

RECORD NUMBER 10303^A

APR 19 1979 - 12 10 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1979,

Between

THRALL CAR MANUFACTURING COMPANY

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent.

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of April 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent, so acting, being hereinafter called the "Assignee"), and THRALL CAR MANUFACTURING COMPANY (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 of the Conditional Sale Agreement, defined below).

The Builder and Interstate Power Company (the "Company"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder, and the purchase by the Company of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment").

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called "this Assignment") WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Company, subject to payment by the Assignee to the Builder of the amount required to be paid to the Builder under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and in the last paragraph of Article 15 thereof and reimbursements

for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Company to the Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Company from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Company with respect to the Builder's Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall

construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment of the Builder under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Builder will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from the Company or special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Builder of any obligation with respect to the Equipment of the Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of

the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Company in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Company and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Company and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Company with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment of the Builder or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of such Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale

Agreement, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee the title and security interest of the Builder in the Equipment in such Group, warranting to the Assignee and to the Company that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Builder for the units of Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Company as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date and satisfactory in form and scope to the Assignee and Investors, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Company and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal,

valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has title to and a valid and perfected first security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment except for the approvals of the Federal Energy Regulatory Commission under the Federal Power Act, as amended, and of the Illinois Commerce Commission under the Illinois Public Utilities Act which approvals have been duly granted and are in full force and effect, (vii) the Conditional Sale Agreement and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and substance to said counsel and that said counsel believe that the Assignee and Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investor;

(e) an opinion of counsel for the Company, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and this Assignment by parties thereto other than the Company) and to the

effect that (i) the Company is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware and is duly qualified and authorized to do business and is in good standing in each other jurisdiction in which the business and activities of the Company are such as to require such qualification, (ii) the Company has the full corporate power and authority and legal right and possesses all licenses and permits necessary to carry on its business as now conducted, to execute and deliver the Finance Agreement, the Conditional Sale Agreement and the Acknowledgment of the Notice of Assignment attached to this Assignment (hereinafter called the "Acknowledgment") and to perform and observe the respective terms and conditions thereof, (iii) neither the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or the Acknowledgment nor the consummation of the transactions therein contemplated or the fulfillment of, or compliance with, the terms and provisions thereof by the Company will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Articles of Incorporation (as amended) or the By-laws (as amended) of the Company, or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument known to such counsel to which the Company is now a party or by which it or its property may be bound as guarantor or otherwise, or constitute (with the giving of notice or the passage of time or both) a default thereunder, (iv) neither the execution and delivery by the Company of the Finance Agreement, the Conditional Sale Agreement or the Acknowledgment nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality, (v) no mortgage, deed of trust or other lien of any nature whatsoever other than liens, if any, for taxes not yet due and payable which now covers or affects any property or interest therein of the Company, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Assignee therein pursuant to this Assignment, (vi) there are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or threatened against or affecting the

Company or any property rights of the Company at law or in equity, or before any commission or other administrative agency, arbitration board or tribunal which could materially and adversely affect the condition, financial or otherwise, of the Company or the ability of the Company to perform its obligations under the Finance Agreement, the Conditional Sale Agreement or the Acknowledgment, and the Company is not in default with respect to any order or decree of any court of governmental commission, agency or instrumentality, (vii) neither the Assignee nor the Investors nor any of them will by virtue of the transactions contemplated by this Assignment, the Finance Agreement or the Conditional Sale Agreement be or become an "electric utility company" for purposes of the Public Utility Holding Company Act of 1935, as amended (the "1935 Act"), as presently in effect, nor will any of them, by virtue of the transactions contemplated by this Assignment, the Finance Agreement or the Conditional Sale Agreement, be or become subject to regulation under the 1935 Act, or the Federal Power Act, as amended, or any state public utility statute or regulation, or if any of them is so subject, the appropriate approvals and consents have been obtained, (viii) the Equipment will be used in interstate commerce and the transactions contemplated by the Conditional Sale Agreement, the Finance Agreement and this Assignment will not subject the Agent or the Investors to the provisions of the Interstate Commerce Act or the authority of the Interstate Commerce Commission, (ix) the Company has good and valid title to the property it owns and which is required for its business, (x) the Company is not an "electric utility company" nor is it the subsidiary of one for purposes of the 1935 Act, and (xi) the purchase of and payment for the Conditional Sale Indebtedness on the terms and conditions provided in the Finance Agreement and in the Conditional Sale Agreement are not prohibited by any applicable law or governmental regulation (including, without limitation, Regulations G, T and X of the Board of Governors of the Federal Reserve System) and shall not subject any Investor to any penalty, liability or other onerous condition under or pursuant to any applicable law or governmental regulation;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above in

respect of the Equipment insofar as such matters relate to the Builder and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the full power and authority to own its properties and to carry on its business as conducted on the date thereof, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder.

(g) a certificate of an officer of the Company, dated as of such Closing Date, to the effect that (i) to the best of his knowledge and belief, no event of default, or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing, and (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief no other tax liens have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment;

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Company; and

(i) a certificate of an officer of the Builder, dated as of such Closing Date, to the effect that the Equipment is new standard gauge equipment, not placed in service prior to February 1, 1979.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4,

counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment of the Builder at the time of delivery thereof under the Conditional Sale Agreement; in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States on the opinion of counsel for the Builder or the opinion of counsel for the Company as to such matter; in giving the opinion specified in said subparagraph (e), counsel may rely on the bill of sale and opinion of counsel for the Builder as to claims, liens, security interests and other encumbrances arising from, through or under the Builder.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy

all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Company, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Company in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee and provided that the Assignee shall have made all payments which the Assignee is required by this Assignment to make to the Builder, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment of the Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder as between said parties shall be governed by the laws of the State of Delaware; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Company, which delivery shall constitute due notice of the assignment

hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THRALL CAR MANUFACTURING COMPANY,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as Agent,

by

[Corporate Seal]

Assistant Vice President

Attest:

Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

INTERSTATE POWER COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of April 1, 1979.

INTERSTATE POWER COMPANY,

by

R. Steele

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

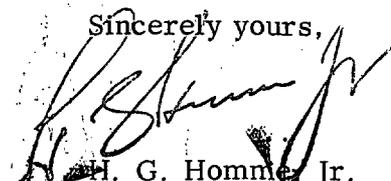
4/19/79

George S. Balis
Cravath Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

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 4/19/79 at 12:10pm, and assigned recordation number(s). 10303 & 10303-A

Sincerely yours,



H. G. Homme Jr.
Secretary

Enclosure(s)

SE-30
(3/79)