

8-250AC24

No. 111
Date SEP 7 1978
Fee \$10.00

RECORDATION NO. 9335-A
Filed & Recorded
SEP 7 1978 2 00 PM

Interstate Commerce Commission
Washington, D.C.

Gentlemen:

ICC Washington, D. C. INTERSTATE COMMERCE COMMISSION

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and three counterparts of a First Supplement and Amendment to Indenture of Mortgage, Assignment of Lease and Security Agreement dated as of July 1, 1978.

The original Indenture of Mortgage, Assignment of Lease and Security Agreement was filed with the Interstate Commerce Commission on April 19, 1978, and assigned Recordation No. 9335.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Debtor under First Supplement and Amendment to Indenture of Mortgage, Assignment of Lease and Security Agreement:

Swindell-Dressler Leasing Company
c/o Pullman Incorporated
200 South Michigan Avenue
Chicago, Illinois 60604

Security Trustees under First Supplement and Amendment to Indenture of Mortgage, Assignment of Lease and Security Agreement:

Harris Trust and Savings Bank
and R.G. Mason
111 West Monroe Street
Chicago, Illinois 60690

The undersigned is the Debtor under the First Supplement and Amendment to Indenture of Mortgage, Assignment of Lease and Security Agreement to Robert C. Nash, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$10.00 covering the required recording fee.

RECEIVED
SEP 7 3 00 PM '78
I.C.C.
FEE OPERATION BR

Very truly yours,
SWINDELL-DRESSLER LEASING COMPANY

By [Signature]
Its Vice President and Treasurer

Enclosures

DESCRIPTION OF EQUIPMENT

<u>Manufacturer</u>	<u>Type of Car</u>	<u>Specification</u>	<u>Number of Cars</u>	<u>Car Numbers</u>	<u>Delivery</u>
Ortner Freight Car Company	3850 cu. ft. capacity coal "Rapid Discharge" coal hopper railroad cars	Ortner Freight Car Company No. OCN 1130 10-73 dated October 1, 1973 and supplement #1 dated February 5, 1974	128	SDEX 10001 to SDEX 10032, both inclusive; SDEX 10034 to SDEX 10097, both inclusive; and SDEX 10099 to SDEX 10130, both inclusive	October 1, 1975 Gillette, Wyoming
Ortner Freight Car Company	3850 cu. ft. capacity coal "Rapid Discharge" coal hopper railroad cars	Ortner Freight Car Company No. OC 586	112	SDEX 10261 to SDEX 10372, both inclusive	August 30, 1978 Gillette, Wyoming
Pullman Incorporated (Pullman-Standard Division)	100-ton capacity quadruple open top, double automatic discharge door "Standard T-16" coal hopper railroad cars	Pullman Incorporated (Pullman-Standard Division) No. 3628	130	SDEX 10131 to SDEX 10260, both inclusive	August 30, 1978 Gillette, Wyoming

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INTERSTATE COMMERCE COMMISSION
FIRST SUPPLEMENT AND AMENDMENT
TO INDENTURE OF MORTGAGE,
ASSIGNMENT OF LEASE
AND SECURITY AGREEMENT

Dated as of July 1, 1978

Between

SWINDELL-DRESSLER LEASING COMPANY,

as Debtor

and

HARRIS TRUST AND SAVINGS BANK

and

R. G. MASON,

as Security Trustees

FIRST SUPPLEMENT AND AMENDMENT TO INDENTURE OF MORTGAGE,
ASSIGNMENT OF LEASE AND SECURITY AGREEMENT

THIS FIRST SUPPLEMENT AND AMENDMENT, dated as of July 1, 1978, to Indenture of Mortgage, Assignment of Lease and Security Agreement, dated as of February 1, 1978, each between SWINDELL-DRESSLER LEASING COMPANY, a Delaware corporation (the "Debtor"), whose post office address is 200 South Michigan Avenue, Chicago, Illinois 60604, and HARRIS TRUST AND SAVINGS BANK (the "Corporate Security Trustee") and R. G. MASON (the "Individual Security Trustee") (said Corporate Security Trustee and Individual Security Trustee being hereinafter sometimes collectively referred to as the "Security Trustees"), whose post office addresses are 111 West Monroe Street, Chicago, Illinois 60690, Attention: Indenture Trust Division.

R E C I T A L S:

A. The Debtor and the Security Trustees have heretofore entered into that certain Indenture of Mortgage, Assignment of Lease and Security Agreement, dated as of February 1, 1978 (the "Original Indenture"), as security for the payment in full of all principal of and interest on the 9% Notes (as defined in the Original Indenture) in an aggregate principal amount not exceeding \$18,542,000 and the Interim Notes (as defined in the Original Indenture) in an aggregate principal amount not exceeding \$11,542,000, outstanding at any one time.

B. Terms not defined in this First Supplement and Amendment shall have the respective meanings indicated in the Original Indenture.

C. The respective parties to the Master Coal Service Agreement, the SPS Guaranty, the Subordination Agreement and the Assignment have entered into a novation of said agreements and have entered into the following agreements in consideration of the novation thereof:

(1) the Master Coal Service Agreement dated as of July 1, 1978 (the "New Master Coal Service Agreement"), between TUCO and the Lessee;

(2) the Guaranty of Master Coal Service Agreement dated as of July 1, 1978 (the "New SPS Guaranty"), between the Lessee and SPS;

(3) the Agreement of Subordination dated as of July 1, 1978 (the "New Subordination Agreement"), between the Lessee and SPS; and

(4) the Assignment of Guaranty, Subordination Agreement and Master Coal Service Agreement (Security Agreement) dated as of July 1, 1978 (the "New Assignment") from the Lessee to the Debtor.

D. The Debtor and the Lessee have entered into (i) an Amendment to Facilities Lease dated as of July 1, 1978 (the "Facilities Lease Amendment") in order to clarify the description of Land on which the Facilities are located, to add certain new Facilities (the "Additional Facilities") and to effect certain amendments to the Facilities Lease necessitated by the execution of the Agreements referred to in clauses (1) through (4) of Recital C hereof, (ii) an Amendment to Lease Supplement No. 1 dated as of July 1, 1978 (the "Lease Supplement Amendment") in order to clarify the description of Land on which the Facilities described in Lease Supplement No. 1 executed pursuant to the Facilities Lease are located, and (iii) an Amendment to Equipment Lease dated as of July 1, 1978 (the "Equipment Lease Amendment") in order to effect certain amendments to the Equipment Lease necessitated by the execution of the Agreements referred to in clauses (1) through (4) of Recital C hereof.

E. All of the requirements of law have been fully complied with and all other acts and things necessary to make this First Supplement and Amendment a valid, binding and legal instrument to secure the Indebtedness Secured by the Indenture have been done and performed.

F. The Original Indenture as supplemented and amended by this First Supplement and Amendment is hereinafter called the "Indenture"; and terms not otherwise defined herein shall have the respective meanings assigned thereto in the Original Indenture.

NOW, THEREFORE, the Debtor in consideration of the premises and of the sum of Ten Dollars received by the Debtor from the Security Trustees and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest on the Notes according to their tenor and effect, and to secure the payment of all other Indebtedness Secured by the Indenture and the performance and observance of all the covenants and conditions contained in the Notes, the Indenture, the Loan Agreement and the Note Agreements, does hereby grant, bargain, sell, transfer, convey, mortgage, assign, pledge and hypothecate unto the Security Trustees, their successors in trust and assigns, forever, and grants to the Security Trustees, their successors in trust and assigns, forever, a security interest in, all and singular the following described properties, rights, interests and privileges and the proceeds thereof (hereinafter sometimes referred to as the "additional mortgaged property").

DIVISION I

All the right, title and interest of the Debtor in that certain Easement described in Exhibit A attached hereto and made a part hereof.

DIVISION II

All right, title and interest of the Debtor in all buildings, structures and improvements, together with all appurtenances thereto, and all heating, sprinkler and electric light systems, boilers, plumbing, tracks, tanks and switches and other machinery and equipment used or useful by the Debtor which are classified as fixtures and a part of the freehold under applicable laws whether such right, title and interest is now owned or hereafter acquired and which are located on the property described in Division I of these granting clauses.

DIVISION III

The Additional Facilities, as the same are now and will hereafter be constituted, whether now owned by the Debtor or hereafter acquired, leased or to be leased under the Facilities Lease, together with all accessories, equipment, parts and appurtenances appertaining or attached to the Additional Facilities, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to any and all of said Additional Facilities, together with all the rents, issues, income, profits and avails thereof.

DIVISION IV

All right, title, interest, claims and demands of the Debtor in, to and under (i) the New Assignment, (ii) the New SPS Guaranty, (iii) the New Subordination Agreement and (iv) the New Master Coal Service Agreement and all sums due and to become due thereunder (including without limitation the Service Fee Payments as defined in the New Master Coal Service Agreement), together with all rights, powers, privileges, licenses, easements, options and other benefits of the Debtor under each thereof, including, without limitation, the right to make all waivers and agreements, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings as shall be permitted thereby or by law, and to do any and all other things which the Debtor is or may be entitled to do thereunder, it being the intent and purpose hereof that the assignment and transfer to the Security Trustees of said rights, powers, privileges, licenses, easements, options and benefits

shall be effective and operative immediately and shall continue in full force and effect at all times during the period from and after the date of this Indenture until the Indebtedness Secured by the Indenture has been fully paid and discharged.

SUBJECT, HOWEVER, to (a) the interest of the Lessee under the Leases, and (b) any other Permitted Encumbrances referred to in Section 1 of the Original Indenture.

TO HAVE AND TO HOLD the additional mortgaged property unto the Security Trustees, their successors and assigns, forever; IN TRUST NEVERTHELESS, upon the terms and trust herein set forth, for the equal and proportionate benefit, security and protection of all present and future holders of the Notes outstanding (i) under the Loan Agreement and hereunder from and after the issuance of the Interim Note so long as such Note shall remain outstanding, and (ii) under the Note Agreements and hereunder from and after the issuance of the 9% Notes, without preference, priority or distinction of any Notes over any other Notes by reason of priority at the time of issue, sale, negotiation, date of maturity thereof or otherwise for any cause whatsoever.

SECTION 1. AMENDMENTS.

The Original Indenture is hereby amended as follows:

(a) The definition of the term "Assignment" set forth in Section 1 of the Original Indenture shall hereafter be deemed to mean the New Assignment; and

(b) The definition of the term "Easements" set forth in Section 1 of the Original Indenture shall be amended to read as follows:

"Easements' shall mean the Easements, each dated as of December 29, 1975, as amended, of Southwestern Public Service Company to the Debtor, pertaining to the Premises."

(c) The definition of the term "Master Coal Service Agreement" set forth in Section 1 of the Original Indenture shall hereafter be deemed to mean the New Master Coal Service Agreement;

(d) The definition of the term "SPS Guaranty" set forth in Section 1 of the Original Indenture shall hereafter be deemed to mean the New SPS Guaranty;

(e) The definition of the term "Subordination Agreement" set forth in Section 1 of the Original Indenture shall hereafter be deemed to mean the New Subordination Agreement;

(f) Exhibit C to the Original Indenture is hereby amended by adding to the legal description contained therein of that certain land and premises upon which the coal handling Facility is located:

"That certain Easement and Right-of-Way dated as of December 29, 1975, as amended, from Southwestern Public Service Company to Swindell-Dressler Leasing Company filed for record with the County Clerk of Potter County, Texas at Vol. 1262, Page 5 of the Deed Records of Potter County, Texas."

SECTION 2. CONSENT TO AMENDMENTS BY SECURITY TRUSTEES.

The Security Trustees do hereby consent to the execution and delivery of the Facilities Lease Amendment, the Equipment Lease Amendment and the Lease Supplement Amendment, and the Debtor does hereby ratify and confirm the assignment under the Indenture of the Facilities Lease and the Equipment Lease, as so amended.

SECTION 3. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this First Supplement and Amendment:

"Additional Facility" shall mean each, and "Additional Facilities" shall mean every, facility described in Exhibit B hereto together with any and all appliances, parts, instruments, appurtenances, accessories and other equipment from time to time incorporated or installed thereon which are the Property of the Debtor pursuant to the terms of the Facilities Lease.

"Indebtedness Secured by the Indenture" shall mean the Notes and all principal thereof (and premium, if any) and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Notes, the Original Indenture as supplemented and amended hereby, the Loan Agreement or the Note Agreements.

SECTION 4. TITLE TO ADDITIONAL MORTGAGED PROPERTY.

The Debtor has the right, power and authority to grant a lien and security interest in the additional mortgaged property

to the Security Trustees for the uses and purposes herein set forth, and the Debtor will warrant and defend the title to the additional mortgaged property against all claims and demands of Persons claiming by, through or under the Debtor (excepting only Permitted Encumbrances).

SECTION 5. INCORPORATION OF ORIGINAL INDENTURE.

All of the covenants, warranties and agreements on the part of the Debtor which are set forth in, and all the rights, privileges, powers and immunities of the Security Trustees which are provided for in the Original Indenture, are incorporated herein and shall apply to the additional mortgaged property with the same force and effect as though set forth at length in this First Supplement and Amendment, and the terms "Facility" and "Facilities" as used herein and in the Original Indenture shall hereafter be deemed to include "Additional Facility" and "Additional Facilities", respectively.

SECTION 6. SUPPLEMENTAL INSTRUMENT.

This instrument is executed as and shall constitute an instrument supplemental to the Original Indenture, and shall be construed in connection with and as a part of the Original Indenture.

SECTION 7. RATIFICATION OF ORIGINAL INDENTURE.

Except as modified and expressly amended by this First Supplement and Amendment, the Original Indenture is in all respects ratified and confirmed and all the terms, provisions and conditions thereof shall be and remain in full force and effect.

SECTION 8. COUNTERPARTS.

This First Supplement and Amendment may be executed and delivered in any number of counterparts, each of such counterparts constituting an original, but all together only one First Supplement and Amendment.

IN WITNESS WHEREOF, the Debtor has caused this First Supplement and Amendment to be executed, and Harris Trust and Savings Bank, in evidence of its acceptance of the Trusts hereby created, has caused this First Supplement and Amendment to be executed on its behalf by one of its Vice Presidents and its corporate seal to be hereunto affixed, and said seal and this First Supplement and Amendment to be attested by one of its Assistant Secretaries,

and R. G. Mason, in token of his acceptance of the Trusts hereby created, has hereunto set his hand all as of the day and year first above written.

[SEAL]

ATTEST:

William O. Eldredge
Its William O. Eldredge
ASSISTANT SECRETARY

SWINDELL-DRESSLER LEASING COMPANY

By [Signature]
Its Nicole W. Foster
Vice President

DEBTOR

[SEAL]

ATTEST:

[Signature]
Its J. E. K. [Signature]
ASSISTANT SECRETARY

HARRIS TRUST AND SAVINGS BANK

By [Signature]
Its J. L. Spreng
VICE PRESIDENT

CORPORATE SECURITY TRUSTEE

[Signature]
R. G. Mason

INDIVIDUAL SECURITY TRUSTEE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE ME, the undersigned authority, on this day personally appeared R. G. MASON, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

GIVEN under my hand and seal of office, this 31st day of August, A.D. 1978.

Rose Marie Murray
Notary Public in and for
Cook County, Illinois

My Commission expires:
February 19, 1979



DESCRIPTION OF EASEMENT

That certain Easement and Right-of-Way dated as of December 29, 1975, as amended, from Southwestern Public Service Company to Swindell-Dressler Leasing Company filed for record with the County Clerk of Potter County, Texas at Vol. 1262, Page 5 of the Deed Records of Potter County, Texas.

DESCRIPTION AND LOCATION OF ADDITIONAL FACILITY

Facility Flow
Wayside Rail
Reclaim Facility
Vibrating Pile Dischargers
Vibrating Feeders
Belt Conveyors 222 and 231
Belt Conveyors 240 and 250
Belt Conveyor 700
One Ton Hoist
Power Plant Supply Conveyors
Transfer House Chutework
Bunker Feed (Tripper) Conveyor
Ancillary Systems
Wet Spray Dust Suppression
Vacuum Cleanup Systems
Fire Suppression Systems
Electrical Systems
Power Distribution
Fire Detection System

The above-described coal handling Facility is located on that certain land and premises situated in Potter County, Texas and more particularly described as follows:

beginning at a point 1050.00 feet North and 2000.00 feet West of the Southeast corner of Section 98 of Block 2, AB&W survey;
thence West 725.00 feet;
thence North 58° 48' West 1,097.00 feet;
thence North 31° 12' East 1,200.00 feet;
thence North 78° 34' 30" East 576.87 feet;
thence South 58° 16' 18" East 207.23 feet to the Northwest corner of existing SPS fence;
thence South 630.00 feet;
thence South 53° 45' East 372.02 feet;
thence South 750.00 feet to beginning point, containing 43.62 acres, SAVE AND EXCEPT all oils, gas and other minerals.

and

That certain Easement and Right-of-Way dated as of December 29, 1975, as amended, from Southwestern Public Service Company to Swindell-Dressler Leasing Company filed for record with the County Clerk of Potter County, Texas at Vol. 1262, Page 5 of the Deed Records of Potter County, Texas.