



NORFOLK SOUTHERN

Norfolk Southern Corporation
Law Department
8 North Jefferson Street
Roanoke, Virginia 24042
703 981-5369

RECORDATION NO **16470** FILED 1423

AUG 10 1989 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

James R. Paschall
General Attorney

August 8, 1989

VIA AIRBORNE EXPRESS

9-222A005

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., N. W.
Washington, D. C. 20423

Re: Filing for Recordation of Lease of Two Locomotives
from Norfolk and Western Railway Company to BPM
Rail, Inc. d/b/a Louisville, New Albany &
Corydon Railroad

Dear Ms. McGee:

Enclosed are five duplicate originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This document is a lease, a primary document, dated August 2, 1989.

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

Lessor: Norfolk and Western Railway Company
8 N. Jefferson Street
Roanoke, VA 24042-0041

Lessee: BPM Rail, Inc.
d/b/a Louisville, New Albany & Corydon Railroad
P. O. Box 10
Corydon, IN 47112

A description of the equipment covered by the document follows: two GM EMD Model SW-1200 diesel electric locomotives numbered NW 1230 and NW 1231.

A fee of \$13.00 is enclosed.

Please return any copies not needed by the Commission for recordation with the appropriate date and number stamp to: James R. Paschall, General Attorney, Norfolk Southern Corporation, 8 N. Jefferson Street, Roanoke, VA 24042-0041.

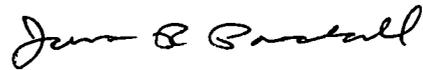
REC'D
AUG 10 11 29 AM '89
MAIL ROOM UNIT

Ms. Noreta R. McGee
August 8, 1989
Page Two

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

Lease between Norfolk and Western Railway Company, 8 N. Jefferson Street, Roanoke, VA 24042, Lessor, and BPM Rail, Inc. d/b/a Louisville, New Albany & Corydon Railroad, P. O. Box 10, Corydon, IN 47112, Lessee, dated August 2, 1989 and covering two GM EMD Model SW-1200 diesel electric locomotives numbered NW 1230 and NW 1231.

Very truly yours,



James R. Paschall

JRP/bg

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/11/89

OFFICE OF THE SECRETARY

James R. Paschall
Norfolk Southern Corporation
8 North Jefferson Street
Roanoke, Virginia 24042

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 **8/10/89**, at **11:25am** and assigned recordation number(s). **16470**

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

LEASE OF DIESEL LOCOMOTIVE UNITS/PARTS

REGISTRATION NO. 16470
AUG 10 1989 - 11 25 AM
INTERSTATE COMMERCE COMMISSION

THIS LOCOMOTIVE LEASE, dated as of the 2nd day of August, 1989 by and between NORFOLK AND WESTERN RAILWAY COMPANY, 8 N. Jefferson Street, Roanoke, VA 24042 (hereinafter sometimes called "NW" or "Lessor") and BPM RAIL, INC. d/b/a LOUISVILLE, NEW ALBANY & CORYDON RAILROAD, P. O. Box 10, Corydon, IN 47112 (hereinafter sometimes called "LNAL" or "Lessee") covers two GM EMD Model SW-1200 diesel-electric locomotives, numbered NW 1230 and NW 1231 (hereinafter "Locomotives").

WHEREAS, NW and LNAL desire to enter into a lease of the Locomotives and certain spare parts from NW to LNAL, pursuant to terms and conditions set forth below:

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereafter set forth, the parties hereby do agree as follows:

1. Lease and Charges. NW hereby leases to LNAL and LNAL hereby hires from NW each of the Locomotives, subject to the terms and conditions hereafter set forth. NW shall supply LNAL with certain identified spare parts from the Norfolk and Portsmouth Belt Line when the Locomotives are accepted by LNAL. As rental for the locomotives and spare parts, LNAL shall pay NW \$25.00 per loaded car inbound or outbound which is interchanged between LNAL and Southern Railway Company ("SR") at Corydon Junction, IN, except for cars moving to or from Evanite Battery Separator, Inc. or cars which move under discounted rates which are clearly identified to SR and NW by LNAL in writing at least 10 days before the exception takes effect. The rental charge will be taken from LNAL's normal handling allowance by SR. When LNAL shall have paid \$125,000 in rental charges (or \$125,000.00 minus the Depreciated Value of any destroyed Locomotive or of one Locomotive should one of the two be returned to NW as determined in Section 19), the rental charge shall become \$25.00 per Locomotive per month or LNAL may exercise its right to purchase the Locomotives and remaining spare parts as set forth in Section 20. Rental charges shall continue even if the Locomotives are out of service for repair or otherwise, unless both Locomotives are destroyed, or one Locomotive and remaining spare parts are returned and one is destroyed.

2. Taxes. LNAL shall reimburse NW for all property taxes, assessments and other governmental charges accruing during the continuance of this Lease and levied or assessed against NW or any successor in ownership of the Locomotives on account of LNAL's possession, use or operation of the Locomotives or on account of the earnings arising therefrom. LNAL shall pay or reimburse NW for the payment of any taxes arising out of this Lease transaction. In the event any tax reports are required to be made on the basis of the individual Locomotives hereby leased, LNAL will either make such reports in such manner as to show ownership of the Locomotives by NW or will notify NW of such requirements and will make such reports in a manner satisfactory to NW.

3. Liens. LNAL will pay and discharge, cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of any debt, tax, charge, assessment, obligation or claim against LNAL which, if unpaid, might become a lien or charge upon or against the title of NW to any of the Locomotives or which might have the effect of altering in any way the rights of NW in such Locomotives and spare parts. LNAL shall not be required to pay or discharge any such debt, tax, charge, assessment, obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the judgment of NW, materially endanger the rights or interests of NW. In no event, however, shall LNAL permit a lien to be maintained against any of the Locomotives or spare parts. LNAL will promptly cause any such lien to be discharged.

4. Delivery. The Locomotives and spare parts will be delivered to LNAL at Corydon Junction, IN after they have been obtained from the Norfolk and Portsmouth Belt Line. The delivery will be made without charge to LNAL by NW and SR, routed NW/SR direct. NW and SR shall not be liable for delays in delivery of the Locomotives to LNAL. Upon delivery of each Locomotive to LNAL by NW, LNAL will assume full responsibility and risk of loss with respect to each Locomotive so delivered.

5. Acceptance. A representative of LNAL shall inspect the Locomotives at the point of their delivery to LNAL. As each of the Locomotives is found by the representative of LNAL to be in good order and condition and to conform with all applicable Federal Railroad Administration requirements and all standards recommended by the Association of American Railroads, such LNAL representative shall execute a "Certificate of Acceptance" in the form attached hereto as Exhibit 1. Such Certificate of Acceptance shall constitute conclusive evidence that the Locomotive has been inspected by and delivered to LNAL. The Certificate of Acceptance shall be delivered to NW (or SR as its agent) at the time LNAL accepts delivery of each of the Locomotives. LNAL shall give NW prompt written advice as to the person authorized to accept and deliver a Certificate of Acceptance on behalf of LNAL upon execution of this Lease and prior to delivery of the Locomotives.

6. Title. At all times during the continuance of this Lease, title to each Locomotive and spare parts will remain with NW, its successors or assigns. Neither delivery of possession of the Locomotives to LNAL nor LNAL's possession of the Locomotives or spare parts shall constitute a lending or bailment. LNAL will not take or permit actions in derogation to NW's title to the Locomotives or spare parts, except to the extent NW may authorize disposition of spare parts in accordance with Section 21 and Exhibit 2.

7. Numbering. LNAL will not change the number of either of the Locomotives without first obtaining the consent of NW in writing. LNAL will cause the Locomotives to be kept numbered with

their identifying numbers. If a new number is assigned to the Locomotives, it will be set forth in a supplemental agreement or amendment to this Lease, which NW and LNAL shall execute.

8. Changes in Locomotives. LNAL shall make no change in, addition to, or improvement to the Locomotives without first obtaining NW's written consent.

9. NO WARRANTIES. NW MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, concerning the Locomotives and spare parts furnished to LNAL. Upon delivery by NW to LNAL, LNAL shall accept each Locomotive and all spare parts AS IS and WITH ALL FAULTS.

10. Responsibility for Locomotive Repair; Inspection. LNAL, at its own cost and expense, shall maintain and keep each of the Locomotives in good order and repair in accordance with NW's practices and procedures for maintenance, repair, replacement of parts and rebuilding of Locomotives. Any replacement components and parts not provided by NW to LNAL with the Locomotives shall be in accordance with NW's specifications. NW shall have the right, but not the obligation, to inspect the Locomotives at any time. LNAL's obligation to keep the Locomotives in good repair shall not be affected by the failure of NW to inspect the Locomotives.

11. Operation Costs. The cost of operation of the Locomotives, including but not limited to the cost of fuel, supplies, wages or trackage charges, shall be the responsibility of LNAL.

12. Compliance with Laws and Rules. LNAL shall comply in all respects with the laws of the jurisdictions in which its operations involving the Locomotives may extend and with all lawful rules of the Interstate Commerce Commission, Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives. To the extent that such laws and rules require the alteration of the Locomotives, LNAL will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules.

13. Indemnification; Notice of Claims. LNAL shall indemnify and hold harmless NW, its affiliates and parent, and all their officers, agents and employees (all of whom are referred to as the "Indemnified Parties"), from and against any and all loss, cost, liability, damage, claims or expenses (including but not limited to condemnation of Locomotives or spare parts, litigation costs and attorneys' fees) which the Indemnified Parties may sustain, be held liable for or be subject to, arising out of injury to or death of any person or loss of or damage to any business or property of any person or company as a result of any condition or defect existing in any of the Locomotives or spare parts while in the possession or under the control of LNAL, or arising out of or in connection with the location, use, possession

or operation of Locomotives or spare parts by LNAL, regardless of whether any negligence on the part of the Indemnified Parties may have caused or contributed to said personal injury, loss or damage. LNAL will give NW written notice of any demand, claim, lien or suit against the Locomotives or naming NW, SR or Norfolk Southern Corporation as parties.

14. Insurance. LNAL shall maintain insurance satisfactory to meet its obligations under this Lease and to pay the Depreciated Value of each Locomotive in the event of its loss or destruction. LNAL shall provide NW with satisfactory certificates of insurance. If insurance to satisfy these obligations becomes unavailable or excessively costly, LNAL may request that it be allowed to self-insure the Locomotives. NW shall authorize reasonable requests to permit self-insurance only in writing and subject to such reasonable conditions as NW may deem appropriate.

15. Loss or Destruction. If a Locomotive is lost, destroyed or, in the opinion of NW, damaged to the extent that the cost of repair or rebuilding exceeds the value of the Locomotive, LNAL shall pay NW an amount equal to the "Depreciated Value" of the Locomotive. For the purpose of applying the preceding sentence, Depreciated Value is the replacement cost of the Locomotive, or of the most nearly similar kind and class of locomotive, prorated to the same horse power, as of the date the Locomotive is damaged or destroyed, less depreciation from the date that the Locomotive was originally delivered to NW to the date of its damage, at the rate of depreciation reported by NW to the Interstate Commerce Commission for that class and kind of Locomotive, except that the depreciation so deducted will in no event reduce the value of the Locomotive below \$22,500. In no event shall the Depreciated Value of a Locomotive under this Lease exceed \$45,100. If any of the spare parts are lost or destroyed, LNAL shall pay NW the base price for the parts as determined under Exhibit 2. All reimbursements by LNAL to NW under this Section will be made within 30 days of the date of NW's billing, unless NW notifies LNAL in writing that it will accept payment under an extended schedule.

16. Recordkeeping; Audit. LNAL shall keep records concerning the repair of the Locomotives and use of the spare parts. LNAL shall permit NW to audit any such records during normal business hours at NW's request.

17. Non-Assignment. LNAL shall not sell, assign or transfer its rights under this Lease nor sublet the Locomotives nor transfer possession of the Locomotives to any person, firm or corporation without obtaining the written consent of NW.

18. Term and Termination. This Lease shall continue until terminated by either party. Either party may terminate this Lease upon 14 days' written notice to the other party. All accrued rights and obligations shall survive the termination of the Lease.

19. Return. If either or both Locomotives are returned to NW, LNAL shall return them in the same condition in which they were received by LNAL, normal wear and tear excepted, and with the same amount of fuel which they contained when they were received by LNAL. NW shall bill LNAL and LNAL shall pay NW within 30 days of its bill for any repairs or fuel necessary to bring a returned Locomotive into the foregoing condition. If both Locomotives are returned or destroyed, or if one Locomotive is returned and one is destroyed, LNAL shall return to NW any remaining spare parts. LNAL shall pay NW the value of any unused spare parts which are not returned within 30 days from the date of NW's bill for said spare parts. LNAL shall return any Locomotive or spare parts to SR without charge at Corydon Junction, IN, at a time convenient to SR. NW or SR shall furnish LNAL an appropriate receipt for each Locomotive or spare part returned.

20. Purchase Option. At any time prior to the conversion of the rental charges in Section 1 to \$25.00 per Locomotive per month, LNAL may purchase either Locomotive by paying NW \$45,100 minus 36 percent of the rental charges under Section 1 paid to NW from the start of the term of this Lease. During the same time period, LNAL may purchase the remaining spare parts by paying NW \$35,100 minus 28 percent of the rental charges under Section 1 paid to NW from the start of the term of this Lease and minus any amounts paid to NW pursuant to the sale of excess spare parts by LNAL under Section 21 and Exhibit 2 of this Lease. If LNAL shall purchase both Locomotives, or a surviving Locomotive if the other has been destroyed or returned, LNAL shall also purchase the spare parts. The purchase price paid by LNAL to NW for either Locomotive or the spare parts shall be subtracted from the \$125,000 (or adjusted) rental charge under Section 1. After LNAL shall have paid the \$125,000 or other adjusted rental charge under Section 1 and the lease charge shall have converted to \$25.00 per Locomotive per month, LNAL shall have the option to purchase either or both Locomotives for \$100.00 each. If LNAL shall purchase either Locomotive for such sum, LNAL shall also purchase any remaining spare parts for the sum of \$100.00.

21. Disposal of Spare Parts. Upon written approval of an NW official specified in Section 30, LNAL may sell certain spare parts which LNAL reasonably determines are in excess of its needs pursuant to the terms and procedures of Exhibit 2 of this Lease.

22. Non-Waiver. Any extension of time granted by NW to LNAL for the payment of any sum due under this Lease, or for the performance of any other obligation hereunder, shall not be deemed a waiver of any rights and remedies hereunder or otherwise existing. The failure of either party to require the strict performance of any obligation assumed by the other party hereunder, or the failure of either party to exercise any remedy or right to which it is entitled, shall not constitute a waiver nor cause a diminution of the rights of that party. Waiver of any default by either party shall not constitute a waiver of any subsequent default by the other party.

23. Execution of Counterparts. This Lease may be simultaneously executed in several counterparts, each of which so executed shall be deemed an original, and such counterparts together will constitute but one and the same agreement, which will be sufficiently evidenced by any such original counterpart.

24. Captioned Headings. All captioned headings are inserted for convenience only and will not affect any construction or interpretation of this Lease.

25. Severability. If any provision of this Lease is found unlawful or unenforceable, the parties intend to sever and delete from it only those specific words that must be deleted to make the remaining agreement lawful and enforceable, and not all other words in the same phrase, clause or section.

26. Governing Law. The laws of the Commonwealth of Virginia shall govern the construction of this Lease and the rights and obligations of the parties, except that the construction and legal effect of Section 13 in any action for indemnity for claims arising from personal injury or property damage shall be governed by the law of the state in which that personal injury or property damage occurred.

27. Modification or Amendment of Lease. No amendments, variation, or modification of this Lease will be valid unless in a writing signed by authorized officials of both parties. No waiver of any of this Lease's provisions or conditions will be valid unless in a writing signed by an authorized official of the party waiving a provision or condition which benefits such party.

28. Entire Agreement. This Lease and attachments thereto contain the entire and only agreement between the parties relating to the subject matter hereof, there being merged herein all prior and collateral representations, promises and conditions in connection with the subject matter. Except as specifically provided under the terms of this Lease, no modifications, extensions, waiver, renewal, or termination of this Lease, or any of the provisions hereof, shall be binding on either party unless made in writing on its behalf by the duly authorized official of such party.

29. Representations of LNAL. LNAL represents and warrants that:

(i) LNAL is a duly organized and validly existing corporation in good standing under the laws of the State of Indiana; it is qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Lease and it has the power and authority to carry on its business as now conducted.

BPM RAIL, INC. d/b/a
LOUISVILLE, NEW ALBANY & CORYDON RAILROAD

By Robert J. Hawkins P.P.S.
Robert J. Hawkins, President

State of Indiana)
County of Harrison) ss:

On this 4 day of August, 1989 before me personally appeared Robert J. Hawkins, to me personally known, who being by me duly sworn says he is President of BPM Rail, Inc. d/b/a Louisville, New Albany & Corydon Railroad, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged the execution of the foregoing instrument was the free act and deed of such corporation.

Gail J. Sunk
Notary Public

My commission expires: 7/10/90

CERTIFICATE OF ACCEPTANCE

UNDER A LOCOMOTIVE LEASE DATED AS OF _____, 1989

TO: NORFOLK AND WESTERN RAILWAY COMPANY (OWNER, LESSOR)

I, a duly appointed inspector and authorized representative of BPM Rail, Inc. d/b/a Louisville, New Albany & Corydon Railroad ("LNAL"), do hereby certify that I have inspected, received, approved and accepted, on behalf of the LNAL under the Locomotive Lease dated as of _____, 1989, between Norfolk and Western Railway Company ("NW"), the following units of equipment ("Equipment"):

TYPE OF EQUIPMENT:	Locomotives and Spare Parts
NUMBER OF LOCOMOTIVE UNITS:	(2) Two GM EMD SW-1200 Locomotives
NUMBERED:	NW 1230 and NW 1231
FUEL LEVELS:	_____
DATE ACCEPTED:	

I do further certify that the foregoing Equipment is in good order and condition and conforms to the specifications applicable thereto, and at the time of delivery to the LNAL there was plainly, distinctly, permanently and conspicuously marked upon each side of each locomotive unit constituting the Equipment the following legend:

"NORFOLK AND WESTERN RAILWAY COMPANY, Owner, Lessor,
Lease filed with ICC, _____."

Inspector and Authorized Representative
BPM RAIL, INC. d/b/a
LOUISVILLE, NEW ALBANY & CORYDON RAILROAD

Date

DISPOSAL OF SPARE PARTS

In the event that LNAL wishes to dispose of any of the spare parts acquired from NW under this Lease, the following procedure and terms will apply:

- (1) Upon delivery of the parts to LNAL, NW and LNAL will determine a base price for the parts inventory by dividing the purchase price for the inventory financed by NW by the original total dollar value of the spare parts as specified by the inventory valuation of the Norfolk and Portsmouth Belt Line.
- (2) If LNAL should determine that certain spare parts are excess and should be sold, LNAL will submit to NW a complete listing of all parts to be sold, identified by the individual part's inventory description prescribed by EMD. The LNAL will also provide to NW the number of surplus parts to be retained by LNAL for its own use. In no event will the LNAL sell parts unless there is an excessive number of parts in inventory.
- (3) The LNAL will pay NW the base price, as determined in (1) above, plus 50 percent of the selling price in excess of the base price, for any surplus part(s) sold from the inventory. Payment to NW will be made immediately by LNAL upon receipt of the sale proceeds. All disposition of the surplus parts shall be on a cash basis.
- (4) If LNAL sells spare part(s) for an amount in excess of the base price, the additional amount will be shared equally between LNAL and NW.
- (5) All payments received by NW from the sale of surplus spare parts will be applied against the current balance of the \$35,100 amount due NW for the spare parts inventory under Section 20. In the event that the \$35,100 amount has been completely cancelled by the LNAL, any proceeds from the sale of surplus parts will be utilized to reduce the amount due for the Locomotives pro rata under the same sections of this Lease.
- (6) LNAL will provide NW with copies of all bills of sales for the surplus parts, as well as other information as may be reasonably requested by NW.
- (7) LNAL will make every reasonable effort to minimize the number of requests to the NW to approve the sale of surplus parts.