

RECORDATION NO. 14398/A Filed 1425

AUG 10 1984 -3 15 PM

August 10, 1984

INTERSTATE COMMERCE COMMISSION

ICC OFFICE OF THE SECRETARY  
AUG 10 3 37 PM '84  
MOTOR OPERATING UNIT

James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

RECORDATION NO. 14398 Filed 1425

No. 4-223A121

Date AUG 10 1984

AUG 10 1984 -3 15 PM

Fee \$ 20.00

Dear Mr. Bayne:

INTERSTATE COMMERCE COMMISSION  
ICC Washington, D. C.

I have enclosed two (2) original copies of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. These documents are a Lease and Lease Supplement, a primary document and a secondary document, respectively, each dated as of August 1, 1984. The names and addresses of the parties to the documents are as follows:

Lessee and Mailing Address:

Colorado-Ute Electric Association, Inc.  
South Townsend  
Post Office Box 1149  
Montrose, Colorado 81401

Lessor and Mailing Address:

The Connecticut National Bank - not in its individual capacity but solely as trustee under that certain Trust Agreement dated as of August 1, 1984 -  
777 Main Street  
Hartford, Connecticut 06115  
Attn: Bond and Trust Administration

Beneficiary and Mailing Address:

General Electric Credit Corporation  
Transportation Financing Department  
1600 Summer Street, 6th Floor  
Post Office Box 8300  
Stamford, Connecticut 06904

Manufacturer and Mailing Address:

Ortner Freight Car Company  
6040 Fidelity Drive  
Milford, Ohio 45150

ICC OFFICE OF THE SECRETARY  
AUG 16 3 37 PM '84  
MOTOR OPERATING UNIT

*W. Charles Smith*  
*C. ...*

James H. Bayne  
August 10, 1984  
Page Two

A description of the equipment named in the document is as follows:

Fifty-five (55) open top, four (4) hopper, auto-bottom dump cars of 3,800 cubic foot capacity when level-full. AAR mechanic designation HTS. Road Numbers CUEX84001-CUEX84055 (inclusive).

A fee of \$20.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

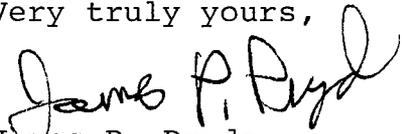
General Electric Credit Corporation  
Transportation Financing Department  
Post Office Box 8300  
Stamford, Connecticut 06904  
Attn: Ms. Lynn Mazur

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

Lease between The Connecticut National Bank (not in its individual capacity but solely as trustee under that certain Trust Agreement dated as of August 1, 1984), 777 Main Street, Hartford, Connecticut 06115 (as Lessor) and General Electric Credit Corporation, Transportation Financing Department, 1600 Summer Street, 6th Floor, Post Office Box 8300, Stamford, Connecticut 06905 (as Beneficiary), and Colorado-Ute Electric Association, Inc., Post Office Box 1149, Montrose, Colorado 81401, (as Lessee), dated August 1, 1984, and covering Fifty-five (55) Open-top, four (4) hopper, auto-bottom dump cars of 3,800 cubic foot capacity when level-full.

Supplement to Lease with Recordation No. [Recordation number of the Lease, a primary document] dated August 1, 1984, and covering Fifty-five (55) Open-top, four (4) hopper, auto-bottom dump cars of 3,800 cubic foot capacity when level-full.

Very truly yours,

  
James P. Pryde  
Stinson, Mag & Fizzell  
2100 Charterbank Center  
P.O. Box 19251  
Kansas City, Missouri 64141

Attorney for Colorado-Ute  
Electric Association, Inc.

SUPPLEMENT NO. I TO MASTER LEASE AGREEMENT

RECORDATION NO. 14398 A FILED 1225

DATED AS OF August 1, 1984  
(the "Commencement Date")

AUG 10 1984 - 3 45 PM  
INTERSTATE COMMERCE COMMISSION

Lessee and Mailing Address:

Colorado-Ute Electric Association Inc.  
P. O. Box 1149  
Montrose, Colorado 81401

Lessor and Mailing Address:

The Connecticut National Bank - not in  
its individual capacity but solely as  
trustee under that certain Trust  
Agreement dated as of August 1, 1984  
777 Main Street  
Hartford, Connecticut 06115  
Attn: Bond and Trust Administration

Broker and Mailing Address:

National Cooperative Services Corporation  
1115, 30th N.W.  
Washington, DC 20007

Terms used in this Supplement which are not otherwise defined herein shall have the meanings ascribed to them in the Master Lease referred to above (the "Agreement").

This Supplement covers the following Units of railroad equipment.

Description of Equipment

| Supplier Name and Address  | Type and Model of Units  | Number of Units | Unit Cost*  | Car Numbers         | Estimated Acceptance Date |   |         |
|--|--|-----------------|-------------|---------------------|---------------------------|---|---------|
| Ortner Freight Car Company<br>6040 Fidelity Drive<br>Milford, OH | Open-top, four-hopper, auto-bottom dump cars of 3800 cu. ft. capacity when level full. | 55              | \$41,179.24 | CUEX84001-CUEX84008 | 8/10/84                   |   |         |
|  |  |                 |             | CUEX84010-CUEX84011 |                           |   |         |
|  |  |                 |             | CUEX84013-CUEX84019 |                           |   |         |
|  |  |                 |             |                     |                           | CUEX84042-CUEX84051   | 8/14/84 |
|  |  |                 |             |                     |                           | CUEX84009, CUEX84012<br>CUEX84020-CUEX84033.                      | 8/16/84 |
|  |  |                 |             |                     |                           | CUEX84037-CUEX84041<br>CUEX84034-CUEX84036<br>CUEX84052-CUEX84055 | 8/17/84 |

\*This cost is subject to escalation or de-escalation of not more than 10%.

A. Definitions:

1. Maximum Aggregate Lessor's Cost: \$2,530,000.
  2. Daily Interim Rent/Interim Rent Payment: For each Unit, Daily Interim Rent equal to .030359% ("Interim Rent Factor") of Lessor's Cost of such Unit shall accrue on a daily basis from the Acceptance Date of such Unit through the last day prior to the date Basic Rent begins to accrue. Accrued Interim Rent shall be payable in one installment on the last day preceding the date Basic Rent begins to accrue.
  3. Basic Rent: For each Unit 5.46456% ("Rent Factor") of Lessor's Cost of such Unit, payable semi-annually in arrears. The Rent Factor and Stipulated Loss Value (see Part F below) are calculated on the assumption that, with respect to each Unit, on the Acceptance Date: (i) the maximum combined Federal and state corporate tax rate is 48% assessed the Beneficiary (ii) the Unit is placed in service for the Unit Cost as adjusted by the percentage set forth above and (iii) Lessor shall not agree to accept a Unit after the Cut-Off Date. If as of the said Acceptance Date, these assumptions prove incorrect for any reason, including but not limited to a change in the Code or in applicable state tax law adopted or effective prior to the date of said Acceptance Date, the Rent Factor, Interim Rent Factor and Stipulated Loss Values may be increased or decreased as necessary, in the judgment of Beneficiary to preserve the rate and amount of Beneficiary's after-tax economic yields, net income and cash flow ("Net Economic Return") provided, however, that nothing contained herein shall in any way alter the Beneficiary's rights under Section 8 of the Tax Indemnity Agreement. Lessee shall, upon written notice from Lessor, be obligated to pay Interim Rent, Basic Rent, and (if appropriate) Stipulated Loss Value as so adjusted.
- Basic Rent shall begin to accrue as of January 1, 1985 and shall be payable semi-annually in arrears commencing July 1, 1985 and each July 1 and January 1 thereafter through January 1, 2000 (each a "Basic Rent Payment Date").
4. Overdue Rate: 2% over the highest per annum rate publically announced by Chemical Bank of New York ("Bank") as its prime or commercial lending rate from time to time in effect during the period any amount is past due without regard to whether such Bank actually charges such rate to any of its customers. If Chemical Bank of New York shall cease to publish a prime or commercial lending rate, then the prime or commercial lending rate used to calculate the Overdue Rate shall be the prime or commercial lending rate of a New York Clearing House Bank selected by Lessor.
  5. Cut-Off Date: December 31, 1984
  6. Lease Term (for each Unit): The Acceptance Date of the Unit through January 1, 2000, inclusive.
  7. Lessor's Cost: Lessor's Cost shall be the amount stated as Lessor's Cost for a Unit on the Certificate of Acceptance for such Unit which amount shall not include fees, if any, paid by Lessor to Broker.

Lessor's Cost for a Unit shall be limited to all amounts paid or to be

paid pursuant to the Purchase Order (as defined in the Purchase Order Assignment and Consent agreement dated as of August 1, 1984, by and between Lessor, Lessee, Beneficiary and Supplier) with the Supplier governing such Unit plus applicable sales tax plus such costs and expenses of the transaction which are incurred by the Lessor and which are includible in the basis of the Unit under applicable state tax law and under the Code.

8. REA: shall refer to the Rural Electrification Association.

9. REA Mortgage: shall mean the Supplemental (consolidated) Mortgage and Security Agreement, dated as of March 31, 1981, as supplemented and amended, and the Subordinated Mortgage, Security Agreement and Financing Statement dated as of December 8, 1982 in favor of National Rural Utilities Cooperative Finance Corporation.

10. Governmental Entity: shall mean any foreign, federal, state, or local government, any subdivision, commission, department or executive, judicial, legislative, or administrative branch thereof, however denominated.

B. Manner and Location of Payment: Lessee shall make each payment of Interim Rent, Basic Rent, and Stipulated Loss Value at The Connecticut National Bank, 777 Main Street, Hartford, Connecticut 06115, Attn: Bond and Trust Administration, in Federal or other funds immediately available to Lessor by 10:00, A.M. Colorado time, on the date such payment is due.

Lessee shall make all payments due under the Tax Indemnity Agreement at Manufacturer's Hanover Trust Company, 600 Fifth Avenue, New York, New York 10020 to the Account of General Electric Credit Corporation, Account No. 135-0-70380, in Federal or other funds immediately available to the Lessor by 11:00 A.M., New York time, on the date such payment is due.

C. Expenses:

Each party will pay its own legal fees. Lessor will pay all other out-of-pocket expenses related to this transaction. To the extent Lessor pays such expenses, Lessor may adjust Basic Rent, Interim Rent and Stipulated Loss Values to preserve Beneficiary's Net Economic Return as defined in Paragraph 3 of Section A of this Supplement.

D. Closing Conditions:

Without the Lessor's prior written consent, each Unit must be delivered on or before the Cut-Off Date set forth in this Supplement and the Unit Cost of each Unit may not, when added to the total Lessor's Cost of all Units acquired and leased by Lessor pursuant to this Supplement, cause the total cost of all Units acquired and leased to exceed the Maximum Aggregate Lessor's Cost set forth herein.

Lessee will give Lessor not less than 10 days' prior written notice of the date on which delivery of each Unit will be accepted by Lessee. Lessor's obligation to purchase each Unit and to lease such Unit to Lessee shall be subject to Lessor's receipt and acceptance of the following:

1. At least three business days before the date of acceptance of the first Unit referred to in this Supplement: (a) the Agreement duly executed by Lessee and Lessor, (b) an opinion from Lessor's counsel and with respect to tax matters from Beneficiary's counsel in form and substance satisfactory to Lessor and to Beneficiary as to tax and other matters, (c) this Supplement executed by Lessor and Lessee (d) if the Lessee and Supplier have previously entered into an agreement for the Lessee to purchase the Unit, an Assignment of Purchase Order and Consent executed by Lessee and Supplier in the form of Annex A hereto (e) a Closing Certificate in the form of Annex B hereto (f) if requested by Lessor, an opinion of Lessee's counsel in the form of Annex C hereto (g) a letter from an appraiser evidencing that the estimated useful life, the residual value and usefulness to Lessor or third parties of the Unit at the end of the Lease Term and the fair market value of the Unit at the commencement of the Lease Term satisfy applicable tax guidelines including but not limited to Rev. Rul 75-21 as modified by Rev. Rul 75-28 and Rev. Rul 79-48(f) (h) satisfactory evidence of filings or recordations to protect Lessor's security interest in each Unit, including but not limited to: precautionary UCC-1 financing statements filed in the state of the Lessee's principle place of business; and the Agreement filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

2. On or before the date of funding of an accepted Unit referred to in this Supplement: (a) an invoice from the Supplier of each Unit to be accepted under this Supplement and/or other persons furnishing services in connection with such Unit (b) a Certificate of Acceptance in the form of Annex D hereto covering each Unit to be accepted, duly executed by Lessee and (c) a bill of sale or other document in form and substance satisfactory to Lessor transferring title to the Unit from Supplier to Lessor on or before acceptance thereof by Lessee.

E. Options:

So long as no Event of Default under the Agreement or an event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, shall have occurred and be continuing, Lessee may, at Lessee's option (i) purchase all but not less than all of the Units listed on this Supplement on an "as is, where is" basis, except for the absence of liens created by or through Lessor without representation or warranty, express or implied, at the end of the Lease Term at a price equal to the Fair Market Value thereof or (ii) extend the Term for a period of 60 months at the Fair Market Rental of the Unit(s). If the parties cannot agree upon the Fair Market Value or Fair Market Rental Value, as applicable, of the Unit(s), Lessee, at its sole expense, may have an authorized representative of the American Arbitration Association or any successor organization thereto appoint an appraiser to determine such Fair Market Value or Fair Market Rental Value, which determination shall be binding and conclusive upon Lessor and Lessee. This purchase or extension option, as applicable, shall only be available if Lessee gives Lessor at least 60 days prior written irrevocable notice of Lessee's exercise of such option and Lessor and Lessee shall have agreed to all terms and conditions of such purchase or extension prior to the expiration date of the applicable term. The Fair Market Value and Fair Market Rental of a Unit shall be, respectively, the price or rental which would be obtained in an arm's length sale or

lease between an informed and willing buyer-user (other than a dealer in used equipment) or lessee and an informed and willing seller or lessor under no compulsion to sell or lease, and, in either of such determinations, costs of dismantling and removal from the location of current use shall not be a deduction from such value and no consideration shall be given to the burdens and benefits of the Agreement.

F. Stipulated Loss Value:

The Stipulated Loss Value of any Unit covered by this Supplement, as of any date, shall be an amount equal to the product of (i) the Lessor's Cost of such Unit (as set forth in the Certificate of Acceptance) and (ii) the percentage indicated below opposite the Basic Rent Payment Date indicated below on or next preceding the date on which the event of Loss or Damage occurred.

STIPULATED LOSS VALUE

| <u>Basic Rent Payment Date</u> | <u>Percentage of Lessor's Cost</u> |
|--------------------------------|------------------------------------|
| Prior to 1/1/85                | 107.658                            |
| 1/1/85                         | 109.313                            |
| 7/1/85                         | 112.487                            |
| 1/1/86                         | 110.064                            |
| 7/1/86                         | 110.324                            |
| 1/1/87                         | 106.998                            |
| 7/1/87                         | 106.267                            |
| 1/1/88                         | 101.907                            |
| 7/1/88                         | 100.187                            |
| 1/1/89                         | 95.091                             |
| 7/1/89                         | 92.842                             |
| 1/1/90                         | 87.432                             |
| 7/1/90                         | 85.025                             |
| 1/1/91                         | 82.545                             |
| 7/1/91                         | 79.983                             |
| 1/1/92                         | 77.339                             |
| 7/1/92                         | 74.604                             |
| 1/1/93                         | 71.778                             |
| 7/1/93                         | 68.850                             |
| 1/1/94                         | 65.821                             |
| 7/1/94                         | 62.677                             |
| 1/1/95                         | 59.419                             |
| 7/1/95                         | 56.033                             |
| 1/1/96                         | 52.702                             |
| 7/1/96                         | 49.196                             |
| 1/1/97                         | 45.495                             |
| 7/1/97                         | 41.586                             |
| 1/1/98                         | 37.475                             |
| 7/1/98                         | 33.207                             |
| 1/1/99                         | 28.811                             |
| 7/1/99                         | 24.327                             |
| 1/1/2000                       | 20.000                             |

G. Miscellaneous:

Except as expressly modified hereto, all terms and provisions of the Agreement shall remain in full force and effect.

This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract.

IN WITNESS WHEREOF, this Supplement is hereby executed and agreed to this 10<sup>th</sup> day of August, 1984.

Lessor:

Colorado Ute Electric Association Inc.  
as Lessee

The Connecticut National Bank  
not in its individual capacity but  
solely as trustee under a Trust  
Agreement dated as of August 1, 1984  
with General Electric Credit  
Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By *Frank W. McDonald*

(SEAL)

Title Corporate Trust Officer

Attest By \_\_\_\_\_

Date August 10, 1984

G. Miscellaneous:

Except as expressly modified hereto, all terms and provisions of the Agreement shall remain in full force and effect.

This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract.

IN WITNESS WHEREOF, this Supplement is hereby executed and agreed to this 10<sup>th</sup> day of August, 1984.

Lessor:

The Connecticut National Bank  
not in its individual capacity but  
solely as trustee under a Trust  
Agreement dated as of August 1, 1984  
with General Electric Credit  
Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Colorado Ute Electric Association Inc.  
as Lessee

By *Donald D. Cook*

Title *Vice President*

Date *August 10, 1984*

(SEAL)

Attest By *Carol A. Curran*

*Asst. Secretary*







PURCHASE ORDER ASSIGNMENT AND CONSENT

THIS AGREEMENT dated as of August 1, 1984 is between The Connecticut National Bank, not in its individual capacity but solely as trustee under a Trust Agreement dated as of August 1, 1984 with GENERAL ELECTRIC CREDIT CORPORATION (who shall be referred to herein as "Beneficiary"), (the foregoing trustee being referred to as "Lessor") and COLORADO-UTE ELECTRIC ASSOCIATION, INC. (the "Lessee").

PURCHASE ORDER ASSIGNMENT:

WHEREAS, Lessor and Lessee have entered into a Master Lease Agreement dated as of August 1, 1984 as supplemented by Supplement(s) No. I thereto (the "Agreement") pursuant to which Lessee has agreed to lease from Lessor the Unit(s) of railroad equipment referred to in the said Supplements (all terms used in this Purchase Order Assignment, the Acceptance By Lessor, the Agreement For Payment By Beneficiary and the Consent And Agreement herein and not otherwise defined shall have the meaning ascribed to them in the Agreement); and

WHEREAS, Lessee desires to lease rather than purchase the Unit(s) and, subject to the terms and conditions stated in this Purchase Order Assignment, in the Acceptance By Lessor, in the Agreement For Payment By Beneficiary and the Consent And Agreement, the Lessor is willing to acquire certain of the Lessee's rights and interests under the Agreement and any amendments thereto for purchase of the Unit(s) dated February 24, 1984 entered into by and between Lessee and Ortner Freight Car Company as Supplier (the "Purchase Order"), which Purchase Order and any amendments thereto are attached hereto as Attachment A;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, Lessor and Lessee hereby agree as follows:

SECTION 1. Assignment.

(a) Lessee does hereby assign and set over to Lessor all of Lessee's rights and interests in and to the Unit(s) (other than as Lessee under the Agreement) and the Purchase Order as the same relate to the Unit(s) including, without limitation, in such assignment (i) the right to purchase each Unit pursuant to the related Purchase Order, and the right to take title to such Unit and to be named as the purchaser in the bill of sale for such Unit, (ii) all claims for damages in respect of each Unit purchased by Lessor arising as a result of any default by the Supplier thereof under the related Purchase Order, including, without limitation, all warranty and indemnity provisions contained in such Purchase Order, and all claims arising thereunder, in respect of such Unit, and (iii) any and all rights of Lessee to compel performance of the terms of such Purchase Order.

(b) Except as otherwise provided in this subparagraph (b), if and so long as no Event of Default or event which with the passage of time, the

giving of notice, or both, would constitute an Event of Default under the Agreement has occurred and is continuing, Lessee, or such other person as, with the prior consent of Lessor, which consent shall not be unreasonably withheld, is authorized or may be so authorized by Lessee, shall be, and is hereby authorized on behalf of Lessor in the name of Lessor to exercise all rights and powers of the purchaser under the Purchase Order with respect to the Unit(s) and to retain any recovery or benefit resulting from the enforcement of any warranty, indemnity or right to damages under the Purchase Order or otherwise existing against the Supplier in respect of the Unit(s). Supplier shall be entitled to rely upon Lessee's authority under the preceding sentence until such time as Supplier receives written notice from Lessor that such authority has been revoked, which notice Lessor hereby agrees to provide.

SECTION 2. Continuing Liability of Lessee. It is expressly agreed that, anything herein contained to the contrary notwithstanding, until the Unit(s) are accepted by Lessor: (a) Lessee shall at all times remain liable to the Supplier to perform all of the duties and obligations of the purchaser under the Purchase Order to the same extent as if this Purchase Order Assignment and Consent had not been executed, (b) the execution of this Purchase Order Assignment and Consent shall, except as herein provided, not modify any contractual rights of the Supplier under the Purchase Order and the liabilities of the Supplier under the Purchase Order shall be to the same extent and continue as if this Agreement had not been executed, (c) the exercise by the Lessor of any of the rights assigned hereunder shall not release Lessee from any of its duties or obligations to the Supplier under the Purchase Order except that Lessor's exercise of its rights hereunder shall constitute performance of Lessee's obligations under the Purchase Order, and (d) Lessor shall not have any obligation or liability under the Purchase Order by reason of, or arising out of, this Purchase Order Assignment and Consent or be obligated to perform any of the obligations or duties of Lessee under the Purchase Order or to make any payment (other than to pay the purchase price with respect to each Unit only if the Unit is accepted by Lessee under the Agreement and then to Supplier within 5 days after receipt of the executed Certificate of Acceptance described in the Agreement, the Supplier's invoice and a bill of sale satisfactory in form and substance to Lessor conveying title to the Units free and clear of all liens and encumbrances under the terms and conditions set forth in the Agreement) or to make any inquiry into the sufficiency of or authorization for any payment received by the Supplier or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

Lessee warrants and agrees that: (i) the Purchase Order is in full force and effect and is enforceable in accordance with its terms subject only to enforcement of remedies under applicable bankruptcy and insolvency laws; (ii) Lessee is not in material breach of the terms of the Purchase Order thereunder; (iii) no other person, firm or corporation has any right or interest as purchaser under, or right of approval or consent with respect to, the Purchase Order; (iv) Except as permitted under the Agreement Lessee has not assigned or pledged and will not assign or pledge, the whole or any part of the rights hereby assigned to anyone other than Lessor; (v) Lessee will not enter, and has not entered, into any agreement subordinating, amending, supplementing, hypothecating, waiving, discharging or terminating the Purchase Order or any of the terms and provisions thereof; (vi) no portion of the purchase price of the Unit(s) has been paid by Lessee or by the United States of America; (vii) notwithstanding any provision of the Purchase Order to the contrary, the Unit(s) are not subject to inspection, testing or approval by

the Administration (as defined in the Purchase Order); and (viii) the provisions of the Purchase Order set forth the entire agreement between Lessee and Supplier with respect to the sale of the Unit(s).

Lessee agrees that Lessor, in its sole discretion, may revoke acceptance of this Purchase Order Assignment and Consent and the Agreement at any time before Lessee accepts the Unit(s) under the Agreement if Lessor, in its sole discretion, determines that: (i) any representation by Lessee in the documents submitted as part of this transaction proves to have been false or misleading in any material respect when made, or (ii) subsequent to the making of any such representation, there has occurred a material change such that any such representation as made is not true and correct or (iii) any event which would constitute an Event of Default under Section 9 of the Agreement has occurred.

If the Acceptance Date (as defined in the Agreement) does not occur by the Cut Off Date specified in the applicable Supplement which pertains to the Units to be purchased under the Purchase Order, Lessor may prior to acceptance of the Unit(s) (i) change any of the terms and conditions under which acceptance of the Agreement and this Purchase Order Assignment and Consent was made or (ii) revoke its acceptance of the Agreement and the Purchase Order Assignment and Consent. Upon Lessor's revocation, Lessor shall be relieved of any responsibility to Lessee with respect to the Agreement and the Units.

Unless otherwise agreed by Lessor in writing, title to a Unit under the Purchase Order shall not be transferred from Supplier to any party hereto or any third party until the Unit is accepted by Lessor or its authorized agent, or until the Cut-Off date, whichever occurs first.

Notwithstanding anything to the contrary contained in the Purchase Order or in any other agreement between any of the parties hereto, the terms and conditions contained in this Purchase Order Assignment, in the Acceptance By Lessor, in the Agreement For Payment By Beneficiary, and in the Consent and Agreement which follow are in addition to and modification of such agreements and are binding upon the parties hereto, and upon the Supplier all of which consent to this Purchase Agreement Assignment.

SECTION 3. Miscellaneous.

Except where otherwise expressly provided to the contrary, when used in the Agreement, the Tax Indemnity Agreement, and any other documents in relation to the transaction contemplated herein, the term "Purchase Order Assignment and Consent" shall refer to the Purchase Order Assignment, the Acceptance By Lessor, the Agreement For Payment By Beneficiary and the Consent And Agreement.

The Purchase Order Assignment and Consent may be executed in any number of counterparts, such counterparts constituting but one and the same contract.

IN WITNESS WHEREOF, Lessee has caused this Purchase Order Assignment and Consent to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

COLORADO-UTE ELECTRIC ASSOCIATION, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

ACCEPTANCE BY LESSOR

The foregoing assignment is hereby accepted this \_\_\_ day of \_\_\_\_\_ of 19\_\_.

Lessor agrees that, subject to the terms and conditions of the above Purchase Order Assignment and of the Consent And Agreement, and upon acceptance by Lessor (acting through its agent, the Lessee) of each Unit and receipt of the Supplier's invoice and bill of sale in form and substance satisfactory to Lessor, and notwithstanding the provisions of Section 3 of the Purchase Order to the contrary, Lessor agrees to pay to the Supplier the full purchase price of such Unit.

The Connecticut National Bank, not in its individual capacity, but solely as Trustee,

By \_\_\_\_\_

Its \_\_\_\_\_

AGREEMENT FOR PAYMENT BY BENEFICIARY

Subject to the terms and conditions of the Purchase Order Assignment, the Acceptance By Lessor, and the Consent And Agreement, (including Lessor's acceptance thereof), and the Agreement, the Beneficiary agrees to provide the Lessor with the funds necessary to enable Lessor to meet its obligations to purchase the Unit(s), by paying, for the account of the Lessor, the purchase price set forth in the applicable Supplement.

IN WITNESS WHEREOF, the Beneficiary has caused this Agreement for Payment by Beneficiary to be duly executed this \_\_\_ day of \_\_\_\_\_, 19\_\_.

GENERAL ELECTRIC CREDIT CORPORATION

By \_\_\_\_\_

Its \_\_\_\_\_

CONSENT AND AGREEMENT

The undersigned Supplier hereby consents to the above Purchase Order Assignment, Lessor Acceptance and Agreement For Payment By Beneficiary and agrees not to assert any claims against Lessor which are inconsistent with the terms thereof; provided that this Consent And Agreement shall, in no way, release Lessee of any obligations which it may have to Supplier under the Purchase Order; provided, further, however, that the preceding provision shall not constitute a guarantee by the Lessee of the purchase price of the Unit(s) once the Unit(s) are accepted by the Lessor.

With respect to each Unit, the Supplier agrees that the invoice and bill of sale referencing such Unit shall be in form and substance (except for the additions of signatures and dates) identical to the invoice and bill of sale referencing such Unit in Appendices A-1 through A-4 and B-1 through B-4, attached hereto.

IN WITNESS WHEREOF, the Suppliers has caused this Consent and Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_ of 19\_\_.

ORTNER FREIGHT CAR COMPANY

By \_\_\_\_\_

Its \_\_\_\_\_

CLOSING CERTIFICATE

Colorado-Ute Electric Association Inc., as Lessee (the "Lessee") under a certain Master Lease Agreement dated as of August 1, 1984 as Supplemented by Supplement No. I thereto (the "Agreement"), between the Lessee and The Connecticut National Bank not in its individual capacity but solely as Trustee under that certain Trust Agreement dated as of August 1, 1984 (the "Lessor"), hereby represents, warrants and covenants to the Lessor as follows:

(a) Lessee is a non-profit taxable rural electric cooperative corporation duly organized, validly existing and in good standing under the laws of the State of Colorado and has power and authority to carry on its business as presently conducted, to own or hold under lease the Unit(s), to enter into the Agreement, (including but not limited to the Purchase Order Assignment and Consent) and any other documents to be delivered by the Lessee concurrently with the Agreement (said Agreement and other documents being hereinafter called the "Documents") and to perform its obligations thereunder and is duly qualified to do business wherever necessary to carry on its present business operations;

(b) The Documents, as executed by Lessee, have been duly authorized by Lessee and, upon delivery, (and assuming due authorization and execution by the other parties thereto) will constitute the valid, legal and binding obligations of Lessee enforceable in accordance with their respective terms, subject only to enforcement of remedies under applicable bankruptcy and insolvency laws;

(c) All approvals, consents or withholdings of objections required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by Lessee of the Documents have been obtained;

(d) The entry into and performance by Lessee of the Documents will not: (i) violate any judgment, order, law or regulation applicable to Lessee or any provision of Lessee's certificate of incorporation or by-laws; or (ii) result in any breach of, constitute a default under or result in the creation of any lien (other than that lien created by the REA Mortgage), charge, security or other encumbrance pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument (other than the Agreement) to which Lessee is party;

(e) There are no suits or proceedings pending or, to the knowledge of Lessee, threatened in any court or before any regulatory commission, board or other administrative governmental agency against or affecting Lessee, which will have a material adverse effect on the ability of Lessee to execute the Documents and to fulfill its obligations under the Documents;

(f) Assuming the Lessor will not by its own action or inaction cause the Unit to cease to be personal property, each Unit of equipment leased under the Agreement is and will at all times remain tangible personal property of Lessor;

(g) Since the date of the Agreement there has been no material adverse change in the financial or operating condition of Lessee or of any consolidated group of companies of which Lessee is a member;

(h) Neither Lessor nor Beneficiary is, by virtue of this transaction, subject to regulation under the Public Utilities Law of the State of Colorado as set forth in Colorado Revised Statutes 40-1-101 et seq., without regard to any other transaction to which they the protected party hereunder is a party, provided, however, that Lessee shall not be liable to the protected party hereunder to the extent that such party shall, in addition to engaging in the transactions contemplated by the Agreement and the Documents, also engage in business activities which, when combined with the said contemplated transactions, cause such party to be subject to such regulation;

(i) Neither the Lessor nor the Beneficiary is subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 1935 or the Federal Power Act and neither party is a "holding company" or "subsidiary" or "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, or the Federal Power Act, or "carrier" within the meaning of the Interstate Commerce Act, provided, however, that Lessee shall not be liable to the protected party hereunder to the extent that such party shall, in addition to engaging in the transactions contemplated by the Agreement and the Documents, also engage in business activities which, when combined with the said contemplated transactions, cause such party to be subject to such regulation;

(j) The Lessee is not subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 1935 or the Federal Power Act (except for Sections 1-18, 21-30, 202(c), 210-212, and 305(c) of such Act), and, notwithstanding anything herein to the contrary, is not a "holding company" or "subsidiary" or "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, or the Federal Power Act, or "carrier" within the meaning of the Interstate Commerce Act;

(k) The Lessee's representations contained in the Agreement are true and correct on the date hereof;

(l) Attached hereto as Exhibit 1 is a true and correct copy of the Articles of Incorporation of the Company together with all amendments thereto and there has been no amendment since February 7, 1984;

(m) Attached hereto as Exhibit 2 is a true and correct copy of the By-Laws of the Company as in effect on January 1, 1984 and at all subsequent times to and including the date hereof;

(n) Attached hereto as Exhibit 3 is a true and correct copy of certain resolutions authorizing the Agreement, its execution and the transactions and obligations contemplated thereby duly adopted by the Board of Directors of the Company at a meeting thereof duly held on August 10, 1984; at such meeting a quorum was present and acting throughout; and such resolutions have not been

amended, modified, revoked or rescinded and are still in full force and effect; and

(o) The persons named in the attached "Certificate of Incumbency and Authenticity of Signatures of Officers of Colorado-Ute Electric Association, Inc." (the terms of which are incorporated herein by reference) have been duly appointed, have duly qualified as, and as of the date stated on the said certificate, to and including the date hereof, have been officers of the Company, and the signatures set forth opposite their names on the said certificate are their genuine signatures.

In witness whereof this Closing Certificate has been executed on behalf of the Lessee, and the seal of the Lessee has been affixed, this \_\_\_\_ day of \_\_\_\_\_ 1984.

COLORADO UTE ELECTRIC ASSOCIATION, INC.

By \_\_\_\_\_

By \_\_\_\_\_  
Secretary

OPINION OF COUNSEL

The Connecticut National Bank  
Bond & Trustee Administration  
777 Main Street  
Hartford, CT 06115

General Electric Credit Corporation  
260 Long Ridge Road  
Stamford, CT 06902

Gentlemen:

I am general counsel to Colorado-Ute Electric Association Inc., as Lessee (the "Lessee") under a certain Master Lease Agreement dated as of August 1, 1984, as supplemented by Supplement No. 1 thereto (the "Agreement"), between the Lessee and The Connecticut National Bank, not in its individual capacity but solely as trustee under a Trust Agreement dated as of August 1, 1984 with General Electric Credit Corporation (who shall be referred to as "Beneficiary") (the foregoing trustee being referred to as "Lessor"), and in such capacity am of the following opinion:

1. The Lessee is a non-profit, taxable rural electric cooperative corporation duly organized and validly existing in good standing under the laws of the State of Colorado, and has all requisite corporate power and authority to carry on its business as presently conducted, to own or hold under lease the Units and to enter into and perform its obligations under the Agreement and each of the Documents (as defined in the Closing Certificate delivered pursuant to the Agreement) to which it is a party. The Lessee is duly licensed or qualified in each jurisdiction where the failure to do so would materially impair its ability to perform its obligations under the Documents to which it is a party or materially adversely affect its business or the assets of Lessee.

2. The execution, delivery and performance by the Lessee of the Agreement and each of the Documents to which the Lessee is a party have been duly authorized by all necessary corporate action on the part of the Lessee and do not require any approval of the members of the Lessee or any approval or consent of any trustee or holder of any indebtedness or other obligation of the Lessee, except such as have been duly obtained, are in full force and effect and copies of which have been delivered to the Lessor. Upon obtaining such consents as have been obtained, the execution and delivery by the Lessee of the Agreement and of each of the Documents, consummation by the Lessee of any of the transactions contemplated thereby and the compliance by the Lessee with any of the terms and provisions thereof will not contravene any Federal, state or local law, rule or regulation applicable to or binding upon the Lessee or contravene or result in any breach of, or constitute any default under, or result in the creation of any lien (except under the REA Mortgage) upon any property of the Lessee under, the articles of incorporation or By-Laws of the Lessee, or any agreement or instrument to which the Lessee is a party or by which it or any of its properties may be bound.

3. No consent, approval or authorization of, and no notice to or filing with, any governmental authority or instrumentality is required on the part of the Lessee in connection with the execution, delivery and performance by the Lessee of each of the Documents to which it is a party.

4. No consent, approval or authorization of, and no notice to or filing with, any governmental authority or instrumentality is required on the part of the Lessor or the Beneficiary in connection with the execution, delivery and performance by the Lessor and Beneficiary of the Agreement and of each of the Documents to which it is a party, assuming for the purposes of this paragraph 4 that the Lessor and/or Beneficiary is engaged in no business other than the transactions contemplated by the Agreement and the Documents.

5. The Agreement and each of the Documents executed by the Lessee have been duly authorized, executed and delivered by Lessee and constitute legal, valid and binding agreements of the Lessee, and assuming due authorization and execution by the other parties will be enforceable against the Lessee in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency and similar laws affecting the rights of creditors generally and except as such enforceability may be limited by general principles of equity.

6. The Units (as defined in the Agreement) are tangible personal property.

7. There is no suit or proceeding pending or, to my knowledge, threatened in court or before any regulatory commission, board or other administrative governmental agency (i) which involves the Lessee or the Units and which affects the transactions contemplated by the Agreement and the Documents, (ii) which might, individually or in the aggregate, have a material adverse effect on the financial condition or operations of the Lessee or impair the ability of the Lessee to fulfill its obligations under the Agreement, (iii) which questions the binding effect, validity or enforceability of the Agreement or any of the Purchase Documents to which Lessee is a party or of any action taken or to be taken by Lessee in connection therewith.

8. The Lessee is not subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 1935 or the Federal Power Act (except for Sections 1-18, 21-30, 202(c), 210-212, and 305(c)), as each such act is now in effect, and, notwithstanding anything to the contrary, is not a "holding company" or "subsidiary" or "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as now in effect, or the Federal Power Act, as now in effect, or "carrier" within the meaning of the Interstate Commerce Act, as now in effect.

9. Neither the Lessor nor the Beneficiary (as defined in the Agreement) is subject to regulation under the Public Utilities Law of the State of Colorado as set forth in Colorado Revised Statutes 40-1-101 et seq. as now in effect and neither party is subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company of 1935 or the Federal Power Act, as each such act is now in effect, and is not a "holding company" or "subsidiary" or "affiliate" of a "holding company" or a

"subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1936, as now in effect, or the Federal Power Act, as now in effect, or "carrier" within the meaning of the Interstate Commerce Act, as now in effect, assuming for the purposes of this paragraph 9 that Lessor and Beneficiary are engaged in no business other than transactions contemplated by the Lease and the Documents.

I am a member of the Bar of the State of Colorado and do not hold myself out as being conversant with the laws of any jurisdiction other than those of the United States of America and the State of Colorado. Insofar as the foregoing involves the laws of the State of New York or the State of Connecticut for purposes of rendering this opinion we have assumed that the substantive laws of the States of New York and Connecticut are the same as the substantive laws of the State of Colorado and have not made any independent investigation of such laws of the States of New York or Connecticut.

Very truly yours,

Annex D to Supplement No. I  
of the Agreement (as defined  
herein)

CERTIFICATE OF ACCEPTANCE

To: The Connecticut National Bank  
Bond & Trustee Administration  
777 Main Street  
Hartford, CT 06115

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RECORDATION NO. .... Filed 1425

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INTERSTATE COMMERCE COMMISSION

I, as the duly authorized representative of The Connecticut National Bank, not in its individual capacity but solely as trustee under a Trust Agreement dated as of August 1, 1984, with General Electric Credit Corporation (the foregoing trustee being referred to herein as "Lessor") and Colorado-Ute Electric Association, Inc. (the "Lessee") under the Master Lease Agreement dated as of August 1, 1984 executed by Lessor and Lessee as supplemented by Supplement No. I thereto (the "Agreement") do hereby certify that I have inspected and accepted delivery of the following Units of equipment (as defined in the Agreement):

SUPPLIER:  
DATED ACCEPTED ("Acceptance Date"):  
NUMBER OF UNITS:  
TYPE AND MODEL OF UNITS:  
SUPPLIER'S IDENTIFICATION OR SERIAL NUMBERS:  
LESSOR'S COST:

I do further certify to Lessor that the foregoing Units (i) are in good order and condition, (ii) conform to the specifications, requirements and standards applicable thereto (iii) require no improvements, modifications or additions (other than ancillary items of removal equipment of the kind customarily selected and furnished by purchasers or lessees of similar equipment) in order to render the Units complete for their intended use, and (iv) have not been placed in service prior to the date hereof.

I do further certify that as of the date hereof (i) the Lessee is not in default under the Agreement, (ii) the representations and warranties made by Lessee pursuant to or under the Agreement are true and correct on the date hereof and (iii) Lessee has been fully reimbursed by Lessor for all costs incurred with respect to the Units, all such costs being reflected in the Lessor's Cost specified above.

Execution of this Certificate of Acceptance will not relieve or decrease the liability of Supplier for warranties made with respect to the Units.

\_\_\_\_\_  
Authorized Representative

Dated: \_\_\_\_\_