

9-114A050

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16307

RECORDATION #0 FILED 1423

APR 24 1989 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

April 24, 1989

RE
Date 4/24/89
Fee \$ 13
IOC Washington, D. C.

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and three counterparts of an Interim User Agreement, dated as of April 1, 1989, among General Electric Company ("Manufacturer"), The New York, Susquehanna and Western Railway Corporation ("Interim User"), and CSX Transportation, Inc. ("Interim User"), a primary document.

The names and addresses of the parties to the enclosed Interim User Agreement are as follows:

MANUFACTURER: General Electric Company
Transportation Systems
Business Operations
2901 East Lake Road
Erie, PA 16531

INTERIM USER: The New York Susquehanna
and Western Railway
Corporation
47 Bergen Turnpike
Ridgefield Park, NY 07660

INTERIM USER: CSX Corporation
100 North Charles Street
Baltimore, MD 21201

APR 24 2 15 PM '89
MOTOR OPERATING UNIT

A general description of the railroad locomotives covered by the enclosed document is attached hereto as Schedule I.

File Maser

OC

Letter to Secretary McGee
Page Two
April 24, 1989

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

Also enclosed is a remittance in the amount of \$13.00 for the required recording fee.

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

PRIMARY DOCUMENT

Interim User Agreement, dated as of April 1, 1989, among General Electric Company ("Manufacturer"), The New York, Susquehanna and Western Railway Corporation ("Interim User") and CSX Transportation, Inc. ("Interim User"), relating to twenty (20) General Electric Dash 8-40B, 4-axle, 4-motor, turbocharged Diesel Electric Road Switcher Locomotives, bearing identification marks "NYSW" and Road Nos. 4010, 4012, 4014, 4016, 4018, 4020, 4022, 4024, 4026, 4028, 4030, 4032, 4034, 4036, 4038, 4040, 4042, 4044, 4046, and 4048.

Respectfully submitted,

GENERAL ELECTRIC COMPANY

BY:



John K. Maser III
Attorney-In-Fact

004/207-B
Enclosures

Schedule I

Description of Locomotives

<u>Type of Equipment</u>	<u>Number</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric, Dash 8-40B, 4-axle, 4-motor, turbocharged Diesel Electric Road Switcher Locomotives	20	Marked "NYSW" on both sides of locomotives	4010, 4012, 4014, 4016, 4018, 4020, 4022, 4024, 4026, 4028, 4030, 4032, 4034, 4036, 4038, 4040, 4042, 4044, 4046 and 4048

Interstate Commerce Commission
Washington, D.C. 20423

4.24.89

OFFICE OF THE SECRETARY

John K. Maser III
Donelan, Cleary, Wood & Maser.P.C.
1275 K. St. N.W. Suite 850
Washington, D.C. 20005

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 **4.24.89**, at **2:20pm**, and assigned recordation number(s). **16307**

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

16307
RECORDATION NO. FILED 1425

APR 24 1989 -2 20 PM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

DATED AS OF APRIL 1, 1989

AMONG

GENERAL ELECTRIC COMPANY

CSX TRANSPORTATION, INC.

AND

THE NEW YORK, SUSQUEHANNA AND
WESTERN RAILWAY CORPORATION

COVERING

TWENTY (20) 4,000 H.P. ROAD SWITCHER TYPE LOCOMOTIVES

CEWP:CON/INT-USER

DRAFT 1 - MARCH 29, 1989 - RFH/MM

THIS AGREEMENT, dated as of April 1, 1989, among GENERAL ELECTRIC COMPANY, a New York corporation (Manufacturer), THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, a New Jersey corporation (NYS&W), and CSX TRANSPORTATION, INC., a Virginia corporation (CSXT);

WITNESSETH:

Pursuant to that certain Purchase Agreement dated April 21, 1989 by and between Manufacturer and NYS&W incorporated herein as Exhibit A and which is made a part hereof, the Manufacturer has agreed (among other things) to construct and to deliver to NYS&W at Erie, Pennsylvania, and NYS&W has agreed to accept and pay for, twenty (20) 4,000 H.P. road switcher type locomotives, described as Dash 8-40B, 4-axle, 4-motor, turbocharged Diesel Electric Road Switcher Locomotives, and bearing road numbers 4010, 4012, 4014, 4016, 4018, 4020, 4022, 4024, 4026, 4028, 4030, 4032, 4034, 4036, 4038, 4040, 4042, 4044, 4046, 4048, inclusive (the Locomotives). Pursuant to an Assignment of Purchase Agreement dated as of _____, NYS&W has assigned to CSXT its rights and obligations under said Purchase Agreement.

CSXT intends to finance the purchase of the Locomotives from the Manufacturer pursuant to one or more permanent forms of financing and to lease or sublease the Locomotives to NYS&W but deliveries of the Locomotives are scheduled to begin on or about April 21, 1989, and CSXT will not have completed said financing arrangement(s) by that time. CSXT represents that such financing arrangement(s) will be established, however, on or before June 30, 1989. CSXT, in order that NYS&W may use the Locomotives pending establishment of such fi-

nancing arrangements, desires that NYS&W may have temporary custody and possession of the Locomotives upon their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to grant such temporary custody and possession to NYS&W upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to NYS&W and CSXT, and NYS&W and CSXT accept from the Manufacturer, the Locomotives as of the date each of them is delivered to NYS&W and CSXT at the Manufacturer's plant, Erie, Pennsylvania, for the period ending on the earlier of June 30, 1989, or the date of establishment of said financing arrangement(s), whichever is the earlier time. At the end of such period, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned, except for those provisions that are expressly stated to survive termination.

Upon delivery of each Locomotive, NYS&W's and CSXT's representative shall execute a certificate of acceptance, in the form of Exhibit C to the Purchase Agreement, acknowledging the receipt of delivery of each such Locomotive under this Agreement. Title to the Locomotives shall remain in the Manufacturer with NYS&W's and CSXT's rights and interests therein being solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be affected only at the time of delivery of bills of sale in the form of Exhibit D to the Purchase Agreement. NYS&W and CSXT shall do such acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the locomotives, including, but not limited to, filing with the Interstate Commerce Commission.

CSXT shall place a security deposit with the Manufacturer pursuant to the following formula:

(a) on May 4, 1989, CSXT shall deposit a sum equal to the number of Locomotives delivered (Erie, PA) as of the end of that day, multiplied by the price therefor plus any obligations agreed to be paid by NYS&W under the above-referenced Purchase Agreement;

(b) on May 11, 1989, CSXT shall deposit a sum equal to the number of Locomotives delivered and accepted (Erie, PA) as of the end of that day, multiplied by the price therefor plus any obligations agreed to be paid by NYS&W under the above-referenced Purchase Agreement;

(c) as to any Locomotives delivered and accepted (Erie, PA) after May 11, 1989, CSXT shall deposit the price plus other obligations within twenty-four hours of delivery.

The amounts deposited by or for CSXT above will be retained by the Manufacturer as security for the payment to the Manufacturer of the final invoiced cost of the Locomotives delivered under the permanent financing. During the period of deposit the Manufacturer will have the full use of the funds on deposit. Upon receipt of payment for such Locomotives under the permanent financing, the Manufacturer agrees that the amount on deposit will be repaid to CSXT without interest. It is also agreed that CSXT's deposit in the security fund shall give CSXT and/or NYS&W no ownership in the Locomotives and shall in no way be considered a payment or partial payment therefor.

NYS&W and CSXT shall permit no liens or encumbrances of any kind to attach to the Locomotives and they shall:

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and

(b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Manufacturer, because of the Manufacturer's ownership or because of the use, operation, management, maintenance, repair or handling of the Locomotives by NYS&W during the term of this Agreement. NYS&W's and CSXT's obligations contained in this paragraph shall survive the termination of this Agreement.

NYS&W and CSXT shall, at their own expense, keep and maintain the locomotives in good order and running condition applying the Manufacturer's recommended normal maintenance standards and procedures, and shall, at their option; repair or promptly pay to the Manufacturer the purchase price (as set forth in the Purchase Agreement) in each of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

NYS&W and CSXT acknowledge that each takes its possessory and/or ownership interest in the Locomotives subject to Sections 6 and 8 of the Purchase Agreement relating to Warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.

Prior to the delivery of each such Locomotive under this Agreement, each such Locomotive shall be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of the financing arrangement, as hereinbefore mentioned, the following legend in letters not less than one inch in height:

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

NYS&W and CSXT hereby agree to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Locomotives. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotive, NYS&W shall immediately cause the same to be restored or replaced.

In the event NYS&W and/or CSXT fail to purchase the Locomotives in accordance with the Purchase Agreement, Manufacturer may, by its agents, enter upon the premises of the NYS&W and/or CSXT or other premises where the Locomotives may be and take possession of all or any such Locomotives and thenceforth hold, possess and enjoy the same free from any right of NYS&W and/or CSXT, or its successors or assigns, to use the Locomotives for any purposes whatsoever; and to sell and deliver the Locomotives to others upon such terms as Manufacturer may see fit in its sole discretion, it being understood and agreed that NYS&W and/or CSXT shall be liable to Manufacturer for (i) an amount equal to any difference in the price paid by such other parties and the purchase price due under the aforementioned Purchase Agreement, plus (ii) an amount equal to all expenses incident to such sale, including but not limited to the expenses of withdrawing the Locomotive from the service of NYS&W and/or CSXT, providing for the care and custody of such Locomotives, preparing such Locomotives for sale, and selling such Locomotives. NYS&W and/or CSXT shall pay from time to time upon demand by Manufacturer the foregoing amounts.

NYS&W, CSXT and Manufacturer represent and warrant that:

- Each is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement; and has power and authority to own its properties and carry on its business as now conducted;
- The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Agreement is a valid and binding obligation of each enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against each in accordance with its terms;
- The rights of Manufacturer as herein set forth and the title of Manufacturer to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon NYS&W and CSXT;
- No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Agreement or for the validity and enforceability thereof or the bailment of the Locomotives hereunder on the other terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained, and if any such shall hereafter be required, they will promptly be obtained.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives, may be assigned by the Manufacturer and reassigned by any assignee at any time or from

time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranty or indemnity or obligations contained in this Agreement or the Purchase Agreement. In the event the Manufacturer shall assign its rights to receive the payments for the Locomotives, and CSXT shall receive written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by CSXT for the Locomotives or in connection therewith shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to CSXT.

In the event of any such assignment by the Manufacturer of its rights to receive any such payments, the rights of such assignee to such payments as may be assigned shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to NYS&W or CSXT by the Manufacturer. Any and all such obligations, however arising, shall be and remain enforceable by NYS&W or CSXT, or their successors and assigns, only against the Manufacturer and its successors and assigns (other

than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

NYS&W and CSXT agree with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer of the Locomotives as contemplated by this Agreement, shall not relieve NYS&W and CSXT of their obligations to accept, take and pay for the Locomotives in accordance with the terms of the Purchase Agreement.

THIS AGREEMENT shall be governed by and construed in accordance with the laws of the State of New York.

Attest: [CORPORATE SEAL]

THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION

By: _____
Assistant Secretary

By: _____

Attest: [CORPORATE SEAL]

CSX TRANSPORTATION, INC.

By: _____
Assistant Secretary

By: _____

Attest: [CORPORATE SEAL]

GENERAL ELECTRIC CORPORATION COMPANY

By: W. D. W. W. W.
Assistant Secretary

By: Royce N. Jones

State of New York)
) ss:
City of)

On this _____ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____, of THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, that said instrument was executed on behalf of said 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 said corporation.

[NOTARIAL SEAL]

Notary Public

My Commission expires:

State of Maryland)
) ss:
City of Baltimore)

On this _____ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____, of CSX TRANSPORTATION, INC., that said instrument was executed on behalf of said 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 said corporation.

[NOTARIAL SEAL]

Notary Public

My Commission expires:

State of Pennsylvania)
) ss:
County of Erie)

On this 21st day of April, 1989, before me personally appeared Royce H. Tonjes, to me personally known, who, being by me duly sworn, says that he is Manager-Finance Operation, of GENERAL ELECTRIC COMPANY, that said instrument was executed on behalf of said 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 said corporation.

[NOTARIAL SEAL]

Mary Jo Casinelli

Notary Public

My Commission expires:
MARY JO CASINELLI, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE COUNTY
MY COMMISSION EXPIRES JUNE 24, 1989

Member, Pennsylvania Association of Notaries

State of New York)
City of Cooperstown) ss:

On this 19th day of April, 1989, before me personally appeared C. DAVID SOULE, to me personally known, who, being by me duly sworn, says that he is Executive Vice President THE NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CORPORATION, that said instrument was executed on behalf of said 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 said corporation.

[NOTARIAL SEAL]

[Signature]
Notary Public
DORIS J. PERINO
NOTARY PUBLIC IN THE STATE OF NEW YORK
QUALIFIED IN WEST LANSING COUNTY NO. 402766
MY COMMISSION EXPIRES MAR. 30, 1991

My Commission expires:

State of Maryland)
City of Baltimore) ss:

On this 17th day of April, 1989, before me personally appeared Dennis J. Chaswell to me personally known, who, being by me duly sworn, says that he is AVP & TREASURER EQUIPMENT UNIT of CSX TRANSPORTATION, INC., that said instrument was executed on behalf of said 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 said corporation.

[NOTARIAL SEAL]

[Signature]
Notary Public

My Commission expires:

MY COMMISSION EXPIRES JULY 1, 1990

State of)
County of) ss:

On this ___ day of _____, 1989, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of GENERAL ELECTRIC CORPORATION, that said instrument was executed on behalf of said 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 said corporation.

[NOTARIAL SEAL]

Notary Public

My Commission expires:

EXHIBIT A

THIS PURCHASE AGREEMENT is entered into this ___ day of _____, 1989 between GENERAL ELECTRIC COMPANY, acting through its Transportation Systems Business Operations, having offices at 2901 East Lake Road, Erie, Pennsylvania 16531 ("Seller") and THE NEW YORK, SUSQUEHANNA & WESTERN RAILWAY CORPORATION, having offices at 1 Railroad Avenue, Cooperstown, New York 13326 ("Buyer"). Seller and Buyer agree as follows:

1. Purchase of Products

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the following equipment ("Products"):

<u>Quantity</u>	<u>Description of Products</u>
Twenty (20)	Model Dash 8-40B 4000 HP for traction, 4-axle, 4-motor turbocharged diesel electric road switcher locomotives bearing the Road Numbers listed on Exhibit A with the features listed in Exhibit B.

2. Delivery

a. Products will be delivered FOB Seller's factory in Erie, Pennsylvania (the "Seller's Factory"). Title will pass at the time of delivery to the common carrier at such delivery point. Risks of loss or damage pass to Buyer on delivery. Upon delivery, Buyer will furnish Seller a certificate executed by its authorized agent, stating that the Products have been delivered and are accepted without reservation on Buyer's behalf (the "Certificate of Acceptance"), a copy of which Certificate of Acceptance is attached hereto as Exhibit C. Shipment to the destination specified by Buyer will be arranged freight collect.

b. The following delivery schedule will apply:

All Products will be delivered by May 31, 1989.

This delivery date is approximate and is based upon prompt receipt of all necessary information from Buyer.

3. Price and Payment

a. The price for each Product is \$ _____ for a total contract price of \$:

b. Payment shall be made upon delivery. If Seller is ready to deliver and Buyer requests delay, Seller may place Products in storage at the expense of Buyer and, in such event, all risk of loss or damage shall be borne by Buyer.

c. In addition to the price specified above, Buyer shall pay the gross amount of any sales, use, excise, value-added or other similar tax applicable to the price, sale or delivery of any Products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with a tax-exemption certificate acceptable to the taxing authorities.

4. Excusable Delays

Seller shall not be liable for delays in delivery or performance or for failure to manufacture, deliver or perform due to (i) causes beyond its reasonable control, or (ii) acts of God, acts of Buyer, acts of civil or military authority, governmental priorities, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (iii) inability on account of causes beyond the reasonable control of Seller to obtain necessary materials, components, services or facilities. In the event of any such delay, there will be no termination and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

5. Patents

a. Seller warrants that Products furnished hereunder, 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 may 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 any and all damages awarded therein against Buyer and direct costs (including attorney's fees) incurred by Buyer in connection with such suit or proceeding. In case any Product or part thereof is in such suit held to constitute such an infringement and the use of said Product or part is enjoined, Seller shall, at its expense and option, either procure for Buyer the right to continue using said Product or part, or replace same with a non-infringing Product or part, or modify same so it becomes non-infringing, or remove the Product and refund the purchase price (less reasonable depreciation for any period of use) and pay any transportation and other out of pocket costs incurred by Buyer in connection with returning the Product or part to Seller. The foregoing states the entire liability of the Seller for patent infringement by said Products or any part thereof.

b. The preceding paragraph shall not apply to any Product or part specified by Buyer (that is not regularly offered by Seller) or manufactured to Buyer's design, or to the use of any Product furnished hereunder in conjunction with any other Product in a combination not furnished by Seller as a part of this transaction. As to any such Product, part, or use in such combination, Seller assumes no liability whatsoever for such patent infringement.

6. Warranty

a. The Seller warrants to the Buyer that each Product delivered by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind designated 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). **NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE SHALL 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 first occur, that the Product delivered hereunder does not meet the warranties specified above, and the Buyer notifies the Seller promptly, the Seller after verification as to condition and usage shall correct any defect including non-conformance with specifications, at its option, either by repairing any defective

part or parts made available to the Seller, or by making available at the Seller's plant or warehouse, a repaired or replacement part. If requested by the Seller, the Buyer will ship the defective part or parts, with shipping charges for the account of Seller, to the plant or warehouse designated by the Seller.

b. The liability of the Seller to the Buyer (except as to title) arising out of the supplying of any Product hereunder or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Product as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate provided, however, that this provision is not intended to limit Seller's tort liability to third parties. The Seller shall have no liability for any Product 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 the Buyer, or any third party other than the Seller. The foregoing shall constitute the sole remedy of the Buyer and the sole liability of the Seller.

c. The Seller shall deliver to Buyer a warranty bill of sale substantially in the form of Exhibit D conveying good and marketable title to Buyer free and clear of all liens, claims, charges or encumbrances of any kind whatsoever arising on or before delivery by, through or under the Seller. Seller shall promptly remove (i) any Federal, state or other tax lien arising prior to delivery by, through or under the Seller and (ii) any other lien (including mechanics liens) on or any security interest in or claim to any Product arising prior to delivery by, through or under the Seller and, in the event of Seller's failure to promptly remove same, Seller shall indemnify Buyer against costs incurred by Buyer (including attorney's fees) in removing same.

7. Disclosure of Information

Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of Seller.

8. Limitations of Liability and Indemnities

a. Unless otherwise agreed in writing by a duly authorized representative of Seller, Products sold hereunder are not intended for use in connection with any nuclear facility or activity. If so used and any nuclear damage, injury or contamination occurs, Seller disclaims all liability of every kind, and Buyer shall indemnify Seller from any such liability including Seller's negligence.

b. In no event, whether as a result of breach of contract, warranty or tort (including negligence), shall Seller or its suppliers be liable to Buyer for any consequential or incidental damages including, but not limited to loss of profit or revenues, loss of use of the Products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of Buyer's customers for consequential or incidental damages.

c. Except as provided in Section 5 ("Patents"), Seller's liability to Buyer on any claim of any kind (including negligence) 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, shall in no case exceed the price of the specific Product 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 Section 6 ("Warranty").

d. The invalidity, in whole or part of any of the foregoing paragraphs will not affect the remainder of such paragraphs or any other paragraph in this Section.

9. General

a. All notices in connection with this Agreement shall be transmitted by first class mail letter, telex, or telephone transmitted facsimile, directed by one party to the other at its respective address as follows:

If to Seller: GENERAL ELECTRIC COMPANY
Transportation Systems Business Operations
2901 East Lake Road
Erie, PA 16531
ATTENTION: General Manager-Transportation
Systems Marketing and Sales Department

If to Buyer: THE NEW YORK SUSQUEHANNA & WESTERN RAILWAY
CORPORATION
47 Bergen Turnpike
Ridgefield Part, New Jersey 07660
ATTENTION: D. Powell

Either party may, by written notice to the other party, change the address to which requests or notices may be directed. All notices shall be effective when received.

b. This Agreement constitutes the entire and only agreement between the parties relating to the subject matter hereof and supersedes and cancels all agreements, negotiations, commitments and representations in respect thereto made prior to the date of this Agreement. Any representation, promise, course of dealing or trade usage not contained or referenced herein will not be binding on Seller. No modification, amendment, rescission or waiver of or other change to this Agreement shall be binding on Seller unless assented to in writing by Seller's authorized representative.

c. The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendment hereto shall be governed by the law of the State of New York.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by its authorized representative and its corporate seal to be hereto duly affixed this ___ day of _____, 1989.

THE NEW YORK, SUSQUEHANNA &
WESTERN RAILWAY CORPORATION

GENERAL ELECTRIC COMPANY

By _____

By _____

Title _____

Title _____

[Corporate Seal]

[Corporate Seal]

Attest: _____

Attest: _____

Title _____

Title _____

EXHIBIT A

ROAD NUMBERS

4010
4012
4014
4016
4018
4020
4022
4024
4026
4028
4030
4032
4034
4036
4038
4040
4042
4044
4046
4048

EXHIBIT B

FEATURES

NYS&W DASH 8-40B LOCOMOTIVES - 1989 DELIVERY

- o AUTO & INDEPENDENT BRAKE VALVE EXHAUST PIPED BELOW FLOOR
- o PC KNOCKDOWN WITH POWER CIRCUITS REMAINING ENERGIZED
- o SAFETY CONTROL WITH 15" FOOT PEDAL AND C.O. COCK (SEAL-OPEN)
- o DOUBLE PORTED CUTOFF COCK WITH HB-5 RELAY AIR VALVE
- o A-1 CHARGING CUTOFF PILOT VALVE FOR BREAK-IN-TWO
- o REMOVABLE BRAKE VALVE HANDLES
- o STANDARD CLEANING OF AIR BRAKE PIPING
- o WABCO 3 CYLINDER AIR COOLED AIR COMP (NO CHARGE)
- o AIR COMP. SYNCH WITH DUAL CONTROL PRESSURE SWITCH
- o LUBE OIL SAMPLING VALVE (MALE QUICK-DISCONNECT)
- o SALEM BRAKE PIPE FLOW INDICATOR
- o ONE (1) EXTRA SALEM TEST FITTING
- o ONE (1) SALEM 824-176 AND ONE (1) SALEM 818-176 FILTERS
- o SALEM 880-20 AUTOMATIC DRAIN VALVES
- o LESLIE SL-3LR HORN
- o PROVISION FOR CAB SIGNAL
- o ELECTRONIC CAB SIGNAL ALARM
- o PROVISION FOR E.O.T. GLENA YRE #GL6624, WITH SINCLAIR #321A
- o ANTENNA AND TWO (2) EXTRA BRACKETS
- o AUTOMATIC 30 SECOND TIMED SANDING
- o PERMANENT MU JUMPER CABLE WITH DUMMY RECEPTACLES
- o MAIN RESV. MU HOSE - WIRE REINFORCED
- o BRAKE CYLINDER HOSE - 3/4 IN. THREAD
- o MU WALKWAYS AND LIGHTS AND "BREAK AWAY" CHAIN POSTS
- o EXTENDED RANGE DYNAMIC BRAKING
- o SELF LOAD
- o TRAINLINED BRAKE WARNING/WHEELSLIP BUZZER
- o AUTO GROUND RELAY RESET (MICROPROCESSOR CONTROL)

EXHIBIT B (Cont'd)

FEATURES

NYS&W DASH 8-40B LOCOMOTIVES - 1989 DELIVERY

- o GROUND RELAY RESET TRAINLINED (PIN #26)
- o INDIVIDUAL MOTOR CUTOUT SWITCHES ("PULL-TO-THROW")
- o TRACTION MOTOR QUICK DISCONNECT
- o TRACTION MOTOR QUICK INSPECTION BOTTOM COVER
- o DEKA DL-U450 BATTERIES, WITH INDICATING PLATE
- o ENGINE AIR FILTERS TO BE AAF BAGGIES
- o FUEL OIL HEATER, GE 60,000 BTU WITH AMOT VALVE
- o LUBE OIL SAMPLING VALVE (MALE QUICK-DISCONNECT)
- o OGANTZ AUTOMATIC WATER DRAIN (MODEL PP45SA)
- o TURBO, FUEL AND LUBE OIL GAUGES @ START STATION
- o HIGH MOUNTED BRAKE CYLINDERS
- o CENTER BEARING OIL CUPS
- o BRAKE SHOE HEAD WITH REJECT FEATURE
- o AXLE ALTERNATOR TO HAVE ANTI-SHOCK MOUNT
- o PROVISION FOR WILLY VOGEL FLANGE LUBRICATOR SYSTEM
- o THREE (3) CAB SEATS, C&C #1606401/302 (WITH ARM RESTS) WITH TRIPODS, C&C #1915300
- o PULSE 48H8C-3 RECORDER AND S1-80-00-W SPEED INDICATOR, WITH MUX-02, RM-01 AND GE AXLE ALTERNATOR
- o PROVISION FOR STRAIGHT AIR DEFROSTING - REAR WINDOWS
- o TWO (2) SALEM 652 WIND DEFLECTORS (MIRROW @ BOTTOM)
- o HARMON SELECT-A-POWER
- o DIGITAL THROTTLE CLOCK (TESCO #T-60180)
- o FUSEE AND TORPEDO HOLDER
- o VORTACOOOL VR-770-FSH WATER COOLER
- o POWER PARTS #PPC-10722 CARD HOLDER
- o FIRST AID KIT HOLDER

EXHIBIT B (Cont'd)

FEATURES

NYS&W DASH 8-40B LOCOMOTIVES - 1989 DELIVERY

- o TOWEL DISPENSER, SCOTT #995-0
- o TOOL BOARD
- o PLEXIGLASS CLIPBOARD HOLDER (PPC #14813)
- o COMPLETE RADIO INSTALLATION, MODEL MCX 100
- o REMOTE SPEAKER (ALTEC #MM2F) WITH VOLUME CONTROL
- o TYPE "E" COUPLER
- o NC-390 DRAFT GEAR
- o FOUR (4) RED MARKER LIGHTS, TRANSLITE #FM5158
- o TWO (2) 20# AMEREX #423 FIRE EXTINGUISHERS
- o PRIME 192-6 TOILET WITH ANDREWS FITTINGS
- o TOILET TISSUE HOLDER
- o WEIGHT 287,000#, +/-2%; 1% BALANCE BETWEEN ENDS
- o SNOW PLOW - MEDIUM (35 IN)
- o ANTI-CLIMBER ON #1 END
- o BOTTOM SIDES STEPS - 18 TO 19 IN. ABOVE RAIL
- o HOOK SLOTS PROVIDED IN BOTH END PLATES
- o KNUCKLE BRACKETS (2) ON #2 END PLATE
- o 3,900 GALLON FUEL TANK PLUS 100 GALLON RETENTION TANK
- o TELETRAC MODEL FT212 FUEL MEASURING SYSTEM
- o TWO (2) PNUEMERCATOR FUEL GAUGES
- o TWO (2) HOUSTON MODEL H3300 FUEL FILLS WITH 3300E SHUTOFF
- o POLYURETHANE PAINT PLATFORM AND ABOVE
- o 1,000 GALLONS FUEL OIL & BORATE WATER TREATMENT
- o LOCOMOTIVE TO BE SHIPPED WITH TBN 13 LUBE OIL
- o XEROX-REPRODUCIBLE TRACINGS

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

This is to certify that the following equipment covered by that certain Purchase Agreement dated _____, 1989 has been accepted by The New York, Susquehanna & Western Railway Corporation this ___ day of _____, 1989:

Description of Equipment

<u>Number of Units</u>	<u>Description</u>	<u>Road Numbers</u>
	Model Dash 8-40B 4-Axle, 4-Motor Turbocharged Diesel Electric Road Switcher Locomotives	

THE NEW YORK, SUSQUEHANNA & WESTERN
RAILWAY CORPORATION

By _____

Title _____

EXHIBIT D

WARRANTY

BILL OF SALE

NO. _____

GENERAL ELECTRIC COMPANY (the "Builder") in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by THE NEW YORK, SUSQUEHANNA & WESTERN RAILWAY CORPORATION ("Purchaser"), pursuant to that certain Purchase Agreement dated _____, 1989 (the "Purchase Agreement"), the receipt and sufficiency of which consideration is hereby acknowledged, does hereby sell, assign, transfer and set over unto Purchaser, its successors and assigns, all the right, title and interest of the Builder in the following units of railroad equipment which have been delivered by the Builder pursuant to the Purchase Agreement:

NUMBER OF UNITS	DESCRIPTION OF EQUIPMENT	ROAD NUMBERS
	Model Dash 8-40B 4-Axle, 4-Motor Turbocharged Diesel Electric Road Switcher Locomotives	

The Builder hereby warrants to the Purchaser that at the time of delivery of each of said units of railroad equipment under the Purchase Agreement the Builder has and hereby conveys good and marketable title thereto and good and lawful right to sell each such unit and that title to each such unit was free and clear of all claims, liens, security interest or any other encumbrances arising by, through and under Builder.

The Builder covenants and agrees that it will defend such title to each such unit of railroad equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of each such unit by the Builder under the Purchase Agreement.

IN WITNESS WHEREOF, the Builder has caused this instrument to be signed by a duly authorized representative and its corporate seal to be hereto affixed, duly attested, this ___ day of _____, 1989.

ATTEST:

GENERAL ELECTRIC COMPANY

Attesting Secretary

By _____

Title _____

AFFIDAVIT

This will certify that I have compared the attached copies of the Interim User Agreement, dated as of April 1, 1989, among General Electric Company, The New York, Susquehanna and Western Railway Corporation, and CSX Transportation, Inc., plus the attached exhibits thereto, with the original document and attached exhibits, and I have found the copies of the Interim User Agreement and the attached exhibits thereto to be complete and identical in all respects to the original documents.

Dated at Washington, D.C. this 24th day of April, 1989.



JOHN K. MASER III

District of Columbia, ss:

On this 24th day of April, 1989,
before me, personally appeared John
K. Maser III, to me known to be the
person described in and who executed
the foregoing instrument and he
acknowledged that he executed the
same as his free act and deed.



NOTARY PUBLIC, D.C.

My Commission expires: 9/30/91