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0-112A020  
Date APR 21 1980  
Fee \$ 50.00

W. F. Nowlin (1908-1978)  
Harper Macfarlane  
Grady Barrett  
of Counsel

ICB Washington, D.C.  
RECORDATION NO. 11679 Filed 1425  
APR 21 1980 - 11 25 AM  
INTERSTATE COMMERCE COMMISSION

1590 Alamo National Building  
San Antonio, Texas 78205  
(512) 226-4211

April 14, 1980

CERTIFIED MAIL #249549  
RETURN RECEIPT REQUESTED

Secretary of Interstate Commerce Commission  
Washington, D.C. 20423

Re: Filing Pursuant to 49 U.S.C.  
11303 of Documents Relating  
to Railroad Cars

Dear Sir:

Pursuant to 49 U.S.C. 11303, enclosed for filing and recordation are the original executed Railroad Car Lease Agreement dated March 12, 1980, between RailTex, Inc., a Texas corporation, as Lessor, and Texas Utilities Generating Company, a Texas corporation, as Lessee, together with two certified true copies thereof.

Also enclosed is our check in the amount of \$50.00 in payment of your recordation fees.

The address of RailTex, Inc., is 4901 Broadway, Suite 206, San Antonio, Texas 78209, and the address of Texas Utilities Generating Company is 2001 Bryan Tower, Room 1745, Dallas, Texas 75201. The Railroad Car Lease Agreement relates to 10 new rapid discharge, self-cleaning bottom dump rail cars manufactured by Ortner Freight Car Company with AAR mechanical designation No. HTS, AAR car-type code K340, each of which is marked RailTex, Inc., San Antonio, Texas, owner and lessor, bearing serial numbers TRAX 1040 through 1049, both inclusive.

RECEIVED  
APR 21 10 52 AM '80

*Matthews, Nowlin, Macfarlane & Barrett*

ICC

Page 2

Apr. 15, 1980

After filing and stamping, please return the enclosed original and one copy thereof to this law firm.

Should you have any questions or need further information with respect to this matter, please contact the undersigned by collect telephone call at (512) 226-4211.

Thanking you for your cooperation, I am

Very truly yours,

A handwritten signature in cursive script that reads "Lionel R. Fuller". The signature is written in black ink and is positioned above the typed name.

Lionel R. Fuller

LRF:fm

Encl.

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Lionel R. Fuller  
Matthews, Nowlin, Macfarlane & Barrett  
1500 Alamo National Building  
San Antonio, Texas 18205

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/21/80 at 11:25AM, and assigned re-  
recording number(s). 11679

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 11679 ✓  
Filed 1425

APR 21 1980 - 11 25 AM

CERTIFICATE OF NOTARY PUBLIC  
PURSUANT TO 49 C.F.R., §116.3(b)  
INTERSTATE COMMERCE COMMISSION

STATE OF TEXAS X  
COUNTY OF BEXAR X

I, the undersigned Notary Public in and for Bexar County, Texas, do hereby certify that I have compared the attached copy of the Railroad Car Lease Agreement dated March 12, 1980, executed by RailTex, Inc., a Texas corporation, as Lessor, and Texas Utilities Generating Company, a Texas corporation, as Lessee, with the original document and that it is a true and correct copy thereof in all respects.

Dated: April 15, 1980.

*Dianne J. Kotara*  
Notary Public in and for Bexar County, Texas

DIANNE J. KOTARA  
Notary Public  
Bexar County, Texas

My Commission Expires:  
Jan. 17, 1981

RAILROAD CAR LEASE AGREEMENT

THIS AGREEMENT, No. TU-01, made and entered into March 12, 1980, by and between RAILTEX, INC., a Texas corporation with its principal office and place of business in San Antonio, Texas (herein called "LESSOR"), and TEXAS UTILITIES GENERATING COMPANY, a Texas corporation (herein called "LESSEE").

WITNESSETH:

Description  
of Leased  
Cars:

1. LESSOR agrees to furnish to LESSEE, and LESSEE agrees to rent from LESSOR, the railroad cars shown on the Rider attached hereto and made a part hereof, and such additional Riders as may be added hereto from time to time by agreement of the parties and signed by their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, covered thereby including such facts as: number of cars, car initials and numbers, the Association of American Railroads ("AAR") or Interstate Commerce Commission ("ICC") specifications, cubic capacity, truck capacity, delivery point, rental, term throughout which the cars shall remain in LESSEE's service, and other pertinent information that may be desired by both parties.

Use of  
Cars:

2. LESSEE agrees to use said cars under the following restrictions:

(a) The cars will be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated, and government agencies.

(b) At the expiration or termination of the rental term of the particular Rider applicable to each such car described in such Rider, LESSEE at its expense shall cause said cars to be returned to LESSOR at San Antonio, Texas, or to such other point designated by LESSOR but at no cost to LESSEE greater than the charge for return to San Antonio, Texas.

(c) The cars shall be returned to LESSOR in the same, or as good, condition in which they were delivered to LESSEE except for ordinary wear and tear.

(d) The cars will not be altered by LESSEE in any way without prior written approval of LESSOR.

(e) Mechanical unloading assistance devices, such as a car shaker, shall be operated only for that period of time necessary to dislodge material from the car. Operation beyond the time the material is dislodged from the car shall constitute unnecessary abuse by LESSEE of the car.

(f) LESSEE shall notify LESSOR in writing within five (5) days of each change in routing, origin or destination of the car so as to permit LESSOR to monitor individual car movements. This requirement is not to be construed as limiting in any way movements of the cars other than as set forth in paragraphs 2(a) and 2(h) hereof.

(g) The cars are intended for use in carrying aggregate type products, with individual rock segments not to exceed twelve (12) inches in cross section. The use of these cars for any other purpose is not permitted without prior written approval of LESSOR.

(h) The cars will be operated only within the United States of America.

Rent:

3. LESSEE agrees to pay LESSOR the monthly rental stated in the Rider covering said cars from the date each car is delivered as specified in the Rider, and until the cars are delivered to LESSOR upon expiration of the rental term specified in the Rider applicable to such car. Such rentals shall be paid to LESSOR in San Antonio, Texas, or such other place as LESSOR may hereafter direct in writing. Bills for rentals shall be presented to LESSEE by LESSOR in advance on or about the 1st day of each calendar month

and payment of said rentals shall be made by LESSEE within thirty (30) days thereafter.

Mileage:

4. LESSOR shall collect all mileage earned by the cars and shall credit monthly to the rental amount owing by LESSEE such mileage earned by the cars while in the service of LESSEE, as and when received from the railroads according and subject to all rules of the tariffs of the railroads, but only to the extent of the aggregate rental charges payable hereunder. The mileage refund will be the current rate as governed by the applicable tariff.

Term of Lease:

5. This Agreement shall be effective as of the date first set forth hereinabove and shall expire upon expiration of the rental term of the last car, or cars, covered hereunder. The rental term for each car shall be as shown in the Rider covering such car.

Repair, Maintenance and Abatement of Rentals:

6. LESSOR agrees to keep the cars in good operating condition and pay all costs of maintenance which may be necessary while such cars are in LESSEE's possession. LESSOR also agrees to pay for all repairs to the cars, except repairs required due to acts or omissions of LESSEE, its shipper, consignee, agent or sublessee, and repairs occasioned while cars are on a railroad which does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the

AAR, or while on any private siding or track or any private or industrial railroad, for all of which repairs, including transportation costs, LESSEE shall pay LESSOR. LESSOR shall make all contractual arrangements for all repairs, notwithstanding who is responsible for the costs thereof. LESSOR will permit LESSEE to make repairs when requested by LESSEE so long as such repairs meet AAR Interchange Rules. The expenses of LESSEE incurred in connection with such repairs as billed at AAR billing rates will be credited against monthly rental amounts, except with respect to those repairs for which LESSEE is responsible for payment of the costs thereof. LESSEE shall notify LESSOR within three (3) full business days following knowledge of any damage to any of the cars. When damaged cars have been forwarded to a shop for repair or maintenance, the excess mileage incurred by deviation from normal routing earned by such car to and from the shop shall be retained by LESSOR. When cars are in a "BAD ORDER STATUS" for maintenance or repair in excess of five (5) consecutive days, the rental charges on each car shall be suspended during the excess period they are in such status; provided, however, that rental charges will be suspended immediately for repairs necessitated by accident damage occasioned when the car is under control of a railroad. If any repairs are required as a result of the acts or omissions of LESSEE, its consignee, shipper, agent or

sublessee, the rental charge shall continue unabated during the rental period.

Car  
Modifications:

7. LESSOR has the right to withdraw cars from service for the purpose of making nonsafety related modifications, repairs and/or painting upon five (5) days' written notice to LESSEE. Rental payments will be suspended whenever a car is withdrawn from service for car modifications, unless LESSOR substitutes an equivalent car therefor.

Destroyed  
Cars:

8. LESSEE agrees that if by reason of its acts or omissions or those of its consignee, shipper, agent or sublessee, or while on a railroad that does not subscribe to, or fails to meet its responsibility under, the Interchange Rules of the AAR or on any private siding or track or any private or industrial railroad, any car is completely destroyed or in the opinion of LESSOR such car's physical condition is such that it cannot be economically repaired to be operated in railroad service, LESSEE will pay LESSOR in cash the settlement value of such car within ten (10) days following a request by LESSOR for such payment. The term "settlement value" as used herein shall mean the valuation of such cars as provided for by Rule 107 of the Interchange Rules of the AAR. LESSOR shall retain ownership of the car if it rebuilds the car. Otherwise, the title to destroyed cars shall be transferred by

LESSOR to LESSEE upon payment by LESSEE to LESSOR of the settlement value of any such car. If any of the cars shall be completely destroyed, or if the physical condition of any car shall become such that such car cannot economically be repaired to be operated in railroad service as determined by LESSOR, then LESSOR at its option may cancel the lease as to such car as of the date on which such event occurred, or may substitute an equivalent car within a reasonable period of time. In the event of such substitution, the substituted car shall be held pursuant to all terms and conditions of this Agreement.

Indemnity:

9. LESSEE will indemnify LESSOR against any loss, damage, claim, expense (including attorney's fees and expenses of litigation) or injury imposed on, incurred by, or asserted against LESSOR arising directly or indirectly, out of LESSEE's, its consignee's, agent's, shipper's, or any sublessee's use, lease, possession or operation of the cars occurring during the term of this Agreement, or by the contents of such cars, however occurring, except any loss, liability, claim, damage or expense which is directly attributable to the act or omission of LESSOR, or for which a railroad or railroads have assumed full responsibility and satisfies such responsibility. All indemnities contained in this Agreement shall survive the termination hereof, however same shall occur.

Insurance:

10. Unless waived in writing by LESSOR, LESSEE shall, at its own cost and expense, with respect to each car at all times maintain and furnish LESSOR with evidence of insurance against all risks assumed by LESSEE under paragraph 9 hereof (including, without limitation, physical damage insurance and liability insurance) protecting LESSOR, in such companies, in such amounts, and with such endorsements as LESSOR shall from time to time request. LESSEE's obligation to maintain insurance with respect to each car shall commence on the delivery date of such car and shall continue until the lease term thereof terminates and, if such car is required hereunder to be returned to LESSOR, until such return. LESSEE shall cooperate and, to the extent possible, cause others to cooperate with LESSOR and all companies providing any insurance to LESSEE or LESSOR or both with respect to the cars.

Additional  
Charges by  
Railroad:

11. LESSEE agrees to use the cars, upon each railroad over which the cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party; and, if the operation or movements of any of the cars during the term hereof shall result in any charges being made against LESSOR by any such railroad, LESSEE shall pay LESSOR for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. LESSEE agrees to indemnify LESSOR

against same and shall be liable for any switching, demurrage, track storage or detention charge imposed on any of the cars during the term hereof.

Right of  
Entry:

12. LESSOR shall have the right to enter the property of LESSEE or its agent, at LESSOR's own cost, and at all reasonable times for the purpose of making car inspections and repairs.

Reports:

13. LESSOR shall collect and retain all data necessary for making mileage, per diem and "Bad Order Status" calculations. The railroad reports will serve as prima facie evidence of the facts reported therein.

Payment of  
Taxes:

14. During the term of this Agreement, LESSEE shall, in addition to the rentals specified, pay all use taxes, if any, based on rentals, but excluding all income taxes incurred by LESSOR. LESSEE shall also reimburse LESSOR for all personal property taxes paid by LESSOR on the cars covered by this Agreement. LESSEE at its own expense may contest the amount or validity of the imposition of the taxes described in this paragraph whether imposed against LESSEE or LESSOR. However, LESSEE shall promptly pay such imposition unless such proceeding shall operate to prevent or stay the imposition so contested. LESSOR may, at its option and expense, but shall not be required to, join in any such proceedings by counsel of its own choice. In the event LESSEE shall fail promptly to

defend or contest any tax described in this paragraph, LESSOR shall have the right to defend and, compromise the same and obtain payment from LESSEE of its reasonable costs and expenses (including reasonable legal fees) incurred in connection therewith, and for any judgments recovered against LESSOR or LESSEE or payments made in settlement.

Liens:

15. LESSEE shall keep the cars free from any encumbrances or liens which may be a cloud upon or otherwise affect LESSOR's title.

Marking  
of Cars:

16. LESSEE shall keep all cars subject to this Lease free of any markings which might be interpreted as a claim of ownership, nor shall LESSEE change the identifying numbers.

Subleasing:

17. LESSEE will not sublease said cars or assign any of its rights hereunder, without written consent of LESSOR.

LESSOR's  
Remedies:

18. Upon the happening of any of the events of default as hereinafter defined, the LESSOR or its assignee may then, or at any time thereafter, take possession of the cars and any accessions thereto, wherever same may be found, and, at the election of the LESSOR or its assignee, as the case may be, either:

- (a) Declare the Agreement terminated, in which event all rights of the parties hereunder shall

cease except only the obligation of LESSEE to pay accrued rentals and other charges to the date of retaking, or;

(b) Relet the cars as agent of LESSEE, apply the proceeds of such reletting first to the expenses that may be incurred in the retaking and delivery of the cars to the new lessee, then to the payment of the rent and charges due under this Lease. LESSEE shall remain liable for any rents and charges remaining due after so applying the proceeds so realized, and LESSEE agrees to pay said deficit monthly as the same may accrue. LESSEE shall bear all costs involved in LESSOR retaking the cars, including transportation costs to San Antonio, Texas.

LESSEE'S  
Defaults:

19. The happening of any of the following events shall be considered an "event of default":

(a) Nonpayment of LESSEE within thirty (30) days after the same becomes due of any installment of rental.

(b) Failure of LESSEE to comply with, or perform, any of the other terms and conditions of this Agreement within thirty (30) days after receipt of written notice from LESSOR demanding compliance therewith and performance thereof.

(c) The appointment of a receiver or trustee in bankruptcy for LESSEE or for any of its property and the failure by such receiver or trustee to adopt and assume and agree to perform the obligations of LESSEE hereunder within thirty (30) days after such appointment.

LESSEE'S  
Remedies:

20. In the event LESSOR defaults in the performance of any of the conditions to be performed and observed by LESSOR with respect to any car, and such default continues for a period of thirty (30) days after receipt of written notice from LESSEE demanding performance and observance thereof, LESSEE may, at its option, terminate this Agreement or the lease of such car, and LESSOR shall have the right to repossess such car immediately upon such termination.

Filing:

21. LESSOR intends to cause this Lease to be filed and recorded with the ICC in accordance with Section 11303 of the Interstate Commerce Commission Act. LESSEE shall from time to time do and perform any other act, and execute, acknowledge, deliver, file, register and record any and all further instruments required by law, or requested by LESSOR, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement, and LESSEE will promptly furnish to LESSOR certificates or

other evidences of all such filing, registering and recording in form satisfactory to LESSOR. LESSOR shall promptly reimburse LESSEE for any out-of-pocket expenses it may so incur.

Inspection  
of Cars:

22. Each of the cars shall be subject to LESSEE's inspection before delivery; and the acceptance thereof by LESSEE shall be conclusive evidence (i) of the fit and suitable condition of such car for the purpose of transporting any commodities then and thereafter loaded therein and (ii) that it is one of the cars described in the Riders.

Disclaimer of  
Warranties:

23. LESSOR LEASES THIS EQUIPMENT, AS IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO: (a) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY CARS INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (b) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (c) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. Notwithstanding anything to the contrary contained in this paragraph, cars shall conform to the specifications contained in the Riders and must be maintained in accordance with AAR Interchange Rules and any other applicable governmental rules or regulations.

Ownership  
of Cars:

24. Certain of the cars leased hereunder and identified on the Rider attached hereto may not be owned by LESSOR. In each such case, the car or cars so identified are owned by third persons who have appointed LESSOR to manage and supervise the operation of such cars, including the leasing thereof, pursuant to Management Agreements entered into by such owners and LESSOR. Notwithstanding the provisions of paragraph 23 hereof, LESSOR warrants and represents that it has the right to lease such cars and that the Management Agreements granting such right are in full force and effect, neither LESSOR nor the respective owners of the cars are in default thereunder and the Management Agreements are valid, binding and enforceable against LESSOR and the respective owners of the cars in accordance with their terms. LESSOR further warrants and represents that it has full right and power to execute and perform this agreement and that LESSEE, on payment of the rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the cars leased hereunder during the full term of this Agreement and any extension or renewal hereof.

Renewal:

25. At the expiration of the initial rental term, LESSEE shall have the option to renew this Agreement covering those cars listed in the Rider for a period of

five (5) years from the date of the initial delivery of the cars in one (1) to five (5) year increments.

Notice of the exercise of this option shall be given, in writing, by LESSEE to LESSOR at least ninety (90) days prior to the expiration of the rental term of the car or cars covered hereunder.

Miscellaneous:        26.    It is mutually agreed that the time of payment of rentals is of the essence of this Agreement and that this Agreement and any Rider now and hereafter entered into is subject and subordinate to any Management Agreement described in paragraph 24 of this Agreement, any Security Agreement or Conditional Sale Agreement on the cars heretofore or hereafter leased hereunder, and to the rights of any Trustee under any Equipment Trust heretofore or hereafter established by LESSOR; provided, however, that the rights of LESSEE shall remain in full force and effect during the term of this agreement so long as LESSEE shall continue to perform all of the covenants of this Agreement.

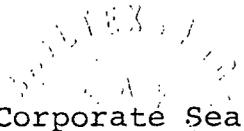
Notice:                27.    All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given if given in writing and delivered personally or sent by registered or certified mail, return receipt requested. The respective

addresses for notice shall be the addresses of the parties given in writing at the execution of this Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

Governing Law:

28. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas, in which state it has been executed and delivered.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective corporate officers and duly attested, as to the date first above written.

  
(Corporate Seal)

ATTEST:

Sauet Lennie Flobur  
Secretary

RAILTEX, INC. (LESSOR)

By Bruce M. Alch  
President

(Corporate Seal)

ATTEST:

  
Boonville  
Secretary

TEXAS UTILITIES GENERATING COMPANY  
(LESSEE)

By R. J. Gary  
Executive Vice President

STATE OF TEXAS           X  
                                  X  
COUNTY OF BEXAR        X

BEFORE ME, the undersigned authority, on this day personally appeared Bruce M. Flohr, President of Railtex, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this the 11<sup>th</sup> day of April, 1980.

*Laura J. Anderson*  
Notary Public in and for  
Bexar County, T E X A S

STATE OF TEXAS           X  
                                  X  
COUNTY OF Dallas    X

BEFORE ME, the undersigned authority, on this day personally appeared R. J. Gump, Executive Vice President and General Manager of Texas Utilities Generating Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this the 28 day of March, 1980.

*Edonia D. Miller*  
Notary Public in and for  
Dallas County, T E X A S

RAILTEX, INC.  
Rider No. 01  
To Master Agreement No. TU-01

It is hereby agreed that, effective March 12, 1980, this Rider shall become a part of Master Car Agreement No. TU-01 between RailTex, Inc., and Texas Utilities Generating Company, dated March 12, 1980, and the cars described herein shall be placed in service, subject to the terms set forth below:

CAR INITIAL NUMBERS: TRAX 1040 thru 1049 inclusive  
CAR OWNERS MARKS: RailTex, Inc.  
CLASS OF CAR: HTS/K340, Ortner "Rapid Discharge" Manual Door Aggregate Car.  
NUMBER OF CARS: Ten (10)  
CAPACITY OF CARS: 100 ton nominal - 2300 cubic feet  
COMMODITY LIMITATION: Free flowing aggregate passing through a 12" screen.  
DELIVERY POINT: Clifstone, Texas (ATSF).  
TERM: Twelve (12) months from delivery date of last car covered by this Rider.  
CERTIFICATION OF INSPECTION AND ACCEPTANCE: Exhibit "A" attached hereto and made a part hereof.  
TERMS OF RENT FOR ORIGINAL TERM: \$22.68 per car, per day, for twelve (12) months from date hereof.  
TERMS OF RENT FOR EXTENDED TERM: Rent for original term as increased 3.32 cents per car, per day, during the extended term for each one percent (1%) or fraction thereof of the increase of the AAR labor rate as of the date of this Rider as specified in the AAR Office Manual.

(SEAL)  
ATTEST:

Sauet Lennie Flohr  
Secretary

(SEAL)

ATTEST:

[Signature]  
Secretary

RAILTEX, INC. (LESSOR)

By [Signature]  
President

TEXAS UTILITIES GENERATING COMPANY  
(LESSEE)

By [Signature]  
Executive Vice President