

**OSTER**  
**Researching Services**  
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301-253-6040

No. 8-214A050  
Date AUG 1 1988  
Fee \$13.00  
ICC Washington, D. C.

RECORDATORY 1 5764

August 1, 1988

AUG 1 1988-9 25 AM

**INTERSTATE COMMERCE COMMISSION**

Ms. Mildred Lee  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Please find enclosed a Lease of Railroad Equipment dated July 13, 1988, between the following parties:

Lessor: Helm Financial Corporation  
One Embarcadero Center  
San Francisco, CA 94111

Lessee: Tampa Electric Company  
702 North Franklin Street  
Tampa, FL 33602

The equipment involved in this agreement is attached. Please record this agreement as a primary document. Thank you.

Sincerely,

*Mary Ann Oster*  
Mary Ann Oster  
Research Consultant

Enclosure

*Copy sent - Mary Ann Oster*

ICC OFFICE OF  
THE SECRETARY  
AUG 1 9 32 AM '88  
MOTOR OPERATING UNIT

Annex A

To

Lease of Railroad Equipment

Dated as of July 13, 1988

Equipment Description

100 ton, roller bearing, 3422 cubic foot, three-pocket, open top coal hopper cars remanufactured by Bethlehem Steel in 1988.

Equipment Numbers - HLMX

5003	5013	5023	5045	5058	5069	5087
5004	5014	5024	5048	5059	5073	5098
5005	5015	5027	5050	5060	5075	5099
5007	5016	5028	5051	5061	5076	5103
5008	5018	5041	5053	5063	5078	5105
5011	5019	5042	5054	5064	5081	5106
5012	5022	5043	5055	5065	5085	5111
10001	10015	10045	10053	10070	10081	10096
10002	10033	10047	10054	10071	10082	10118
10003	10038	10048	10060	10073	10084	10120
10005	10039	10050	10061	10075	10085	10121
10006	10040	10051	10062	10078	10086	10124
10014	10042	10052	10069	10080	10087	

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

8/1/88

Mary Ann Oster  
Oster Reseaching Service  
12897 Colonial Drive  
Mt. Airy, MD 21771

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/1/88 at 9:35AM, and assigned recordation number(s). 15764

Sincerely yours,

*Narta R. McEue*

Secretary

Enclosure(s)

RECORDATION NO. 1 5764 FILED 1988

AUG 1 1988-9 05 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

HELM FINANCIAL CORPORATION

AND

TAMPA ELECTRIC COMPANY

## LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of July 13, 1988, between HELM FINANCIAL CORPORATION, a California corporation, (hereinafter called the "Lessor") and the TAMPA ELECTRIC COMPANY, a Florida corporation, (hereinafter called the "Lessee"). The term "Affiliate" as used hereinafter means Lessee's parent corporation or one or more of its parents' subsidiaries or affiliated companies.

WHEREAS, the Lessor hereby represents that it is the Owner of and has free and clear title to the one hundred (100) open top hopper cars more fully described in Annex A hereto (hereinafter called the "Units");

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

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

1. Delivery and Acceptance of Units. The Lessee hereby accepts the Units at CSX Transportation's Corbin, Kentucky yard (hereinafter called the "Acceptance Point") whereupon each Unit shall be subject thereafter to all terms and conditions of this Lease. The Lessee further agrees to be responsible for any transportation cost of moving the Units from the Acceptance Point. The Lessor agrees to furnish the Units in compliance with now existing AAR rules of interchange. Lessee, at its expense, shall have the right to inspect and reject the Units subject to this Lease, at the Acceptance Point.

2. Rentals. The Lessee agrees to pay the Lessor rental for each Unit subject to this Lease for twenty-six (26) monthly installments, payable monthly in advance. The monthly payments shall be in the amount of [REDACTED] each per Unit. Rental shall become effective with regard to each Unit as of the date of delivery of no less than ninety (90) Units to the Acceptance Point. The effective date of the Lease shall begin on the date the last Unit is delivered to the Acceptance Point (hereinafter referred to as "Effective Date") and shall continue in effect with regard to each of the Units until returned to the Lessor at the end of the term of this Lease, as hereafter provided in Paragraph 3. Payment of Lease Rental shall be made to the Lessor at the address specified in Paragraph 17, or to such other place as Lessor may direct, with the first month's payment due on the first day of the month following the month the last Unit is delivered to

the Acceptance Point. Rental for any Unit for any partial month shall be prorated on a daily basis. Lessee shall pay to Lessor an additional Mileage Lease Rental of [REDACTED] per mile per Unit for each mile a Unit travels in excess of [REDACTED] miles on an annualized basis, mileage to be based on CSX Transportation's Monthly Private Mileage Summary Reports and copies of the reports will be sent to Lessee on a monthly basis. Additional Mileage Lease Rental will commence during the month that a Unit travels the first mile in excess of [REDACTED] miles. Lessor will invoice Lessee for these amounts and Lessee will pay Lessor within thirty (30) days of said invoice. If Lessee disputes Lessor's invoice, Lessee will make payments of all amounts due Lessor which are not in dispute. In the event that settlement cannot be reached within thirty (30) days after Lessor's issuance of the disputed invoice, the matter shall be resolved in accordance with the provisions of Paragraph 11. Any costs incurred by the Lessor in collecting Rental wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by the Lessee.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to [REDACTED] per annum.

This Lease includes maintenance, however, the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Units

except in accordance with the express terms hereof.

3. Term of Lease. This Lease shall remain in full force and effect, with respect to each Unit, for a period through August 31, 1990, unless sooner terminated in accordance with the provisions of the Lease. At the end of the initial term, Lessee shall have the option upon thirty (30) days prior written notice to the Lessor to extend this Lease subject to mutually agreeable price and term negotiations.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Paragraphs 5, 8, and 10 hereof) shall survive the expiration or sooner termination of this Lease.

4. Identification Marks. The Lessor shall deliver each Unit numbered with the identifying number as set forth in Annex A hereto and, as part of its routine maintenance, Lessor will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

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

5. Taxes. Lessor agrees to pay any personal property taxes associated with the Units, so long as the Units are utilized by Lessee in the carriage of coal from Gatliff, Kentucky to Tampa, Florida. Lessee agrees to assume responsibility for, and to pay, all other taxes, costs, fines and assessments of every kind upon the Units, and to file all reports relating thereto; provided, however, that Lessee shall not be responsible for federal or state taxes based upon the income of Lessor. In the event that Lessee utilizes such Units from loading points which increase the tax liability as contemplated herein (exclusive of any taxes based

upon any income of Lessor), such additional liability shall be paid by the Lessor and reimbursed and paid in full by the Lessee. Any such additional taxes shall be invoiced by the Lessor as a separate item.

6. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. As between Lessee and Lessor and any Assignee of Lessor, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned (provided that Lessor shall be responsible for any and all damage and liabilities caused by Lessor), such risk to be borne by Lessee with respect to each Unit from its Acceptance Date, and continuing until such Unit has been returned to Lessor in accordance with the provisions of Paragraph 10 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay rent.

(b) Casualty Occurrence. In the event that any Unit shall be or become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, except if such cause is attributable to the Lessor, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of ninety (90) continuous days arising out of actions of the Lessee, (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment. A settlement value payment pursuant to Rule 107 of the AAR Car Service and Car Hire Agreement Code will also be made as of that date. Upon the making of such payment by the Lessee in respect of a Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. Lessor has the right, in its sole discretion, to replace any and all Units subject to a Casualty Occurrence and such replacement Units will be subject to this Lease as if originally a part thereof.

7. Report and Inspection. On or before April 1st in each year, commencing with the calendar year 1989, the Lessee will furnish to the Lessor an accurate statement setting forth as of the preceding twelve (12) months the amount, description and numbers of all Units then leased hereunder, and the amount,

description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year. The Lessor, or its agent at its sole cost and expense, shall have the right, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

8. Compliance with Laws and Rules; Maintenance; Insurance and Indemnification. Lessor warrants that Lessor is the lawful owner of the Units and has good and marketable title to the Units. Lessor hereby assigns to Lessee for the term of this Lease the benefit of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS, EXCEPT WHERE DAMAGE OR LIABILITY RESULTS FROM LESSOR'S NEGLIGENT REPAIR OF UNITS.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or repairs of any such Unit, the Lessor will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessor may, in its reasonable judgment based upon the cost and economic value of such repairs or alterations in relation to the then estimated fair market value of the Units, declare this Lease terminated for those so affected as of the date such repairs or alterations are required as a condition to use of the Units by Lessee.

During the term of this Agreement, commencing with the Effective Date with respect to each Unit, Lessor shall perform or cause to be performed maintenance and repair work necessary to maintain the Units in Good Operating Condition ("Maintenance Services") in conformity with all applicable laws and regulations including the AAR Code of Interchange Rules and FRA Railroad

Freight Unit Safety Standards, 49 CFR Part 215, as amended, except for the following:

(1) repairs required as a result of damage caused by the Lessee, its agents, representatives, customers or independent contractors or any third party; or

(2) repairs required because of damage caused to the Units by any corrosive or abrasive substance except coal, coke, iron ore or aggregates loaded therein or used in connection therewith; or

(3) repairs required because of excessive, unusual or avoidable damage caused to the Units by open flames, vibrators, sledges or other similar devices during loading or unloading operations; or

(4) repairs required because of excessive or unbalanced loading; or

(5) repairs required because of damage to safety appliances.

If Units in possession of Lessee are in need of repairs for which Lessee is responsible hereunder, Lessee shall contact Lessor and advise, at Lessee's sole option, whether Lessee desires to perform such repairs or have such repairs performed at its expense. If Lessee decides not to repair such Units, Lessor will either repair the Units or subcontract for the repairs. Lessee shall be responsible only for the invoice price, if repairs are subcontracted, or for actual costs (but not to exceed AAR costs) if performed by Lessor.

Lessee will make the Units available to Lessor at a repair shop specified by Lessor in the states of Kentucky, Tennessee, Georgia or Florida at any reasonable time for the purpose of repairs. Lessee shall as promptly as practical deliver Units requiring repairs which Lessor is required to make to the repair shop specified by Lessor. Lessee shall make Units available for inspection or maintenance in accordance with its operating convenience and at its own expense.

If there is any dispute as to who is responsible for repairs to any Unit, the completion of such repairs by a party shall not constitute an admission of responsibility, but instead such party may still assert its claims that the other party was responsible.

Lessee will review any suggestions made by Lessor regarding operating conditions that might be causing undue and avoidable wear or damage to the Units and to implement those suggested changes that are reasonable under the circumstances.

Neither party to this Agreement will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Units without the other party's written consent.

Any and all additions to any Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

Lessor reserves the right to retire any Unit that in its sole opinion it deems uneconomical to repair. Lessee's obligation to pay rent shall abate for any Unit retired by Lessor as of the date on which it is retired or when such Unit is delivered to the Repair Shop, whichever occurs first. Lessor will use its best efforts, subject to equipment availability and economic feasibility, to replace such Unit.

Lessee shall, at all times while this Agreement is in effect at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Unit(s); and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor named as additional insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.

Each item obtained by Lessee pursuant to this Paragraph shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Lessor's written approval, Lessee shall be

permitted to self-insure on any specified interests, the Lessee hereby warrants to place the Lessor in the same position as if the relating insurance had been effected.

The Lessee agrees to indemnify, save harmless and defend the Lessor against any charges or claims made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's sole negligence) by reason of entering into or the performance of this Lease, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit until such Unit is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on the account of any accident (unless resulting from the Lessor's sole negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all mandatory reports of which the Lessee has actual knowledge, except income tax reports, to be filed by the Lessor, with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee. The Lessor shall notify the Lessee of any such reports of which the Lessor has actual knowledge.

9. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, Lessor's title thereto, or any interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, ownership or leasing of the Units or this lease or any Lease Supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly

pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor and any assignee of Lessor, any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor and any assignee of Lessor in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

10. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost, expense, and risk, at the request of the Lessor, transport and deliver possession of such Unit(s), to any reasonable CSX Transportation interchange point as reasonably directed by Lessor. The condition of the Units upon such return shall be as required, pursuant to Paragraph 8 hereof.

The assembling, delivery, storage and transporting of the Units as provided in this Paragraph 10 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence prior to the expiration of the term of this Lease, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any, responsibility of ownership thereof, from and after receipt of such notice and if requested by Lessee, Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances whatsoever.

11. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur if:

(a) default shall be made in the payment of any part of the rental provided in Paragraph 2 hereof except as excused or abated as set out herein or as maybe otherwise mutually agreed to, and such default shall continue for ten (10) days after written notice is sent to Lessee;

(b) the Lessee shall make or permit any assignment or transfer of this Lease or of possession of the Units, or any thereof, except as provided in Paragraph 14 hereof and such is not cured or agreement reached as to the action necessary to cure within ten (10) days after written notice is sent

from Lessor to Lessee;

(c) default shall be made in the material failure to observe or perform any other of the material covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decreed, by a trustee or trustees appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

then, in any such case, the Lessor, at its option may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee

any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which represents the then present value of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed in each case on a basis of a 13% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto if a court determines that Lessor shall have sustained same by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, reasonable expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor). In connection with the damages set out in (a) and (b), Lessor shall have an affirmative duty to mitigate its damages and Lessee shall be entitled to a reduction or set off in the amount of the damages set out in (a) and (b) as a result of any resale, release or other activities performed to sustain its duty to mitigate.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

12. Return of Units Upon Default. If this Lease shall terminate pursuant to Paragraph 11 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The

Lessee shall transport such Units, at Lessee's expense and risk, to any reasonable CSX Transportation interchange point as reasonably directed by Lessor. The condition of the Units upon such return shall be as required pursuant to Paragraph 8 hereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 12, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

13. Force Majeure. Neither party to this Lease shall be liable for nonperformance or delay in performance hereunder to the extent caused by unforeseen acts of God, government restraint, acts of the public enemy, civil commotion, strikes, nuclear or other disasters, labor disputes, labor or material shortage, fire, explosion, flood or breakdown of or damage to plant, equipment or facilities (any of such events herein called "Force Majeure"). If affected by Force Majeure, the party so affected will give notice to the other party as promptly as practicable, but no later than five (5) business days, of the nature and expected duration of such Force Majeure. If, because of Force Majeure, either party hereto is prevented from carrying out any of its obligations under this Lease, then the obligations of such party, except for obligations of payment of Lease Rentals by the Lessee as set forth in Paragraph 2, shall be suspended to the extent made necessary by such Force Majeure and the Lease Term and the obligations of both parties, except for payment of Lease Rentals, shall be extended for a period equivalent to the duration of the Force Majeure. The party affected shall exercise all reasonable efforts to eliminate the effect of such Force Majeure as promptly as possible.

14. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Paragraphs 5, 8 and 11) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In

conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee may without any prior consent of the Lessor sublease any one or more of the Units or assign this Lease to any one or more of the Lessee's Affiliates, or with the prior written consent of the Lessor sublease the Units to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.

The Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the term of this Lease use or fail to use any Unit, in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use each Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Unit and all deductions allowable to Lessor with respect to each Unit will be treated as derived from, or allowable to, sources within the United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor.

So long as the Lessee or its Affiliates shall not be in default under this Lease, the Lessee or its Affiliates shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Paragraph 14) or encumber its leasehold interest under this Lease in the Units; and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit or the interest of the Lessor, or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of the next succeeding paragraph hereof.

Nothing in this Paragraph 14 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Paragraph 16 hereof).

In connection with any sublease or assignment by Lessee under this Paragraph 14, whether or not Lessee is required to obtain the consent of the Lessor to any such transaction, Lessee agrees, at its expense, to cause any such assignment or sublease to be duly filed and recorded with the Interstate Commerce Commission in accordance with the 49 U.S.C. 11303 in order to protect the interest of the Lessor in and to the Units under this Lease.

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The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the United States of America. ~~except that during such term of any Unit outside the United States of America will be limited to incidental and temporary use in Canada.~~

15. Opinions of Counsel. When requested by Lessor's lender, after the execution and delivery of this lease, the Lessee will deliver to the Lessor and the lender the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that:

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee;

(d) this Lease has been duly filed and recorded with the Interstate Commerce Commission under 49 U.S.C. 11303; no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Lessor in and to the Units.

At the same time as delivery of the foregoing opinion of counsel for the Lessee, the Lessor will deliver to the Lessee the written opinion of counsel for the Lessor, in scope and substance reasonably satisfactory to the Lessee and its counsel, substantially to the effect set forth in subparagraphs (a) through (c) above with respect to the Lessor.

16. Recording. Prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Paragraph 14 hereof, the Lessee will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection to the satisfaction of the Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor: Helm Financial Corporation  
One Embarcadero Center  
Suite 3320  
San Francisco, CA 94111

If to the Lessee: Tampa Electric Company  
702 North Franklin Street  
Tampa, FL 33602  
Attn: Director, Fuels

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

18. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such

jurisdiction, be ineffective to the extent of such prohibition of unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

20. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

21. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

22. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the Commonwealth of Kentucky; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

23. Paragraph Headings. The headings appearing at the commencement of certain paragraphs or subparagraphs herein are for convenience only, and the content or body of the paragraph(s) or subparagraph(s) thereunder shall control. The numbering system is also included for convenience only.

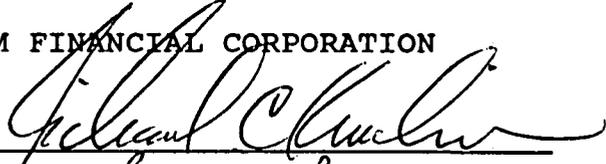
24. Confidentiality. The parties shall keep confidential the terms and conditions of this Lease. Neither party shall disclose the terms and conditions of this Lease to a third party, excluding any parent, affiliate, subsidiary company, potential buyers of the cars, or Lessor's lender, without the written permission of the other party or unless readily ascertainable from public information or public sources requested by regulatory commission, subpoenaed by court or governmental agency, or otherwise required by law to be disclosed. The existence of this Lease may be disclosed without such consent.

25. Attorney's Fees. In the event that a dispute arises hereunder which is resolved by a competent court jurisdiction, negotiated between the parties, or some other commercially

acceptable dispute resolution procedure, the prevailing party (the party recovering damages) shall be entitled to recover it's reasonable attorneys' fees and costs from the other party herein. In the event such dispute is resolved by negotiation, between the parties, such Attorneys' fees and costs shall be mutually agreed to as part of such resolution.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

HELM FINANCIAL CORPORATION

By 

Title President

TAMPA ELECTRIC COMPANY

By 

Title President

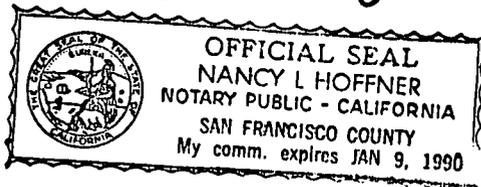
STATE OF CALIFORNIA )  
 ) §  
COUNTY OF SAN FRANCISCO )

On this 14<sup>th</sup> day of July, 1988, before me personally appeared RICHARD A. KIDWELL, to me personally known, who, being by me duly sworn, says that he is PRESIDENT of HELM FINANCIAL CORPORATION, that said instrument was signed and sealed 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.

Nancy L Hoffner  
Notary Public

My Commission Expires: January 9, 1990

[Notarial Seal]



STATE OF FLORIDA )  
 ) §  
COUNTY OF Hillsborough

On this 13<sup>th</sup> day of July, 1988, before me personally appears Girard Anderson, to me personally known, who being by me duly sworn says that he is a President of Tampa Electric Company that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judith K Castellano  
Notary Public

My Commission Expires: June 27, 1990

[Notarial Seal]

Annex A

To

Lease of Railroad Equipment

Dated as of July 13, 1988

Equipment Description

100 ton, roller bearing, 3422 cubic foot, three-pocket, open top coal hopper cars remanufactured by Bethlehem Steel in 1988.

Equipment Numbers - HLMX

5003	5013	5023	5045	5058	5069	5087
5004	5014	5024	5048	5059	5073	5098
5005	5015	5027	5050	5060	5075	5099
5007	5016	5028	5051	5061	5076	5103
5008	5018	5041	5053	5063	5078	5105
5011	5019	5042	5054	5064	5081	5106
5012	5022	5043	5055	5065	5085	5111
10001	10015	10045	10053	10070	10081	10096
10002	10033	10047	10054	10071	10082	10118
10003	10038	10048	10060	10073	10084	10120
10005	10039	10050	10061	10075	10085	10121
10006	10040	10051	10062	10078	10086	10124
10014	10042	10052	10069	10080	10087	

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