

17230 / A
REGISTRATION NO. _____ FILED 1425

FEB 19 1991 -3 15 PM

INTERSTATE COMMERCE COMMISSION

THE FIFTH THIRD BANK

LEGAL DEPARTMENT

17230
REGISTRATION NO. _____ FILED 1425

FEB 19 1991 -3 15 PM

INTERSTATE COMMERCE COMMISSION
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17230 / B
REGISTRATION NO. _____ FILED 142A
FEB 19 1991 -3 15 PM
INTERSTATE COMMERCE COMMISSION

January 22, 1991

Ms. Mildred Lee
INTERSTATE COMMERCE COMMISSION
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Please find enclosed herewith an original and certified set of documents by and between Laurinburg and Southern Railroad Company, located at P. O. Box 1929, Laurinburg, North Carolina 28362, Carolina Power and Light Company, located at P. O. Box 1551, Raleigh, North Carolina 27602 and The Fifth Third Bank Leasing Company, located at 38 Fountain Square Plaza, Cincinnati, Ohio 45263. The documents enclosed include the following:

- a. Promissory Note;
- b. Security Agreement;
- c. Assignment of Lease; and
- d. Notice and Acknowledgement of Assignment.

It is Fifth Third's intention to take a security interest in the equipment described in Schedule A of the Security Agreement. I have also enclosed a check in the amount of \$15.00 representing filing fees. Please return the original documents in the self-addressed envelope that I have enclosed. Should you have any questions, please feel free to call me at (513) 579-5193.

Thank you in advance for your cooperation in this matter.

Sincerely,

THE FIFTH THIRD BANK,



Ann M. Blase
Paralegal

NOTICE OPERATING UNIT
FEB 19 3 04 PM '91

AMB:km
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

3/1/91

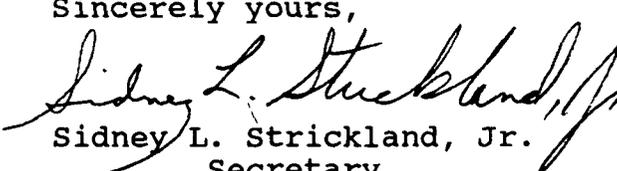
OFFICE OF THE SECRETARY

Arn M. Blass
The Fifth Third Bank
38 Fountain Square Plaza
Cincinnati, Ohio 45263

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 2/19/91 at 3:15pm, and assigned recordation number(s). 17230, 17230-A & 17230-B

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

17230/A

FEB 19 1991 -3 15 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE

THIS AGREEMENT, made as of the 17 day of DEC, 1990 by and between LAURINBURG AND SOUTHERN RAILROAD COMPANY (hereinafter called "Assignor") and FIFTH THIRD LEASING COMPANY (hereinafter called "Assignee")

WITNESSETH:

That in consideration of mutual undertakings herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment of Lease. Assignor hereby assigns and sets over unto Assignee, effective on the date hereof, all of Assignor's right, title, and interest in, under and to the documents listed on Schedule A, attached hereto and made a part hereof (the "Operative Documents") between Assignor, as lessor, and Carolina Power and Light Company, as lessee (the "Lessee"). Assignor agrees that Assignee is not responsible for the obligations of Assignor under the Operative Documents. Assignor agrees to give Lessee notice of the Assignment made herein and to instruct Lessee to send copies of all notices given under the terms of the Operative Documents to Assignee at its address at 38 Fountain Square Plaza, Cincinnati, Ohio 45263.

2. Representations of Assignor. Assignor hereby represents and warrants and Assignee may rely on the following:

- (a) Assignor will deliver to Assignee certified originals of the Operative Documents and other documents pertaining thereto including, without limitation all consents, waivers and any other written communications or correspondence.
- (b) Assignor is a duly organized and validly existing corporation in good standing under laws of the State of North Carolina and is duly qualified to do business in each jurisdiction (including the jurisdiction where the equipment which is the subject of the Operative

Documents is to be located) where its ownership or lease of property or conduct of its business require such qualification.

- (c) Each of the Operative Documents has been duly executed and delivered and is in full force and effect, constitutes the valid and binding obligation of Assignor and Lessee are enforceable against Assignor and Lessee in accordance with the terms of the Operative Documents (subject to laws or general obligation effecting creditors' rights) and no defaults or conditions, which with the passage of time or the giving of notice or both, would constitute defaults, exist thereunder by Lessee or by Assignor.
- (d) Assignor has the power and authority to enter into this Agreement and to carry out the transactions contemplated hereunder. There is no action, suit or proceeding pending against Assignor before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Assignor of this Agreement.
- (e) The execution and delivery of this Agreement by Assignor and the performance by Assignor of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action of Assignor and do not violate or conflict with: (i) any provision of Assignor's Certificate of Incorporation or By-Laws (ii) any law, or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority, or (iii) any agreement to which Assignor is a party by which Assignor is bound.
- (f) The making and performance by Assignor of this Agreement and the transactions contemplated hereby and thereby do not conflict with and are not in consistent with, and will not result, (with or without the giving of notice or passage of time, or both), in a breach of or constitute a default or require any consent under the terms of any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guaranty or other instrument to which Assignor is a party or by which Assignor may be bound or to which it may be subject.
- (g) The Operative Documents have been duly executed and delivered, and will, on the date of closing hereunder, be in full force and effect without any defenses or offsets; each of the Operative Documents, which is a lease schedule, constitutes a separately enforceable

lease agreement, and neither default or any event which, but for the passing of time or the giving of notice or both, would be a default, will then have occurred or be continuing under the Operative Documents; and Assignor warrants that no prepayments of the rent under the Operative Documents have been made by Lessee.

- (h) This Agreement has been duly authorized, executed and delivered by Assignor and constitutes the legal, valid and binding obligation of Assignor enforceable in accordance with its terms.
- (i) Assignor has, or will provide, any and all notices and obtain any and all consents which may be necessary to complete the transactions contemplated hereby.
- (j) All sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits, or certificates which were, or may be required to be paid or obtained in connection with the assignment of the Operative Documents have been, or will be, when due, paid in full or obtained by Assignor.
- (k) Assignor represents and warrants that all payments of installments of the firm, non-concealable rentals payable under the Operative Documents are current and the rents payable under the Operative Documents are not subject to any defenses, offsets, or counterclaims.

3. **Notes.** Any notices under or pursuant to this Agreement shall be deemed duly sent when delivered in hand or when mailed by registered or certified mail, return receipt requested, addressed as follows:

To Assignor: Fifth Third Leasing Company
38 Fountain Square Plaza
Cincinnati, Ohio 45263

To Assignee: Laurinburg and Southern Railroad
Company
P.O. Box 1929
Laurinburg, North Carolina 28362
Attn: Murphy EVANS

4. **Miscellaneous.**

- (a) **Survival.** All representations, warranties and certifications made by Assignor and Assignee shall survive the execution, delivery and performance of this Agreement and all other documents provided for herein.

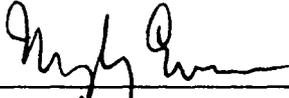
- (b) Successors and Assigns. This Agreement and all covenants and agreements contained herein as well as all other documents provided for herein, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (c) Indemnification. Assignor shall indemnify and hold Assignee harmless from and against any and all loss, costs, damage, injury or expense (including court costs and reasonable attorneys' fees) wheresoever and howsoever arising which Assignee may incur by reason of any breach by Assignor of any of its warranties, representations or obligations set forth herein or under any documents executed in connection herewith.
- (d) Captions. The captions appearing in this Agreement and in any other documents relating to this transaction are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of such sections or articles nor in any way effect this Agreement or any other documents relating to this transaction.
- (e) Further Instruments. The parties hereto hereby agree to execute and deliver or cause to be executed or delivered such further instruments or documents and take each other action as may be required to effectively carry out the transactions contemplated herein, including but not limited to an acknowledgement of assignment from Lessee.
- (f) Applicable Law/Jurisdiction. All acts and transactions hereunder and the rights and obligations hereto shall be governed, construed and interpreted in accordance with the domestic laws of the State of Ohio. Assignor agrees that the state and federal courts in Hamilton County, Ohio have exclusive jurisdiction over all matters arising out of this Agreement, and that service of process in any such proceeding shall be effective if mailed to Assignor at its address described in the Notices section of this Agreement.

ASSIGNOR AND ASSIGNEE HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

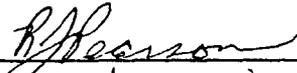
IN WITNESS WHEREOF, the Assignor and Assignee have executed this Agreement by their duly authorized officers as of the date first above written.

ASSIGNOR:

LAURINBURG AND SOUTHERN
RAILROAD COMPANY

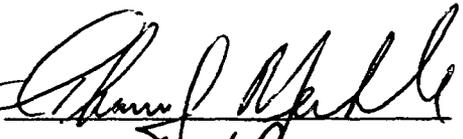
By: 
Title: President

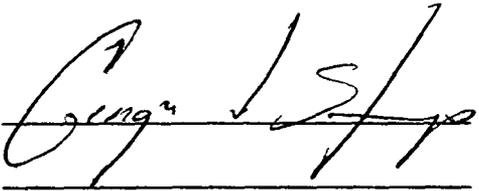
WITNESS:


Asst Sec. Treas

ASSIGNEE:

THE FIFTH THIRD LEASING COMPANY

By: 
Title: A.V.P.



RAIL2.001
12/10/90

SCHEDULE A

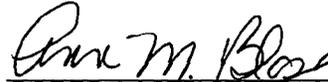
Operative Documents

1. Contract Number XB90000046 dated as of April 1, 1986 between Laurinburg and Southern Railroad Company, as lessor and Carolina Power & Light Company, as lessee.
2. Contract Number XT00000054 dated as of April 16, 1990 between Laurinburg and Southern Railroad Company, a lessor and Carolina Power & Light Company, as lessee.
3. Supplement No. 3 to Contract Number 78-GD-35 dated April 21, 1980 between Laurinburg and Southern Railroad Company, as lessor and Carolina Power & Light Company, as lessee.
4. Supplemental Order Number 5 dated January 27, 1982 to Contract Number 78-GD-35 between Laurinburg and Southern Railroad Company, as lessor and Carolina Power & Light Company as lessee.

rrsched2.001

THIS PHOTO STAT IS CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE NAMED DOCUMENT.

THE FIFTH THIRD BANK



ANN M. BLASE, PARALEGAL

SWORN TO AND SUBSCRIBED IN MY PRESENCE THIS 22 DAY OF JAN., 1991.

J PATRICK LIDDY, Notary Public — State of Ohio
My Commission has no Expiration Date
Section 147.03 R. C.


NOTARY PUBLIC, STATE OF OHIO