



3-078A001

GE Transportation
Systems

Michael J. Baughman
Counsel

General Electric Company
2901 East Lake Road, Erie, PA 16531
814 875-3044 Fx: 814 875-2724

March 18, 1993

VIA FEDERAL EXPRESS

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

RECORDATION NO. **18170** FILED 1425

MAR 19 1993 10:00 AM

INTERSTATE COMMERCE COMMISSION

MAR 19 9 55 AM '93
RECORDATION UNIT

Subject: Recordation of Locomotive Lease

Dear Ms. Lee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303 and the regulations thereunder, is an original and one copy/counterpart of an Interim User (Locomotive Lease) Agreement, dated as of March 1, 1993, between General Electric Company ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), a primary document.

The names and addresses of the parties to the enclosed Locomotive Lease Agreement are as follows:

LESSOR: General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

LESSEE: The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173

A general description of the locomotives covered by the enclosed documents is attached hereto as Schedule I. Also enclosed is a remittance in the amount of \$16.00 for the required recording fee.

SCHEDULE I

Description of Locomotive(s)

<u>Type of Equipment</u>	<u>Number of Units</u>	<u>Road Number(s)</u>
General Electric Diesel Electric Locomotives	sixty	867-926 (inclusive)

18170
RECORDATION NO. FILED 1425

MAR 19 1993 10-00 AM

INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

By and between

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

AND

GENERAL ELECTRIC COMPANY

Effective as of February 26, 1993

THIS AGREEMENT, dated as of February 26, 1993, between GENERAL ELECTRIC COMPANY, a New York corporation ("GE") and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("ATSF").

WITNESSETH:

WHEREAS, GE and ATSF contemplate entering into an agreement to be dated as of March 1, 1993 (the "Purchase Agreement") calling for GE to manufacture and deliver to ATSF, and ATSF to accept and pay for, 60 Dash 8-40CW locomotives to bear road numbers 867-926, inclusive (collectively, the "Locomotives"); and

WHEREAS, ATSF intends to finance the purchase of the Locomotives from GE pursuant to one or more permanent forms of financing (the "Financing"), but delivery of the Locomotives is scheduled to begin prior to the time ATSF will have completed said Financing; and

WHEREAS, ATSF desires that it be permitted to use the Locomotives pending establishment of such Financing, solely as a bailee thereof, and GE is willing to grant such temporary custody and possession to ATSF 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 ATSF, as lessee, FOB GE's Erie, Pennsylvania plant, as of the date each of them is released from manufacturing, for acceptance by ATSF in Joliet, Illinois. ATSF covenants to GE that the Financing will be established and the purchase price for the Locomotives paid, not later than June 25, 1993 (time being of the essence) for all Locomotives delivered on or before June 20, 1993. ATSF further covenants to GE that the Financing will be established and the purchase price paid, not later than September 23, 1993 (time being of the essence) for all Locomotives delivered after June 20, 1993. ATSF may pay the purchase price for any of the Locomotives in advance of June 25, 1993 or September 23, 1993, pursuant to an executed Purchase Agreement between GE and ATSF. On the date the purchase price of the Locomotives is paid to GE, 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 receipt of each Locomotive in Joliet, Illinois, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Locomotive under this Agreement. During the term hereof for so long as the purchase price shall not have

been paid, title to the Locomotives shall remain in GE with ATSF's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of GE's delivery of bills of sale to the party which has paid the purchase price therefor.

3. On the date the purchase price for all of the Locomotives is paid, ATSF agrees to pay to GE, as rent for each such Locomotives, a sum equal to the purchase price for the Locomotives, 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, for each day that payment of the purchase price is not received from and after the 30th day after the average delivery date of the Locomotives FOB Erie, Pennsylvania. It is the mutual intent of the parties that the purchase price for the Locomotives be paid on the 30th day after the average delivery date of the Locomotives, such that no rent shall be due hereunder.

4. ATSF shall permit no liens or encumbrances (other than the usual interchange of traffic rules) of any kind 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 ATSF during the time any of the Locomotives are in the possession of ATSF; 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 ATSF described in this Section 4 shall survive termination of this Agreement.

5. ATSF shall cause the Locomotives to be covered by a Maintenance Agreement between GE and ATSF and shall, at its option, repair or promptly pay to GE 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. ATSF 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.**

ATSF 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, ATSF shall promptly cause the same to be restored or replaced.

8. In the event ATSF shall, in violation of its obligations under the Purchase Agreement, fail to accept and pay (or cause payment to be made) for the Locomotives when due, GE may, in addition to any other remedies it may have, enter upon the premises of ATSF 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 ATSF, or its successors or assigns. In such event, GE may use the Locomotives for any purposes whatsoever, and may sell and deliver the Locomotives to others upon such terms as GE may see fit in its sole discretion, it being understood and agreed that ATSF shall remain liable to GE 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 ATSF under the Purchase Agreement (less the value of GE's use of the Locomotives), plus (b) an amount equal to all expenses of GE incident to such sale including, but not limited to, the expenses of withdrawing the Locomotives from the service of ATSF, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. ATSF shall pay the foregoing amounts from time to time upon demand by GE.

9. ATSF 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. ATSF 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 ATSF 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 GE's release of the Locomotives from manufacturing in Erie, Pennsylvania.

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

IN WITNESS WHEREOF, each party hereto has caused this Interim User Agreement to be executed by its authorized representative in Schaumburg, Illinois as of the 26th day of February, 1993.

Attest:


Assistant Secretary

**THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY
COMPANY**

By: 
Title SENIOR VICE PRES. TREASURER
AND CHIEF FINANCIAL OFFICER

Attest:


M. J. Baughman Attesting Secretary

GENERAL ELECTRIC COMPANY

By: 
D. B. Tucker, General Manager,
North American Locomotive
Marketing, Sales & Service

State of Illinois)
) ss:
County of Cook)

On this 17 day of March, 1993, before me personally appeared DENISE SPRINGER, to me personally known, who, being by me duly sworn, says that he is SR. V.P. TREAS. & CFO of The Atchison, Topeka and Santa Fe Railway 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]



Lois M. Melkovitz
Notary Public

My Commission expires:

Commonwealth of Pennsylvania)
) ss:
County of Erie)

On this 11th day of March, 1993, 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]

Carol A. Wahlen
Notary Public

My Commission expires:

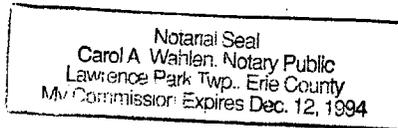


EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated as of March 1, 1993 has been accepted in Joliet, Illinois by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") under the Interim User Agreement dated as of February 26, 1993 between General Electric Company and ATSF this _____ day of _____ 1993.

Description of Equipment

Number of Units

Description

Road Numbers

Model Dash 8-40CW

**THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY**

By: _____

Title _____