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LEASE OF RAILROAD EQUIPMENT INTERSTATE COMMERCE COMMISSION

THIS LEASE OF RAILROAD EQUIPMENT dated as of June 1, 1971 between Sigfried Weis and Robert F. Weis, of Sunbury, Pennsylvania, as tenants in common and trading as S&R RAILROAD (the "Lessor"), and PENNSYLVANIA POWER & LIGHT COMPANY, a Pennsylvania corporation (the "Lessee");

WITNESSETH:

WHEREAS, Lessor has purchased, pursuant to a conditional sale agreement the railroad equipment (collectively the "Equipment" and individually "Item of Equipment") described in Schedule A hereto; and

WHEREAS, the Lessee desires to lease all of the Equipment at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions, namely:

SECTION 1. DELIVERY AND ACCEPTANCE OF EQUIPMENT.

The Lessor will cause each Item of Equipment to be tendered to the Lessee at the point or points mutually agreed upon by the Lessor and the Lessee. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor a certificate of acceptance in the form attached hereto as Exhibit 1 (hereinafter called the "Certificate of Acceptance"), whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease.

SECTION 2. RENTALS AND RENTAL PAYMENT DATES.

2.1. Rentals for Equipment.

The Lessee agrees to pay the Lessor for the use of the Equipment eighty installments of Fixed Rental in the amounts provided for such Equipment in Schedule B hereto. The Fixed Rental for each Item of Equipment on any rental payment date shall be the amount equal to the total Fixed Rental due on that rental payment date

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on \_\_\_\_\_ at \_\_\_\_\_, Recordation No. \_\_\_\_\_.

notwithstanding the delivery thereof to and the possession and use thereof by Lessee.

4.2. The Lessee will cause each Item of Equipment to be kept numbered with its identifying number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"OWNED BY S&R RAILROAD,  
AND SUBJECT TO A SECURITY INTEREST OF  
PROVIDENT NATIONAL BANK, AGENT, RECORDED WITH  
THE I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Item of Equipment except with the consent of the Lessor.

4.3. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

4.4. The Lessee shall indemnify the Lessor and any assignee under Section 16 hereof against any liability, loss or expense incurred by any of them as a result of the aforesaid marking of the Equipment with such name, initials or insignia.

#### SECTION 5. DISCLAIMER OF WARRANTIES.

As between Lessor and Lessee, Lessor leases the Equipment, *AS-IS* without warranty or representation, either express or implied, as to (a) the fitness or merchantability of any Item or Items of Equipment or (b) the Lessor's title thereto, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and

condition and repair, ordinary wear and tear excepted. The Lessee shall not modify any Item of Equipment in such a way as to lessen its fair market value and without thirty (30) days prior written notice to the Lessor. In the event Lessor or any assignee of Lessor shall object in writing to such modification within fifteen days of receipt of such notice, Lessee shall not make such modification without the prior written consent of Lessor or such assignee of Lessor, which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

The Lessee will not assign or permit the assignment of any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States of America.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through, or under the Lessee and its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. Lessee's obligations under this Section 9 shall survive termination of the Lease.

#### SECTION 10. FILING; PAYMENT OF FEES AND TAXES.

10.1. The Lessee will, at its sole expense, cause this Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act or other applicable statutory authority, and/or in such other place or places within or without the United States as the Lessor may reasonably request for the protection of its title and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting the Lessor's title to the Equipment to the satisfaction of the Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

10.2. The Lessee, or the Lessor at the Lessee's expense, shall report, pay and

Equipment shall terminate, but the Lessee shall continue to pay rental for all other Items of Equipment. The reduction in subsequent installments of Fixed Rental shall be equal to the Fixed Rental otherwise payable pursuant to Schedule B times the fraction whose numerator is the Original Cost of all Items of Equipment listed in Schedule A with respect to which payments on account of Casualty Occurrence have been made and whose denominator is the total Original Cost of the Equipment as set forth on Schedule A. The Lessee shall pay when due all rental payments as to an Item or Items due prior to the date on which the Casualty Value thereof is payable.

11.4. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment suffering a Casualty Occurrence as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "AS IS", "WHERE IS" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts of such price plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item or Items of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item or Items of Equipment.

11.5. Upon (but not until) the payment of the Retirement Value of all of the Items of Equipment, this Lease shall terminate. The Lessee shall pay when due all rental payments as to the Equipment due prior to and on the date on which the Retirement Value of the Equipment is payable.

11.6 (a) The Casualty Value of each Item of Equipment described in Schedule A shall be the amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) set forth in the Schedule of Casualty Value attached hereto as Schedule C. (b) The Retirement Value of each Item of Equipment described in Schedule A shall be the amount determined as of the date the Retirement Value is paid as provided in this Section 11 set forth in the Schedule of Retirement Value attached hereto as Schedule D.

11.7. The Lessee shall bear the risk of and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of, any Casualty Occurrence to any Item of Equipment after the date hereof.

11.8. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent

and marked as specified in subsection 4.2 hereof.

#### SECTION 12. ANNUAL REPORTS.

12.1. On or before April 1 in each year, commencing with the year 1972, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the end of the preceding calendar year, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced, and that the name of no person, association or corporation appearing on any Item of Equipment may be interpreted as indicating a claim of ownership thereof by any such person, association or corporation except as contemplated pursuant to this Lease.

#### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM; PURCHASE OPTION, *Renewal*

13.1. Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks as the Lessor may designate, or in the absence of such designation as the Lessee may select, provided such place of storage shall not be more than 100 miles from the location at which Lessee received possession of the Equipment, all as directed by the Lessor upon not less than thirty days' written notice to Lessee. All movement of each such Item is to be at the risk and expense of the Lessee. During any such delivery period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same. The assembling and delivery of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

13.2. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the Fixed Term or any extension term of this Lease elect (1) to purchase all but not fewer than all the Items of Equipment then covered by this Lease at the end of the Fixed Term or such extension term hereof for a purchase price equal to the "Fair Market Value" thereof as of the end of the Fixed Term or such extension term or (2) to extend the term of this Lease for five additional periods of two years each in respect of all, but not fewer than all, of the Items of

and such default shall continue for thirty days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within thirty days after such appointment, if any, or sixty days after such proceedings shall have been commenced, whichever shall be earlier;

then in any such case, the Lessor, at its option may

(i) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, provided that Lessee shall not be liable or responsible for any entry by Lessor upon property of third parties; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such accrued number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item over the then present worth of the then fair rental value of such Item for such period computed by discounting to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the

**SECTION 16. ASSIGNMENTS BY LESSOR.**

This Lease shall be assignable in whole or in part by Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by the Lessor in respect of this Lease and the rental and other sums due and to become due hereunder insofar as the same relate to Items of Equipment described in different schedules hereto, the Lessor and the Lessee agree that so long as such separate assignments remain in force and effect this Lease shall be deemed to be and shall be construed as a divisible and severable contract between the Lessor and the Lessee for the leasing of Equipment covered by each such separate assignment, all to the same extent and with the same force and effect as though a separate lease had been entered into by the Lessor and the Lessee in respect of such Equipment. Upon notice to the Lessee of any such assignment the rental and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defence, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in the Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the assignee, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

**SECTION 17. ASSIGNMENTS BY LESSEE: USE AND POSSESSION.**

17.1. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession, use and quiet enjoyment of the Equipment in accordance with the terms of this Lease. Without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer to allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

17.2. So long as the Lessee shall not be in default under this Lease, the Lessee

charge or encumbrance upon the Lessee's leasehold interest under this Lease in the Equipment (except to the extent that the provisions of any existing mortgage of the Lessee may require the subjection of such leasehold interest to the lien thereof) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

**SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY THE LESSOR.**

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also an amount equal to 8 $\frac{3}{4}$ % per annum (or the lawful rate, whichever is less) of the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

**SECTION 20. NOTICES.**

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, certified mail, first class postage prepaid, addressed as follows:

If to the Lessor:                   Sigfried Weis & Robert F. Weis  
  c/o Lybrand, Ross Bros. & Montgomery  
  Packard Building  
  Philadelphia, Pa. 19102

If to the Lessee:                    Pennsylvania Power & Light Company  
  901 Hamilton Street  
  Allentown, Pa. 18101  
  Attention: Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

**SECTION 21. EXECUTION IN COUNTERPARTS.**

This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

**SECTION 22. LAW GOVERNING.**

This Lease shall be construed in accordance with the laws of Pennsylvania;



### SCHEDULE A TO LEASE

All Items of the Equipment will be delivered c/o Penn Central Transportation Company at Johnstown, Pennsylvania.

<u>Description</u>	<u>Quantity</u>	<u>Numbered (Inclusive)</u>	<u>Item Original Cost</u>	<u>Total Original Cost</u>
One-hundred ton hopper cars in accordance with Bethlehem Steel Corporation Specification 3400-247, Revision B, dated March 12, 1971.	133	PPLX 520-650 PPLX 238, PPLX 298	\$16,935.17	\$2,252,377.67

### SCHEDULE B TO LEASE

#### Fixed Rental Payments

\$51,395.26 on September 15, 1971 and on each succeeding December 15, March 15, June 15, and September 15, through and including June 15, 1991 reduced by an amount equal to 1/133 of such payment for any Item of Equipment as to which a payment on account of a Casualty Occurrence has been made.

<u>Rental Payment Date</u>	<u>Rental Payment Number</u>	<u>Casualty Value</u>
September 15, 1982	45	\$11,539.56
December 15, 1982	46	11,344.86
March 15, 1983	47	11,146.54
June 15, 1983	48	10,944.52
September 15, 1983	49	10,730.57
December 15, 1983	50	10,521.10
March 15, 1984	51	10,307.69
June 15, 1984	52	10,090.25
September 15, 1984	53	9,861.29
December 15, 1984	54	9,635.73
March 15, 1985	55	9,405.88
June 15, 1985	56	9,171.65
September 15, 1985	57	8,926.32
December 15, 1985	58	8,683.24
March 15, 1986	59	8,435.49
June 15, 1986	60	8,182.96
September 15, 1986	61	7,919.81
December 15, 1986	62	7,657.65
March 15, 1987	63	7,390.39
June 15, 1987	64	7,117.93
September 15, 1987	65	6,835.37
December 15, 1987	66	6,552.41
March 15, 1988	67	6,263.91
June 15, 1988	68	5,969.74
September 15, 1988	69	5,666.04
December 15, 1988	70	5,360.04
March 15, 1989	71	5,048.78
June 15, 1989	72	4,730.96
September 15, 1989	73	4,404.23
December 15, 1989	74	4,073.95
March 15, 1990	75	3,737.09
June 15, 1990	76	3,393.50
September 15, 1990	77	3,041.69
December 15, 1990	78	2,684.54
March 15, 1991	79	2,320.21
June 15, 1991	80	1,948.56