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INTERSTATE COMMERCE COMMISSION

Lease of Railroad Equipment

Dated as of March 31, 1975

BETWEEN

CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO,
as Lessor

AND

WEST PENN POWER COMPANY,
as Lessee

212 Railroad Cars

LEASE OF RAILROAD EQUIPMENT

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THIS LEASE OF RAILROAD EQUIPMENT dated as of March 31, 1975 between Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter, together with its successors and assigns, called "Lessor") under a Trust Agreement dated as of the date hereof (hereinafter called the "Trust Agreement") with Manufacturers Hanover Leasing Corporation and Old Kent Bank and Trust Company (hereinafter, together with their respective successors and assigns permitted by the Trust Agreement, called collectively "Owners" and individually an "Owner"), and West Penn Power Company (hereinafter called "Lessee").

WITNESSETH:

(a) Lessor, Owners, Lessee, Mellon Bank, N. A., as Trustee (hereinafter, together with its successors and assigns, called "Security Trustee") under the Security Agreement referred to below and the loan participants named in Appendix I thereto (hereinafter called the "Loan Participants") are entering into a Finance Agreement dated as of the date hereof (hereinafter called the "Finance Agreement") providing for the several commitments of Owners and the Loan Participants in the Purchase Price (as defined in the Purchase Agreements referred to below) of the units of the Equipment referred to below, which units are more particularly described in Annex A hereto. The commitments of the Loan Participants are to be evidenced by Lessor's 9 $\frac{7}{8}$ % Equipment Trust Notes (hereinafter called the "Notes") issued under and secured by the Security Agreement. The holders of the Notes from time to time are hereinafter sometimes called the "Noteholders".

(b) Lessor and Lessee propose to enter into purchase agreements dated as of the date hereof with, respectively, Thrall Car Manufacturing Company (hereinafter called "Thrall") and Bethlehem Steel Corporation (hereinafter called "Bethlehem"), in each case providing for the purchase by Lessor of certain new standard-gauge railroad equipment. Thrall and Bethlehem are hereinafter called collectively "Builders" and individually a "Builder". Such purchase agreements are to be substantially in the form of Exhibit B to the Finance Agreement and are hereinafter called the "Purchase Agreements". The railroad equipment to be purchased by Lessor pursuant to the Purchase Agreements is hereinafter called the "Equipment".

(c) Lessee desires to lease all the units of the Equipment, or such lesser number as are delivered, accepted and settled for under the Purchase Agreements, at the rentals, for the terms and upon the conditions hereinafter stated (such number of units as are delivered, accepted and settled for under the Purchase Agreements being hereinafter called collectively the "Units" and individually a "Unit").

(d) Lessor and Security Trustee are entering into a security agreement dated as of the date hereof (hereinafter called the "Security Agreement"), in substantially the form of Exhibit C to the Finance Agreement, pursuant to which Lessor will provide for the issue of the Notes and will assign its right, title and interest in and to the Equipment and certain of its rights in, to and under this Lease and the Purchase Agreements to Security Trustee as security for the Notes.

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 Lessee and intending to be legally bound hereby, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Units upon the following terms and conditions:

SECTION 1. *Net Lease.* This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor, Owners, Builders, the holders of the Notes or any other person for any reason whatsoever; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the obligations of Lessee be otherwise affected, by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause and of whatever duration, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention

of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

SECTION 2. Delivery and Acceptance of Units. Lessor hereby appoints Lessee as its agent for the inspection and acceptance of, and the approval of all invoices relating to, the Units pursuant to the Purchase Agreements. Lessor will cause each Unit to be delivered to Lessee at the point or points within the United States of America at which such Unit is delivered to Lessor under the applicable Purchase Agreement. Upon such delivery, Lessee may cause an employee of Lessee or an authorized representative of Lessee to inspect the same and, in any event, if such Unit is acceptable, Lessee shall accept delivery of such Unit and execute and deliver to Lessor and the applicable Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance"), in accordance with the provisions of Section 2 of such Purchase Agreement, stating that such Unit has been inspected (or that inspection of such Unit is waived) and accepted on behalf of Lessee and Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 5 of this Lease, whereupon such Unit shall be deemed to have been delivered to and accepted by Lessee hereunder, shall (without limiting Section 10) as between Lessor and Lessee be conclusively presumed to comply with the Specifications, requirements and standards applicable thereto pursuant to such Purchase Agreement and to be in good working order and repair without inherent vice or defect in title, condition, design, operation or fitness for use and shall thereafter be subject to all the terms and conditions of this Lease.

Notwithstanding the delivery to and acceptance by Lessee of the Units and their possession and use by Lessee hereunder, Lessor shall and does retain the full legal title to and property in all of the Units, it being expressly understood that this Lease is an agreement of lease only.

SECTION 3. *Rentals.* Lessee agrees to pay to Lessor, as rental for all Units subject to this Lease, 31 consecutive payments on June 17 and December 17 in each year, commencing June 17, 1975. The rental payment due on June 17, 1975 (hereinafter called the "Interim Rent") shall be in an aggregate amount equal to the sum of 0.0288719% of the Purchase Price for each Unit then subject to this Lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the applicable Purchase Agreement) for such Unit to and including the date of such payment. The next 30 semi-annual rental payments (hereinafter called the "Basic Rent") shall be determined as follows: for each rental payment date occurring on or prior to June 17, 1980, an amount equal to 3.20938% of the aggregate Purchase Price of all Units then subject to this Lease; for each rental payment date occurring thereafter and on or prior to June 17, 1985, an amount equal to 5.18816% of the aggregate Purchase Price of all Units then subject to this Lease; and for each rental payment date occurring thereafter and on or prior to June 17, 1990, an amount equal to 8.21235% of the aggregate Purchase Price of all Units then subject to this Lease.

The Basic Rent is subject to adjustment pursuant to Section 17. If any of the semi-annual rental payment dates referred to above is not a Business Day (as defined below) the semi-annual rental payment otherwise payable on such date shall be payable on the next preceding Business Day.

Lessee agrees to pay to Lessor, as supplemental rental for each Unit becoming subject to this Lease, the amount of any storage, shipping, insurance and interest charges invoiced by any Builder to Lessor with respect to such Units, it being understood that such charges relate to the storage of such Units by such Builder prior to their delivery under the applicable Purchase Agreement and this Lease.

All payments provided for in this Lease shall be made in immediately available funds.

The term "Business Day" as used herein means calendar days, excluding Saturdays, Sundays and any other day¹ on which banking institutions in Chicago, Illinois, Pittsburgh, Pennsylvania, Grand Rapids, Michigan or New York, New York are authorized or obligated to remain closed.

Lessee agrees that if for any reason whatsoever (i) any rental or other moneys payable by Lessee under this Lease (all such rentals and moneys being hereinafter in this paragraph collectively called "Rents") shall be diminished or subject to any diminution for any reason, or shall be subject to withholding at the source by reason of any taxes, assessments or liabilities of any character, foreseen or unforeseen, incurred by or against any person, including Lessor, or by reason of any claims, charges or liens of any nature, foreseen or unforeseen, incurred by any person, including Lessor, so that the Rents would thereby be rendered unavailable or would be less in amount than contemplated by this Lease, (ii) the payment in full of the Rents when the same are due and payable under this Lease shall be delayed, hindered or prevented or in any way adversely affected, (iii) the use or application of the Rents by Security Trustee shall be hindered, delayed or prevented or the right of Security Trustee to use or apply the same shall in any way be adversely affected, (iv) Security Trustee shall refuse to apply the Rents as provided in the Security Agreement because of a threatened or pending suit in any court as a result of which Security Trustee in good faith considers it may have personal liability if it does apply the Rents or (v) the holders of the Notes issued by Lessor under the Security Agreement shall be subject to any liability or obligation to refund or pay over the Rents, then, in any such event, Lessee will promptly pay as additional rent under this Lease, and take any action and incur any additional expense that may be necessary to the proper application of, an amount sufficient to (x) pay fully and discharge or otherwise eliminate or nullify the cause of such diminution or withholding, (y) eliminate or prevent any delay, hindrance or obstacle in the payment in full of the Rents when the same are due and payable under this Lease and in the use or application thereof by Security Trustee and (z) protect fully the right of Security Trustee to use or apply the Rents, indemnifying Security Trustee against any personal liability which may arise from the application of the Rents and such holders against any liability or obligation to repay, or any loss in repaying, any moneys received from Security Trustee.

So long as any of the Notes are outstanding, Lessor irrevocably instructs Lessee to make all the payments (other than payments owing to Lessor or Owners pursuant to Sections 6, 10 and 17, which shall be made directly to Lessor or Owners, as the case may be) provided for in this Lease at the principal office of Security Trustee, for the account of Lessor,

in care of Security Trustee, with instructions to Security Trustee first to apply such payments to satisfy the obligations of Lessor under the Security Agreement known to Security Trustee to be due and payable on the date such payments are due and payable hereunder and second, so long as no Default or Event of Default under the Security Agreement shall have occurred and be continuing, to pay any balance promptly to Lessor at such place as Lessor shall specify in writing, unless and until Lessor shall otherwise direct Security Trustee in writing. Lessee agrees that (i) no payments shall be made to Lessor or Owners pursuant to Section 6, 10 or 17 unless concurrently therewith Lessee shall pay to Security Trustee and the Noteholders all amounts which are then due to Security Trustee and the Noteholders under the provisions of this Lease, including this Section 3, and (ii) no payments shall be made to the Noteholders pursuant to Section 6 or 10 unless concurrently therewith Lessee shall pay to Lessor and Owners all amounts which are then due to Lessor and Owners under Section 6 or 10, as the case may be; and the making of such concurrent payment is of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, any such person shall be entitled to a decree against Lessee requiring specific performance of the same.

SECTION 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of Sections 7, 8, 11 and 14, shall terminate on June 17, 1990.

Anything herein to the contrary notwithstanding, upon the occurrence and during the continuance of an Event of Default hereunder, all rights of Lessee under this Lease and in and to the Units are subject to the rights of Security Trustee under the Security Agreement.

SECTION 5. *Identification Marks.* Lessee will cause each Unit to be kept numbered with an identifying number as set forth in Annex A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Leased from Continental Illinois National Bank and Trust Company of Chicago, as Lessor and

Trustee, and Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by Lessor and/or Security Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's title to and property in such Unit and the rights of Lessor under this Lease and of Security Trustee under the Security Agreement. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Security Trustee and Lessor and filed, recorded, registered and deposited by Lessee in all public offices where this Lease and the Security Agreement shall have been filed, recorded, registered and deposited and (ii) Lessee shall have furnished Security Trustee and Lessor an opinion of counsel for Lessee with respect thereto satisfactory to Security Trustee and Lessor.

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Units may be lettered with the name or initials or other insignia customarily used by Lessee.

SECTION 6. *Taxes.* All payments to be made by Lessee hereunder will be free of expense to Lessor, Owners, Security Trustee and the Noteholders, and Lessee shall pay and shall indemnify and hold harmless Lessor, Owners, Security Trustee, the Noteholders and the Trust Estate (as defined in the Security Agreement) from and against, all collection charges, all license and registration fees and all taxes, including, without limitation, income, franchise, sales, use, personal property, stamp, interest equalization, withholding and other taxes, levies, imposts, duties, charges or withholdings of any nature, together with any penalties, fines or interest thereon (all such fees, taxes, levies, imposts, duties, charges, withholdings, penalties, fines and interest being hereinafter called collectively "Impositions"), imposed against Lessor, Owners, Security Trustee, the Noteholders, the Trust Estate, Lessee or any Unit by any federal, state or local government or taxing authority of or in the United States of America, or by any taxing authority or governmental subdivision of a foreign

country, upon or with respect to any Unit, or upon the purchase, ownership, delivery, leasing, possession, use, operation, sale, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the income or other proceeds received with respect thereto, or upon or with respect to this Lease, the Finance Agreement, the Trust Agreement, the Purchase Agreements, the Security Agreement or the issuance of the Notes; excluding, however, subject to the provisions of Section 17:

(i) United States federal taxes on, or measured by, the net income of any Owner and any taxes, fees or other charges (collected by withholding or otherwise) of any other jurisdiction which are based on, or measured by, the net income of such Owner and are (a) imposed by the jurisdiction in which the principal office of such Owner is located or (b) imposed by any other jurisdiction in which such Owner is subject to taxes, fees or other charges based on, or measured by, net income (or constituting franchise taxes of such jurisdiction) for reasons other than the ownership or leasing of property located in such jurisdiction;

(ii) any taxes on or measured by any fees or other compensation received by Lessor or Security Trustee for services rendered in connection with the transactions contemplated hereby; or

(iii) any taxes, fees or other charges on or with respect to the ownership or transfer of the Notes or the revenues, receipts or earnings therefrom for which any Noteholder is liable;

except that Lessee need not pay any Imposition to the extent that and while it is being contested by Lessee in good faith and by appropriate proceedings and so long as such proceedings or the nonpayment of such Imposition does not, in the written opinion of counsel satisfactory to Lessor and Security Trustee, involve (A) any danger of the sale, forfeiture or loss of any Unit or any interest therein, (B) any material adverse change in the title, property or rights of Lessor in or to the Units or hereunder or Security Trustee under the Security Agreement, (C) any assessment or penalty against any party indemnified by this Section 6, (D) any interference with the due payment by Lessee of rentals hereunder or the application of such rentals under the Security Agreement or (E) any danger of criminal or other liability for which no indemnification is provided hereunder being imposed against Lessor, Security Trustee or the agents or servants of either of them. If any Imposition shall have been charged or levied against Lessor, Owners, Security Trustee or the Noteholders directly and paid by such person, Lessee shall reimburse such person upon

presentation of an invoice therefor. Lessee further agrees that it will promptly pay to Lessor, each Owner, Security Trustee, the Noteholders or the Trust Estate, as the case may be, an amount which, after deduction of any taxes required to be paid by such person in respect of the receipt thereof, shall be equal to any additional tax payable by such person attributable to the inclusion in such person's income of any payment or reimbursement made or payable by Lessee under this Section 6; *provided, however*, that such payment shall be reduced by an amount equal to any reduction in taxes resulting from the deduction by such person of the liability or payments with respect to which such payment or reimbursement is made or paid by Lessee.

All amounts payable by Lessee pursuant to this Section 6 shall be payable, to the extent not theretofore paid, on written demand by the party entitled to indemnification; and all the indemnities contained in this Section 6 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, Lessor, each Owner, Security Trustee and the Noteholders.

In the event that Lessor shall become obligated to make any payment to Security Trustee or otherwise pursuant to any correlative provision of the Security Agreement not covered by the foregoing paragraphs of this Section 6, Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to Lessor as will enable Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to Impositions are required to be made, Lessee will either make such reports in such manner as to show the ownership of Lessor and security interest of Security Trustee in the Units or notify Lessor and Security Trustee of such requirement and make such reports in such manner as shall be satisfactory to Lessor and Security Trustee.

SECTION 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall become worn out, lost, stolen, destroyed, irreparably damaged from any cause whatsoever or otherwise rendered permanently unfit for use, or shall be taken or requisitioned by condemnation or otherwise, except any requisition which by its express terms is for a period less

than the term of this Lease or is for an indefinite period (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease (including any extended term), Lessee shall promptly and fully notify Lessor and Security Trustee with respect thereto. Lessee shall bear the risk of any Casualty Occurrence to any Unit. Except as provided in the third paragraph of this Section 7, when any Unit shall have suffered a Casualty Occurrence, on the rental payment date next succeeding, Lessee shall (i) pay to Lessor an amount equal to the rental payment or payments in respect of such Unit or Units due and payable on such date, plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit or Units as of the date of such payment in accordance with the schedule set out below and (ii) deliver to Lessor and Security Trustee a certificate signed by its President or any Vice President setting forth the portion of such Casualty Value which shall equal the "Unamortized Debt Commitment" (as defined in the Security Agreement) of the Units with respect to which such Casualty Value is paid. Upon (but not prior to) the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall thereafter cease, the term of this Lease as to such Unit shall terminate and Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee as its agent to dispose of any Unit suffering a Casualty Occurrence for which the Casualty Value is to be paid at the best price obtainable on an "as is, where is" basis. If Lessee shall have previously paid the Casualty Value to Lessor, Lessee shall be entitled to the net proceeds of such disposition to the extent that such proceeds do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor.

Subject to adjustment pursuant to the provisions of Section 17, the Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
June 17, 1975	103.9723%	June 17, 1978	120.0498%
December 17, 1975 ..	106.0202	December 17, 1978 ..	114.3698
June 17, 1976	109.6503	June 17, 1979	115.6646
December 17, 1976 ..	112.8258	December 17, 1979 ..	116.5919
June 17, 1977	115.6037	June 17, 1980	117.1644
December 17, 1977 ..	118.0137	December 17, 1980 ..	110.0573

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
June 17, 1981	108.5146%	June 17, 1986	75.3619%
December 17, 1981 ..	106.8344	December 17, 1986 ..	69.3319
June 17, 1982	105.0202	June 17, 1987	63.1470
December 17, 1982 ..	95.7186	December 17, 1987 ..	56.8023
June 17, 1983	93.6365	June 17, 1988	50.2924
December 17, 1983 ..	91.4204	December 17, 1988 ..	43.6112
June 17, 1984	89.0733	June 17, 1989	36.7530
December 17, 1984 ..	86.5934	December 17, 1989 ..	29.7113
June 17, 1985	83.9834	June 17, 1990	15.0000
December 17, 1985 ..	81.2412		

In lieu of paying the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, Lessee may, at its own cost and expense, at any time prior to the date such payment is due, replace such Unit with another unit (hereinafter called a "Replacement Unit") of standard-gauge railroad equipment of the same type which is in as good operating condition as, and has a utility to the unit trains being operated by Lessee as contemplated by this Lease and a Fair Market Value (as defined in Section 14) at least equal to, that of such Unit immediately preceding such Casualty Occurrence, assuming such Unit to have been in the condition and state of repair required by Section 10. If a Replacement Unit is to be conveyed to Lessor as provided in the immediately preceding sentence, Lessee shall take all necessary action to vest title thereto in Lessor free and clear of all liens, charges, security interests or other encumbrances (other than this Lease and the Security Agreement) and to subject such Replacement Unit to this Lease and the Security Agreement to the same extent and for the same purposes as the Unit being replaced; and, without limiting the generality of the foregoing, Lessee shall cause to be delivered to Lessor and Security Trustee the following papers:

(i) a certificate signed by the President, any Vice President or the Treasurer of Lessee stating (A) such Replacement Unit is standard-gauge railroad equipment of the same type as the Unit being replaced, (B) the original cost of such Replacement Unit, (C) the date such Replacement Unit was first placed in service (or that such Replacement Unit was first placed in service not later than a specified date), (D) the Fair Market Value of such Replacement Unit and the Fair Market Value of the Unit being replaced immediately preceding such Casualty Occurrence, (E) such Replacement Unit has been numbered and marked in accordance with this Lease and the Security Agreement and (F) that, in the opinion of the signer, all conditions

precedent provided for in this Lease and the Security Agreement relating to such replacement have been complied with;

(ii) a bill of sale in respect of such Replacement Unit substantially in the form specified in Section 4 (c) (i) of the Purchase Agreements;

(iii) a proper supplement to this Lease and a proper supplement to the Security Agreement in respect of such Replacement Unit; and

(iv) an opinion of counsel (who may be counsel for Lessee) to the effect that (A) such bill of sale is valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in Lessor title to such Replacement Unit free and clear from all liens, charges, security interests or other encumbrances (except only the rights of Security Trustee under the Security Agreement and the rights of Lessee under the Lease), (B) proper supplements to this Lease and the Security Agreement in respect of such Replacement Unit have been duly executed by all necessary parties and (C) in the opinion of such counsel, all conditions precedent provided for in this Lease and the Security Agreement relating to such replacement have been complied with.

Upon compliance with the provisions of the immediately preceding paragraph, any Replacement Unit shall be deemed a "Unit" hereunder and all terms of this Lease, including the provisions relating to the payment of Basic Rent, Casualty Value and Termination Value (as defined in Section 8), shall apply to such Replacement Unit as though it were the Unit being replaced and no Casualty Occurrence had occurred. Upon such compliance, Lessor shall, upon request of Lessee, execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such replaced Unit is free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under Lessor other than liens, charges, security interests and other encumbrances which Lessee is obligated to discharge hereunder) for such replaced Unit and such other documents as may be required to release such replaced Unit from the terms and scope of this Lease and to transfer title thereto to Lessee, or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

Except as hereinabove in this Section 7 provided, Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Unit.

Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained, with insurers of recognized responsibility satisfactory to Lessor and Security Trustee, all risk loss and physical damage insurance on the Units in an amount that shall not at any time be less than the sum of the Casualty Value of the Units as of the next succeeding rental payment date plus the Basic Rent due on such date, which insurance may contain a deductible provision of not to exceed \$10,000 for any one Unit and \$250,000 for any one accident. Lessee shall cause each insurance policy obtained in satisfaction of the requirements of the preceding sentence to, and the insurer issuing such policy to certify to Lessor and Security Trustee that such policy does:

(i) name Lessor, as owner of the Units, and Security Trustee as additional insureds as their respective interests may appear;

(ii) provide that the proceeds of such insurance shall be payable in United States dollars to Security Trustee, so long as the indebtedness secured by the Security Agreement shall not have been paid in full, and thereafter to Lessor;

(iii) insure the respective interests of Lessor and Security Trustee regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policy;

(iv) provide that such insurance, as to the respective interests of Lessor and Security Trustee therein, shall not be invalidated by the use or operation of the Units for purposes which are not permitted by such policy;

(v) waive any right of subrogation of the insurer to any rights of Lessor or Security Trustee, except rights against persons other than Lessor, Security Trustee, any Owner or any Noteholder to the extent of payments made by the insurer under such policy in respect of claims which are the subject matter of such rights, and shall also waive any right of the insurer to any set-off, counterclaim or other deduction, whether by attachment or otherwise, in respect of any liability of Lessor, Lessee or Security Trustee;

(vi) provide that if any premium or installment thereof is not paid when due, or if such policy would lapse or be cancelled, terminated or materially changed for any reason whatsoever, the insurer will promptly notify Lessor and Security Trustee in writing and any such lapse, cancellation, termination or change shall not be effective as to Lessor or Security Trustee for 30 days after receipt of such notice.

Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained, with insurers of recognized responsibility satisfactory to Lessor and Security Trustee, insurance with

respect to the Units against liability for loss or damage to the person or property of others from such risks and in such amounts (payable in United States dollars) as Lessee would, in the prudent management of its properties, maintain or cause to be maintained with respect to similar equipment owned by it; *provided, however*, that in no event shall the insurance maintained in accordance with this sentence be less than an aggregate of \$25,000,000 under single limit liability for each occurrence, which insurance may contain a \$100,000 deductible provision for any one accident. Lessee shall cause each insurance policy obtained in satisfaction of the requirements of the preceding sentence to, and the insurer issuing such policy to certify to Lessor and Security Trustee that such policy does:

(i) name Lessor, as owner of the Units, Owners, Security Trustee and the Noteholders as additional insureds thereunder;

(ii) insure the respective interests of Lessor, Owners, Security Trustee and the Noteholders regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policy;

(iii) provide that all of the provisions thereof, except the limits of liability (which shall be applicable to all the insureds as a group) and liability for premiums (which shall be the sole responsibility of Lessee), shall operate in the same manner as if there were a separate policy covering each insured;

(iv) provide that such insurance, as to the respective interests of Lessor, Owners, Security Trustee and the Noteholders, shall not be invalidated by the use or operation of the Units for purposes which are not permitted by such policy;

(v) waive any right of subrogation of the insurer to any rights of Lessor, Owners, Security Trustee or the Noteholders, except rights against persons other than Lessor, Security Trustee, any Owner or any Noteholder to the extent of payments made by the insurer under such policy in respect of claims which are the subject matter of such rights, and shall also waive any right of the insurer to any set-off, counterclaim or other deduction, whether by attachment or otherwise, in respect of any liability of Lessor, Owners, Security Trustee, the Noteholders or Lessee; and

(vi) provide that if any premium or installment thereof is not paid when due, or if such policy would lapse or be cancelled, terminated or materially changed for any reason whatsoever, the insurer will promptly notify Lessor, Owners, Security Trustee and the Noteholders in writing and any such lapse, cancellation, termination or change shall not be effective as to Lessor, Owners, Security Trustee or the Noteholders for 30 days after receipt of such notice.

Lessee shall deliver to Lessor and Security Trustee copies of each such insurance policy (or a certificate of insurance relating thereto) on or before the Closing Date with respect to the Units then being settled for and copies of each renewal policy (or a certificate or other evidence of insurance relating thereto) prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall notify Lessor and Security Trustee in writing of the status of such insurance 30 days prior to the expiration thereof in the event Lessee has not then delivered to Lessor and Security Trustee a renewal policy, or a certificate or other evidence of insurance relating thereto; and Lessee shall deliver to Lessor and Security Trustee receipts or other evidence that the premiums on all such policies have been paid.

Any net insurance proceeds resulting from insurance carried by Lessee or condemnation payments received by Lessor or Security Trustee in respect of any Unit suffering a Casualty Occurrence which has been replaced as in this Section 7 provided shall be the property of Lessee; and Lessor and Security Trustee, at Lessee's expense, shall execute any assignment thereof or disclaimer of interest therein reasonably requested by Lessee. If Lessor or Security Trustee shall receive any such net insurance proceeds or condemnation payments with respect to a Unit suffering a Casualty Occurrence and thereafter such Unit shall be replaced in accordance with this Section 7, Lessor or Security Trustee, as the case may be, shall pay such net insurance proceeds or condemnation payments to Lessee unless an Event of Default or other event (hereinafter called a "Default") which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor or Security Trustee and applied to discharge the liabilities of Lessee under Section 11.

Any net insurance proceeds resulting from insurance carried by Lessee or condemnation payments received by Lessor or Security Trustee in respect of any Unit suffering a Casualty Occurrence which has not been replaced as in this Section 7 provided shall be deducted from the amount payable by Lessee to Lessor in respect of such Casualty Occurrence pursuant to this Section 7. If Lessor or Security Trustee shall receive any such net insurance proceeds or condemnation payments after Lessee shall have made payments pursuant to this Section 7 without deduction for such net insurance proceeds or such condemnation payments, Lessor or

Security Trustee, as the case may be, shall pay such net insurance proceeds or condemnation payments to Lessee up to the amount of such payments made by Lessee (but not in excess of the Casualty Value with respect to such Unit) unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor or Security Trustee and applied to discharge the liabilities of Lessee under Section 11. The balance of such net insurance proceeds or condemnation payments shall remain the property of Lessor. All net insurance proceeds received by Lessor, Security Trustee or Lessee with respect to a Unit not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing the damage to such Unit, but no such proceeds shall be paid to Lessee until Lessor and Security Trustee shall have received a certificate signed by an authorized officer of Lessee to the effect that such damage has been fully repaired; and any balance remaining after the completion of such repairs shall be paid to Lessee unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor or Security Trustee and applied to discharge the liabilities of Lessee under Section 11. Any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of Lessor.

Nothing in this Section 7 shall prohibit Lessor from placing any insurance Lessor desires, at Lessor's expense, on or with respect to the Units or the operation thereof unless such insurance would conflict with or otherwise vitiate insurance that is required to be carried by Lessee pursuant to this Section 7.

SECTION 8. *Voluntary Termination.* Unless an Event of Default or Default shall have occurred and be continuing hereunder, Lessee shall be entitled, at its option, upon at least 180 days' prior written notice to Lessor and Security Trustee, to terminate this Lease during the original term hereof if Lessee shall have made a good faith determination that all (but not less than all) of the Units have become obsolete or can no longer be used economically in Lessee's operations, which notice shall be accompanied by a certified copy of resolutions adopted by the Board of Directors of Lessee making such determination and a written statement of the President or a Vice President of Lessee setting forth a summary of the basis for such determination; *provided, however,* that such termination shall become effective only on a rental payment date (hereinafter in this Section 8 called the "Termination Date") and, in no event, prior to June

17, 1985; and *provided further*, that such termination shall not take effect unless Lessee shall have fully complied with the succeeding paragraphs of this Section 8. Lessor and Lessee agree that the Units shall not be considered obsolete or no longer economically useful if Lessee shall enter into any arrangement with any person whereby the Units shall be sold and, as a part of the same transaction or series of related transactions, Lessee or any affiliate (as hereinafter defined) of Lessee shall then or thereafter lease or rent or otherwise acquire the right to possession or use of the Units, or any part thereof, or any similar railroad equipment; *provided, however*, that the occasional leasing from time to time of less than 10 railroad cars of the same types as the Units shall not be deemed to prevent the Units from being considered obsolete or no longer economically useful.

During the period from the giving of such notice to the Termination Date, Lessee, as agent for Lessor, shall use its best efforts to obtain bids for the purchase of all the Units on an "as is, where is" basis, and Lessee shall certify to Lessor in writing the amount of each bid received and the name and address of the person (who shall not be Lessee or any person, firm or corporation affiliated with Lessee) submitting such bid. An "affiliate" of Lessee shall mean any person which possesses, directly or indirectly, the right to vote at least 20% of the voting securities of Lessee, and any person which, directly or indirectly, controls or is controlled by or is under common control with Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. On the Termination Date, Lessor shall, without recourse or warranty (including, but not limited to, warranties relating to title), sell all the Units for cash to whomsoever shall have submitted the highest bid therefor (including any Owner) prior to the Termination Date, and thereupon Lessee shall cause to be delivered the Units to Lessor in accordance with the terms of Section 15. If the sale of all the Units shall not occur on the Termination Date, Lessee shall not cause such delivery of the Units to Lessor; and this Lease shall continue in full force and effect. Lessor shall be under no duty to (but may) solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take any action in connection with any such sale other than as expressly provided in this Section 8.

The total sale price realized at any such sale of the Units shall be retained by Lessor and, concurrently therewith, Lessee shall pay to Lessor

the excess, if any, of (i) the Termination Value (as hereinafter defined) of the Units computed as of the Termination Date over (ii) the proceeds of such sale less all expenses incurred by Lessor in connection with such sale or with the collection or distribution of such payment. Lessee shall also be obligated to pay Lessor (x) any and all rentals and other sums due hereunder with respect to the Units up to and including the Termination Date and (y) the prepayment premium payable by Lessor pursuant to Section 5.02 of the Security Agreement. In the event of such sale and compliance by Lessee with all the provisions of this Section 8, the obligations of Lessee to pay rental hereunder on all rental payment dates occurring after the Termination Date shall terminate.

Subject to adjustment pursuant to the provisions of Section 17, the Termination Value of each Unit as of the Termination Date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Termination Date</u>	<u>Percentage</u>	<u>Termination Date</u>	<u>Percentage</u>
June 17, 1985	74.2334%	June 17, 1988	37.5424%
December 17, 1985.	70.9912	December 17, 1988.	30.3612
June 17, 1986	64.6119	June 17, 1989	23.0030
December 17, 1986.	58.0819	December 17, 1989.	15.4613
June 17, 1987	51.3970	June 17, 1990	0.0000
December 17, 1987.	44.5523		

SECTION 9. Reports. On or before March 31 in each year, commencing with the year 1976, Lessee will furnish to Lessor, each Owner and Security Trustee an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as Lessor or Security Trustee may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 5 and the Security Agreement have been preserved or replaced. Lessor and Security Trustee shall have the right, by their respective agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor or Security Trustee, as the case may be, may request during the term of this Lease.

As soon as available and in any event within 90 days after the end of each of its fiscal years, Lessee will deliver to Lessor and Security Trustee a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Lessee stating that a review of the activities of Lessee during such fiscal year has been made under his supervision with a view to determining whether Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and that, to the best of his knowledge, Lessee during such fiscal year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein, or if there shall have occurred a Default or an Event of Default under this Lease specifying such Default or Event of Default and the nature and status thereof.

SECTION 10. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **LESSOR LEASES THE UNITS, AS IS, IN WHATEVER CONDITION THEY MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY LESSOR OR ANY OWNER, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY OF THE UNITS INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) LESSOR'S TITLE THERETO, (C) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR, OWNERS AND LESSEE, ARE TO BE BORNE BY LESSEE.** Lessee's execution of this Lease shall be conclusive evidence as between Lessor, Owners and Lessee that the Units described herein are in all of the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor or any Owner based on any of the foregoing matters.

Lessee agrees, for the benefit of Lessor and Security Trustee, to comply in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of each Unit) of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads, with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all provisions of the insurance policies carried by Lessee pur-

suant to Section 7; and in the event that such laws, rules or provisions require any alteration, replacement or addition of or to any part of any Unit, Lessee will conform therewith at its own expense; *provided, however*, that Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor or Security Trustee, adversely affect the property or rights of Lessor or Security Trustee under this Lease or under the Security Agreement or create any danger that Lessor, Security Trustee or the agents or servants of either of them will incur criminal or other liability for which no indemnification is provided hereunder.

Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Units. Lessee, at its own cost and expense, shall maintain and service, or cause to be maintained and serviced, each of the Units so as to keep it in the same operating condition, order, repair and appearance as it was when it first became subject to this Lease, ordinary wear and tear excepted; and at all times during the term hereof such Unit shall be suitable for use in interchange. Lessee, at its own cost and expense and within a reasonable period of time, shall also replace all parts of any Unit that may have become worn out, lost, stolen, confiscated, destroyed or otherwise rendered permanently unfit for use with appropriate replacement parts, which shall be free and clear from any mortgage, lien, charge or encumbrance.

Lessee shall not, without the prior written consent of Lessor, alter any Unit, or affix or install any accessories or devices on any Unit, if the same shall impair the originally intended function or use of such Unit or shall diminish its commercial value. Any and all additions to and improvements of any Unit, and any and all parts installed on and additions and replacements made to any Unit, shall constitute accessions to such Unit and ownership thereof, free from any lien, charge, security interest or encumbrance (except for those created by the Security Agreement or this Lease), shall immediately be vested in Lessor.

Lessee agrees to indemnify, protect and hold harmless Lessor, each Owner, Security Trustee, the Noteholders (including their respective successors, assigns, agents and servants) and the Trust Estate from and against all losses, damages, injuries, liabilities, claims (including claims for negligence or strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but

not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of (i) the entering into or the performance of the Finance Agreement, the Trust Agreement, the Purchase Agreements, the Security Agreement or this Lease, the ownership of any Unit, the ordering, construction, acquisition, use, operation, condition (whether defects are latent or discoverable by Lessor or Lessee), maintenance, repair, improvement, replacement, purchase, delivery, rejection, lease, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage, sale or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 15, (ii) any loss or damage to the Units, ordinary wear and tear excepted, (iii) any act or omission of Lessee when acting as agent or attorney-in-fact for Lessor hereunder, (iv) any failure of Lessee to comply with the terms of this Lease or (v) any claims for patent infringement. Without limiting the generality of this Section 10 or Section 6, Lessee further agrees to indemnify, protect and hold harmless each Owner, and its respective successors, assigns, agents, servants and legal representatives, from and against all losses, damages, liabilities, claims, taxes, penalties, expenses, costs, disbursements, actions, suits and other obligations, including legal fees and disbursements, of any kind or nature whatsoever which may be imposed or asserted against such Owner under Section 6.01 of the Trust Agreement. The indemnities arising under this paragraph are expressly made for the benefit of, and shall be enforceable by, Lessor, each Owner, Security Trustee, the agents and servants of each of them and the Noteholders and shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

Lessee agrees to prepare, deliver to Lessor for execution within a reasonable time prior to the required date of filing and file (or, to the extent permissible, to prepare for and file on behalf of Lessor directly) any and all reports (other than income tax returns) to be filed by Lessor with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units or the leasing thereof to Lessee.

SECTION 11. *Default.* If during the continuance of this Lease one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any part of the rent provided in Section 3;

(B) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof, or shall fail to maintain insurance in accordance with Section 7;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein, and such default shall continue for 30 days after written notice from Lessor to Lessee specifying such default and demanding that the same be remedied;

(D) any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension, and, if such proceedings have been commenced against Lessee, such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such proceedings shall have been commenced, or Lessee shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due;

(E) any representation or warranty made by Lessee in the Finance Agreement or this Lease shall prove to be false or misleading in any material respect as of the date made;

(F) default shall be made in the observance or performance of any covenant or agreement on the part of Lessee contained in the Finance Agreement, and such default shall continue for 30 days after written notice from Lessor to Lessee specifying such default and demanding that the same be remedied;

(G) default shall occur in respect of any evidence of indebtedness of Lessee or under any agreement under which any bonds, notes or other evidence of indebtedness of Lessee may be issued, or under any other material agreement or any material lease of real or personal property to which Lessee is a party or under any covenant, provision or condition contained in the charter, articles of incorporation or similar instrument of Lessee, and such default shall continue for more than the period of grace, if any, therein specified or 30 days, whichever is less; or

(H) final judgment for the payment of money in excess of \$250,000 shall be rendered against Lessee and the same shall remain unsatisfied for a period of 30 days during which execution shall not be effectively stayed;

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

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including net after-tax losses of federal and state income tax benefits to which Lessor or Owners would otherwise be entitled as a result of owning the Units and leasing the same to Lessee under this Lease; or

(2) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the possession and use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may, by its agents, enter upon the premises of Lessee or any other premises where any of the Units may be located and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatsoever; but Lessor shall, nevertheless, have a right to recover from 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 multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (a) as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each Unit then subject to this Lease, Lessor, in its sole discretion, shall specify by written notice to Lessee: (x) an amount equal to the excess, if any, of the Casualty Value for such Unit, computed as of the rental payment date immediately preceding the Event of Default specified in such notice, over the Fair Market Rental (computed as provided in Section 14) of such Unit for the remainder of the term of this Lease after discounting such Fair Market Rental semi-annually to present value as of such preceding rental payment date at the rate of 9 $\frac{3}{8}$ % per annum or (y) an amount equal to the excess, if any, of the Casualty Value for such Unit as of such preceding rental payment date over the Fair Market Value (computed as provided in Section 14) of such Unit as of such preceding rental payment date and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

It is expressly understood and agreed that upon the occurrence of any of the defaults or conditions described in clauses (A) through (H), both

inclusive, of the first paragraph of this Section 11, and prior to the time that this Lease is terminated by Security Trustee or the maturity of the Notes is accelerated pursuant to Section 8.03 of the Security Agreement, either Lessor or any Owner may make such payment or perform such other act as will cure such default or condition, and the amount of all payments by Lessor or Owners on behalf of Lessee, plus the amount of all reasonable expenses incurred in connection therewith, together with interest thereon at the higher of 10% per annum or 3% over the commercial loan rate of Manufacturers Hanover Trust Company referred to in Section 16 of the Finance Agreement from time to time, but not to exceed the maximum rate permitted by law, from the date of expenditure to the date of reimbursement, shall constitute additional rental payable hereunder by Lessee to Lessor on demand. The option of Lessor or Owners to cure any default described in clause (A) shall be limited to the payment of an amount not exceeding two full Basic Rent payments.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

The failure of Lessor to exercise any of the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The foregoing provisions of this Section 11 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 12. *Return of Units upon Default.* If this Lease shall terminate pursuant to Section 11, Lessee shall forthwith deliver possession of the Units to Lessor and shall:

- (a) forthwith place such Units upon such storage tracks as Lessor reasonably may designate until such Units have been sold, leased or otherwise disposed of by Lessor; and

(b) cause the same to be delivered to any carrier for shipment directed by Lessor.

The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 10, shall be maintained, or caused to be maintained, by Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 12 and shall be insured by Lessee, at its own cost and expense, during such period of storage in accordance with Section 7; and at the time of such return and during such period of storage shall be kept free and clear of all liens, charges, security interests and encumbrances in accordance with Section 13. The assembling, delivery, storage and transporting of the Units as in this Section 12 provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligations of Lessee under the foregoing provisions of this Section 12, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 13. *Assignment; Possession and Use; Liens.* Lessor, or any assignee of Lessor, may at any time, without notice to or consent by Lessee, sell, assign, transfer, mortgage or otherwise encumber its interest under this Lease or in the Units, subject to the terms of this Lease and the rights of Lessee hereunder, and, upon receipt of written notice of any such assignment, Lessee shall recognize such assignment subject to the rights of Lessee against Lessor hereunder. No assignment or reassignment shall release Lessor from its obligations to Lessee under this Lease. Lessor agrees to deliver to Lessee a copy of each agreement evidencing any such sale, assignment, transfer, mortgage or other encumbrance, or the portion thereof which effects compliance with the provisions of this Section 13, as soon as practicable after the execution and delivery thereof. All the

rights of Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 8, 11 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively), but only to the extent assigned. The term "Owners" as used herein shall include all members of any affiliated group of corporations which includes one or more of the persons named in the definition of such term and which file a consolidated federal income tax return.

Subject to the terms and conditions of this Lease and the Security Agreement, Lessee shall have the right to the full use and uninterrupted and undisturbed possession of the Units, and so long as no Default or Event of Default hereunder shall have occurred and be continuing, Lessor shall not interfere with or otherwise disturb Lessee's use and enjoyment of any Unit nor do or cause to be done any act which would deprive Lessee of the full use, possession and enjoyment of any Unit; *provided, however*, that any claim of Lessee against Lessor for breach of this sentence shall be subordinate to the obligations and duties secured by the Security Agreement and the rights of the Security Trustee thereunder. Without the prior written consent of Lessor, Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them; *provided, however*, that (i) this sentence shall not prohibit any transaction permitted by Section 21 and (ii) Lessee may sublease an undivided interest in the Units to Monongahela Power Company and/or The Potomac Edison Company or sublease the Units to any other person for use as a unit train or unit trains if, in any such case, such sublease has been authorized in writing by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, as amended (or such Commission has indicated in writing that no such authorization is required), and by all other federal and state regulatory commissions and agencies having jurisdiction and is otherwise lawful, and if a copy of each such authorization, disclaimer or other order shall have been delivered to Lessor and Security Trustee, but Lessee shall not be relieved of any of its obligations hereunder by reason of any such sublease and any such sublease shall expressly provide that the rights of sublessee thereunder are subject in all respects to the rights of Lessor and Security Trustee hereunder and under the Security Agreement and that the Units shall not be used contrary to clause (ii) of the next paragraph; and *provided further* that this sentence shall not be

deemed to prohibit any lien attaching only to the leasehold interest of Lessee under this Lease by reason of the existence of an after-acquired property clause in any mortgage to which Lessee is a party covering substantially all of its utility property. Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any person which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by Lessor or Security Trustee or resulting from claims against Lessor or Security Trustee unrelated to transactions contemplated by the Finance Agreement) on or with respect to any Unit, including any accession thereto, or the interest of Lessor, Security Trustee or Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; *provided, however,* that Lessee shall not be required to pay or discharge any such claim to the extent that and while it is being contested by Lessee in good faith and by appropriate proceedings and so long as such proceedings or the nonpayment of such claim does not, in the written opinion of counsel satisfactory to Lessor and Security Trustee, involve (A) any danger of the sale, forfeiture or loss of any Unit or any interest therein, (B) any material adverse change in the title, property or rights of Lessor in or to the Units or hereunder or Security Trustee under the Security Agreement, (C) any assessment or penalty against any party indemnified by Section 6, (D) any interference with the due payment by Lessee of rentals hereunder or the application of such rentals under the Security Agreement or (E) any danger of criminal or other liability for which no indemnification is provided hereunder being imposed against Lessor, Security Trustee or the agents or servants of either of them; and *provided further,* that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this paragraph and the immediately succeeding paragraph.

So long as there shall exist no Default or Event of Default under this Lease, Lessee shall be entitled to the possession of the Units and to the use of the Units for one or more unit trains to haul coal to any generating

station owned or used by Lessee, but only upon and subject to all the terms and conditions of this Lease and the Security Agreement; *provided, however,* that (i) Lessee shall in all events use the Units in a careful and proper manner consistent with the use contemplated by the manufacturer thereof and solely in the business of Lessee and (ii) Lessee shall not assign or permit the assignment of any Unit to service involving the operation or maintenance thereof outside the continental United States of America (excluding Alaska).

SECTION 14. *Purchase and Renewal Options.* Provided this Lease has not been earlier terminated and there exists no Default or Event of Default hereunder, Lessee may (a) by written notice delivered to Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to purchase at the end of such term all, but not less than all, of the Units then covered by this Lease for a purchase price equal to the "Fair Market Value" (as hereinafter defined) of such Units as of the end of the original term or any such extended term or (b) by written notice delivered to Lessor not less than six months prior to the end of the original term or the extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all of such Units then covered by this Lease for an additional five-year period commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond June 17, 2005. In the event that the term of this Lease is extended pursuant to the preceding sentence, Lessee shall pay rentals at the "Fair Market Rental" (as hereinafter defined) of such Units in semi-annual payments in arrears on June 17 and December 17 in each year of such extended term; and all of the other terms of this Lease (other than Section 8) shall be applicable during any extended term, except that the Casualty Value of any Unit shall, at any time during any such extended term, be an amount equal to (x) all rentals which would have been payable for such Unit pursuant to the provisions of this Section 14 after the first rental payment date following the Casualty Occurrence through the last day of such extended term, discounted to present value as of the date on which such Casualty Value is paid to Lessor at the rate of 6% per annum, plus (y) an amount equal to 15% (in the case of the first extended term), 10% (in the case of the second extended term) and 5% (in the case of the third extended term) of the Purchase Price of such Unit.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If, within two months following receipt of the notice required by the preceding paragraph, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as Lessor may select with the approval of Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected; and if the appraisers selected by Lessor and Lessee are unable to agree upon such third appraiser, either Lessor or Lessee may apply to any court of competent jurisdiction to select such third appraiser. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by Lessee.

Upon payment of the purchase price on the date of the expiration of the original term or, in the case of an extension hereof, the applicable extended term of this Lease, Lessor shall, upon request of Lessee, execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Units are free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under Lessor other than the liens, charges, security interests and other encumbrances which Les-

see is obligated to discharge hereunder) for the Units, and such other documents as may be required to release the Units from the terms and scope of this Lease and to transfer title thereto to Lessee, or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

SECTION 15. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease in the event the Units are not purchased pursuant to Section 14, Lessee will, at its own cost and expense, at the request of Lessor, deliver the Units to Lessor upon such storage tracks as Lessor may reasonably designate, or, in the absence of such designation, as Lessee may select, and store the Units on such tracks for a period not exceeding 60 days and cause the same to be delivered, at any time within such 60-day period, to any reasonable place directed by Lessor. The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 10, shall be maintained, or caused to be maintained, by Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 15 and shall be insured by Lessee, at its own cost and expense, during such period of storage in accordance with Section 7; and at the time of such return and during such period of storage shall be kept free and clear of all liens, charges, security interests and encumbrances in accordance with Section 13. The movement and storage of the Units shall be at the expense and risk of Lessee. During any such storage period, Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of the Units, may inspect the same; *provided, however*, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the right of inspection granted under this sentence. The assembling, delivery, storage, maintenance and transporting of the Units as in this Section 15 provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence, it may deliver written notice to such effect to Lessee and Lessee shall thereupon assume and hold Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after

receipt of such notice. Lessor shall execute and deliver to Lessee a bill of sale and other documents, as specified in the last paragraph of Section 14, with respect to any Unit so abandoned. Lessee shall have no other liability to Lessor in respect of any Unit abandoned by Lessor after termination of this Lease; *provided, however*, that this sentence shall not in any way relieve Lessee of its obligations pursuant to Section 7 to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect or to replace such Unit.

SECTION 16. *Recording.* Lessee, at its own expense, will cause this Lease and the Security Agreement, and any amendments or supplements hereto or thereto, and any further assignments hereof and thereof, to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and Lessee will effect all other the filing, registering, depositing and recording required of Lessor under the Security Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will re-file, re-register, re-deposit or re-record whenever required) any and all further instruments, including Uniform Commercial Code financing and continuation statements, required by law or reasonably requested by Lessor or Security Trustee for the purpose of proper protection, to their satisfaction, of Lessor's and Security Trustee's respective interests in the Units, or for the purpose of carrying out the intention of and their respective rights under this Lease and the Security Agreement; and Lessee will promptly furnish to Lessor and Security Trustee evidence of all such filing, registering, depositing and recording and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor and Security Trustee. This Lease and the Security Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. *Income Taxes.*

(i) For the purposes of paragraph (iii) of this Section 17, the following occurrences shall be deemed "Events of Indemnity" provided they result from one of the causes specified in paragraph (ii) of this Section 17: (A) any Owner not being entitled for each of its taxable years (or portions thereof) in which this Lease is in effect to a depreciation deduction with respect to at least the full Purchase Price of the Units which is based on a method of depreciation provided by Section 167(b)(2), (3) or (4) of the Internal Revenue Code of 1954, as

in effect on the date of this Lease (hereinafter called the "Code"), the asset depreciation range system of Treasury Regulations §1.167(a)-11, as adopted on April 20, 1973 (T.D. 7272), and a class life of not more than 12 years and which permits any Owner to depreciate the Units to a salvage value, as of the end of the original term of this Lease, of not more than 5% of such full Purchase Price; (B) any Owner not being entitled to deduct pursuant to Section 163(a) of the Code interest on the Notes; (C) any Owner not being entitled to an investment tax credit equal to at least 10% (or such other percentage as shall have been utilized in adjusting the Basic Rent, Casualty Values and Termination Values pursuant to paragraph (vii) of this Section 17) of the full Purchase Price of the Units; or (D) any Owner not being entitled either to deduct the expenses and fees paid by Owners pursuant to Section 14(b) of the Finance Agreement in the year in which paid or to amortize such expenses and fees on a straight-line basis over a period of not exceeding 15 years following June 17, 1975.

(ii) The causes referred to in paragraph (i) of this Section 17 are the following:

(A) the "original use" of any portion of the Units being deemed to commence within the meaning of Section 167(c)(2) of the Code prior to acceptance by Lessor of the transfer to it of title thereto;

(B) any part of the full Purchase Price of the Units not being deemed part of Owners' basis for the purpose of depreciating the Units or calculating the investment tax credit with respect thereto for any reason whatsoever, including, without limitation, by reason of any part of any of the Units being removed therefrom at any time or resulting from a replacement of a Unit or Units pursuant to Section 7;

(C) (1) any representation, fact, estimate, opinion or other statement contained in the request for Ruling referred to in Section 16 of the Finance Agreement made or stated by Lessee (or by any affiliate, officer, employee, agent or counsel of Lessee) in this Lease or in connection herewith or with such request for Ruling proving to be (or being finally determined by the Internal Revenue Service to be) fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part; or (2) any material fact (other than any fact with respect to Owners or Lessor) being (or being finally determined by the Internal Revenue Service to have been) omitted from such request for Ruling; or (3) Lessee (or any affiliate, officer, employee, agent or counsel of Lessee) taking or failing to take (or being finally de-

terminated by the Internal Revenue Service to have taken or have failed to take) any action whatsoever (including, without limitation, any action in respect of Lessee's income tax returns), which action or failure to act is inconsistent with or in contravention of any matters set forth in such request for Ruling or the Ruling;

(D) any alteration or modification in or addition to any of the Units made by or at the direction of Lessee, or any sublessee of any of the Units;

(E) any act or failure to act of Lessee whatsoever;

(F) any increase in tax by way of a recomputation of the investment tax credit pursuant to Section 47 of the Code, including any such recomputation resulting from replacement of a Unit or Units pursuant to Section 7; or

(G) any part of the expenses and fees referred to in clause (D) of paragraph (i) of this Section 17 not being, for any reason whatsoever, either deductible in the year in which paid or amortizable on a straight-line basis over a period of not more than 15 years following June 17, 1975 for income tax purposes.

(iii) If an Event of Indemnity occurs, Lessee agrees to pay Lessor for the account of Owners, as additional rent hereunder, a sum which, after deduction of all taxes required to be paid by Lessor or Owners in respect of the receipt thereof under the laws of any governmental or taxing authority in the United States, shall be equal to the sum of (x) the amount of the investment tax credit not so utilized or lost by each Owner, (y) an amount equal to the additional income taxes paid or payable by Lessor or each Owner in consequence of the failure to obtain the benefit of a depreciation deduction, an interest deduction or an expense or amortization deduction on the basis set forth in paragraph (i) of this Section 17, and (z) any interest and penalties (net of any tax benefit from the deduction thereof) which may be payable by Lessor or each Owner in connection with such inability to utilize or such loss of the investment tax credit or failure to obtain the benefit of a deduction or amortization on the aforesaid basis, which amounts shall be payable on written demand made at any time after payment of the consequential additional income tax.

(iv) For the purpose of this Section 17, the term "Owner" shall include the "common parent" and all other corporations included in the affiliated group within the meaning of Section 1504 of the Code (or any successor section thereto) of which an Owner is or becomes a member.

(v) If for any year (hereinafter called a "Later Year") after Lessee shall have indemnified an Owner in accordance with this Section 17

for any disallowance of a depreciation deduction, such Owner shall obtain any depreciation deduction with respect to any part of the Units which it would not have received had there not been the disallowance of depreciation in respect of which such Owner was indemnified, such Owner shall pay to Lessee, by way of reverse indemnity, an amount calculated as follows:

(A) there first shall be calculated the amount by which the aggregate income taxes (federal, state and local, taking into account that the state and local taxes are deductible for federal income tax purposes) paid by such Owner for the Later Year were diminished in consequence of its obtaining such additional depreciation (hereinafter called the "Amount of Tax Reduction");

(B) there shall then be calculated the effective rate of the aggregate income tax applicable to the income received by such Owner as a result of this Lease in the Later Year (hereinafter called the "Tax Rate"); and

(C) the amount which such Owner shall pay to Lessee as a reverse indemnity shall be an amount which, taking into account the Tax Rate and the fact that the payment gives rise to an income tax deduction for such Owner, represents an expense to such Owner, net after taxes, equal to the Amount of Tax Reduction.

No amounts of reverse indemnity shall be payable before such time as Lessee shall have made all indemnity payments due under this Section 17.

(vi) Anything in this Lease to the contrary notwithstanding (but subject to the provisions of paragraphs (vii) and (viii) of this Section 17 with respect to adjustment of Basic Rent, Casualty Values and Termination Values), Owners shall not be entitled to indemnity in respect of loss of the depreciation deduction, expense deduction or amortization, asset depreciation range system or the investment tax credit, or in respect to having their respective tax increased by recomputation of the investment tax credit pursuant to Section 47 of the Code, if the reason for such loss or tax increase is:

(A) the enactment of an amendment to the Code or an adoption of an amendment to the regulations thereunder as the same were in effect on the date of this Lease;

(B) the failure of any Owner to have sufficient federal income tax liability against which to apply such investment tax credit or the inability of such Owner to utilize such investment tax credit as a result of the limitation imposed by Section 46(a) (2) of the Code;

(C) the sale or disposition of any part of the Units by Lessor prior to any Event of Default under this Lease;

(D) the failure of any Owner to make any election, which failure results in any loss of investment tax credit or depreciation or expense deduction or expense amortization to which such Owner would otherwise be entitled;

(E) the failure of any Owner to claim such investment credit or depreciation or expense deduction or expense amortization in its tax return;

(F) the filing of a consent by any Owner pursuant to the provisions of Sections 108 and 1017 of the Code and the applicable regulations thereunder;

(G) the assignment, conveyance or other transfer by any Owner of all or any portion of its right, title or interest in and to the Trust Agreement, the Estate, the Finance Agreement or this Lease; and

(H) any other act or failure to act by any Owner which directly causes such loss or tax increase.

(vii) Lessor and Lessee agree that the percentages specified in Sections 3, 7 and 8 were determined on the basis, among other things, that each Owner would be entitled to an investment tax credit, in computing its federal income taxes, equal to 10% of the full Purchase Price of the Units. Therefore, in the event that the rate of the investment tax credit to which Owners shall be entitled under the Code shall be changed (either upward or downward and whether before or after June 17, 1975) from 10%, the percentages specified in Sections 3, 7 and 8 shall be adjusted (upward or downward) so as to provide Owners the same recovery of investment and after-tax yield as they would have had if no such change had taken place; *provided, however*, that no installment of Basic Rent, as so adjusted, thereafter payable shall be less than the next preceding such installment.

(viii) Lessor and Lessee further agree that the percentages specified in Sections 3, 7 and 8 were determined on the basis, among other things, that each Owner would be entitled to depreciation deductions, interest deductions and expense deductions or amortization on the bases referred to in clauses (A), (B) and (D) of paragraph (i) of this Section 17. Therefore, in the event, and to the extent, that any such deduction or amortization will not be available to any Owner as a result of any amendment to the Code which is enacted on or before June 16, 1975 or as a result of any regulation or amended regulation which is promulgated under the Code on or before June

16, 1975, then the percentages specified in Sections 3, 7 and 8 shall be adjusted so as to provide Owners the same recovery of investment and after-tax yield as they would have had if no such amendment, regulation or amended regulation had been enacted or promulgated; *provided, however*, that no installment of Basic Rent, as so adjusted, thereafter payable shall be less than the next preceding such installment.

(ix) It is further agreed that (A) in determining the amount of any adjustment pursuant to paragraph (vii) or (viii), recovery of investment and after-tax yield will be computed on the same assumptions (including assumptions with respect to income tax rate) as were otherwise used by Owners in determining the percentages set forth in Sections 3, 7 and 8, and (B) the amount of any such adjustment shall be determined by Owners, who shall promptly (and, in the case of an adjustment pursuant to paragraph (viii), on or before June 16, 1975) certify to Lessee and Lessor that such adjustment was determined pursuant to, and in compliance with, the requirements of such paragraph.

SECTION 18. *Interest on Overdue Rentals.* Anything herein to the contrary notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of Lessee promptly to pay interest equal to the higher of 10 $\frac{1}{4}$ % per annum or 3% over the commercial loan rate of Manufacturers Hanover Trust Company referred to in Section 16 of the Finance Agreement from time to time, but not to exceed the maximum rate permitted by law, on the overdue rentals and other obligations for the period of time during which they are overdue. Such interest shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 19. *Notices.* Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if mailed, certified mail postage prepaid, at the following specified addresses:

(a) To Lessor, 231 South La Salle Street, Chicago, Illinois 60693, attention of Corporate Trust Department, with a copy to each Owner;

(b) To Lessee, c/o Allegheny Power Service Corporation, 320 Park Avenue, New York, New York 10022, attention of Mr. Klaus Bergman, Vice President;

(c) To Manufacturers Hanover Leasing Corporation, 350 Park Avenue, New York, New York 10022, attention of Mr. Robert L. Burke, Senior Vice President;

(d) To Old Kent Bank and Trust Company, One Vandenberg Center, Grand Rapids, Michigan 49502, attention of Mr. James J. Nyhuis, Assistant Vice President;

or to such other address as may have been furnished in writing by any of the foregoing to the other persons named above.

SECTION 20. *Payment of Expenses.* Lessee agrees to pay the expenses assumed by it in the Finance Agreement.

SECTION 21. *Merger, Consolidation, etc.* Lessee shall not consolidate with or merge into any other corporation or convey or transfer its properties and assets substantially as an entirety to any person, unless:

(A) such transaction shall have been approved by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, as amended;

(B) the corporation into which Lessee shall be merged or the person which shall acquire by conveyance or transfer the properties and assets of Lessee substantially as an entirety shall be Allegheny Power System, Inc., Monongahela Power Company or The Potomac Edison Company, or the corporation formed by such consolidation shall have as constituents thereto only Lessee and one or more of Allegheny Power System, Inc., Monongahela Power Company and The Potomac Edison Company, and, in any such case, such corporation shall be organized and existing under the laws of the United States of America or any state thereof;

(C) such successor corporation shall expressly assume, by an appropriate supplement hereto executed and delivered to Lessor, in form and substance satisfactory to Lessor and Security Trustee, the due and punctual payment of all rents and other sums and the performance and observance of each and every covenant and agreement of this Lease on the part of Lessee to be paid, performed or observed;

(D) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing hereunder or under the Security Agreement; and

(E) Lessee shall have delivered to Lessor and Security Trustee a certificate signed by the President, any Vice President or the Treasurer of Lessee and an opinion of counsel (who may be counsel for Lessee), both to the effect that such consolidation, merger, conveyance of transfer and such supplement comply with the provisions of this Section 21 and that all conditions precedent provided for in this Lease or the Security Agreement relating to such transaction have been complied with.

Upon the consummation of any transaction permitted by the immediately preceding paragraph, the successor corporation shall succeed to, and be substituted for, and may exercise every right and power of, Lessee under this Lease with the same effect as if such successor corporation had been named as Lessee herein; *provided, however*, that no conveyance or transfer referred to in such preceding paragraph shall have the effect of releasing Lessee or any successor corporation which shall theretofore have become such in the manner prescribed in this Section 21 from its obligations under this Lease.

Lessee shall not lease its properties and assets substantially as an entirety to any person.

SECTION 22. *Severability; Effect and Modification of Lease.* Any provision of this Lease prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by Lessee to the full extent permitted by law, to the end that this Lease shall be enforced as written.

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and of Lessee.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. All references herein to Sections, paragraphs, clauses and other subdivisions refer to the designated Sections, paragraphs, clauses and other subdivisions of this Lease; and the words "herein", "hereof", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Section, paragraph, clause or other subdivision hereof.

SECTION 23. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Common-

wealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Lease as shall be conferred by the laws of the several jurisdictions in which this Lease shall be filed, recorded, registered or deposited.

SECTION 24. *Further Assurances.* Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order fully to effect the purposes of this Lease, including, but not limited to, any and all information necessary to enable Lessor to properly complete and file any and all state or political subdivision thereof income tax returns in connection herewith.

SECTION 25. *Modification, Waiver and Consent.* Any modification or waiver of any provision of this Lease, or any consent to any departure by Lessee therefrom, shall not be effective in any event unless the same is in writing and signed by Lessor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on Lessee in any event not specifically required of Lessor hereunder shall not entitle Lessee to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

SECTION 26. *Binding Effect.* This Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Lessee and Lessor.

SECTION 27. *Use of Units Beyond Lease Term.* If Lessor permits the use of any Unit beyond the term of lease with respect thereto, the obligations of Lessee hereunder shall continue; *provided, however*, that such permissive use shall not be construed as a renewal of such term of lease nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of such Unit at any time upon demand.

SECTION 28. *Limitation of Liability.* It is expressly understood and agreed by and between Lessor and Lessee that this Lease is executed by Continental Illinois National Bank and Trust Company of Chicago, not individually or personally but solely as Trustee under the Trust

Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and Continental Illinois National Bank and Trust Company of Chicago hereby warrants that it possesses full power and authority to enter into and perform this Lease); it is further understood and agreed that, except as otherwise expressly provided herein or in the Finance Agreement and except in the case of negligence or wilful misconduct of Lessor for which Lessor alone shall be liable, nothing herein contained shall be construed as creating any liability on Continental Illinois National Bank and Trust Company of Chicago individually or personally or any Owner to perform any covenant contained herein, all such liability being expressly waived by Lessee; and so far as Continental Illinois National Bank and Trust Company of Chicago or any Owner is concerned, Lessee shall look solely to the Estate (as defined in the Trust Agreement) for the performance of the obligations of Lessor herein.

SECTION 29. *Rights, Remedies and Powers.* Each and every right, remedy and power granted to Lessor hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by Lessor from time to time concurrently or independently and as often and in such order as Lessor may deem expedient. Any failure or delay on the part of Lessor in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect Lessor's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. In the event Lessor shall have proceeded to enforce any such right, remedy or power and such proceeding shall have been determined adversely to Lessor, then in such event Lessee and Lessor shall be restored to their former positions and the rights, remedies and powers of Lessor shall continue as if no such proceeding had been taken.

SECTION 30. *Execution.* This Lease may be executed in any number of counterparts, but the counterpart delivered to Security Trustee shall be deemed to be the original counterpart. Although this Lease is dated for convenience as of March 31, 1975, 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.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Lease to be signed 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.

(CORPORATE SEAL)

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Lessor

By *[Signature]*
Second Vice President

Attest:

[Signature]
Trust Officer

(CORPORATE SEAL)

WEST PENN POWER COMPANY,
as Lessee

By *[Signature]*
Vice President

Attest:

[Signature]
ASSISTANT Secretary

RECORDED & INDEXED
MAY 10 1960
COMMERCIAL RECORDS
CHICAGO, ILL.

STATE OF ILLINOIS }
COUNTY OF COOK } SS

On this 14th day of June, 1975, before me personally appeared
..... M. J. Kruger, to me personally known, who, being by me duly
sworn, says that he is a Second Vice President of Continental Illinois Na-
tional Bank and Trust Company of Chicago, that one of the seals affixed
to the foregoing instrument is the corporate seal of said association and
that said instrument was signed and sealed on behalf of said association
by authority of its By-laws, and he acknowledged that the execution of
the foregoing instrument was the free act and deed of said association.

..... [Signature]

Notary Public

(NOTARIAL SEAL)

NOVEMBER 16, 1977

My Commission Expires.....

STATE OF NEW-YORK }
COUNTY OF NEW YORK } SS

On this 17th day of June, 1975, before me personally appeared
KLARIS BERGMAN, to me personally known, who, being by me
duly sworn, says that he is a Vice President of West Penn Power Com-
pany, that one of the seals affixed to the foregoing instrument is the cor-
porate seal of said corporation and that said instrument was signed and
sealed on behalf of said corporation by authority of its Board of Direc-
tors, and he acknowledged that the execution of the foregoing instrument
was the free act and deed of said corporation.

..... [Signature]

Notary Public

(NOTARIAL SEAL)

My Commission Expires..... March 30, 1976

VERONICA T. MAHONEY
NOTARY PUBLIC, State of New York
No. 03-7672120 - Qual. in Bronx County
Certificate filed in Orange County
Cert. filed in New York County Clerk's Off.
Commission Expires March 30, 1976

**Annex A to
Lease of Railroad Equipment**

DESCRIPTION OF UNITS

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Place of Delivery</u>
Thrall Car Manufacturing Company	100-ton (4,000 cu. ft.) high-side steel gondola cars with swivel couplers	GN-100-46-133	106	APAX 501-APAX 606	Chicago Heights, Illinois
Bethlehem Steel Corporation	100-ton (3,608 cu. ft.) open-top hopper cars with one rotating and one non-rotating coupler	X-300-190 dated 12/17/73	101	APAX 101-APAX 201	Johnstown, Pennsylvania
Bethlehem Steel Corporation	100-ton (3,608 cu. ft.) open-top hopper cars with rotating couplers on both ends	X-300-190 dated 12/17/73	5	APAX 202-APAX 206	Johnstown, Pennsylvania