

RECORDATION NO. 10970 Filed 1425

NOV 01 1979-9 05 AM
INTERSTATE COMMERCE COMMISSION

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

GORDON E. NEUENSCHWANDER
EXECUTIVE VICE PRESIDENT
& GENERAL COUNSEL

324 P&LE TERMINAL BUILDING
PITTSBURGH, PA. 15219
PHONE (412) 261-3201

G. EDWARD YURCON
ASSISTANT GENERAL COUNSEL

RICHARD A. PORACH
ATTORNEY

October 31, 1979

9-305A020

Ms. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, D. C. 20423

Date NOV 1 1979

Fee \$ 50.00

CC Washington, D. C.

Dear Ms. Mergenovich:

Enclosed for filing with the Commission pursuant to Section 11303 of the Interstate Commerce Act is the original document described below, together with three additional counterparts. The document is:

Interim Use Agreement, dated as of October 30, 1979, between Greenville Steel Car Company and The Pittsburgh and Lake Erie Railroad Company providing for temporary use of up to 500 100-ton, 3420 cubic feet, Triple Hopper Cars (P&LE Nos. 81,500-81,999)

In compliance with the Commission's rules and regulations, you are advised as follows:

LESSOR: Greenville Steel Car Company
Greenville, Pennsylvania 16125

LESSEE: The Pittsburgh and Lake Erie Railroad Company
P&LE Terminal Building
Pittsburgh, Pennsylvania 15219

Following is a general description of the railroad equipment covered by said document:

<u>No. of Units</u>	<u>Description</u>	<u>Identifying Road Nos.</u>
500	100-ton, 3420 cubic feet, Triple Hopper Cars	P&LE Nos. 81,500-81,999 both inclusive

Handwritten signatures and initials on the left margin.

Ms. Agatha L. Mergenovich

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October 31, 1979

Also enclosed is Pittsburgh and Lake Erie Railroad Company voucher in the amount of \$50.00, payable to the Treasurer of the United States, to cover the recordation fee prescribed by the Commission in its rules and regulations.

Please acknowledge receipt at your earliest convenience by stamping and returning to me the original document and two counterparts.

Very truly yours,

A handwritten signature in cursive script, reading "Gordon E. Havershwaik". The signature is written in dark ink and is positioned below the typed name "Gordon E. Havershwaik".

encs.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Gordon E. Neuenschwander
The Pittsburgh & Lake Erie RR Co.
324 P&LE Terminal Building
Pittsburgh, Pennsylvania 15219

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/01/79 at 9:35AM, and assigned re-
recording number(s). 10970

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 10970 Filed 1425
NOV 01 1979-9 35 AM
INTERSTATE COMMERCE COMMISSION

INTERIM USE AGREEMENT

Dated as of October 30, 1979

Between

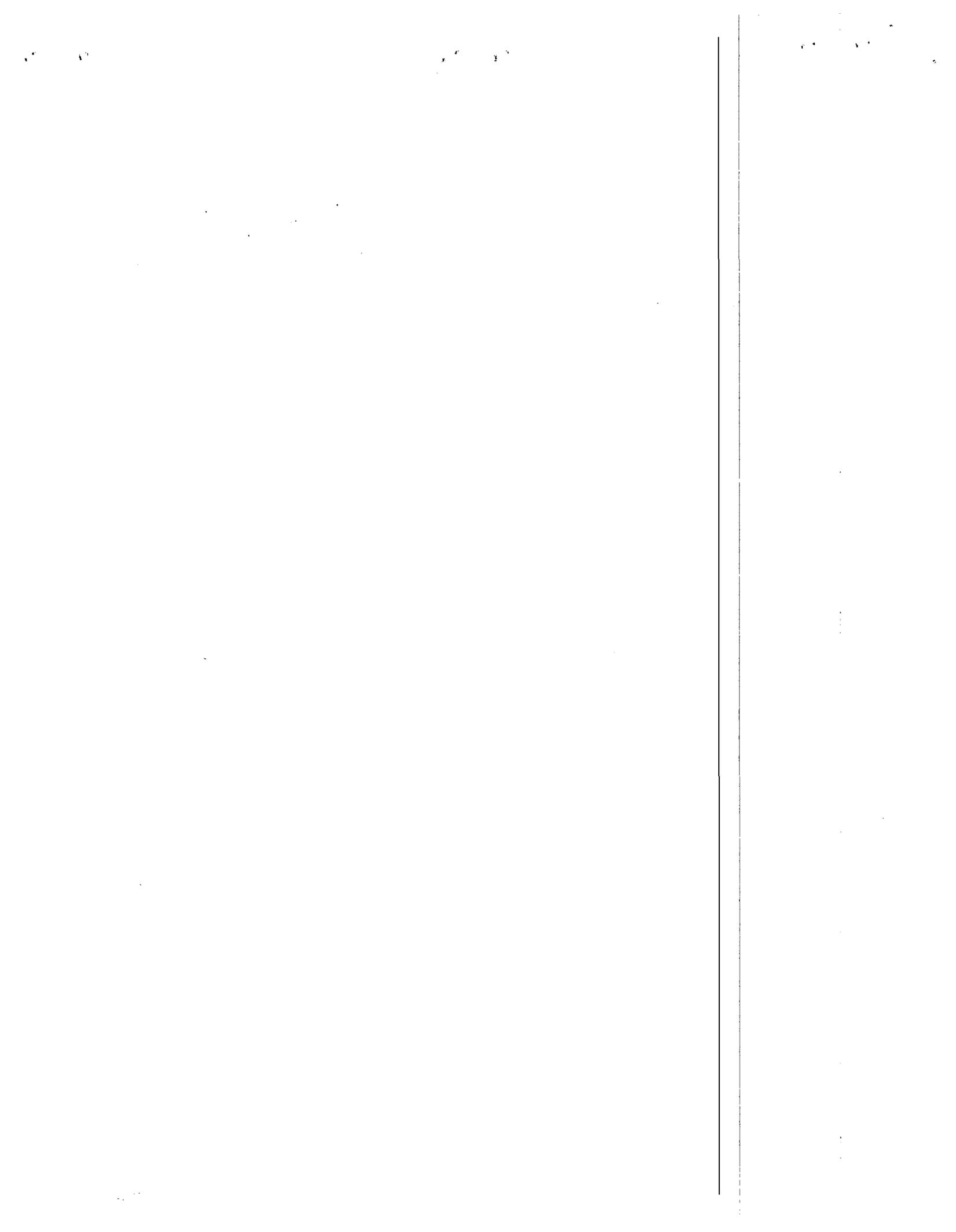
GREENVILLE STEEL CAR COMPANY
(Manufacturer)

and

THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY
(P&LE)

Covering

Five Hundred (500) Hopper Cars



THIS INTERIM USE AGREEMENT, dated as of October 30, 1979, by and between GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation (Manufacturer), and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (P&LE).

W I T N E S S E T H:

The Manufacturer and P&LE heretofore entered into an agreement ("Purchase Agreement") based upon Manufacturer's Proposal Letter, dated October 2, 1979, and P&LE's Purchase Order No. 10-18-2, dated October 11, 1979 (copies of which are made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to P&LE, and P&LE agreed to accept and pay for the following railroad cars:

500 100-ton 3420 cubic feet Hopper Cars, to bear
P&LE road numbers 81,500-81,999, inclusive;

(the "Cars").

Delivery of the Cars by the Manufacturer to P&LE is scheduled to begin on or about October 31, 1979. However, inasmuch as P&LE has not as yet consummated financing arrangements (pursuant to a Conditional Sale Agreement or otherwise), it is not in a position to accept delivery of and pay for the Cars under the terms of the Purchase Agreement at this time.

P&LE represents that such financing arrangements will be consummated, however, on or before November 26, 1979 (hereinafter referred to as the "Cut-Off Date"). P&LE (in order

that it may use the Cars pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Cars on their completion, solely as a bailee of the Cars and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to P&LE and P&LE hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to the Bessemer and Lake Erie Railroad Company at Shenango, Pennsylvania, or other such place as may be specified by P&LE, for the period ending on the earlier of November 26, 1979, or the date of consummation of the above financing arrangements. At such time this Interim Use Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in the Manufacturer and P&LE's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Interim Use Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. P&LE, without expense to the Manufacturer, will promptly cause this Interim Use Agreement to be filed with the Interstate Commerce Commission for recordation under Section 11303 of the Interstate Commerce Act. In addition, P&LE shall do such other acts as may be required by law or reasonably requested by the Manufacturer for the protection of the Manufacturer's title to and interest in the Cars.

P&LE agrees that it will permit no liens of any kind to attach to the Cars, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cars of the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Cars by P&LE during the term of this Interim Use Agreement.

P&LE's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Interim Use Agreement.

P&LE will, at its own expense, keep and maintain the Cars in good order and running condition, and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Interim Use Agreement.

Prior to the delivery of each Car to P&LE under this Interim Use Agreement, it will be numbered with a number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Car,

in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED UNDER THE INTERSTATE COMMERCE ACT,
SECTION 11303"

P&LE hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

If, during the effective period of this Interim Use Agreement, such markings shall at any time be removed, defaced, or destroyed on any Car, P&LE shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the Purchase Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Interim Use Agreement or in the Purchase Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Purchase Agreement, and P&LE receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by P&LE under

this Interim Use Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in a form satisfactory to P&LE.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Interim Use Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, nor subject to any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to P&LE by the Manufacturer. Any and all of such obligations howsoever arising shall be and will remain enforceable by P&LE, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits, or advantages assigned pursuant to this Interim Use Agreement).

P&LE agrees with the Manufacturer that the execution by the Manufacturer of this Interim Use Agreement or the delivery by the Manufacturer to P&LE of the Cars, as contemplated by this Interim Use Agreement, shall not relieve P&LE of its obligations to accept, take and pay for the Cars in accordance with

the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement.

In the event that payment to Manufacturer of the purchase price for any Car or Cars delivered pursuant to this Interim Use Agreement has not been made on or before the Cut-Off Date, P&LE agrees to purchase any such Car or Cars and to pay the purchase price therefor on the Cut-Off Date. The term "purchase price" as used herein shall mean the firm price per Car as contained in P&LE's Purchase Order No. 10-18-2.

GREENVILLE STEEL CAR COMPANY

By

A. F. Sandy
President

ATTEST:

Samuel N. Moore
Secretary

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

By

Gerard E. Nevenschwaner
Executive Vice President

ATTEST:

Edward Conner
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF ALLEGHENY)

On this 31st day of October, 1979, before me personally appeared A. F. SAROSDY, to me personally known, who being by me duly sworn, says that he is the President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

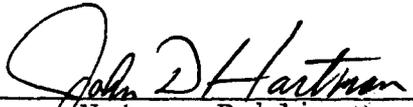
Alana E. Mulla
Notary Public

My Commission Expires: May 2, 1983



COMMONWEALTH OF PENNSYLVANIA))
) SS:
COUNTY OF ALLEGHENY)

On this 31st day of October, 1979, before me personally appeared GORDON E. NEUENSCHWANDER, to me personally known, who being by me duly sworn, says that he is Executive Vice President of The Pittsburgh and Lake Erie Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

JOHN D. HARTMAN, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY.
MY COMMISSION EXPIRES JUNE 20, 1981
Member, Pennsylvania Association of Notaries

My Commission Expires: _____

