

STEPTOE & JOHNSON

1250 CONNECTICUT AVENUE  
WASHINGTON, D. C. 20036

1-201A000

ROBERT J. CORBER  
(202) 862-2038

REGISTRATION NO. 11965-0 FILED 1420

AUG 19 1981 -10 20 AM

August 18, 1981

AUG 19 1981  
Fee \$...70.00

INTERSTATE COMMERCE COMMISSION

Ms. Agatha Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Washington, D. C.  
REGISTRATION NO. 11965-P FILED 1420

AUG 19 1981 -10 20 AM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

I have enclosed an original and six copies of each of the documents described below, to be recorded pursuant to Section 11303 of Title 49 U.S. Code.

The primary document is a Lease Agreement dated October 21, 1980. The accompanying secondary document is an Assignment of Lease Agreement dated August 17, 1981. Both are related to the Credit and Security Agreement dated as of October 1, 1979, previously assigned Recordation No. 11965.

We request that these documents be cross-indexed under the name of the Agent, Manufacturers Hanover Trust Company, 741 Fifth Avenue, New York, New York 10022. Additionally, please cross-index the assignment under the name of the Lessee, Richard B. Ogilvie, Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Debtor), 516 West Jackson Boulevard, Chicago, Illinois 60606.

The names and addresses of the parties to the documents are as follows:

Lease Agreement--

Lessor - Brae Railcar Management Inc.  
Three Embarcadero Center  
San Francisco, CA 94111

Lessee - Richard B. Ogilvie  
Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company,  
Debtor  
516 West Jackson Boulevard  
Chicago, IL 60606

AUG 19 10 13 AM '81

*Courtesy - Maureen McCre*

Assignment of Lease Agreement--

Assignor - Brae Railcar Management Inc.  
Three Embarcadero Center  
San Francisco, CA 94111

Assignee - BRAE Corporation  
Suite 1760  
Three Embarcadero Center  
San Francisco, CA 94111

A description of the equipment covered by these documents follows:

One hundred twenty-three (123) 4700, 4750 and 4550 cubic foot covered hoppers (AAR designation - LO), numbered MILW102300 through MILW102422, inclusive.

A fee of \$70.00 is enclosed. Please return the originals and any extra copies not needed by the Commission for recordation as well as the enclosed copies of this letter--all stamped to indicate the appropriate filing information--to the person presenting this letter.

Short summaries of the documents to appear in the index follow:

LEASE between BRAE RAILCAR MANAGEMENT INC., 3 Embarcadero Center, San Francisco, California 94111 and RICHARD B. OGILVIE, Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Debtor), 516 West Jackson Boulevard, Chicago, Illinois 60606 dated October 21, 1980 and covering 123 covered hoppers numbered MILW102300 through MILW102422, inclusive.

ASSIGNMENT between BRAE RAILCAR MANAGEMENT INC., 3 Embarcadero Center, San Francisco, California and BRAE CORPORATION, Suite 1760, 3 Embarcadero Center, San Francisco, California 94111 dated August 17, 1981, covering 123 covered hoppers numbered MILW102300 through MILW102422, inclusive, and connected to the Lease Agreement with Recordation No. 11965-\_\_\_.

Very truly yours,



Robert J. Corber

mbm  
Enclosures



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

OFFICE OF THE SECRETARY

Robert J. Corber  
Steptoe & Johnson  
1250 Connecticut Avenue  
Washington, D. C. 20036

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 8/19/81 at 10:20AM, and assigned re-  
recording number(s). 11965-0, & 11965-P

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

AUG 19 1981 -10 20 AM

BRAE RAILCAR MANAGEMENT, INC. INTERSTATE COMMERCE COMMISSION

## LEASE AGREEMENT

THIS AGREEMENT, dated October 21, 1980 by and between BRAE RAILCAR MANAGEMENT INC. a California corporation (hereinafter called "Lessor"), and Richard B. Ogilvie, Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, with its principal place of business at 516 West Jackson Boulevard, Chicago, Illinois 60606 (hereinafter called "Lessee"),

## WITNESSETH:

1. Lessor agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions herein set forth, the cars covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other cars delivered to and accepted by Lessee. Each such rider shall set forth the number of cars, the rental rate, term of use, car numbers, and other pertinent information that may be desired by both parties. All cars leased pursuant to such riders, or otherwise delivered to and accepted by Lessee, are subject to the terms of this Agreement.

2. Lessor agrees to deliver the cars to Lessee at a point or points designated by Lessee. Lessor's obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. Lessee agrees to use the cars exclusively in its own service, except as hereinafter provided, and none of the cars shall be shipped beyond the boundaries of the United States or Canada except with the prior written consent of Lessor. Lessee agrees that if any of the cars are used outside of the continental United States, Lessee shall reimburse Lessor for any customs, duties, taxes, investment tax credit reductions or other expenses resulting from such use.

3. Lessee agrees to pay the rental charges specified in Rider No. 1 with respect to each of the cars from the date of delivery thereof and until such car is returned to Lessor. Such rental charges shall be paid to Lessor at its principal office, 3 Embarcadero Center, San Francisco, California 94111 in advance on the first day of each month, prorating, however, any period which is less than a full month.

4. Each of the cars shall be subject to Lessee's inspection upon delivery to Lessee. Failure to report any defect in the car within a reasonable time after delivery of the car or the loading of each such car by Lessee or at its direction shall constitute acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purpose of transporting the commodities then and thereafter loaded therein or thereon.

5. Lessee shall keep all records pertaining to the movement of the cars, both on its lines and on the lines of other railroads, during such periods.

6. Lessee shall promptly notify Lessor upon receipt by Lessee of knowledge of any damage to any of the cars. Lessor agrees to pay for the maintenance and repair of the cars, except as hereinafter provided. Lessee shall not repair, or authorize the repair of, any of the cars without Lessor's prior written consent, except that running repairs (as specified in the Association of American Railroads Rules for Interchange) may be performed without prior written consent. The amount Lessor will pay for such running repairs shall not be in excess of the basis, in effect at the time the repair is made, provided by the Association of American Railroads. If any car becomes unfit for service and shall be held in a car shop for repairs, the monthly rental with respect to such car shall abate from and after the date of arrival at shop (or five days after the Lessee has notified the Lessor that said car is in need of repair if the Lessor has not provided disposition for said car during this five day period) until such car is released from the shop or until another car (of the same type and capacity) shall have been placed in the service of Lessee by Lessor in substitution for such car. It is understood that no rental credits will be issued for cars in a shop for repairs which are Lessee's responsibility. Lessee shall be responsible for all charges and costs incurred in shipping the cars into a shop for repairs or required modifications and back to Lessee.

7. In the event any car is totally damaged or destroyed, the rental with respect to such car shall terminate upon receipt by Lessor of notification thereof, and in the event any car is reported to be bad ordered and Lessor elects to permanently remove such car from Lessee's service rather than have such car taken to a car shop for repairs, the rental with respect to such car shall terminate upon receipt by Lessor of notification that such car was bad ordered. Lessor shall have the right, but shall not be obligated, to substitute for any such car another car of the same type and capacity and the rental in respect to such substituted car shall commence upon delivery of such substituted car to Lessee.

8. In the event that any of the cars, or the fittings, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of the Lessee's employees, agents or customers or from any commodity or other material loaded therein or thereon, Lessee agrees to assume financial responsibility for such damage or destruction, but not for such responsibility which is that of other parties as defined under the Association of American Railroads Rules for Interchange.

9. Lessor shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in or on the cars, and Lessee agrees to assume financial responsibility for, to indemnify Lessor against, and to save it harmless from any such loss or damage.

10. Lessee, at its own expense, shall either replace or reimburse Lessor for the cost of replacing any appliance or removable part, if destroyed, damaged, lost, removed or stolen, unless the railroad transporting the cars has assumed full responsibility for such loss or damage, or unless such loss or damage results from the negligence or omission of Lessor, its agents or employees.

11. The application, maintenance and removal of interior protective lining in any of the cars is to be performed by and at the expense of Lessee unless otherwise specifically provided for in the applicable rider.

12. Lessee agrees to indemnify and hold Lessor harmless from and against any loss, liability, claim, damage or expense (including, unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claim for damages) arising out of or in connection with the use of the cars during the term of this Agreement, excepting, however, any loss, liability, claim, damage or expense which accrues with respect to any of the cars: (i) while such car is in a repair shop undergoing repairs; (ii) which is attributable to the negligence or omission of Lessor, its agents or employees; or (iii) for which another railroad or railroads have assumed full responsibility, including investigating and defending against any claim for damages.

13. The cars shall bear the Lessee's markings described in the applicable rider and no other lettering or marking of any kind shall be placed upon any of the cars by Lessee except with the prior written consent of Lessor.

14. Lessee agrees not to load any of the cars in excess of the load limit stenciled thereon.

15. Lessee shall be liable for any demurrage, track storage or detention charge imposed in connection with any of the cars as well as loss of or damage to any car while on any private siding or track or on any private or industrial railroad or in the custody of any carrier not subject to the Association of American Railroads Rules for Interchange.

16. Lessee shall make no transfer or assignment of its interest under this Agreement in and to the cars without Lessor's prior written consent which consent shall not be unreasonably withheld; provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Lessor under all conditions and terms of this Agreement. No right, title or interest in any of the cars shall vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the cars, except the right to use the cars in accordance with the terms of this Agreement and the rules specified in the Association of American Railroads Rules for Interchange.

17. The occurrence of any of the following shall constitute an Event of Default: (i) the failure by Lessee to make any payment of fixed or additional rent or other amount required to be paid by Lessee under this Agreement within ten days after the date such payment is due; (ii) any breach by Lessee of any agreement or covenant contained in this Agreement, which is not cured within 30 days after notice thereof from Lessor to Lessee.

Upon the occurrence of any Event of Default, Lessor may, at its option: (i) proceed by appropriate court action or actions either at law or in equity to enforce specific performance by Lessee of this Agreement and/or to recover damages for breach hereof; or (ii) terminate this Agreement, whereupon all rights of Lessee to the use of the cars shall absolutely cease and terminate as though this Agreement had never been made, and all fixed rent not theretofore due and payable with respect to the cars shall forthwith become due and payable.

Any proceeds to Lessor from reletting the cars shall be applied first to the expenses incurred in reletting the Cars (including, but not limited to, all costs of repossession and delivery of the Cars to the new lessee) and then in payment of the amount due Lessor under this Agreement.

It is expressly understood that if the Lessee is ordered by its Reorganization Court to terminate the lease in connection with the discontinuance of substantially all service or the liquidation of substantially all of the Lessee's assets, this lease shall terminate, the Lessee shall surrender possession of all the cars to the Lessor, and the Lessor shall have no claim against the Lessee other than for rental charges and other obligations which accrued hereunder up to the date of such surrender of possession.

18. Upon the termination of each rider, Lessee agrees, subject to the provisions of paragraph 8 above, to return the cars to Lessor at the final unloading point or at such other place or places as are mutually agreed to on the railroad line of the Lessee, in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits from commodities transported in or on the cars while in the service of Lessee. If any car is not returned to Lessor free from such accumulations or deposits, Lessee shall reimburse Lessor for any expense incurred in cleaning such car.

19. Lessor agrees to assume responsibility for and to pay all property taxes levied upon the cars and to file all property tax reports relating thereto. Lessee agrees to assume responsibilities for and to pay any applicable state sales, use or similar taxes resulting from the lease or use of the cars (other than sales tax payable on the purchase of said cars by Lessor).

20. Lessor's rights hereunder may be assigned, mortgaged or otherwise transferred, either in whole or in part, and Lessor may assign, mortgage or otherwise transfer title to any car with or without notice to Lessee\*. This Agreement and all of Lessee's rights under this Agreement, and all rights of any person who claims rights under this Agreement through Lessee are subject and subordinate to the terms, covenants and conditions of all chattel mortgages, conditional sales agreements, assignments, equipment trust agreements, finance leases or other security documents covering the cars or any of them heretofore or hereafter created and entered into by Lessor and to all of the rights of any such chattel mortgagee, assignee, trustee, owner or other holder of interest in the cars. In the event of any such assignment, mortgage or transfer, Lessee agrees to execute any and all documents required by the assignee, mortgagee or transferee to confirm such third party's interest in and to the cars and this Agreement, and to confirm the subordination provisions contained in this paragraph. Lessee acknowledges and agrees that by execution of this Agreement it does not obtain, and by payment and performance hereunder it will not obtain, title to any car or any interest therein, except solely as lessee hereunder. Lessee shall keep the cars free from all encumbrances, liens and security interests of all kinds (other than those granted by Lessor), which could adversely affect Lessor's title thereto.

21. This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until termination.

In the event that any car is not redelivered to Lessor on or before the date of expiration of the original lease term set forth in the rider hereto, at Lessor's sole option, the term hereof as to such car may be deemed to be extended on a month to month basis (hereafter "Holdover Period"), and all of the obligations of Lessee under this Agreement with respect to such cars shall remain in full force and effect until all such cars are redelivered to Lessor. Lessor may at any time during the Holdover Period terminate this Agreement and take possession of the cars upon demand after 30 days written notice to Lessee.

22. Both parties agree to execute the documents contemplated by this transaction and such other documents as may reasonably be required in furtherance of this Agreement.

23. This Agreement shall be governed by and construed according to the laws of the State of Illinois.

24. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the other party at the following addresses; if to Lessor: 3 Embarcadero Center, San Francisco, California 94111. If to Lessee: Richard B. Ogilvie, not individually but as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, 874 Union Station, 516 West Jackson Boulevard, Chicago, Illinois 60606 or to such other address as the parties hereto may provide in writing.

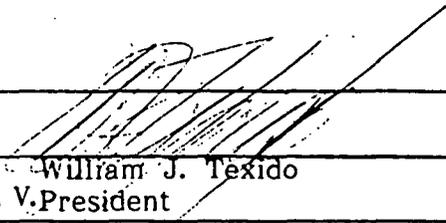
\* but subject to Lessee's rights hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

BRAE RAILCAR MANAGEMENT, INC.

By

  
William J. Texido

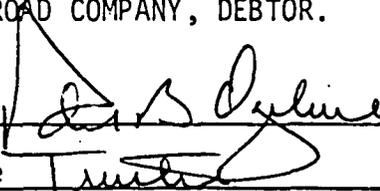
Title V. President

Date December 5, 1980

LESSEE:

RICHARD B. OGILVIE, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR.

By



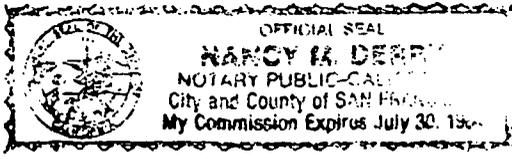
Title Trustee

Date October 21, 1980

State of California  
City and County of San Francisco

On this 5<sup>th</sup> day of November, 1983, before me personally appeared William J. Sipas, to me personally known, who, being by me duly sworn says that he is Vice President of BRAE Railcar Management, Inc., and that the foregoing Lease Agreement and Equipment Schedule(s) were signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of such instruments were the free acts of such corporation.

Nancy M. Alvey  
Notary Public



My commission expires July 30, 1984

(Notarial Seal)

State of . . . Illinois . . . . .  
County of . . . Cook . . . . .

On this 9<sup>th</sup> day of October, 1980, before me personally appeared Richard B. Ogilvie, to me personally known, who, being by me duly sworn says that he is Trustee of the property of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor, and that the foregoing Lease Agreement . . . . was signed by him, and he acknowledged that the execution of such instrument was his free act and deed and that this instrument was signed not individually but solely as Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor.

Joanne H. Easton  
Notary Public

My commission expires July 24, 1982

(Notarial Seal)

RIDER NO. 1

This Rider No. 1 shall be attached to and forms a part of the Lease Agreement (the "Lease") dated October 21, 1980, by and between BRAE RAILCAR MANAGEMENT, INC., ("Lessor") and Richard B. Ogilvie, not individually but solely as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad ("Lessee").

The terms and conditions of this Rider No. 1 shall supercede and supplant any contrary or inconsistent terms or conditions of the Lease, with respect to the cars listed on the Rider No. 1 Equipment Schedule (the "Cars").

1. Term of Agreement

The term of this Agreement as to each Car shall begin on the date such Car reaches the delivery point specified in Item 3 below and terminate 48 months from the end of the calendar month in which this date occurs unless earlier terminated as per Paragraph 17 of the Lease Agreement.

2. Additional Rent

For each mile in excess of  $\frac{38,000 \times \text{days in service}}{365}$  that each Car covered by this Rider travels in a calendar year, there will be an additional charge of \$0.02.

3. Delivery Point

Lessor shall deliver the Cars to Lessee at the following location or locations:

An interchange point to be mutually agreed upon on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Louisville, Kentucky or Chicago, Illinois.

4. Lessee shall use its best efforts to provide that the Cars will not be used predominantly outside of the United States within the meaning of Section 48 (a) (2) (A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder.

Notwithstanding the preceding paragraph, Lessee agrees that if any of the Cars are used outside of the continental United States, Lessee shall reimburse Lessor for any customs, duties, taxes, investment tax credit reductions or other expenses resulting from such use.

5. Prior to any application of, maintenance of, or removal of interior protective lining in any of the Cars, Lessee shall consult with and obtain the written consent of Lessor. It is understood that the interior lining of each Car is to be maintained in the same condition as it was upon delivery to Lessee, ordinary wear and tear excepted.
6. Lessee agrees to use best efforts to insure that Cars shall not be loaded in excess of the load limit stenciled thereon, and that the Cars will not be used to carry commodities which would cause excessive maintenance, contamination or repair to the Cars, including, but not limited to, cement, bauxite, lamp black and non-prilled urea.
7. All other terms or conditions of the Lease shall remain unchanged.

LESSOR:

BRAE RAILCAR MANAGEMENT, INC.

By



William J. Texido

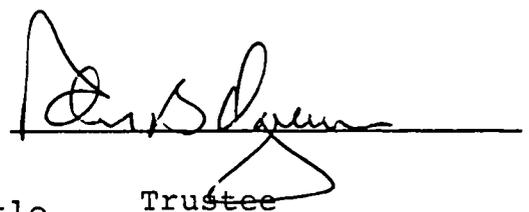
Title V. President

Date December 5, 1980

LESSEE:

RICHARD B. OGILVIE, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR

By



Title

Trustee

Date

December 4, 1980

RIDER NO. 1

EQUIPMENT SCHEDULE

BRAE Railcar Management, Inc., or its assignee ("Lessor") hereby leases the following Cars to Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor ("Lessee") on the terms and conditions contained in the Lease Agreement to which this Schedule is attached.

AAR Mech. Design	Description	Numbers	Length	Dimensions			Number of Cars	Monthly Fixed Rent	Lease Period
				Inside Width	Height	Width			
LO	4700, 4750 and 4550 cubic foot covered hoppers	GNWR MILW102300 - MILW		(Specification Documents attached)			100 125 50	\$495.00 \$500.00 \$505.00	10/80-5/8 6/81-9/84 11/80-10/

RICHARD B. OGILVIE, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE PROPERTY OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR.

By *Richard B. Ogilvie*

Title Trustee

Date December 4, 1980

BRAE RAILCAR MANAGEMENT, INC.

By *[Signature]*

Title President

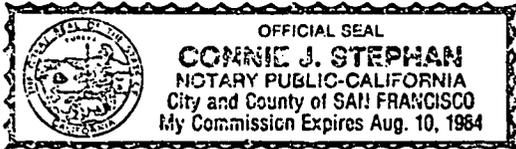
Date December 3, 1980

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

SS:

I, Connie J. Stephan, a Notary Public in and for the State of California, duly commissioned and sworn, do certify that on this 17<sup>th</sup> day of August, 1981, I carefully compared the annexed copy of the LEASE AGREEMENT with the original thereof, and that the same is a full, true and exact copy of said original LEASE AGREEMENT.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of San Francisco, the day and year in this Certificate first above written.



Connie J. Stephan  
Notary Public

(seal)

My Commission Expires: August 10, 1984