufacturer of this Consent, Agreement and Limited Joinder is subject to the condition that concurrently with the delivery of the

Items of Equipment to the Assignee on the Delivery Date the Assignee will lease the Items of Equipment to the Assignor under the Lease Agreement.

The Manufacturer joins in the Assignment solely for the purpose of obtaining the benefits of the provisions in the Assignment relating to the Manufacturer, including without limitation Sections 3.1(d) and (e), 3.2, 3.4(b), 3.5, 4.1 and 7.4.

IN WITNESS WHEREOF and intending to be legally bound hereby, the undersigned have executed this Consent, Agreement and Limited Joinder as of the date first written above.

GENERAL ELECTRIC COMPANY

By: _____

Name: *W.S. Butler*

Title: *GENERAL MANAGER - TRANSPORTATION*

SYSTEMS MARKETING AND SALES DEPARTMENT

CONSOLIDATED RAIL CORPORATION

By: _____

Name:

Title:

NBB PENNSYLVANIA LEASE CO., LTD.

By: _____

Name:

Title:

IN WITNESS WHEREOF and intending to be legally bound hereby, the undersigned have executed this Consent, Agreement and Limited Joinder as of the date first written above.

GENERAL ELECTRIC COMPANY

By: _____
Name:
Title:

CONSOLIDATED RAIL CORPORATION

By: Thomas J. McFadden
Name: Thomas J. McFadden
Title: Manager - Financing

NBB PENNSYLVANIA LEASE CO., LTD.

By: Leonard B. Shavel
Name: Leonard B. Shavel
Title: Attorney-in-fact

COMMONWEALTH OF PENNSYLVANIA

_____)

COUNTY OF ERIE)

ss.

On this 12th day of April, 1989, before me personally appeared W. S. Butler, to me personally known, who, being by me duly sworn, did say that he is General Manager, Transportation Systems Marketing and Sales Department, of General Electric Company, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Betty A. Manucci
NOTARY PUBLIC

My commission expires:

NOTARIAL SEAL
BETTY A. MANUCCI, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE COUNTY
MY COMMISSION EXPIRES JAN 15, 1991
Member, Pennsylvania Association of Notaries



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS,

That I, Hisaaki Iekura, Representative Director of NBB PENNSYLVANIA LEASE CO., LTD. ("NBB Pennsylvania") do hereby constitute and appoint Eric J. Lucas, Peter Turbott, James Fantaci, Robert L. Falkenberg and Leonard B. Shavel jointly or any of them individually, in connection with the purchase by NBB Pennsylvania from General Electric Company (the "Manufacturer") of twenty-five diesel electric locomotives (the "Items of Equipment") and the subsequent lease thereof to Consolidated Rail Corporation (the "Lessee"), as my true and lawful agents and attorneys-in-fact, each with full power of substitution and revocation, to perform each and all of the following acts for and on behalf of me as Representative Director of NBB Pennsylvania in connection with the purchase and lease of the Items of Equipment as aforesaid:

1. to execute the Lease Agreement between NBB Pennsylvania, as lessor, and the Lessee dated as of April 14, 1989 and to deliver or cause to be delivered such Lease Agreement to the Interstate Commerce Commission for recordation pursuant to 49 U.S.C. § 11303 (1988) and to the Registrar General of Canada for recordation under Section 90 of the Railway Act of Canada and for distribution to the parties at closing in connection therewith;
2. to execute Lease Supplement No. 1 dated April 14, 1989 between NBB Pennsylvania, as lessor, and the Lessee and to deliver or cause to be delivered such Lease Supplement No. 1 to the Interstate Commerce Commission for recordation pursuant to 49 U.S.C. § 11303 (1988) and to the Registrar General of Canada for recordation under Section 90 of the Railway Act of Canada and for distribution to the parties at closing in connection therewith;
3. to execute the Assignment Agreement dated as of April 14, 1989 between the Lessee and NBB Pennsylvania and the Consent, Agreement and Limited Joinder dated as of April 14, 1989 among the Manufacturer, the Lessee and NBB Pennsylvania (together, the "Agreements") and to deliver or cause to be delivered such Agreements to the Interstate Commerce Commission for recordation pursuant to 49 U.S.C. § 11303 (1988) and to the Registrar General of Canada for recordation under Section 90 of the Railway Act of Canada and for distribution to the parties at closing in connection therewith;

4. to execute the Bank Security Agreement dated as of April 14, 1989 between NBB Pennsylvania and Barclays Bank PLC, as lender, (the "Agreement") and to deliver or cause to be delivered such Agreement to the Interstate Commerce Commission for recordation pursuant to 49 U.S.C. § 11303 (1988) and to the Registrar General of Canada for recordation under Section 90 of the Railway Act of Canada and for distribution to the parties at closing in connection therewith;
5. to execute and deliver a Participation Agreement and Loan Agreement in connection with the Items of Equipment;
6. to execute and deliver any and all such agreements, undertakings, consents and other documents, instruments and papers as may be necessary in connection therewith, and otherwise to do any and all other acts and things that may be necessary in such connection and to accept delivery of the Items of Equipment and any and all such agreements, undertakings and other documents, instruments and papers from the Manufacturer or the Lessee or anybody else whomsoever in connection with the purchase and lease of the Items of Equipment as aforesaid; and
7. to appoint one or more sub-attorneys to act on behalf of NBB Pennsylvania with respect to all the powers granted hereinabove, fully to effect the powers hereby granted, all on behalf of NBB Pennsylvania.

And I do hereby ratify all that such agents and attorneys-in-fact may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand as of this day of April, 1989.


Name: Hisaaki Iekura
Title: Representative Director
NBB PENNSYLVANIA LEASE
CO., LTD.