

Thrall Car

Objective Excellence

August 23, 1996

20243

AUG 23 1996 7 AM

U.S. DEPARTMENT OF TRANSPORTATION

RECEIVED
SURFACE TRANSPORTATION
BOARD

AUG 26 11 51 AM '96

Counterparts - Jdk

Secretary
Surface Transportation Board
12th and Constitution
Room 2311
Washington, D.C. 20423

Attn: Documents for Recordation

RE: Interim Use Agreement

Dear Secretary:

I am an attorney representing a party to the enclosed document. I have enclosed one original and two counterparts of the document described below to be recorded pursuant to Section 11301 of Title 49 of the United States Code and the regulations adopted thereto.

The document is:

Interim Use Agreement dated August 7, 1996 between Thrall Car Manufacturing Company and Otter Tail Power Company.

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

Vendor/Lessor: Thrall Car Manufacturing Company
2521 State Street
Chicago Heights, IL 60411

Lessee: Otter Tail Power Company
215 S. Cascade Street
Fergus Falls, MN 56538

Surface Transportation Board
August 23, 1996
Page Two

A description of the equipment covered by the foregoing document follows.

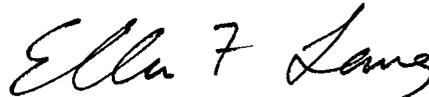
246 121-ton, 4530 c/f MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1501 through 1746 inclusive and 4 121-ton, 4530 c/f double rotary MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1747 through 1750 inclusive

A fees of \$21 00 is enclosed Please return any extra copies not needed by the Commission for recordation and the enclosed copy of this letter, each stamped with your recordation number to Ellen F Lang, 845 Larch Avenue, Elmhurst, IL 60126

A short summary of the document to appear in the index follows

Interim Use Agreement between Thrall Car Manufacturing Company, 2521 State Street, Chicago Heights, IL 60411, Vendor/Lessor, and Otter Tail Power Company, 215 South Cascade Street, Fergus Falls, Minnesota 56538, Lessee, dated August 7, 1996 and covering 246 121-ton, 4530 c/f MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1501 through 1746 inclusive and 4 121-ton, 4530 c/f double rotary MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1747 through 1750 inclusive

Sincerely,
THRALL CAR MANUFACTURING COMPANY



By Ellen F Lang
Attorney

EFL nlf
Enclosures

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20427-0001

Ellen F. Lang-Attorney
Thrall Car Manufacturing Company
2521 State Street
Chicago Heights Illinois 60411

Dear

Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/26/96 at 11:55AM, and assigned recordation number(s). 20243.

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

\$1.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



INTERIM USE AGREEMENT

AUG 6 1996 11 55 AM

Interim Use Agreement dated August 7, 1996 between Thrall Car Manufacturing Company, an Illinois corporation with its principal offices located at 2521 State Street, Chicago Heights, IL 60411 ("Thrall"), and Otter Tail Power Company, a Minnesota corporation with its principal offices located at 215 South Cascade Street, Fergus Falls, Minnesota 56538 ("Customer").

WHEREAS, Thrall and Customer have entered into Purchase Order No. 30331 dated February 1, 1996 (the "Purchase Agreement") pursuant to which Thrall will manufacture and sell to Customer two hundred forty-six (246) 121-ton, 4530 c/f MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1501 through 1746 inclusive and four (4) 121-ton, 4530 c/f double rotary MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1747 through 1750 inclusive (the "Cars"); and

WHEREAS, Customer intends to finance its purchase of the Cars but the financing arrangements will not be completed by the scheduled delivery date for the Cars; and

WHEREAS, Customer desires to utilize the Cars before the financing arrangements are completed, and Thrall is willing to grant temporary possession of the Cars to Customer on the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. Customer agrees to accept possession of the Cars, solely as bailee, when they are delivered by Thrall FOT Cartersville, Georgia pursuant to the Purchase Agreement. Upon delivery of each Car Customer or its representative shall execute a Certificate of Conformance in the form of Exhibit A attached hereto.
2. Customer's rights hereunder shall commence with respect to each Car on the date of delivery by Thrall and end when the purchase price therefor is paid by Customer or its financing source (the "Termination Date") without further action of the parties.
3. Until the Termination Date for each Car, title and ownership shall remain with Thrall and Customer's rights therein shall be solely that of possession, use and custody as bailee. Transfer of title shall occur only pursuant to a Bill of Sale

duly executed and delivered by Thrall. The lien created by this Agreement shall automatically terminate with respect to each Car upon delivery of a Bill of Sale.

4. Customer shall pay to Thrall a security deposit equal to the gross selling price of each Car. Deposits shall be payable two (2) working days following the receipt of each trainset (125 cars) in the State of Montana, by wire transfer of federal funds to the following account:

Thrall Car Manufacturing Company
Account No. 78-58167
Bank of America Illinois
ABA No. 0710-0003-9
Chicago, Illinois 60693

If Customer's financing source takes title to a Car then the applicable deposit shall be refunded to Customer, and if Customer takes title to a Car then the applicable deposit shall be credited to Customer.

5. Customer shall have risk of loss of all Cars delivered pursuant to this Agreement. Customer shall, at its expense, maintain in force public liability and property damage insurance with respect to the Cars in such amounts and with such terms as are comparable with those generally applicable to other railcars owned or leased by Customer.

6. Until the Termination Date for each Car, Customer shall keep and maintain the Car in good order and running condition, normal wear and tear excepted, and Customer shall at its option promptly repair, replace or pay to Thrall the purchase price if a Car is damaged or destroyed. Customer shall not modify any Car without the prior written approval of Thrall, and Customer shall immediately replace or restore any markings which are removed, destroyed or defaced. Prior to delivery of each Car hereunder it shall be numbered with a road number and, in anticipation of the closing of Customer's financing, marked with the following legend in letters not less than one inch high:

**OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH
THE SURFACE TRANSPORTATION BOARD**

Customer shall reimburse Thrall for all costs incurred by it as a result of placing such legend on the Cars if Customer's financing is not completed.

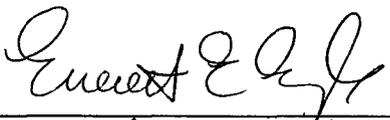
7. Customer shall not permit any liens or encumbrances of any kind, other than the usual interchange of traffic rules and the lien of this Agreement, to attach to any Car prior to the Termination Date for such Car.
8. Customer shall operate the Cars in accordance with all applicable laws, rules and regulations so long as Customer has possession pursuant to this Agreement.
9. Customer acknowledges and agrees that Thrall's execution of this Agreement and its delivery of Cars hereunder does not relieve Customer of its obligation to make payment in full for the Cars in accordance with the Purchase Agreement. If the Termination Date for any Car has not occurred before October 31, 1996, Customer's right of possession under this Agreement shall terminate and Customer shall on that date pay to Thrall the purchase price for such Car. Thrall may enter upon the premises of Customer and take immediate possession of any Cars for which payment in full has not been received on such date, in addition to exercising all other remedies available to it under law or in equity.
10. Prior to delivery of any of the Cars Thrall shall file a copy of this Agreement with the Surface Transportation Board and take such other actions to protect Thrall's interest as Thrall shall reasonably request. Simultaneously with its delivery of a Bill of Sale for each Car Thrall shall deliver to Customer or its financing source for filing a Termination of Agreement with respect to such Car in the form of Exhibit B attached hereto.
11. Customer shall indemnify and hold Thrall harmless from and against any and all claims, expenses, costs or liabilities, including but not limited to reasonable attorneys' fees, arising out of or in connection with Customer's possession, use or custody of the Cars pursuant to this Agreement or Customer's violation of any provisions of this Agreement or the Purchase Agreement. Customer shall pay all taxes (excluding any taxes measured by the net income of Thrall), fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or upon Thrall as owner of the Cars while Customer has possession, use or custody pursuant to this Agreement.
12. Customer acknowledges that it takes possession of the Cars subject to the provisions of the Purchase Agreement, including those relating to warranties, remedies and limitation of liability. The warranty period and any other time period set forth in the Purchase Agreement shall commence on the date of execution of a Certificate of Conformance.

13. Customer and Thrall each represent and warrant to the other that (i) the execution and delivery of this Agreement have been authorized by all necessary corporate action and do not and will not contravene or constitute a default under the provisions of any agreement or instrument binding upon it or any of its property, (ii) this Agreement constitutes a valid and binding obligation of it enforceable in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general principles of equity and (iii) all governmental authorizations, approvals or exemptions required of it for the execution and delivery of this Agreement or for the validity and enforceability of this Agreement against it have been obtained. Customer represents and warrants to Thrall that the rights of Thrall contained in this Agreement and the title of Thrall to the Cars are, and will be through the Termination Date, senior to the lien of any mortgage, security agreement or other instrument binding upon Customer or any of its property.

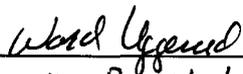
14. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law principles thereof.

15. This Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

THRALL CAR MANUFACTURING
COMPANY

By 
Title V. P. MANUFACTURING SERVICES

OTTER TAIL POWER COMPANY

By 
Title Vice President, Operations

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On the 2nd day of August, 1996 before me personally appeared Fred H. E. Engle, to me known who, being by me duly sworn, stated that he is V.P. Marketing Services of Thrall Car Manufacturing Company, that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

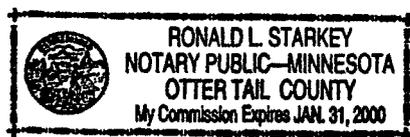


Linda E. Maiorano
Notary Public

My commission expires: 2/16/99

STATE OF Minnesota)
) ss:
COUNTY OF Otter Tail)

On the 20th day of August, 1996 before me personally appeared Ward Uggerved, to me known who, being by me duly sworn, stated that he is Vice President of Otter Tail Power Company, that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.



Ronald L. Starkey
Notary Public

My commission expires: 1-31-2000

EXHIBIT A

CERTIFICATE OF CONFORMANCE

The undersigned, a duly authorized inspector for _____
(“Customer”), hereby certifies that the units of railroad equipment described below
have been inspected by the undersigned on behalf of Customer and have been
found to be completed in conformance with the requirements and provisions of
Customer.

Description of Car: _____

Manufacturer: Thrall Car Manufacturing Company, [location]

Quantity: _____

Car Numbers: _____

Date of Inspection: _____, 199_

Print Name: _____
Authorized Representative

EXHIBIT B

TERMINATION OF AGREEMENT

Termination of Agreement dated _____, 1996 between Thrall Car Manufacturing Company, an Illinois corporation with its principal offices located at 2521 State Street Chicago Heights, IL 60411 ("Thrall"), and Otter Tail Power Company, a Minnesota corporation with its principal offices located at 215 South Cascade Street, Fergus Falls, Minnesota 56538 ("Customer").

WHEREAS, Thrall and Customer have entered into Purchase Order No. 30331 dated February 1, 1996 (the "Purchase Agreement") pursuant to which Thrall will manufacture and sell to Customer two hundred forty-six (246) 121-ton, 4530 c/f MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1501 through ~~1750~~¹⁷⁸⁶ inclusive and four (4) 121-ton, 4530 c/f double rotary MAXGON aluminum coal gondola railcars bearing car numbers BSPX 1747 through 1750 inclusive (the "Cars"); and

WHEREAS, the Agreement was duly filed for recordation with the Surface Transportation Board of the Department of Transportation (the "Board") on August __, 1996 at __: __.m. and given Recordation Number _____; and

WHEREAS, Thrall and Customer desire to terminate the Agreement with respect to certain of the Cars and to record such termination with the Board;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. Thrall and Customer hereby terminate the Agreement, effective _____, 199_, with respect to the Cars listed on Schedule 1 attached hereto; provided, however, that nothing contained in this Termination of Agreement shall affect the rights and liabilities of the parties under the Agreement with respect to acts, events or omissions occurring on or prior to the date hereof.
2. Customer shall record this Termination of Agreement with the Board in order to release any lien created by or arising out of the Agreement with respect to the Cars listed on Schedule 1.

3. Nothing contained herein shall be construed to terminate the Agreement with respect to any Cars other than the Cars listed on Schedule 1.

4. This Termination of Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

THRALL CAR MANUFACTURING
COMPANY

By _____
Title _____

OTTER TAIL POWER COMPANY

By _____
Title _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On the __ day of August, 1996 before me personally appeared _____, to me known who, being by me duly sworn, stated that he is _____ of Thrall Car Manufacturing Company, that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

Notary Public

My commission expires: _____

STATE OF)
) ss:
COUNTY OF)

On the __ day of August, 1996 before me personally appeared _____, to me known who, being by me duly sworn, stated that he is _____ of Otter Tail Power Company, that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

Notary Public

My commission expires: _____

SCHEDULE 1

Description of Car: _____

Quantity: _____

Car Numbers: _____