

0-003A019

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16706
RECORDATION NO _____ FILED 1425
JAN 5 1990 - 11:05 AM
INTERSTATE COMMERCE COMMISSION

January 5, 1990

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and three counterparts of a Locomotive Lease Agreement, dated as of December 8, 1989, between General Electric Company ("Lessor"), and Union Pacific Railroad 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: Union Pacific Railroad Company
1414 Dodge Street
Omaha, Nebraska 68179

RECORDED
JAN 5 1990 11:50
U.S. DEPT. OF JUSTICE

A general description of the railroad locomotives covered by the enclosed documents is attached hereto as Schedule I.

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

Handwritten signature: J. K. Maser III

Letter to Secretary McGee
Page 2
January 5, 1990

Also enclosed is a remittance in the amount of \$15.00 for the required recording fee.

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

PRIMARY DOCUMENT

Locomotive Lease Agreement, dated as of December 8, 1989, between General Electric Company ("Lessor") and Union Pacific Railroad Company ("Lessee"), relating to twenty (20) General Electric Dash 7 C-30 diesel electric locomotives, bearing identification marks "Union Pacific" and Road Nos. 8015, 8017, 8021, 8025, 8026, 8035, 8044, 8046, 8053, 8056, 8058, 8084, 8093, 8125, 8127, 8128, 8130, 8131, 8136, and 8149.

Respectfully submitted,

By: 
John K. Maser III
Attorney-In-Fact

004/FS
Enclosures

Schedule I

Description of Locomotives

<u>Type of Equipment</u>	<u>Number</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric Dash 7 C-30, diesel electric locomotives	20 locomotives	Marked "Union Pacific" on both sides of locomotive	8015, 8017, 8021, 8025, 8026, 8035, 8044, 8046, 8053, 8056, 8058, 8084, 8093, 8125, 8127, 8128, 8130, 8131, 8136, and 8149

Interstate Commerce Commission
Washington, D.C. 20423

1/5/90

OFFICE OF THE SECRETARY

John K Maser III

Donelan, Cleary, Wood & Maser
1275 K. Street N.W.
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/5/90 at 11:05am and assigned recordation number(s). 16706

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

JAN 5 1990 - 11 05 AM LOCOMOTIVE LEASE AGREEMENT

This Lease is made as of the 8th day of December, 1989, between General Electric Company, a corporation of the State of New York through its Transportation Systems Business Operation (hereinafter "Lessor") and Union Pacific Railroad a corporation of the State of Nebraska (hereinafter "Lessee").

1.0 Equipment

Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use under the terms and conditions set forth herein, the locomotives described in Annex 1 hereto (hereinafter "Locomotives")

2.0 Delivery

2.1 Delivery of the Locomotives shall be made at Lessor's facility in Erie, Pennsylvania, or at such other point as may be agreed upon by the parties in writing. If delivery is to be made at a point other than Lessor's facility in Erie, Lessee shall pay all expenses of shipment of the Locomotives to said point. The estimated date of delivery of each Locomotive is set forth in Annex 1

* 2.2 The Lessor shall not be liable for delays in delivery or failure to deliver the Locomotives due to (a) causes beyond its reasonable control, or (b) acts of God, acts of the Lessee, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riots, or delays in transportation, or (c) inability to obtain necessary labor, materials, components, transportation or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time of the delay

3.0 Receipt, Inspection and Acceptance

3.1 At delivery of each Locomotive, an authorized representative of Lessee shall execute a Certificate of Acceptance in the form of Annex 2 hereto

3.2 The Locomotives are subject to Lessee's inspection at delivery. Failure to report any material defect in the Locomotives discoverable upon visual examination within three (3) days of delivery will constitute acceptance of the Locomotives and be conclusive evidence of fitness for service at the time of delivery

3.3 The Locomotives will be available at all reasonable times for Lessor's inspection, but Lessor is under no obligation to inspect and Lessee's obligations to keep the Locomotives in good repair and operating condition is not affected in any manner by any failure to inspect.

4.0 Rentals

* 4.1 Lessee agrees to pay to Lessor, as rent for each of the Locomotives, the sum of \$ 500.00 per day during the term of this Lease

4.2 Payment of all rental charges will be made within ten days of receipt of invoice. Invoices for rental charges will be submitted at the end of the term or every month of the term, whichever is the shorter period. Any other payments due will be made within thirty days of invoice

4.3 Any amounts unpaid after they become due shall accrue interest at the then current prime rate of interest charged by Citibank N.A. plus 2-1/2 percent (or the lawful rate, whichever is less) for the period of time during which they are overdue. It is expressly understood that this provision shall be in addition to (and not in derogation of) any other rights which Lessor has

5.0 Alterations, Maintenance and Repair and Warranty

5.1 Except for alterations or changes required by law or regulatory authority, Lessee shall not make any change in the design, construction or specifications of the Locomotives, body or electrical equipment, or components thereof, without the prior written approval of the Lessor. Any such alteration or change shall be at Lessee's expense. Any parts installed or replacements made by Lessee shall be considered accessions to the Locomotive and title thereto shall immediately vest in Lessor, without cost or expense to Lessor

* 5.2 Lessee shall, during the term of this Lease, at its expense (except to the extent specified in 5.3 below) keep the Locomotives in good repair and operating condition (reasonable wear and tear excepted), applying the manufacturer's recommended normal maintenance standards and procedures. Lessee assumes all operating expenses, including the costs of fuel, lubricating oils, sand, filters, brake shoes and other similar supplies

Lessee is responsible for repairing the Locomotives promptly when repairs are needed, subject to availability of Lessee's shop space and material to be supplied by Lessor

5.3 Lessor's Warranty

5.3.1 Lessor warrants that the Locomotives shall be free from defects in material and workmanship under normal use and service during the term of this Lease. If any part of the Locomotives fails to meet the foregoing warranty and Lessee so informs Lessor of that failure, Lessor, after verification of the condition of the part and usage, shall make available to Lessee a replacement or repaired part. Lessee shall, at its expense, remove defective parts and install repaired and replacement parts

* 5.3.2 If the Lessor is to provide any replacement or repaired part for a Locomotive, this shall not in any way affect or abate Lessee's obligation to pay rent.

5.3.3 Lessor's warranty responsibility shall not extend to parts normally consumed in operation (such as, but not limited to, filters and brake shoes), or defects or damage caused in whole or in part by failure to comply with operating and maintenance recommendations, by reason of improper storage or application, misuse, negligence, accident or improper maintenance, or by repairs or alterations not approved by Lessor

5.3.4 This Paragraph 5.3 sets forth the exclusive remedies for claims based on defects in or failures of the Locomotives, and any part thereof, whether the claim is in contract, warranty, tort (including negligence) or otherwise and however instituted. The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. **NO WARRANTY OR MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.**

6.0 Patents

6.1 Except in case of designs, articles and materials specified by Lessee and not manufactured by Lessor, or manufactured by the Lessor to Lessee's design, Lessor shall defend any suit or proceeding brought against the Lessee based on a claim that any Locomotive or any part thereof, furnished under this Lease constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority information and assistance (at the Lessor's expense) for the defense of same, and Lessor shall pay all damages and costs awarded therein against Lessee. In case said Locomotive, or any part thereof, is held to constitute infringement and the use of said Locomotive or part is enjoined the Lessor shall, at its own expense and option, either procure for the Lessee the right to continue using said Locomotive or part; replace same with non-infringing items; modify it so as to be non-infringing; take possession of said Locomotive and cancel the Lease with respect to such Locomotive, effective as of the date on which the Locomotive or part is held to constitute infringement in such suit, Lessor to pay the reasonable cost of returning said Locomotive to Lessor. The foregoing states the entire liability of the Lessor for patent infringement. In the event the use of a Locomotive is enjoined based on a claim of infringement covered by the provisions of this Paragraph, Lessee's obligation to pay rent with respect to such Locomotive shall abate until the use of the Locomotive no longer is so enjoined or this Lease is cancelled with respect to such Locomotive

6.2 With respect to any designs, articles or materials specified by the Lessee, and not manufactured by the Lessor or manufactured by the Lessor to Lessee's specifications, the Lessee shall defend any suit or proceeding brought against the

Lessor so far as based on a claim that any such designs, articles or materials, or any part thereof, furnished under this Lease constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Lessee's expense) for the defense of same, and the Lessee shall pay all damages and costs awarded therein against the Lessor. In case said designs, articles or materials, or any part thereof is held to constitute infringement, and the use thereof is enjoined the Lessee shall, at its own expense and option, procure for the Lessor the right to continue using or manufacturing said designs, articles and materials, or shall permit Lessor, at Lessee's expense, to modify such designs, articles and materials so as to become non-infringing. Notwithstanding any suits or proceedings which may be brought against Lessor or Lessee based on a claim that any designs, articles or materials specified by Lessee constitute an infringement of any patent of the United States, Lessee's obligation to pay rent shall continue for the term of this Lease

7.0 Use and Operation

7.1 The Lessee agrees to comply with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over Lessee or the Locomotives, to the extent that such laws and rules affect the operation or use of the Locomotives. In the event such laws or rules require the alteration of Locomotives, the Lessee will conform therewith, at its expense, and will maintain the same proper condition for operation under such laws and rules, provided, however, that the Lessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor as owner

7.2 Lessee will use and operate the Locomotives in conformance with all applicable manufacturer recommendations

7.3 Lessee will maintain records as to the use, operation, movement and maintenance of the Locomotives and make such records available for Lessor's inspection at reasonable times and upon reasonable notice

7.4 Lessee agrees to use the Locomotives exclusively within its own service and within the boundaries of the United States, except as specifically agreed to in writing by Lessor, which agreement will not be unreasonably withheld. Any additional operating limitations applicable to the Locomotives will be set forth in one or more riders to this Lease

7.5 Charges levied by third parties for use of their rights of way, track, storage or hauling are the responsibility of Lessee

8.0 Taxes and Liens

8.1 The Lessee agrees that, during the continuance of this Lease, it will promptly pay as additional rentals, all taxes, assessments and other governmental charges levied or assessed against the Lessor, or any predecessor or successor in title of the Lessor, as the case may be, on account of its ownership of the Locomotives or on account of the possession, use or operation thereof, or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on the rentals herein provided), including any sales or similar taxes payable on account of the leasing of the Locomotives hereunder. Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof, unless thereby, in the judgment of the Lessor, the rights or interests of the Lessor will be materially endangered. In the event any tax reports are required to be made concerning said Locomotives, the Lessee will either make such reports in such manner as to show the ownership of such Locomotives by the Lessor or will notify the Lessor of such requirement and will make such report in such manner as shall be satisfactory to the Lessor

8.2 The Lessee will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim against the Lessee which, if unpaid, might become a lien or charge upon or against the title or interest of the Lessor to the Locomotives or which might have the effect of altering in any way the rights of the Lessor in such Locomotives under this Lease. Lessee shall not be required to pay or discharge any such debt, tax, charge, assessment, or obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the judgment of the Lessor, materially endanger the rights or interests of the Lessor

9.0 Loss and Damage

* 9.1 Lessee shall bear the entire risk of loss (including theft) or damage to any Locomotive from the date of delivery through redelivery to Lessor as provided herein, regardless of cause, except to the extent caused directly by the negligence or willful misconduct of Lessor

9.2 Lessee shall notify Lessor immediately of any accident, collision, loss, theft or damage involving any Locomotive, to be followed promptly by a written report to Lessor. Lessee shall provide all assistance reasonably requested by Lessor in the investigation, defense or prosecution of any resulting claims or suits

9.3 In the event a Locomotive is lost or damaged beyond repair, Lessee shall so notify Lessor. Within thirty days of such notification, Lessee shall pay Lessor the daily rental charges through the date of notification and the casualty value of such Locomotive, which for the purpose of this Lease shall be \$_____. Upon payment of the foregoing amounts, Lessor will pass title to the Locomotives to Lessee and this Lease will terminate

9.4 In the event a Locomotive is partly damaged or destroyed, the Lessee shall promptly elect, after consultation with Lessor, whether to repair the Locomotive or consider it damaged beyond repair. If the Lessee elects to repair the Locomotive, it shall do so (or have the repairs done) at its own expense. It is understood that the Locomotive so repaired must be restored to good operating condition, reasonable wear and tear excepted. Moreover, during the period such repairs are being made, Lessee's obligation to pay rent shall continue

9.5 Lessee shall, at all times at its own expense, cause to be carried and maintained (and shall furnish to Lessor, upon request thereof, a certificate evidencing) (i) all risk insurance on Locomotives and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts (subject to customary and prudent deductible) and against such risks and with such insurance companies as is consistent with prudent railroad industry practices. *provided, however, that if Lessee customarily self-insures against such risks, Lessee may self-insure in the extent that such self-insurance is consistent with prudent railroad industry practices.* Any such policies of insurance carried will name Lessor as an additional insured, provide that they will not be cancelled or materially altered without thirty days prior written notice to the Lessor, and will contain such other appropriate provisions as are agreed upon by the parties

* 10 Indemnity

The Lessee agrees to indemnify, defend, and hold the Lessor (and any assignee or successor in interest of Lessor) harmless from any and all losses, costs (including reasonable attorney's fees), claims, actions, suits and judgments whatsoever (hereinafter referred to as the "Liabilities") arising on account of, or caused in any way by, the Locomotives or the use or operation thereof, except to the extent directly caused by the negligence or willful misconduct of Lessor. Lessee will notify Lessor immediately of any Liability, as defined above, and permit Lessor to appear in any proceeding to defend its interests.

Greater of owner's depreciated book value or fair market value

11 Liability of Lessor

- 11.1 Lessor's liability arising out of the furnishing or use of any Locomotive under this Lease, based on contract, warranty, tort (including negligence) or otherwise, will in no case exceed the cost of correcting defects to the Locomotives
- 11.2 In no case, whether arising under contract, warranty, tort (including negligence) or otherwise, will Lessor's liability include special, incidental, indirect or consequential damages, including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Lessee's customers for such damages.
- * 11.3 The provisions of 11.1 and 11.2 above shall not apply to claims of third parties (except Lessee's customers) for personal injury (including death) or property damage to the extent such injury or damage is directly caused by Lessor's negligence

12 Title Identification, Recording

- 12.1 No right, title or interest in the Locomotives will vest in Lessee by reason of this Lease or by reason of the delivery to or use by Lessee of the Locomotives, except the right to use the Locomotives in accordance with the terms of this Lease.
- 12.2 Lessee will take all actions necessary to protect Lessor's rights and interest in the Locomotives and will take no action inconsistent with that obligation. In addition, Lessee agrees to take no action in regard to any financing or trust agreement involving or covering the Locomotives.
- 12.3 Prior to delivery of the Locomotives, the Lessor shall cause to be conspicuously marked on each side of the Locomotives, at Lessor's expense, the following legend

GENERAL ELECTRIC COMPANY
LESSOR
LEASE FILED WITH ICC

Lessee shall not permit such legend to be removed or altered and in the event such words are removed, defaced or destroyed, Lessee shall immediately replace such legend at its expense. Lessee will not allow the name of any persons, association or corporation to be placed on the Locomotives but the Locomotives may be lettered with the names or initials or other insignia customarily used by the Lessee on its equipment of the same or a similar type for convenience of identification of Lessee's right to use and operate the Locomotives under this Lease

- 12.4 Prior to delivery of any Locomotive hereunder, Lessee, at its own expense, shall cause this Lease and any supplements hereto and any assignment and reassignment hereof to be filed with the Interstate Commerce Commission. Lessee shall deliver to Lessor one copy of certificates or other evidence satisfactory to counsel for Lessor of such filing and the payment of filing fees and taxes, if any, in connection therewith. In addition, Lessee shall do such other acts as may be required by Federal or state law, or reasonably requested by Lessor, for the proper protection of Lessor's title and interest in the Locomotives.

13 Assignment

- 13.1 Lessee shall not assign, transfer or encumber this Lease or any interest or right therein without the prior written consent of Lessor. Any such transfer, assignment or encumbrance, whether voluntary, by operation of law, or otherwise, without such prior written consent, shall be void and shall, at the option of Lessor, terminate this Lease.
- 13.2 Lessor, upon prior written notice to Lessee, may assign this Lease and all or any of the rights, benefits and advantages hereunder (including, but not limited to, title to any Locomotive) to any of Lessor's subsidiaries (of any tier) or affiliates as Lessor may select in its sole discretion.

14 Representations and Warranties

- 14.1 The Lessor represents and warrants that it has the right to enter into this Lease
- 14.2 The Lessee represents and warrants that:
 - 14.2.1 The Lessee is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Lease, has power and authority to own its properties and carry on its business as now conducted,
 - 14.2.2 The execution and delivery of this Lease 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 the Lease is a valid and binding obligation of the Lessee enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against the Lessee in accordance with its terms,
 - 14.2.3 No mortgage, security or trust agreement or other instrument binding upon Lessee shall in any manner affect the right and interest of Lessor in and to the Locomotives,
 - 14.2.4 No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Lease or for the validity and enforceability thereof or the leasing of the Locomotives hereunder for the rentals and on the other terms and conditions provided for herein, or, if any such authorizations are required, they have been obtained, and if any such shall hereafter be required, they will promptly be obtained,
 - 14.2.5 No litigation or administrative proceedings are pending or threatened against the Lessee which would affect the validity of this Lease or the rights of the Lessor hereunder.

15 Default

- 15.1 If Lessee breaches any material provision of this Lease and such breach is not cured within fourteen (14) calendar days after written notice from Lessor, Lessor may, without prejudice to any other rights or remedies it may have under this Lease, at law or in equity, do any one or more of the following
 - 15.1.1 proceed by court action either at law or in equity, to enforce performance by the Lessee of the covenants of this Lease or to recover damages for the breach thereof,
 - 15.1.2 terminate this Lease immediately, whereupon Lessee shall promptly redeliver the Locomotives to Lessor at its Erie, PA facility. Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which may then be due and owing or which become due and

unpaid for the use of the Locomotives (including, but not limited to, rentals accruing on the Locomotives after the date of termination) and recover from Lessee amounts due pursuant to subparagraph 15.1.3 below,

- 15.1.3 In the event Lessee fails to promptly redeliver the Locomotives under subparagraph 15.1.2, Lessor may enter upon the premises of the Lessee or other premises where the Locomotives may be and take possession of all or any such Locomotives and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns. Lessee shall pay to Lessor all costs associated with the repossession of the Locomotives.

- 15.2 The remedies and powers in this Lease in favor of Lessor shall not be deemed exclusive, but shall be cumulative and in addition to all other remedies and powers existing at law or in equity, and each and every remedy and power may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any remedy or power, or granting of an extension of time for the making of any payment due hereunder or other indulgence and no exercise of any remedy or power shall impair any such remedy or power or the rights under this Lease or shall constitute a waiver of any breach or default or an acquiescence therein. In the event that Lessor brings suit and is entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

- 15.3 As used in this Section, a breach of a material provision of this Lease shall include, but not be limited to, the following:

- 15.3.1 failure to pay any amounts when due,
- 15.3.2 Lessee's making or suffering, voluntarily, by operation of law or otherwise, any unauthorized assignment, lien, encumbrance or transfer of this Lease or any interest thereon or any right granted thereunder, and shall fail or refuse to cause such assignment, lien, encumbrance or transfer to be cancelled by agreement of all parties having any interest therein
- 15.3.3 any proceedings commenced by or against Lessee for relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions,
- 15.3.4 failure to satisfy the insurance requirements under paragraph 9.5

16 Term

- * 16.1 The terms of this Lease shall commence upon delivery of the Locomotives described in Annex 1 and shall terminate on _____, unless sooner terminated by the mutual consent of both parties hereto, or as provided in Section 9 or 15. Locomotives returned to Lessor at the end of the term or pursuant to a termination under Section 15 will be returned with a full complement of consumables, including fuel, oil and sand
- 16.2 It is understood and agreed that any termination will not relieve either party of any obligation arising prior to or upon such termination, including but not limited to the obligations of Lessee under Sections 9, 10 and 12, and any obligation to pay any rent or other sums due and owing to Lessor at the time of any such termination or as a result of any such termination
- 16.3 Lessee acknowledges that some or all of the Locomotives leased hereunder may be the subject of master leases in which Lessor herein is the lessee or financing agreements. Such leases and financing agreements, if any, may require return of specific equipment, including the Locomotives leased hereunder, upon certain events. Lessee agrees to return to Lessor any Locomotive upon Lessor's written notice of return provided Lessor provides a substantially similar replacement Locomotive to Lessee at a place and time reasonably convenient to Lessee. Expenses of delivery of any such Locomotive will be for Lessor's account

17 General

- 17.1 Subject Headings
The subject headings on this Lease have been placed thereon for the convenience of the parties and shall not be considered in any interpretation or construction of this Lease
- 17.2 Waiver
The failure of either party to enforce at any time or for any period of time any provision of this Lease shall not be construed as a waiver of such provision or of the rights of such party thereafter to enforce such provision
- 17.3 Notice
All notices required or permitted hereunder shall be in writing and shall be deemed duly given when personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by cable confirmed by letter as aforesaid
- 17.4 Execution in Counterparts
This Lease may be executed in counterparts, each of which shall be deemed to be an original and together shall constitute but one and the same instrument.
- 17.5 Applicable Law
Except as Federal law may be applicable, the terms and conditions of this instrument and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, but Lessor and any assignee thereof shall be entitled to such additional rights arising out of the filing or recording thereof, or of an assignment hereof, as shall be conferred by the laws of any jurisdiction in which the Lease or any such assignment shall be filed or recorded
- 17.6 Entire Agreement
This Lease, its annexures and any written amendments and riders, contain the entire and only agreement between the parties concerning the subject matter hereof, and there are merged herein all prior and collateral representations, promises or conditions in connection with the subject matter hereof, and any representation, promise or condition not incorporated herein and made a part hereof shall not be binding upon either party. No modification, renewal, extension, termination or waiver of this Lease or any of the provisions herein contained shall be binding upon either party unless made in writing by a duly authorized representative of each party

"*" THESE SECTIONS ARE AMENDED BY ATTACHED RIDERS

WHEREFORE, the parties hereto, intending to be legally bound hereby, have executed this Lease as of the date first written above.

GENERAL ELECTRIC COMPANY

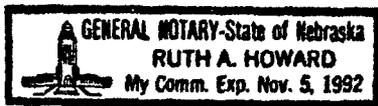
By Nihal Ugg
Title Direct Purchases
Date 12-26-89

By R. H. Lonji
Title MANAGER - FINANCE OPERATIONS
Date 12-2-90

Annex 1 - Locomotive Description
Annex 2 - Certificate of Acceptance

State of Nebraska
County of Douglas ss.

On this 26th day of December, 1989, before
me personally appeared Michael Legg,
to me personally known, who, being by me duly sworn, did say that he is (a)
Director of Union Paper Mills Co
that the instrument was signed on behalf of such 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 such corporation



Ruth A. Howard
Notary Public

My commission expires: 11/5/92

ANNEX 1

TYPE C30

DASH 7 DIESEL ELECTRIC LOCOMOTIVE

DELIVERY POINT: Seattle, WA

QUANTITY:

IDENTIFICATION NOS:

DELIVERY DATE:

20

8015 8058
8017 8084
8021 8093
8025 8125
8026 8127
8035 8128
8044 8130
8046 8131
8053 8136
8056 8149

DEC 11-31, 1989

5

LATER

JAN 2-15, 1990

ANNEX 2

I, the duly authorized representative for the _____
(the "Lessee") under the Lease of Locomotive Equipment dated _____,
1989, do certify that I inspected and accepted delivery thereunder of the fol-
lowing Units of Equipment:

TYPE OF LOCOMOTIVE:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED:

ROAD NUMBER(S):

I do further certify that the foregoing Units are in good order and condition,
and conform to the specifications, requirements and standards applicable there-
fore as provided in the Lease.

I do further certify that each of the foregoing Units has been marked upon each
side of each such Unit in letters not less than one inch in height as follows:

"General Electric Company, Lessor,
Lease filed with the ICC"

Authorized Representative of Lessee

CONT:LO-LEASE

Rider Number One

Section 4.1 is amended by adding the following:

The rental obligation of Lessee as to each Locomotive shall be abated to the extent needed to offset the late delivery of fifty locomotives sold to Lessee by Lessor ("Purchased Locomotives"). Rent shall be abated on a Locomotive-Day basis with the total number of Locomotives-Days of rent to be abated computed by:

- 1) adding the "cumulative scheduled deliveries" of each two month period
- 2) adding the "cumulative actual deliveries" of each two month period
- 3) subtracting (2) from (1)
- 4) dividing the cumulative difference number by 2;
- 5) multiplying that result by 1.33, being the proportionate difference in the horsepower of the Purchased Locomotives (4000) and the leased locomotives (3000);
- 6) multiplying that result by 1.055, being the proportionate difference between the expected availability of the Purchased Locomotives (.95) and the leased locomotives (0.9);
- 7) multiplying the result by 30 being the given number of Locomotive-Days in the Locomotive-Month period thus computed;
- 8) totaling the results.

	<u>Nov. '89</u>	<u>Dec.</u>	<u>Jan. '90</u>	<u>Feb.</u>	<u>Mar.</u>	<u>Apr.</u>
Scheduled Deliveries	1	10	20	15	4	0
Cumulative Scheduled Deliveries	1	11	31	46	50	50
Step 1		12	42	77	96	100
Actual Deliveries	0	--	--	--	--	--
Cumulative Actual Deliveries	0	--	--	--	--	--
Step 2		--	--	--	--	--
Step 3		--	--	--	--	--
Step 4 (+ 2)		--	--	--	--	--
Step 5 (X 1.33)		--	--	--	--	--
Step 6 (X 1.055)		--	--	--	--	--
Step 7 (X 30)		--	--	--	--	--
Step 8 Total						

Rider Number Two

Section 5.2 is superseded in its entirety by the following:

Maintenance responsibilities for the Locomotives covered by this lease will be as follows:

During the term of this lease, Lessee at its expense will:

1. Conduct all FRA required inspections and keep the Locomotives in compliance with such regulations.
2. Be responsible for material and labor for:
 - a. Scheduled maintenance per Lessee's regular practice as on its owned Locomotives.
 - b. Failure repair not to exceed \$1,000 or 8 man-hours (other than Lessor's responsibility as specified in items 5 and 6 below)
 - c. Wheel truing and replacement
 - d. Failures described in 6 below, if such failure is a result of improper use, abuse, or misapplication or improper or untimely maintenance by Lessee.
 - e. Replacement of lost or stolen parts
3. Use best efforts to purchase replacement materials from Lessor. Lessor has option to supply OEM parts at own expense.
4. Use fuel, lubricants, lube oil and coolant per Lessee's regular practice as on its owned Locomotives.

During the term of the lease, Lessor will be responsible for:

5. Any overhauls required. Lessee agrees that Lessor has at its option, the right to perform any overhaul whenever the Lessor feels that it is necessary.
6. Repair or failures requiring replacement of the engine, power assembly, turbocharger main generator or a traction motor, provided such failure is not result of improper use, abuse, misapplication, or improper or untimely maintenance, by the Lessee.

Lessor may, at its sole option, authorize Lessee to perform Lessor's above mentioned repair responsibilities, and if repairs are authorized, Lessee shall render a bill to Lessor for said repairs.

Rider No. Three

Section 5.3.1 is amended by deleting the first sentence and substituting the following in lieu thereof:

"Lessor warrants that the Locomotives shall be free from defects in materials and workmanship under normal use and service during the term of this Lease and, as of the date of delivery to Lessee, comply with applicable FRA regulations."

Rider Number Four

Section 16.1

The termination date for the lease shall be the later of that date when the final locomotive purchased by or for Union Pacific Railroad of the Year Two Deliveries under the multi-year Contract effective July 8, 1988 is delivered by General Electric, or, the date on which the balance of rent abated Locomotive-Days under rider Number One is reduced to zero.

Lessee may return any or all of the Locomotives to Lessor prior to the termination date.

Rider Number Five

Miscellaneous Items

1. Section 2.2 is amended by deleting the word "priorities".

2. Section 5.3.2 is amended by adding the following:

However, if lessor fails to ship any needed replacement or repair part within forty-eight 48 hours of receipt of lessee's order then rent shall be abated for the number of days shipment is delayed; replacement or repair parts needed to repair accident damage shall not be included in this provision.

↑ not caused by a defect in materials or workmanship



3. To the following sections add the words "or from defects in materials and/or workmanship of the locomotives":

(a) at Section 9.1 at the end thereof;

(b) at Section 10 at the end of the first sentence thereof;

(c) at Section 11.3 at the end thereof.