



A general description of the locomotives covered by the enclosed documents consists of the following: Forty (40) GE Dash 9-44CW locomotives bearing road numbers UP 9700 - 9739, inclusive.

Following recordation, please return one original of the enclosed document, together with any other copies not needed by the Commission, bearing appropriate recordation data, to:

Shawn P. Galey, Counsel  
General Electric Company  
2901 East Lake Road, Building 14-5  
Erie, Pennsylvania 16531.

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

PRIMARY DOCUMENT - Interim User Agreement, As Amended and Restated dated as of July 1 1994, between General Electric Company, 2901 East Lake Road, Building 14-5, Erie, Pennsylvania, 16531, as lessor, and Union Pacific Holdings, Inc., Martin Tower, Eighth and Eaton Avenues, Bethlehem, Pennsylvania, 18018, as lessee, covering forty (40) GE Dash 9-44CW locomotives bearing road numbers UP 9700 - 9739, inclusive.

Respectfully submitted,



Enclosures

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

OFFICE OF THE SECRETARY

AUGUST 1, 1994

SHAWN P. GALEY  
GENERAL ELECTRIC COMPANY  
2901 EAST LAKE ROAD  
ERIE PA 16531

Dear MR. GALEY:

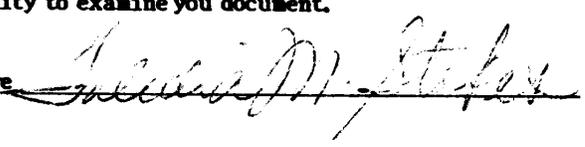
The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/1/94 at 2:00PM, and assigned recordation number(s). 18373--A

Sincerely yours,

WILLIAM VERNON A.  
ACTING SECRETARY

Enclosure(s)

\$ 18.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one stamped on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine you document.

Signature 

REGISTRATION NO. 18878-A FILED 1994

AUG 1 - 1994 -2 05 PM

INTERSTATE COMMERCE COMMISSION

EXECUTION VERSION

**INTERIM USER AGREEMENT,  
AS AMENDED AND RESTATED**

by and between

**UNION PACIFIC HOLDINGS, INC.**

and

**GENERAL ELECTRIC COMPANY**

Effective as of July 1, 1994

THIS INTERIM USER AGREEMENT, AS AMENDED AND RESTATED (this "Agreement"), dated as of July 1, 1994, between **GENERAL ELECTRIC COMPANY**, a New York corporation ("GE") and **UNION PACIFIC HOLDINGS, INC.**, a Utah corporation ("UP"), amends, restates and supersedes that certain Interim User Agreement, dated as of June 30, 1994, between GE and UP.

**WITNESSETH:**

**WHEREAS**, GE and UP (by means of that certain Locomotive Purchase Assignment Agreement, dated as of June 15, 1994, between Union Pacific Railroad Company ("UPRR"), as assignor, and UP, as assignee) are parties to an agreement consisting of: (i) GE's Quotation Number THA-931208, dated December 8, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; (ii) a letter, dated January 6, 1994, from J. J. Habraken of UPRR to T. H. Arrowsmith of GE; (iii) a letter, dated January 11, 1994, from T. H. Arrowsmith of GE to J. J. Habraken of UPRR; (iv) a letter, dated January 13, 1994, from J. J. Habraken of UPRR to T. H. Arrowsmith of GE; (v) a letter, dated January 25, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; (vi) a letter, dated March 3, 1994, from T. H. Arrowsmith of GE to R. M. Grimaila of UPRR; (vii) a letter, dated March 23, 1994, from T. H. Arrowsmith of GE to M. A. Coles of UPRR; (viii) a letter, dated March 23, 1994, from M. L. Legg of UPRR to T. H. Arrowsmith of GE; (ix) a letter, dated April 6, 1994, from T. H. Arrowsmith of GE to G. A. Pietruszynski of UPRR; (x) a letter, dated April 13, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; (xi) a letter, dated May 24, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; and (xii) by reference, all documents and materials referenced in or attached to the foregoing documents including, without limitation, the detailed proposal that accompanied GE's Quotation Number THA-931208 (all of the foregoing documents, taken together, being the "Purchase Agreement") calling for GE to manufacture and deliver to UP, and UP to accept and pay for, forty (40) Dash 9-44CW locomotives to bear road numbers 9700 - 9739, inclusive (collectively, the "Locomotives"); and

**WHEREAS**, UP intends to finance the purchase of the Locomotives from GE pursuant to one or more permanent forms of financing (the "Financing"), but deliveries of the Locomotives are scheduled to begin prior to completion of the Financing; and

**WHEREAS**, UP desires that it be permitted to use the Locomotives pending completion of the Financing, solely as a lessee thereof, and GE is willing to grant such temporary custody and possession to UP upon the terms and conditions hereinafter provided; and

**WHEREAS**, UP and GE previously entered into an Interim User Agreement, dated as of June 30, 1994 (the "Original Agreement"), and desire to amend, restate and supersede the Original Agreement with this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree that the Original Agreement is hereby amended, restated and superseded in its entirety, as follows:

1. GE, as lessor, hereby agrees to deliver the Locomotives to UP, as lessee, f.o.b. GE's Erie, Pennsylvania plant, as of the date each of them is released from manufacturing. UP covenants that the Financing for the Locomotives will be completed not later than September 30, 1994. On September 30, 1994, or such earlier date as the Financing is completed, this Agreement shall automatically terminate without further action by or notice to either party hereto, except for those provisions which in order to be given effect should survive termination.

2. Upon delivery of each Locomotive hereunder, UP's representative shall execute a Certificate of Acceptance, substantially in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Locomotive under the Purchase Agreement. During the term hereof and for so long as the purchase price (as set forth in the Purchase Agreement) shall not have been paid to GE, title to the Locomotives shall remain in GE with UP's rights and interests therein being solely that of possession, custody and use as lessee hereunder. Transfer of title shall be effected only at the time of GE's delivery of one or more bills of sale to UP or to the party which has paid the purchase price (as set forth in the Purchase Agreement) therefor.

3. UP will make payment in full to GE for the Locomotives by means of and upon completion of the Financing contemporaneously with the receipt from GE of one or more bills of sale and other normal and customary documentation, if any, required to be provided by GE under the Financing. Pending payment to GE under the Financing, UP shall pay daily rental amounts to GE in respect of each Locomotive for the period beginning on the date of delivery of such Locomotive and extending up to but excluding the date on which such payment is made. The amount of such daily rental amount for each such Locomotive shall be as follows:

(a) For each day from the date of delivery of such Locomotive up to and including September 2, 1994, an amount equal to \$200 per day per Locomotive; and

(b) For each day thereafter, an amount equal to (i) the purchase price for such Locomotive, multiplied by (ii) the sum of the annual prime rate of interest charged by Citibank, N.A. on such day plus 200 basis points, divided by (iii) 365.

Payments of rental amounts shall be made by UP by wire transfer of immediately available funds to GE within ten days of UP's receipt of GE's invoice(s) for such

amounts, with the final payment of rental amounts to be made on the day on which GE is paid in full the purchase price for the Locomotives. Such payments of rental amounts shall give UP no right of ownership in the Locomotives and shall in no way be considered to be a payment or partial payment of the purchase price therefor.

4. UP shall permit no liens or encumbrances (other than the usual interchange of traffic rules) arising by, through or under it to attach to the Locomotives, and it agrees to:

(a) Indemnify and save GE harmless from any and all claims, expenses or liabilities of whatsoever kind, including but not limited to attorneys' fees and costs, which may arise by, through or under UP during the time any of the Locomotives are in the possession of UP and subject to this Agreement; and

(b) Pay any and all taxes (excluding any tax measured by GE's net income and any franchise, capital, net worth or similar tax imposed on GE, or any tax imposed in lieu of any of the foregoing), fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or GE, because of GE's ownership or because of the use, operation, management or handling of the Locomotives during the term of this Agreement. The obligations of UP described in this Section 4 shall survive termination of this Agreement.

5. During the term hereof, UP shall cause the Locomotives to be maintained in accordance with the manufacturer's recommendations and shall, at its option, repair or promptly pay to GE or its assignee or designee the purchase price (as set forth in the Purchase Agreement) for any of the Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

6. UP acknowledges that it takes its possessory interest in the Locomotives subject to those provisions of the Purchase Agreement relating to warranty, exclusion of certain warranties, remedies (and limitations of remedies) and limitation of liability and indemnities.

7. UP shall do such acts as may be required by law or as reasonably requested by GE for the protection of GE's title to and interest in the Locomotives, including, without limitation, filing this Agreement with the U.S. Interstate Commerce Commission.

8. In the event that UP shall, in violation of its obligations under the Purchase Agreement, fail to make payment in full for the Locomotives (or cause such payment to be made) upon the expiration of this Agreement, GE or its assignee or designee may, in addition to any other remedies it may have, enter upon the premises of UP or such other premises where the Locomotives may be and take possession of all or any Locomotives, and thenceforth hold, possess and

enjoy the same free from any right of UP, or its successors or assigns. In such event, GE or its assignee or designee may use the Locomotives for any purposes whatsoever, and may sell and deliver the Locomotives to others upon such terms as GE or its assignee or designee may see fit in its sole discretion, it being understood and agreed that UP shall remain liable to GE or its assignee or designee under the Purchase Agreement for: (a) an amount equal to any difference in the price paid by such other parties and the purchase price due from UP under the Purchase Agreement (less the value of GE's or its assignee's or designee's use of the Locomotives), plus (b) an amount equal to all expenses of GE or its assignee or designee incident to such sale including, but not limited to, the expenses of withdrawing the Locomotives from the service of UP, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. UP shall pay the foregoing amounts from time to time upon demand by GE or its assignee or designee. Nothing in this Agreement shall affect GE's warranty or other service obligations under the Purchase Agreement.

9. UP and GE each represent and warrant to the other that:

(a) It is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;

(b) The execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;

(c) The rights of GE as herein set forth and the title of GE to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and

(d) No governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.

10. UP agrees that the execution by GE of this Agreement, or the delivery by GE of the Locomotives as contemplated by this Agreement, shall not relieve UP of its obligations to accept, take and pay for the Locomotives at the end of the term hereof applicable to such Locomotives in accordance with the terms of the Purchase Agreement.

11. The execution of a Certificate of Acceptance in the form of Exhibit A hereto pertaining to any such Locomotive shall constitute acceptance of such Locomotive hereunder, and any warranty or other time period set forth in the Purchase Agreement applicable to such Locomotive shall be deemed to commence from the date of such acceptance.

12. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, each party hereto has caused this Interim User Agreement, as Amended and Restated, to be executed by its authorized representative.

Attest:



Assistant Secretary

UNION PACIFIC HOLDINGS, INC.

By:



Title Vice President

Date July 20, 1994

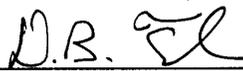
Attest:



Shawn P. Galley, Attesting Secretary

GENERAL ELECTRIC COMPANY

By:



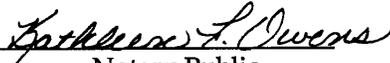
D. B. Tucker, General Manager,  
Americas Locomotive  
Marketing, Sales & Service

Date July 19, 1994

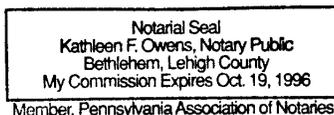
Commonwealth of Pennsylvania )  
 ) ss:  
County of Lehigh )

On this 20th day of July, 1994, before me personally appeared Gary M. Stuart, to me personally known, who, being by me duly sworn, says that he is Vice President of UNION PACIFIC HOLDINGS, INC., that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

  
Notary Public

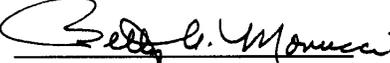
My Commission expires:



Commonwealth of Pennsylvania )  
 ) ss:  
County of Erie )

On this 19th day of July, 1994, before me personally appeared David B. Tucker, to me personally known, who, being by me duly sworn, says that he is General Manager, North American Locomotive Marketing, Sales & Service of GENERAL ELECTRIC COMPANY, that the foregoing instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

  
Notary Public

My Commission expires:

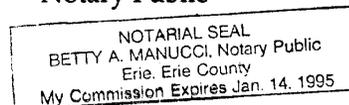


EXHIBIT A

Certificate of Acceptance

This is to certify that the equipment described below has been accepted by Union Pacific Holdings, Inc. ("UP") pursuant to the terms of that Purchase Agreement consisting of: (i) GE's Quotation Number THA-931208, dated December 8, 1994, from T. H. Arrowsmith of GE to M. L. Legg of Union Pacific Railroad Company ("UPRR"); (ii) a letter, dated January 6, 1994, from J. J. Habraken of UPRR to T. H. Arrowsmith of GE; (iii) a letter, dated January 11, 1994, from T. H. Arrowsmith of GE to J. J. Habraken of UPRR; (iv) a letter, dated January 13, 1994, from J. J. Habraken of UPRR to T. H. Arrowsmith of GE; (v) a letter, dated January 25, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; (vi) a letter, dated March 3, 1994, from T. H. Arrowsmith of GE to R. M. Grimaila of UPRR; (vii) a letter, dated March 23, 1994, from T. H. Arrowsmith of GE to M. A. Coles of UPRR; (viii) a letter, dated March 23, 1994, from M. L. Legg of UPRR to T. H. Arrowsmith of GE; (ix) a letter, dated April 6, 1994, from T. H. Arrowsmith of GE to G. A. Pietruszynski of UPRR; (x) a letter, dated April 13, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; (xi) a letter, dated May 24, 1994, from T. H. Arrowsmith of GE to M. L. Legg of UPRR; and (xii) by reference, all documents and materials referenced in or attached to the foregoing documents including, without limitation, the detailed proposal that accompanied GE's Quotation Number THA-931208 (all of the foregoing documents, taken together, being the "Purchase Agreement"), which Purchase Agreement was assigned to UP pursuant to that certain Locomotive Purchase Assignment Agreement, dated as of June 15, 1994, between UPRR, as assignor, and UP, as assignee:

Description of Equipment

<u>Number of Units</u>	<u>Description</u>	<u>Road Numbers</u>
_____ ( )	Model Dash 9-44CW	9____-9____ (inclusive)

General Electric Company,  
Authorized Agent for:

UNION PACIFIC HOLDINGS, INC.

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Date \_\_\_\_\_