



0100300066

GE Transportation
Systems

Shawn P. Galey
Counsel

U.S. Patent & Trademark Office
P.O. Box 1000
Washington, D.C. 20540

July 1, 1994

VIA FEDERAL EXPRESS

18878

RECORDATION NO. _____ FILED 1205

JUL 5 1994 -2 29 PM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2302
Washington, D.C. 20423

Subject: Recordation of Interim User Agreement

Dear Ms. Lee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303 and the regulations thereunder, are duplicate execution copies of an Interim User Agreement, dated as of June 30, 1994, between General Electric Company ("Lessor") and Union Pacific Holdings, Inc. ("Lessee"), a primary document. Please assign to this document the next available recordation number.

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

LESSOR: General Electric Company
2901 East Lake Road, Building 14-5
Erie, Pennsylvania 16531

LESSEE: Union Pacific Holdings, Inc.
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018

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.

Send copies to:

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

PRIMARY DOCUMENT - Interim User Agreement, dated as of June 30, 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



GE Transportation
Systems

Shawn P. Galey
Counsel

General Electric Company
1000 North 17th Street, P.O. Box 1000
Pittsburgh, PA 15217-1000

July 5, 1994

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2302
Washington, D.C. 20423

Re: Recordation of Interim User Agreement

Dear Ms. Lee:

Enclosed you will find a check for the processing fee of the recordation of the Interim User Agreement. The Agreement and letter outlining the objectives was previously mailed to you via Federal Express on Friday, July 1, 1994. We neglected to enclose or mention the processing fee of \$18.00 in the previous packet.

I realize this oversight is an inconvenience, and I greatly appreciate your assistance. I hope that this does not create a problem in the processing procedure. If, for any reason, there is a problem please feel free to contact me at 814-875-3174.

Thank you very much for your time and attention to this matter.

Sincerely,

Shawn Galey

/mm

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

JULY 12, 1994

SHAWN P. GALEY, COUNSEL
GENERAL ELECTRIC COMPANY
2901 EAST LANK ROAD, BUILDING 14-5
ERIE PENNSYLVANIA 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 7/5/94 at 2:30PM, and assigned recordation number(s) 16878

Sincerely yours,

Sidney L. Strickland, Jr.
Secretary

Enclosure(s)

\$ 18 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 your document.

Signature

Isledia M. Stokes

• **18878**
RECORDATION NO. _____ FILED 1425

JUL 5 1994 -2:30 PM

INTERSTATE COMMERCE COMMISSION

EXECUTION VERSION

INTERIM USER AGREEMENT

By and between

UNION PACIFIC HOLDINGS, INC.

AND

GENERAL ELECTRIC COMPANY

Effective as of June 30, 1994

THIS INTERIM USER AGREEMENT (this "Agreement"), dated as of June 30, 1994, between GENERAL ELECTRIC COMPANY, a New York corporation ("GE") and UNION PACIFIC HOLDINGS, INC., a Utah corporation ("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 desires that it be permitted to use the Locomotives pending payment therefor, 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;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree 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. At such time following delivery of each of the Locomotives as the purchase price therefor is paid to GE or its assignee or designee, this

Agreement shall automatically terminate as to each such Locomotive 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 for so long as the purchase price (as set forth in the Purchase Agreement) shall not have been paid, 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 bills of sale to UP or to the party which has paid the purchase price (as set forth in the Purchase Agreement) therefor.

3. Provided the purchase price for each of the Locomotives (as set forth in the Purchase Agreement) is paid to GE or its assignee or designee in a timely fashion (as described and set forth in a letter, dated June 23, 1994, from T. H. Arrowsmith of GE to J. Larson of UP), UP shall not be required to pay rent for its use and possession of the Locomotives hereunder. In the event that payment of such purchase price is delayed for any reason, UP agrees to pay to GE or its assignee or designee, as the case may be, as daily rent for each such Locomotive, a sum equal to the purchase price for such Locomotive, multiplied by the from-time-to-time annual prime rate of interest charged by Citibank, N.A. plus 250 basis points, and divided by 365.

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

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

UP hereby agrees to indemnify GE against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Locomotives. If during the term of this Agreement such markings shall at any time be removed, defaced or destroyed, UP shall promptly cause the same to be restored or replaced.

8. The parties agree that at the end of the term of UP's use of the Locomotives hereunder, UP shall not have the option of returning the Locomotives to GE, but rather UP shall be required to pay to GE or its assignee or designee the purchase price for the Locomotives (or cause the same to be paid) as required by the Purchase Agreement. In the event UP shall, in violation of its obligations under the Purchase Agreement, fail to pay (or cause payment to be for the Locomotives made) when due, 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 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 to be executed by its authorized representative.

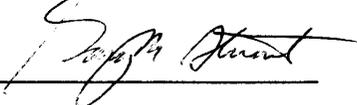
Attest:

UNION PACIFIC HOLDINGS, INC.



Assistant Secretary

By:



Title Vice President and Treasurer

Date June 30, 1994

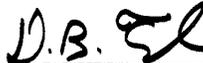
Attest:

GENERAL ELECTRIC COMPANY



Shawn P. Galey, Attesting Secretary

By:



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

Date July 1, 1994

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 _____