

4-212A100

No.

Date JUL 30 1984

Fee \$ 10.00

ICC Washington, D.C.

ALLEN H. HARRISON, JR.

DIRECT LINE (202)

872-6093

WILMER, CUTLER & PICKERING

1666 K STREET, N. W.

WASHINGTON, D. C. 20006

CABLE ADDRESS: WICRING WASH., D. C.

INTERNATIONAL TELEX: 440-239

TELEX: 89-2402

TELEPHONE 202 872-6000

9406-C

EUROPEAN OFFICE

1 COLLEGE HILL

LONDON, EC4R 2RA, ENGLAND

TELEPHONE 01-236-2401

TELEX: 851 883242

CABLE ADDRESS: WICRING LONDON

JUL 30 1984 2 25 PM

INTERSTATE COMMERCE COMMISSION

July 30, 1984

Dear Mr. Bayne:

On behalf of Itel Rail Corporation, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, four enclosed executed counterparts of a secondary document entitled Amendment No. 1.

The aforesaid document amends that certain Lease Agreement dated as of December 23, 1977 among Itel Corporation, SSI Rail Corp, and Marinette, Tomahawk and Western Railroad Company (Lessee), said Lease was filed and recorded with the ICC on May 26, 1978 under Recordation No. 9406. The aforesaid Amendment No. 1 was made March 2, 1984 by and between Itel Rail Corporation as successor in interest to both SSI Rail Corp, and Itel Rail Corporation (Lessor) and the Lessee, and should be filed and recorded under the next available letter designation under Recordation No. 9406.

The names and addresses of the parties to the aforesaid Amendment No. 1 are:

1. Itel Corporation
One Embarcadero Center, Suite 2900
San Francisco, CA 94111
2. Itel Rail Corporation
55 Francisco, 7th Floor
San Francisco, California 94133
3. Marinette, Tomahawk & Western Railroad Co.
P. O. Box 315
Tomahawk, Wisconsin 54487

The equipment covered by this Amendment No. 1 is fifty (50) 50', 70-ton boxcars, A.A.R. mechanical designation XM, bearing reporting marks MTW 8000-MTS 8049.

Handwritten notes and signature:
Hess on in
9406-C
A. H. Harrison

ICC OFFICE OF THE SECRETARY
JUL 30 2 00 PM '84
MOTOR OPERATING UNIT

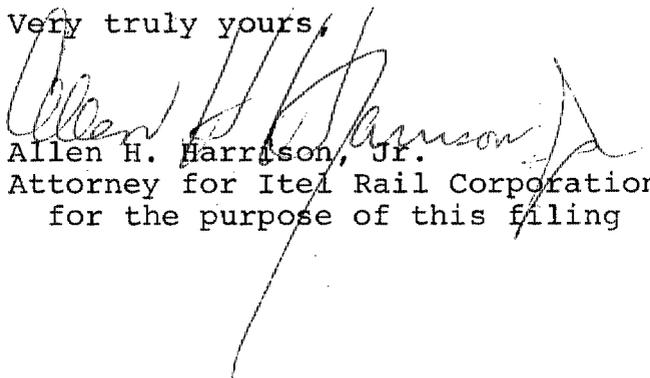
Also enclosed is a check of this firm in the amount of \$10.00 to cover the required recording fee.

A short summary of the document filed herewith to appear in the Index is as follows:

"Adds fifty (50) Boxcars MTW 8000-8049, and amends certain parts of Lease."

Please stamp all counterparts of the enclosed Amendment No. 1 with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files, and the remaining three (3) counterparts, together with the fee receipt, the letter from the ICC acknowledging the filing, and the extra copy of this letter of transmittal should be returned to the bearer.

Very truly yours,


Allen H. Harrison, Jr.
Attorney for IteI Rail Corporation
for the purpose of this filing

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Enclosures

AHH/iw

Interstate Commerce Commission
Washington, D.C. 20423

7/30/84

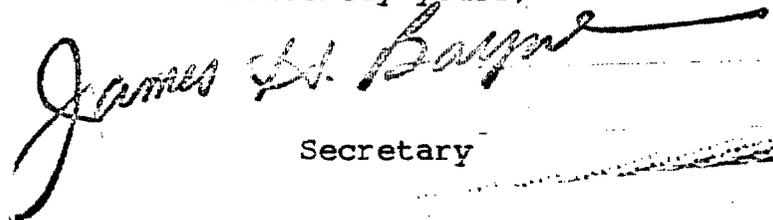
OFFICE OF THE SECRETARY

Allen H. Harrison, Jr.
Wilmer Cutler & Pickering)
1666 K. Street, N.W.
Washington, D.C. 20006

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 7/27/84 at 2:05pm and assigned re-
recording number(s). 9406-C

Sincerely yours,


Secretary

Enclosure(s)

L-0664
2/28/84

RECORDATION NO. 9406-C FILED 1425

JUL 30 1984 2 05 PM

AMENDMENT NO. 1

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 1 (the "Amendment") to that certain Lease Agreement (the "Lease Agreement") dated as of December 23, 1977 among ITEL Corporation, SSI Rail Corp. and **MARINETTE, TOMAHAWK AND WESTERN RAILROAD COMPANY** ("Lessee") is made this 2nd day of March, 1984 by and between **ITEL RAIL CORPORATION** as successor in interest to both SSI Rail Corp. and ITEL Corporation ("Lessor") and Lessee.

W I T N E S S E T H :

WHEREAS, Lessor and Lessee are parties to the Lease Agreement pursuant to which three hundred (300) boxcars bearing the reporting marks MTW 4300-4599 have been delivered by Lessor to Lessee;

WHEREAS, Lessee desires to lease from Lessor, for a certain period of time, fifty (50) additional boxcars.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree to amend the Lease Agreement as follows:

1. All terms defined in the Lease Agreement shall have their defined meanings when used in this Amendment.
2. Equipment Schedule No. 4, attached hereto, which references fifty (50) Boxcars bearing the reporting marks MTW 8000-8049, is hereby added and made a part of the Lease Agreement.
3. With respect to the Boxcars bearing the reporting marks MTW 8000-8049 only, Subsection 2.A. of the Lease Agreement shall be replaced by the following:

"2.A. This Lease Agreement shall remain in full force until it is terminated as to all of the Boxcars as provided herein. The term of the Lease Agreement with respect to each Boxcar described on Equipment Schedule No. 4 shall commence at 12:01 P.M. on the date and at the location that such Boxcar is restencilled pursuant to Section 3.A., and shall expire as to all of the Boxcars on Equipment Schedule No. 4 on March 31, 1987."

4. With respect to the Boxcars bearing the reporting marks MTW 8000-8049 only, Subsections 3.A. and 3.B. of the Lease Agreement shall be replaced by the following:

"3.A. Lessee hereby approves the specifications of the Boxcars delivered to it by Lessor. Lessor shall, at Lessor's expense, remark the Boxcars with the railroad markings of Lessee in compliance with all applicable regulations. Each Boxcar shall be deemed delivered and subject to the terms and provisions of this Lease Agreement at 12:00 Noon on the date and at the location such Boxcar is remarked ("Delivery"). After the Boxcars have been remarked, the Boxcars shall be moved to Lessee's railroad line at no cost

ASSIGNED TO FIRST SECURITY BANK
OF UTAH, N.A., TRUSTEE, UNDER
A LEASE ASSIGNMENT DATED
AS OF APRIL 16, 1984

LESSOR'S INTEREST ASSIGNED TO
FIRST SECURITY BANK OF
UTAH, N.A., WITH RESPECT TO
CARS NUMBERED MTW 8000-8049

to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay the rent set forth in this Lease Agreement. To move the Boxcars to Lessee's railroad line and to ensure optimal use of the Boxcars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and Lessor, to assist in the issuance of movement orders with respect to such Boxcars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules. If Lessor incurs expenses in having other railroads move Boxcars in accordance with this Section with Lessee's approval, except for any expenses incurred in the initial delivery of such Boxcars to Lessee's railroad line pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of invoice from Lessor. For the purposes hereof, the term "Initial Loading" as to each Boxcar, shall be the earlier to occur of either (1) the date such Boxcar shall have been loaded off Lessee's railroad line with the first load or freight, or (2) the thirty-first (31st) day after such Boxcar is delivered pursuant to this Section.

"3.B. Lessee shall load the Boxcars from Lessor prior to loading any substantially similar boxcars leased by or assigned to Lessee from other parties subsequent to the date of this Lease Agreement, purchased by Lessee subsequent to the date of this Lease Agreement, or interchanged from other railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor."

5. With respect to the Boxcars bearing the reporting marks MTW 8000-8049 only, Section 6 of the Lease Agreement shall be replaced by the following:

"6. Lease Rental

A. Definitions

- (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Boxcars, including but not limited to, per diem and mileage, whether or not collected and received by Lessor and without regard to any claimed abatement, reduction or offset caused by any action of Lessee, provided, however, that upon the occurrence of any such abatement, reduction, or offset, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (ii) The "Utilization Rate" of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Boxcars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars are on lease to Lessee, commencing from the Initial Loading.

- (iii) Commencing from Delivery through and including December 31, 1984 ("First Base Rental"), the "Base Rental" shall be defined as the sum equal to the Revenues which the Boxcars would have earned in the aggregate at a Utilization Rate of sixty (60) percent, with the assumption that each Boxcar travelled ninety (90) miles per day. Commencing from January 1, 1985 through and including March 31, 1987 ("Second Base Rental"), the "Base Rental" shall be defined as the sum equal to the Revenues which the Boxcars would have earned in the aggregate at a Utilization Rate of eighty (80) percent, with the assumption that each Boxcar travelled ninety (90) miles per day.
- B. Lessor shall receive all Revenues earned by each Boxcar prior to its Initial Loading. Each Boxcar delivered pursuant to Subsection 3.A. shall become subject to the rental calculation under Subsection 6.C. upon the Initial Loading of such Boxcar.
- C. Lessee agrees to pay the following rent to Lessor for the use of the Boxcars:
 - (i) In the event Revenues earned in any calendar year or applicable portion thereof are equal to or less than the applicable Base Rental, Lessor shall retain a sum equal to one hundred (100) percent of the total Revenues.
 - (ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the applicable Base Rental, Lessor shall retain an amount equal to the Base Rental and Lessee shall receive all Revenues received in excess of the Base Rental.
- D. The calculations required in Subsection 6.C. shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Lessor to meet its financial commitments, Lessor shall, prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year to date basis the approximate amounts owed under Subsection 6.C., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year to date basis the amount due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
- E. If, with respect to any calendar quarter, Revenues are less than the applicable Base Rental, Lessor may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Boxcars as Lessor shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Lessor, void such termination notice by agreeing to pay within thirty (30) days to Lessor an amount equal to the difference between actual Revenues for such calendar quarter and the applicable Base Rental for such calendar quarter.

- F. In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Boxcar will be removed from the rental calculations of this Lease Agreement on the date car hire ceased as set forth in the aforementioned Rule 7. Lessor may, at its expense, replace any destroyed Boxcar with similar equipment upon prior written notice from Lessor to Lessee.
- G. In the event the ICC issues any order which eliminates, reduces or modifies mandatory per diem and mileage payments to boxcar owners by boxcar users for use of the owner's boxcars, as currently established, Lessor may, at its option, terminate this Lease Agreement."

- 6. Except as expressly modified by this Amendment, all terms and provisions of the Lease Agreement shall remain in full force and effect.
- 7. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By: DD Hayes
 Title: Acting President
 Date: 5/24/84

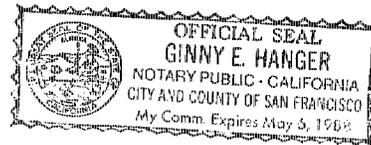
MARINETTE, TOMAHAWK AND WESTERN RAILROAD COMPANY

By: [Signature]
 Title: Vice President
 Date: 3-21-84

STATE OF CALIFORNIA)
)
) SS:
COUNTY OF SAN FRANCISCO)

On this 24th day of May, 1983, before me personally appeared ^{Desmond P. Hayes BENT} ~~J. Douglas Coates~~, to me personally known, who being by me duly sworn says that such person is ^{Acting BENT} President of ITEL Rail Corporation, that the foregoing Amendment No. I was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

GINNY E. HANGER
Notary Public



STATE OF Wisconsin)
)
) SS:
COUNTY OF LINCOLN)

On this 21st day of March, ¹⁹⁸⁴ 1983, before me personally appeared John C. Ormond, to me personally known, who being by me duly sworn says that such person is Vice President of Marinette, Tomahawk and Western Railroad Company, that the foregoing Amendment No. I was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. L. Collins
Notary Public

L-0664

EQUIPMENT SCHEDULE NO. 4

Itel Rail Corporation hereby leases the following Boxcars to Marinette, Tomahawk and Western Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of December 23, 1977.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XRM <i>20</i>	50' Plate C Boxcar, 70-Ton	MTW 8000- 8049	50'6"	9'6"	11'1-3/4"	10'	50

ITEL RAIL CORPORATION

BY: *D. Hayes*

TITLE: *Acting President*

DATE: *5/24/84*

MARINETTE, TOMAHAWK AND WESTERN
RAILROAD COMPANY

BY: *[Signature]*

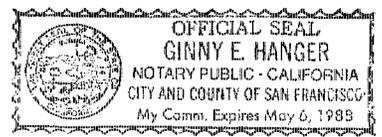
TITLE: *Vice President*

DATE: *3-11-84*

STATE OF CALIFORNIA)
)) ss:
COUNTY OF SAN FRANCISCO)

On this 24th day of May, 198⁴3, before me personally appeared ~~Desmond P Hayes~~ ^{ACTING AGENT} ~~J. Douglas Coates~~, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Equipment Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

GINNY E. HANGER
Notary Public



STATE OF WISCONSIN)
)) ss:
COUNTY OF LINCOLN)

On this 11th day of March, 198⁴3, before me personally appeared John C. Ormond, to me personally known, who being by me duly sworn says that such person is Vice President of Marinette, Tomahawk and Western Railroad Company, that the foregoing Equipment Schedule No. 4 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. F. Bodine
Notary Public