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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of May 15, 1974

between

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee

and

**WISCONSIN POWER AND LIGHT COMPANY
WISCONSIN PUBLIC SERVICE CORPORATION
MADISON GAS AND ELECTRIC COMPANY**

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT dated as of May 15, 1974 between UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee (hereinafter, together with its successors and assigns, called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Beneficiary), and WISCONSIN POWER AND LIGHT COMPANY, WISCONSIN PUBLIC SERVICE CORPORATION and MADISON GAS AND ELECTRIC COMPANY (hereinafter called collectively the Lessees and individually a Lessee).

WHEREAS, the Lessor and the Lessees have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) with Thrall Car Manufacturing Company (hereinafter called the Builder) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Lessor of the railroad equipment described in Annex A hereto (hereinafter called the Equipment);

WHEREAS, the Builder and Continental Illinois National Bank and Trust Company of Chicago, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessees, the Beneficiary and the Investor named therein, have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) assigning to the Assignee the right, security title and interest of the Builder under the Conditional Sale Agreement as security for the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement);

WHEREAS, the Lessees desire to lease all the units of the Equipment, or such lesser number as are delivered, accepted and settled for under the Conditional Sale Agreement, 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 Conditional Sale Agreement being hereinafter called the Units); and

WHEREAS, in order to provide further security for the payment of the Conditional Sale Indebtedness and as an inducement to such Investor to invest in the Conditional Sale Indebtedness, the Lessor will, concurrently with its execution and delivery of this Lease, enter into an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) with the Assignee assigning for security purposes certain of its rights in, to and under this Lease to the Assignee;

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

SECTION 1. Net Lease. This Lease is a net lease and the Lessees shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessees against the Lessor under this Lease or under the Conditional Sale Agreement, including the Lessees' rights by subrogation thereunder to the Builder or the Assignee or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessees be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the

Units, the prohibition of or other restriction against the Lessees' 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 the bankruptcy, reorganization or similar proceeding against any of the Lessees, 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 the Lessees 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, the Lessees hereby waive any and all rights which they may now have or which at any time hereafter may be conferred upon them, 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 the Lessees hereunder shall be final, and the Lessees shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 2. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessees as its agents for the inspection and acceptance of, and the approval of all invoices relating to, the Units pursuant to the Conditional Sale Agreement and the Assignment. The Lessor will cause each Unit to be delivered to the Lessees at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such delivery, the Lessees will cause an employee of one of the Lessees or an authorized representative of the Lessees to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor and the Builder a certificate of acceptance (hereinafter called a Certificate of Acceptance), in accordance with the provisions of Article 3 of the Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessees and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 5, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessees and shall thereafter be subject to all the terms and conditions of this Lease.

SECTION 3. *Rentals.* The Lessees agree to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semi-annual payments on June 1 and December 1 in each year, commencing December 1, 1974. The rental payment due on December 1, 1974 shall be in an amount equal to .027083% of the Purchase Price (as defined in the Conditional Sale Agreement) of 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 Conditional Sale Agreement) for such Unit to and including the date of such payment. The next 30 semi-annual rental payments shall each be in an amount equal to 5.633% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to Section 18. If any of the semi-annual rental payment dates referred to above is not a Business Day (as defined in Article 4 of the Conditional Sale Agreement) the semi-annual rental payment otherwise payable on such date shall be payable on the next preceding Business Day.

On each Closing Date, the Lessees agree to pay to the Lessor, as supplemental rental for each Unit becoming subject to this Lease, the amount of any storage, shipping, insurance and interest charges invoiced by the Builder to the Lessor with respect to such Units, it being understood that such charges relate to the storage of such Units by the Builder prior to their delivery under the Conditional Sale Agreement and this Lease and the delay between the respective

delivery dates of such Units (after the first 25 Units) and such Closing Date as set forth in the Builder's letter to the Lessor dated July 9, 1974.

As and when requested by the Lessor, the Lessees agree to pay to the Lessor from time to time, as supplemental rental hereunder, such amount as shall then be due under item (iii) of the first sentence of Section 21.

The Lessees agree that if for any reason whatsoever (i) any rental or other moneys payable by the Lessees 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 the Lessor, or by reason of any claims, charges or liens of any nature, foreseen or unforeseen, incurred by any person, including the 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 the Assignee shall be hindered, delayed or prevented or the right of the Assignee to use or apply the same shall in any way be adversely affected, (iv) the Assignee shall refuse to apply the Rents as provided in the Conditional Sale Agreement and the Finance Agreement because of a threatened or pending suit in any court as a result of which the Assignee in good faith considers it may have personal liability if it does apply the Rents or (v) the holders of the Certificates of Interest issued by the Assignee under the Finance Agreement shall be subject to any liability or obligation to refund or pay over the Rents, then, in any such event, the Lessees 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 the Assignee and (z) protect fully the right of the Assignee to use or apply the Rents, indemnifying the Assignee 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 the Assignee.

The Lessor irrevocably instructs the Lessees to make all the payments (other than payments pursuant to Section 18 which shall be made directly to the Beneficiary) provided for in this Lease at the principal office of the Assignee, for the account of the Lessor, in care of the Assignee, with instructions to the Assignee first to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement known to the Assignee to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, to pay any balance promptly to the Beneficiary at such place as the Beneficiary shall specify in writing, unless and until the Lessor shall otherwise direct the Assignee in writing. The Lessees agree to make each payment provided for herein as contemplated by this paragraph in Federal funds in the city where such payment is to be made. The Lessees further agree that no payments shall be made to the Beneficiary pursuant to Section 18 unless concurrently therewith the Lessees shall pay to the Assignee, for the account of the Lessor, all amounts which are then due to the Lessor under the other provisions of this Lease; 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, the Lessor shall be entitled to a decree against the Lessees 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 the date on which the final payment of rent in respect thereof is due pursuant to Section 3.

Anything herein to the contrary notwithstanding, upon default by the Lessees hereunder or under the Conditional Sale Agreement, all rights and obligations under this Lease and in and to the Units are subject to the rights of the Assignee under the Conditional Sale Agreement and the Assignment. If an event of default should occur under the Conditional Sale Agreement, the Assignee may terminate this Lease (or rescind its termination) all as provided therein, unless the Lessees are not in default under this Lease.

SECTION 5. *Identification Marks.* The Lessees 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 "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and the Assignee's title to and property in such Unit and the rights of the Lessor under this Lease and of the Assignee under the Conditional Sale Agreement. The Lessees 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. The Lessees 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 the Assignee and the Lessor and filed, recorded, registered and deposited by the Lessees in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded, registered and deposited and (ii) the Lessees shall have furnished the Assignee and the Lessor an opinion of counsel for the Lessees with respect thereto satisfactory to the Assignee and the Lessor.

Except as provided in the immediately preceding paragraph, the Lessees 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 names or initials or other insignia customarily used by any of the Lessees.

SECTION 6. *Taxes.* All payments to be made by the Lessees hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes, license fees, assessments, charges, fines and penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called collectively Impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title to the Units or otherwise under the terms hereof or the Conditional Sale Agreement, all of which Impositions the Lessees assume and agree to pay on demand in addition to the other payments to be made by them provided for herein; *provided,* that the foregoing agreement to pay Impositions shall not apply to the following, which shall not be deemed Impositions:

(i) federal income (including the minimum tax for tax preferences or any withholding tax) or other taxes, fees or charges imposed by the United States of America on, or based on or measured directly by, the net income of the Lessor, and, to the extent that the Lessor is entitled to or receives a credit or a deduction with respect to any such tax, fee or charge, any foreign income tax, fee or charge;

(ii) federal income or other taxes, fees or charges on, or based on or measured directly by, the net income of the Lessor imposed by the United States of America (a) in addition to, or (b) in whole or in part in lieu of, or as a substitute or alternate for, any tax, fee or charge described in clause (i) above, but not to exceed any tax on net income that would otherwise be imposed pursuant to clause (i) above;

(iii) state and local taxes imposed on the Lessor which are (a) taxes on engaging in business activities, employing capital or doing business or the privilege of doing business (whether or not imposed on, or based on or measured directly by, net income) or (b) imposed in whole or in part in lieu of, or as a substitute or alternate for, a tax described in subclause (a) of this clause (iii), but as to both subclauses (a) and (b) of this clause (iii) not to exceed such state and local taxes as are either (x) imposed by the jurisdiction in which the principal office of the Lessor is located and any other jurisdiction in which the Lessor is subject to taxation as the result of business, transactions or facts unrelated to this Lease or (y) if imposed by jurisdictions other than those described in subclause (x), result in a reduction of the Lessor's liability for such taxes in any of the jurisdictions described in subclause (x);

(iv) any taxes, fees or other charges incurred by reason of any transfer by the Lessor of any interest in the Units or any of them, the Trust Agreement or the Trust Estate (as defined in the Trust Agreement) while no Event of Default (as defined in Section 11) has occurred and is continuing; or

(v) any capital levy or estate, succession or inheritance taxes.

The Lessees will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above in this Section 6) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of each Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessees shall be under no obligation to pay any Imposition so long as they are contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor in or to the Units or hereunder or the Assignee under the Conditional Sale Agreement. If any Imposition shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessees shall reimburse the Lessor upon presentation of an invoice therefor.

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

In the event any reports with respect to Impositions are required to be made, the Lessees will either make such reports in such manner as to show the interests of the Lessor and the Assignee in such Units or notify the Lessor and the Assignee of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Assignee.

In the event that during the continuance of this Lease the Lessees become liable for the payment or reimbursement of any Imposition pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessees.

Any provision of this Section 6 to the contrary notwithstanding, the Lessees shall bear any taxes of the types described in clause (iii) of the proviso in the first paragraph of this Section 6 imposed upon the Lessor as an entity separate and apart from the Beneficiary unless, and to the extent that, such taxes upon the Lessor reduce as a direct credit any tax liability which the Lessor or the Beneficiary would otherwise be obligated to pay.

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 taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessees shall promptly and fully notify the Lessor and the Assignee with respect thereto. When five or more Units shall have suffered a Casualty Occurrence, and in any event after the close of each calendar year during which any Unit shall have suffered a Casualty Occurrence, exclusive in each case of Units having suffered a Casualty Occurrence with respect to which payment shall have been made to the Lessor pursuant to this Section 7, on the rental payment date next succeeding, the Lessees shall pay to the 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 of such Unit or Units as of the date of such payment in accordance with the schedule set out below. Upon (but not prior to) the making of such payment by the Lessees in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessees as its agents to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is" basis. If the Lessees shall have previously paid the Casualty Value to the Lessor, the Lessees shall be entitled to the proceeds of such sale to the extent that such proceeds do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of Section 18, 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>
December 1, 1974.....	104.9946%	June 1, 1982.....	82.0291%
June 1, 1975.....	104.0378	December 1, 1982.....	79.1425
December 1, 1975.....	103.7376	June 1, 1983.....	76.1116
June 1, 1976.....	103.1602	December 1, 1983.....	72.9422
December 1, 1976.....	102.5755	June 1, 1984.....	69.6355
June 1, 1977.....	101.5302	December 1, 1984.....	66.2162
December 1, 1977.....	100.4071	June 1, 1985.....	62.6877
June 1, 1978.....	99.0954	December 1, 1985.....	59.0519
December 1, 1978.....	97.6235	June 1, 1986.....	55.3064
June 1, 1979.....	95.9509	December 1, 1986.....	51.4480
December 1, 1979.....	94.0862	June 1, 1987.....	47.4728
June 1, 1980.....	92.0292	December 1, 1987.....	43.3910
December 1, 1980.....	89.7890	June 1, 1988.....	39.2074
June 1, 1981.....	87.3656	December 1, 1988.....	34.9209
December 1, 1981.....	84.7720	June 1, 1989.....	30.5301
		December 1, 1989.....	20.0000

Except as hereinabove in this Section 7 provided, the Lessees shall not be released from their obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessees hereunder.

The Lessees will, at all times while this Lease is in effect, at their own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessees on non-railroad equipment owned by the Lessees, and the proceeds thereof shall be payable as provided in the Conditional Sale Agreement so long as the indebtedness, if any, evidenced thereby shall not have been paid in full, and thereafter to the Lessor and the Lessees as their interests may appear. Any net insurance proceeds resulting from insurance carried by the Lessees received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessees to the Lessor in respect of Casualty Occurrences pursuant to this Section 7. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessees shall have made payments pursuant to this Section 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such net insurance proceeds or condemnation payments to the Lessees up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessees unless an Event of Default or other event 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 the Lessees may be retained by the Lessor and applied to discharge the liabilities of the Lessees under Section 11. The balance of such net insurance proceeds or condemnation payments shall remain the property of the Lessor. All net insurance proceeds received by the Lessor or the Lessees 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, and any balance remaining after the completion of such repairs shall be paid to the Lessees unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessees may be retained by the Lessor and applied to discharge the liabilities of the Lessees under Section 11. Any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of the Lessor.

SECTION 8. *Voluntary Termination.* Unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing hereunder, the Lessees shall be entitled, at their option, upon at least 180 days' prior written notice to the Lessor and the Assignee, to terminate this Lease if the Lessees shall have made a good faith determination that all (but not less than all) of the Units have become obsolete or economically unserviceable to the Lessees' operations, which notice shall be accompanied by a certified copy of resolutions adopted by the Board of Directors of each of the Lessees making such determination and a written statement of the President or a Vice President of Wisconsin Power and Light Company, on behalf of all the Lessees, 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 December 1, 1984; and *provided further,*

that such termination shall not take effect unless the Lessees shall have fully complied with the succeeding paragraphs of this Section 8.

During the period from the giving of such notice to the Termination Date, the Lessees, as agents for the Lessor, shall use their best efforts to obtain bids for the purchase of all the Units on an "as is, where is" basis, and the Lessees shall certify to the Lessor in writing the amount of each bid received and the name and address of the person (who shall not be any of the Lessees or any person, firm or corporation affiliated with any of the Lessees) submitting such bid. An "affiliate" of a Lessee shall mean any person which possesses, directly or indirectly, the right to vote at least 20% of the voting securities of such Lessee, and any person which, directly or indirectly, controls or is controlled by or is under common control with such 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, the Lessor shall, without recourse or warranty, sell all the Units for cash to whomsoever shall have submitted the highest bid therefor prior to the Termination Date, and thereupon the Lessees shall cause to be delivered the Units to the Lessor in accordance with the terms of Section 15. If the sale of all the Units shall not occur on the Termination Date, the Lessees shall not cause such delivery of the Units to the Lessor; and this Lease shall continue in full force and effect. The Lessor shall be under no duty to (but may) solicit bids, to inquire into the efforts of the Lessees 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 the Lessor and, in addition, the Lessees shall pay to the Lessor the excess, if any, of (i) the Casualty Value of the Units computed as of the Termination Date over (ii) the proceeds of such sale less all expenses incurred by the Lessor in connection with such sale or with the collection or distribution of such payment. The Lessees shall also be obligated to pay the Lessor (x) any and all rentals and other sums due hereunder with respect to the Units accrued up to and including the Termination Date and (y) the prepayment premium payable by the Lessor pursuant to Article 8 of the Conditional Sale Agreement. In the event of such sale and compliance by the Lessees with all the provisions of this Section 8, the obligations of the Lessees to pay rental hereunder on all rental payment dates commencing after the Termination Date shall terminate.

SECTION 9. Reports. On or before March 31 in each year, commencing with the year 1975, the Lessees will furnish to the Lessor and the Assignee 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 Conditional Sale 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 the Lessor or the Assignee 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 Conditional Sale Agreement have been preserved or replaced. The Lessor shall have the right, by its agents, to inspect

the Units and the Lessees' records with respect thereto at such reasonable times as the Lessor may request during the term of this Lease.

Within 120 days after the close of each of its fiscal years, each of the Lessees will promptly furnish to the Lessor and the Assignee its Form 10-K Annual Report to the Securities and Exchange Commission for such fiscal year (or any other comparable report substituted therefor which includes certified financial information). Each of the Lessees shall also furnish to the Lessor and the Assignee (i) as soon as available, and in any event within 45 days after the end of each of the first three quarterly periods of each fiscal year of such Lessee, copies of the income statements for the portion of such Lessee's fiscal year ended with such period and for the 12 months' period then ended and the balance sheet of such Lessee as of the end of such quarterly period, all of which financial statements may be unaudited, and (ii) such other financial information as the Lessor or the Assignee may reasonably request from time to time.

As soon as available and in any event within 120 days after the end of each of its fiscal years, Wisconsin Power and Light Company will deliver to the Lessor and the Assignee, on behalf of all the Lessees, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Wisconsin Power and Light Company stating that a review of the activities of the Lessees during such fiscal year has been made under his supervision with a view to determining whether the Lessees have kept, observed, performed and fulfilled all of their covenants and obligations under this Lease and the Conditional Sale Agreement and that, to the best of his knowledge, the Lessees during such fiscal year have kept, observed, performed and fulfilled each and every covenant and obligation contained herein and in the Conditional Sale Agreement, or if an Event of Default under this Lease or the Conditional Sale Agreement shall exist or if an event has occurred which, with notice, demand and/or lapse of time, would constitute such an Event of Default, specifying such Event of Default or such event and the nature and status thereof. There shall be attached to such certificate a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Wisconsin Public Service Corporation and Madison Gas and Electric Company, respectively, stating that such corporation has fully discharged all of its financial covenants and obligations contained herein and in the Conditional Sale Agreement.

SECTION 10. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessees hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessees, are to be borne by the Lessees; but the Lessor hereby irrevocably appoints and constitutes the Lessees as its agents and attorneys-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessees, as their interests may appear, at the Lessees' sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Article 14 of the Conditional Sale Agreement. The Lessees' delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessees and the Lessor that the Units described therein are in all of the foregoing respects satisfactory to the Lessees, and the Lessees will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessees agree, for the benefit of the Lessor and the Assignee, 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 and 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, to the extent that such laws and rules affect the title, operation or use of the Units; and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessees will conform therewith at their own expense; *provided, however*, that the Lessees 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 the Lessor or the Assignee, adversely affect the property or rights of the Lessor or the Assignee under this Lease or under the Conditional Sale Agreement.

The Lessees, at their own cost and expense, shall maintain and keep each Unit in good order and repair.

Any and all additions to 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 Conditional Sale Agreement or this Lease), shall immediately be vested in the Lessor and the Assignee as their respective interests appear in such Unit.

The Lessees agree to indemnify, protect and hold harmless the Lessor and the Assignee from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, 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. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessees agree to prepare, deliver to the 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 the Lessor directly) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Assignee of the Units or the leasing thereof to the Lessees.

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 rental provided in Section 3, and such default shall continue for five days;

(B) the Lessees shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

(C) the Lessees shall fail to maintain insurance in accordance with Section 7;

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

(E) any proceedings shall be commenced by or against any of the Lessees 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 any of the Lessees, 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 any of the Lessees 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;

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

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessees 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 the Lessor would otherwise be entitled under this Lease; or

(2) by notice in writing to the Lessees terminate this Lease, whereupon all rights of the Lessees to the possession and use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessees shall remain liable as hereinafter provided; and thereupon the Lessor may, by its agents, enter upon the premises of the Lessees 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 the Lessees, or their successors or assigns, to use the Units for any purposes whatsoever; but the Lessor shall, nevertheless, have a right to recover from the Lessees 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 the Lessees (a) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for such Unit during such period, such present value to be computed in both cases on a basis of a 3.63% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the 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 and (c) an amount which, after deduction of all taxes required to be paid by the Lessor

in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction (as defined in Section 18) with respect to each Unit from the applicable Closing Date which was lost, not claimed, not available for claim or disallowed or recaptured in respect of such Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessees in Section 18 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessees, the termination of this Lease, the Lessees' loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

It is expressly understood and agreed that upon the occurrence of any of the defaults or conditions described in clauses (A) through (E), both inclusive, of the first paragraph of this Section 11, and prior to the time that such default or condition shall constitute an Event of Default hereunder, either the Lessor or the Beneficiary may make such payment or perform such other act as will cure such default or condition, and the amount of all payments by the Lessor or the Beneficiary on behalf of the Lessees, plus the amount of all reasonable expenses incurred in connection therewith, together with interest thereon at the rate of $10\frac{3}{4}\%$ per annum from the date of expenditure to the date of reimbursement, shall constitute additional rental payable hereunder from the Lessees to the Lessor on demand.

The remedies in this Lease provided in favor of the 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. The Lessees hereby waive 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. The Lessees hereby waive any and all existing or future claims to any offset against the rental payments due hereunder, and agree to make rental payments regardless of any offset or claim which may be asserted by the Lessees or on their behalf.

The failure of the 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, the Lessees shall forthwith deliver possession of the Units to the Lessor and shall:

- (a) forthwith place such Units upon such storage tracks as the Lessor reasonably may designate until such Units have been sold, leased or otherwise disposed of by the Lessor; and
- (b) cause the same to be delivered to any carrier for shipment directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as in this Section 12 provided shall be at the expense and risk of the Lessees and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled

to a decree against the Lessees requiring specific performance of the same. During any storage period, the Lessees will permit the 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 the Lessees under the foregoing provisions of this Section 12, the Lessees hereby irrevocably appoint the Lessor as the agent and attorney of the Lessees, with full power and authority, at any time while the Lessees are obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessees from whomsoever shall be in possession of such Unit at the time.

SECTION 13. *Assignment; Possession and Use; Liens.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessees, but the Lessees shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 8, 11 and 18 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term "Lessor" is used in this Lease, it shall apply and refer to the Lessor and the Beneficiary and each such assignee of the Lessor and, where the context so requires (including, but not limited to, certain of the provisions of Sections 6, 11 and 18), shall refer only to the Beneficiary. The term "Beneficiary" as used herein shall include any affiliated group of corporations which includes the Beneficiary and which file a consolidated federal income tax return.

So long as the Lessees shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessees shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreement, but, without the prior written consent of the Lessor, the Lessees shall not assign or transfer their leasehold interest under this Lease in the Units or any of them; *provided, however*, that this sentence shall not be deemed to prohibit any lien attaching to the leasehold interest of any Lessee under this Lease by reason of the existence of an after-acquired property clause in any mortgage to which such Lessee is a party covering substantially all of its utility property. The Lessees, at their 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 the Lessor or the Assignee or resulting from claims against the Lessor or the Assignee not related to the ownership of the Units) on or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Assignee or the Lessees therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; *provided, however*, that the Lessees shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title of the Lessor in or to the Units or otherwise adversely affect its rights or the rights of the Assignee under this Lease or the Conditional Sale Agreement; 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 undeter-

mined 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. The Lessees shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of their possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessees shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessees shall be entitled to the possession of the Units and to the use of the Units for a unit train to haul coal from Colstrip, Montana or any other location east of the Rocky Mountains to the Lessees' jointly-owned Columbia Generating Station at Portage, Wisconsin or to any other generating station owned by one or more of the Lessees in the State of Wisconsin (returning empty to the mine), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however*, that (i) the Lessees shall give written notice to the Lessor, the Beneficiary and the Assignee if the Units are to be regularly used for any service other than as a unit train to haul coal from Colstrip to the Columbia Generating Station, (ii) the Lessees shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America and (iii) the obligations of each of the Lessees hereunder (including the obligation to pay rentals and supplemental rentals) shall not in any manner or to any extent be diminished or affected by reason of the fact that coal hauled by the Units shall be delivered to or utilized by a generating station not owned by the Lessees in the same percentages as are set out in the first paragraph of Section 23.

SECTION 14. *Purchase and Renewal Options.* Provided this Lease has not been earlier terminated and the Lessees are not in default hereunder, the Lessees may (a) by written notice delivered to the 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 all, but not less than all, of the Units then covered by this Lease at the end of the original term or any such extended term for a purchase price equal to the "Fair Market Value" of such Units as of the end of the original term or any such extended term or (b) by written notice delivered to the 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 three-year period commencing on the scheduled expiration of the original term or the extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 1, 1995. In the event that the term of this Lease is extended pursuant to the preceding sentence, the Lessees shall pay rentals at the "Fair Market Rental" of such Units in semi-annual payments on June 1 and December 1 in each year of such extended term.

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-user (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 de-

duction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessees 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 the Lessor may select with the approval of the Lessees, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by the Lessor, the second by the Lessees and the third designated by the first two so selected. 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 the Lessor and the Lessees. The determination so made shall be conclusively binding upon both the Lessor and the Lessees. The expenses and fees of the Appraiser shall be borne by the Lessees.

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, the Lessor shall, upon request of the Lessees, execute and deliver to the Lessees, or to the Lessees' assignee or nominee, a bill of sale (without representations or warranties except that such 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 the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessees, or such assignee or nominee, in such form as may reasonably be requested by the Lessees, all at the Lessees' 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, the Lessees will, at their own cost and expense, at the request of the Lessor, deliver such Units to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessees may select, and store such Units on such tracks for a period not exceeding three months and cause the same to be delivered, at any time within such three-month period, to any reasonable place directed by the Lessor. The movement and storage of such Units shall be at the expense and risk of the Lessees. During any such storage period, the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, may inspect the same; *provided, however,* that the Lessees shall not be liable, except in the case of negligence of the Lessees or of their employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the right of inspection granted under this sentence. The assembling, delivery, storage 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, the Lessor shall be entitled to a decree against the Lessees requiring specific performance of the same. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall deem to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessees and the Lessees shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessees a bill of sale and other documents, as specified in the last paragraph of Section 14, with respect to any Unit so abandoned. The Lessees shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor

after termination of this Lease; *provided, however*, that this sentence shall not in any way relieve the Lessees of their 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.

SECTION 16. *Opinion of Counsel.* On each Closing Date, the Lessees will deliver to the Lessor two counterparts of the written opinions of counsel for the Lessees, addressed to the Lessor, to the effect provided in subparagraphs (g) and (h) of the first paragraph of Section 5 of the Assignment.

SECTION 17. *Recording.* The Lessees, at their own expense, will cause this Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment, 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 the Lessees will undertake the filing, registering, depositing and recording required of the Lessor under the Conditional Sale 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 refile, re-register, re-deposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee for the purpose of proper protection, to their satisfaction, of the Lessor's and the Assignee's respective interests in the Units, or for the purpose of carrying out the intention of and their respective rights under this Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment; and the Lessees will promptly furnish to the Lessor and the Assignee evidences of all such filing, registering, depositing and recording, and an opinion or opinions of counsel for the Lessees with respect thereto satisfactory to the Lessor and the Assignee. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 18. *Federal Income Taxes.* The Lessor, as the owner of the Units, intends to claim such deductions, credits (except as hereinafter provided in this Section 18) and other benefits as are provided by the Internal Revenue Code of 1954, as amended from time to time, to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Internal Revenue Code of 1954, as amended to the date of the latest acknowledgment hereof (hereinafter called the Code), utilizing, for the purpose of calculating such deduction, the lower limit (12 years) for Asset Guideline Class 00.25 prescribed in accordance with Section 167(m) of the Code (such deduction being hereinafter called the ADR Deduction) and deductions with respect to interest payable under the Conditional Sale Agreement pursuant to Section 163 of the Code (such deductions being hereinafter called the Interest Deduction). Any investment credit with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended from time to time, shall be assigned by the Lessor to the Lessees, and the Lessor shall file an appropriate election in furtherance thereof pursuant to Section 48(d)(1) of the Code. The Lessor does not warrant the availability of any such investment credit.

The Lessees agree that neither they, nor any corporation controlled by, in control of or under common control with, them, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such cor-

porations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in Section 13, the Lessees represent and warrant that (i) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (ii) at all times during the term of this Lease, none of the Lessees will do anything with respect to any Unit which will cause such Unit to cease to be "section 38 property" within the meaning of Section 48(a) of the Code; (iii) none of the Units will be used predominantly outside the United States within the meaning of said Section 48(a) (or any exception thereto); (iv) the Lessees will maintain sufficient records to verify such use; and (v) upon request of the Lessor, the Lessees will provide written reports establishing such use.

If by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessees, the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the ADR Deduction with respect to all or part of any Unit, then the rentals for such Unit set forth in Section 3 shall, on the next succeeding rental payment date after written notice to the Lessees by the Lessor of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize all the ADR Deduction from the Closing Date relating to such Unit, and the Lessees shall forthwith pay to the Lessor as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Lessor attributable to the Loss of all or such portion of the ADR Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture, all or any portion of the ADR Deduction with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessees shall have paid to the Lessor the amounts stipulated under Section 7;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under this Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim in a timely or proper manner the ADR Deduction;

(iv) the failure of the Lessor to have sufficient income to benefit from the ADR Deduction;

(v) the Lessor and the Beneficiary shall, without the prior written consent of the Lessees, voluntarily amend the Trust Agreement in such a manner as to result in the Lessor's Loss of the ADR Deduction.

The Lessor agrees to use its best efforts to avert a Loss which would occasion an increase in the rental rates or other costs of the Lessees as above provided in this Section 18. In the event the rental rates shall be adjusted as in this Section 18 provided, the Casualty Values set forth in Section 7 and the damages and amounts set forth in subparagraph (1) of the first paragraph of Section 11 shall be adjusted accordingly. Any such adjustment in rental rates and Casualty Values shall be effective retroactive to December 1, 1974.

SECTION 19. *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 the Lessees promptly to pay, to the extent legally enforceable, an amount equal to $10\frac{3}{4}\%$ per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

SECTION 20. *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 the Lessor, 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with a copy to the Beneficiary at P. O. Box 8300, Stamford, Connecticut 06904 and at P. O. Box 81 (North Station), White Plains, New York 10603, attention of Loan Officer—Transportation Unit;

(b) To Wisconsin Power and Light Company, 222 West Washington Avenue, Madison, Wisconsin 53701, attention of Secretary;

(c) To Wisconsin Public Service Corporation, 700 North Adams Street, Green Bay, Wisconsin 54301, attention of Vice President—Finance;

(d) To Madison Gas and Electric Company, 100 North Fairchild Street, Madison, Wisconsin 53701, attention of Financial Vice President;

(e) To the Assignee, 231 South LaSalle Street, Chicago, Illinois 60693, attention of Corporate Trust Department;

or to such other address as may have been furnished in writing by such person to the other parties to this Agreement.

SECTION 21. *Payment of Expenses.* The Lessees agree to pay (i) all of the costs and expenses incurred by the Lessees in connection with the preparation, execution and delivery of this Lease, the Finance Agreement, the Trust Agreement, the Conditional Sale Agreement, the Assignment and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of (A) Messrs. Isham, Lincoln & Beale as special counsel for the Lessees, (B) Messrs. Axley, Brynelson, Herrick & Gehl as counsel for Wisconsin Power and Light Company, (C) Messrs. Foley & Lardner as counsel for Wisconsin Public Service Corporation and (D) Messrs. Stafford, Rosenbaum, Rieser & Hansen as counsel for Madison Gas and Electric Company, (ii) any and all commissions, fees, judgments or expenses of any nature or kind which may become payable by reason of any claim by or on behalf of brokers, finders or agents in connection with the transactions contemplated by the Finance Agreement or any litigation or similar proceedings arising from such claims, other than the fees and disbursements of Halsey, Stuart & Co. Inc. and any other amount claimed by or on behalf of any broker, finder or agent by reason of any arrangement or under-

standing directly with the person or persons asserting any rights under this sentence and (iii) as supplemental rental in the manner provided in Section 3, the amount by which the aggregate of the sums paid by the Lessor pursuant to items (i), (ii) and (iii) of the next succeeding sentence exceeds \$20,000. The Lessor agrees to pay (i) all of the costs and expenses incurred by the Investor and the Assignee in connection with the preparation, execution and delivery of this Lease, the Finance Agreement, the Trust Agreement, the Conditional Sale Agreement, the Assignment and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of Messrs. Sidley & Austin as special counsel for the Investor and the Assignee, (ii) the fees and disbursements of the Assignee, (iii) the cost of printing this Lease, the Finance Agreement, the Conditional Sale Agreement, the Assignment, the Lease Assignment and the Certificates of Interest (as defined in the Finance Agreement), or any amendments, supplements or waivers with respect hereto or thereto, (iv) the fees of Halsey, Stuart & Co. Inc. as set forth in its letter dated July 18, 1974 to the Beneficiary, (v) all of the fees, costs and expenses incurred by the Lessor in connection with the preparation, execution and delivery of this Lease, the Finance Agreement, the Trust Agreement, the Conditional Sale Agreement, the Assignment and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of Messrs. Sullivan & Cromwell as special counsel for the Lessor and any other special local counsel retained by the Lessor and (vi) the cost of printing or otherwise reproducing the Trust Agreement, or any amendment, supplement or waiver with respect thereto.

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 the Lessees 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 the Lessor and the Lessees 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 the Lessor and of the Lessees.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

SECTION 23. *Obligations of Lessees Several.* The obligations, duties and liabilities of each of the Lessees under this Lease shall be several and not joint and shall be in the following percentages:

Wisconsin Power and Light Company	39.3%
Wisconsin Public Service Corporation	38.9%
Madison Gas and Electric Company	21.8%

provided, however, that any liability resulting from the failure of less than all of the Lessees to fulfill their respective obligations and duties hereunder shall be the sole responsibility of the Lessee or Lessees failing to fulfill such obligations or duties; and no other person, including without limitation the Lessor and the non-defaulting Lessee or Lessees, shall have any right or claim hereunder against any other non-defaulting Lessee by reason of such failure. Nothing herein contained shall be construed to create an association, joint venture, trust or partnership among the Lessees, or impose any trust or partnership duty, obligation or liability on or with respect to any one or more of the Lessees; and no Lessee or group of Lessees shall be deemed to be under the control of or to control any other Lessee or group of Lessees. Wisconsin Power and Light Company is hereby authorized to give notices on behalf of and otherwise to act as agent for all of the Lessees.

Nothing contained herein shall impair or affect any rights, claims or remedies which any Lessee may have against any other Lessee or Lessees by reason of or in connection with any default, breach or non-performance of any contract, agreement or other arrangement among any two or more of the Lessees other than the Finance Agreement or any document or instrument referred to therein or contemplated thereby. Wisconsin Power and Light Company shall give notice to each party hereto of any default by any of the other Lessees in depositing with Wisconsin Power and Light Company the necessary funds to satisfy such Lessee's obligations hereunder in accordance with the operating procedures established by and among the Lessees, it being understood and agreed that no Lessee shall have the right to perform the obligations of, or to cure the defaults of, any other Lessee or Lessees.

SECTION 24. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Wisconsin; *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 and the Lease Assignment as shall be conferred by the laws of the several jurisdictions in which this Lease or the Lease Assignment shall be filed, recorded, registered or deposited.

SECTION 25. *Execution.* This Lease may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Lease is dated as of May 15, 1974 for convenience, 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)

Attest:

Gene B. Socca
Assistant Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee

By

Malcolm [Signature]
Vice President

(CORPORATE SEAL)

Attest:

James J. Vich
Secretary

WISCONSIN POWER AND LIGHT COMPANY

By

Edward A. Wisque
Vice President

(CORPORATE SEAL)

Attest:

D. A. Bollon
Assistant Secretary

WISCONSIN PUBLIC SERVICE CORPORATION

By

Eel James
Vice President

(CORPORATE SEAL)

Attest:

Leslie Brodzoller
Secretary

MADISON GAS AND ELECTRIC COMPANY

By

W. A. [Signature]
Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS

On this 16th day of July, 1974, before me personally appeared **MALCOLM J. HOON**, to me personally known, who, being by me duly sworn, says that he is a Vice President of United States Trust Company of New York, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James E. Logan

Notary Public

(NOTARIAL SEAL)

JAMES E. LOGAN
Notary Public, State of New York
No. 24-2393228
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1975

My commission expires _____

STATE OF WISCONSIN }
COUNTY OF DANE } SS

On this 24th day of July, 1974, before me personally appeared *Edward A. Wiegner*, to me personally known, who, being by me duly sworn, says that he is a Vice President of Wisconsin Power and Light Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Elizabeth C. Madigan

Notary Public

(NOTARIAL SEAL)

My commission expires _____

ELIZABETH C. MADIGAN
Notary Public, Dane County, Wisconsin
My Commission Expires Jan. 26, 1975

STATE OF WISCONSIN }
COUNTY OF BROWN } SS

On this 25th day of July, 1974, before me personally appeared E. W. James, to me personally known, who, being by me duly sworn, says that he is a Vice President of Wisconsin Public Service Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Priscilla Delorit
Priscilla Delorit Notary Public

(NOTARIAL SEAL)

My commission expires

August 7, 1977

STATE OF WISCONSIN }
COUNTY OF DANE } SS

On this 24th day of July, 1974, before me personally appeared W. A. McNamara, to me personally known, who, being by me duly sworn, says that he is a Vice President of Madison Gas and Electric Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Elizabeth C. Madigan
Notary Public

(NOTARIAL SEAL)

My commission expires

ELIZABETH C. MADIGAN
Notary Public, Dane County, Wisconsin
My Commission Expires Jan. 26, 1975

Annex A to
Lease of Railroad Equipment

<u>Type</u>	<u>Quantity</u>	<u>Car Numbers (Both Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
100-ton (4,000 cu. ft.) high-side steel gondola cars with swivel couplers	281	WISX 300 through 580	July-August, 1974 at the Columbia Generating Station, Portage, Wisconsin

