**HELM**
**FINANCIAL CORPORATION**

One Embarcadero Center • San Francisco, CA 94111
415/398-4510

VIA AIR COURIER

0-127A004

April 26, 1990

16861
RECORDATION NO _____ FILED 1425

MAY 4 1990 -10 15 AM
INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a lease of railroad equipment dated as of December 1, 1989 between the following parties:

Lessor: Midwest Energy Services Company
P.O. Box 1348
Sioux City, Iowa 51102

Lessee: Louisville Gas and Electric Company
P.O. Box 32010
Louisville, Kentucky 40232

The equipment involved in this transaction is as follows:

Equipment: 26 open top hopper cars
See Annex A for Car Numbers

Please file this agreement as a primary document. The filing fee of $15 is enclosed. Thank you.

Sincerely,

Karen Staudenmaier

Karen Staudenmaier
Fleet Operations Administrator

KS:jgs
Enclosures

# Interstate Commerce Commission
Washington, D.C. 20423

5/8/90

OFFICE OF THE SECRETARY

Karen Staudenmaier
Helm Financial Corporation
One Embarcadero Center
San Francisco California 94111

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 5/4/90 at 10:15am and assigned recordation number(s). 16861

Sincerely yours,

Noreta R. McGee

Noreta R. McGee
Secretary

Enclosure(s)

16861
RECORDATION NO _____ FILED 1425
MAY 4 1990 -10 15 AM
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

BETWEEN

MIDWEST ENERGY SERVICES COMPANY

AND

LOUISVILLE GAS AND ELECTRIC COMPANY

# LEASE OF RAILROAD EQUIPMENT

**LEASE OF RAILROAD EQUIPMENT**, dated as of December 1, 1989, between **MIDWEST ENERGY SERVICES COMPANY,** a California corporation, (hereinafter called the **"Lessor"**) and the **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky corporation (hereinafter called the **"Lessee"**).

**WHEREAS**, the Lessor hereby represents that it has the right to lease the open top hoppers more fully described in Annex A hereto (hereinafter called the **"Units"**);

**WHEREAS**, the Lessee desires to lease from the Lessor all the Units at the rentals and for the terms and upon the conditions hereinafter provided;

**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 Lessee and Lessor, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

1. Delivery and Acceptance of Units. Lessor will deliver the Units to Lessee (at no expense to Lessee) to Memphis, Tennessee on the Missouri Pacific Railroad. Lessee will be responsible for movement (including all transportation charges) from aforementioned point to the Lessee's interchange with the Paducah & Louisville Railway (hereinafter called **"Delivery Point"**).

The Lessor agrees to furnish the Units in compliance with the FRA and AAR rules of interchange in effect at the time of delivery. The Lessee, at its expense, shall have the right to inspect and reject the Units subject to this Lease at the Delivery Point. Acceptance of the Units by the Lessee shall be evidenced by a **"Certificate of Acceptance"** in the form set forth in Annex B attached hereto, the execution of which shall constitute conclusive evidence of delivery and acceptance of the Units herein identified.

In the event that any Unit(s) are rejected by Lessee at the Delivery Point due to Unit(s) not conforming to AAR and FRA rules of interchange in effect at the time of delivery and/or Unit(s) not being in proper operating condition, Lessee will be responsible for all transportation charges back to Memphis, Tennessee on the Missouri Pacific Railroad.

2. Car Hire Earnings. Upon acceptance of the Units as set forth in Paragraph 1 hereof, with reporting marks on each Unit as set forth in Paragraph 5 and Annex A hereto, Lessee shall enjoy all

car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. If reporting marks are other than Lessors, Lessor shall not be responsible for collection of any car hire earnings and such responsibility shall lie solely with Lessee.

3. Rentals. Lessee shall pay to Lessor as rental for the Units an amount of _____ per month per Unit (**"Lease Charges"**). Rent shall become effective, with regard to each of the Units, upon the date of the delivery and acceptance of each as provided in Paragraph 1 hereof, and shall continue in effect, with regard to each of the Units, until returned to Lessor at the end of the term of this Lease, as hereafter provided in Paragraph 11. Payment of Lease Charges shall be made to Lessor at the address specified in Paragraph 17 on the first day of each month in advance, with the first months' payment due on the first day of the month following the delivery and acceptance of each Unit as defined in Paragraph 1. Rent for any Unit for any partial month shall be pro-rated on a daily basis. Any reasonable costs incurred by Lessor in collecting Lease Charges wrongfully withheld by Lessee, including reasonable attorney's fees, will be paid by Lessee.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to _____ per annum.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from any cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity (other than Lessor), the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any

Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever.

4. Term of Lease. The term of this Lease with respect to each Unit shall commence on the date of delivery and acceptance of each Unit as provided in Paragraph 1 hereof and shall continue in full force and effect for a period of thirty-six (36) months thereafter at which time the Units will be returned to Lessor as hereafter provided Paragraph 11.

Upon not less than 90 days advanced written notice before the expiration of this Lease, Lessee may extend this Lease for a term and a rate agreeable to both the Lessor and Lessee.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Paragraphs 6, 9 and 11 hereof) shall survive the expiration or sooner termination of this Lease.

5. Identification Marks. The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto at Lessor's expense as from time to time may be required by law in order to protect the title of the Lessor and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership.

6. Taxes. All payments to be made by the Lessee 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 or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Unit or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon any such Unit. The Lessee shall not be responsible for any fines, penalties or incremental charges which arise as a result of the failure of the Lessor to timely notify the Lessee of the liability for such taxes, assessments or charges for which Lessor was notified of in writing.

7. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. As between Lessee and Lessor and any Assignee of Lessor, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned (provided that Lessor shall be responsible for any and all damage and liabilities caused by Lessor or its Assignee(s)), such risk to be borne by Lessee with respect to each Unit from the date of its delivery and acceptance as provided in Paragraph 1 hereof and continuing until such Unit has been returned to Lessor in accordance with the provisions of Paragraph 11 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay rent. Nothing herein shall restrict Lessee's rights to pursue action to collect from other parties, for any loss or damage caused by the parties.

(b) Casualty Occurrence. In the event that any Unit shall become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable from any cause whatsoever (not attributable to Lessor), or any Unit shall be

condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of ninety (90) continuous days (such occurrences being hereinafter called **"Casualty Occurrences"**) during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment. A settlement value payment pursuant to Rule 107 of the Field Manual of the AAR Interchange Rules and Car Hire Agreement Code will also be made as of that date. Upon the making of such payment by the Lessee in respect of a Unit, the rental for such Unit shall cease to accrue as of the date of such payment, 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 Lessee shall be entitled to ownership and possession of such Unit or the remains thereof. Lessor shall make best efforts, but shall not be obligated to replace any and all Units subject to a Casualty Occurrence and such replacement Units will be subject to this Lease as if originally a part thereof.

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

8. Report and Inspection. On or before January 1 in each year, commencing with the calendar year 1991, the Lessee will furnish to the Lessor an accurate statement setting forth as of the preceding twelve (12) months (a) the amount, description and numbers of all Units then leased hereunder, (b) the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and; (c) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request. The Lessor or its agent, at its sole cost and expense, shall have the right to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

9. Compliance with Laws and Rules; Insurance and Indemnification. Lessor warrants that Lessor has the right to lease of the Units. Lessor hereby assigns to Lessee for the term of this Lease the benefit of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Lessor hereby agrees to furnish the Units in compliance with FRA and AAR rules of interchange in effect at the time of acceptance by Lessee. Otherwise, except for the aforesaid, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE

AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.

The Lessee agrees to make best efforts, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or repair of any such Unit, the Lessee will make best efforts to conform therewith, and will maintain Units in the same condition as when if first became subject to the Lease (ordinary wear and tear excepted) under such laws and rules; provided, however, that the Lessee may, in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the property rights of the Lessor hereunder.

Lessee shall at all times during the term of this Lease at its own cost and expense, cause each of the Units to be maintained, serviced and repaired so as to keep it in as good operating condition, working order, and repair (ordinary wear and tear excepted) as it was when it first became subject to the Lease as provided in Paragraph 1.

Subject to Paragraph 7, the Lessee agrees it will return the Units to the Lessor at the expiration of the term or sooner termination of this Lease in same good order and repair as when Units were accepted, including door gate operating system, ordinary wear and tear excepted, suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards.

Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Units without the other party's written consent. Lessor hereby gives Lessee permission to install, at Lessee's expense, quick disconnect boxes and fittings on each Unit and Lessee agrees to remove same, at Lessee's expense, at the end of the term of this Lease.

Any and all additions to any Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

Lessee shall, at all times while this Agreement is in effect at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to each Unit in minimum amount equal to the settlement value (as defined in Paragraph 7b); and (ii) public liability insurance in a minimum amount of _____ per occurrence with respect to third party personal injury and property damage, in each case for such risks and with such insurance companies as are satisfactory to the Lessor. Physical loss and damage insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional insureds and shall also list Lessor and any assignee of Lessor as loss-payees as their interests may appear on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance (**"Other Insurance"**) effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.

Each item obtained by Lessee pursuant to this Paragraph shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subparagraph. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request.

The Lessee agrees to indemnify save harmless and defend the Lessor against any charges or claims made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's sole negligence) by reason of entering into or the performance of this Lease or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, Lessee's purchase from Lessor, delivery, rejection, storage or return of, any Unit until such Unit is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on the

account of any accident (unless resulting from the Lessor's sole negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing any and all data necessary for Lessor to file mandatory reports with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee. The Lessor shall notify the Lessee of any data needed to complete such reports.

10. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, Lessor's title thereto, or any interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, ownership or leasing of the Units or this Lease or any Lease supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor (and any assignee of Lessor), any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor (and any assignee of Lessor) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

11. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, restencil and deliver possession of such Unit to the Lessor at Lessee's interchange point with the Paducah and Louisville Railway (PAL) or the Louisville, Kentucky interchanges the PAL has with Consolidated Rail, CSX Transportation, SooLine and the Southern railroads. Lessee's cost and risk shall end when Units are delivered to any of the

aforementioned interchanges. The condition of the Units upon such return shall be as required, pursuant to Paragraph 9 hereof. The Lessee shall permit the Lessor to store such Units on its own tracks free of charge for a period not exceeding fifteen (15) days after such expiration. The movement and storage of such Units shall be at the risk of Lessor if the Lessor has given movement and storage instructions, however, nothing herein relieves the Lessee from returning the Units in a condition pursuant to Paragraph 9. Under no circumstances shall Lessee store the Units longer than fifteen (15) days. Should Lessor not move the Units within fifteen (15) days, Lessee shall have the right, at Lessor's expense and risk, to have such Units removed from its property and Lessor shall be liable for any costs, risks, damage or loss occasioned by such removal. During any such storage period Lessee will permit Lessor to inspect Units at such reasonable times as Lessee may agree to.

The assembling, delivery, storage and transporting of the Units as provided in this Paragraph 11 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 Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. 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 have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and Lessee 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 and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances whatsoever.

12. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called **"Events of Default"**) shall occur;

(a) default shall be made in the payment of any part of the rental provided in Paragraph 3 hereof and such default shall continue for ten (10) days after written notice is sent to Lessee;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any part thereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

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

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by Lessor or its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee 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 Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which

represents the then present value of all rentals 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, such present value to be computed in each case on a basis of a ___ per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, provided, however, that Lessor shall in good faith and in a commercially reasonable manner attempt to release the Units and if such Units are released, Lessor shall within 90 days of the end of the present term of this Lease remit to Lessee an amount equal to the rentals Lessor received upon releasing but not to exceed the total rentals which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease, less any commercially reasonable charges or expenses incurred in the transportation, care, custody or releasing of the Units after Lessee's default and (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 or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor).

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 Lessee hereby waives any mandatory requirements of law, (except Lessor's obligations under Paragraph 9 herein) 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 Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf except the Lessee shall be credited with any present value payments made pursuant to subparagraph 12 (e)(ii)(a).

The failure of the Lessor to exercise the rights granted it hereunder upon any 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.

13. Return of Units Upon Default. If this Lease shall terminate pursuant to Paragraph 12 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The condition of the Units upon such return shall be as required pursuant to Paragraph 9 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Units on such tracks for a period not exceeding three (3) months at the risk of the Lessee, and

(c) restencil and transport the same at any time within such three (3) month period, to any place on the lines of railroad operated by the Lessee or to the Lessee's interchange point with the Paducah and Louisville Railway (PAL) or the Louisville, Kentucky interchanges the PAL has with Consolidated Rail, CSX Transportation, SooLine and the Southern railroads, all as reasonably directed by Lessor. Lessee's cost and risk shall end when Units are delivered to the aforementioned interchanges. The assembling, delivery, storage and transporting of the Units as provided in this Paragraph 13 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 Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is 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 Lessee from whomsoever shall be at the time in possession of such Unit; provided, however, that Lessor provide reasonable advance notice of its intent to take possession and that Lessor affect the repossession without damage to the property or injury to any persons or, disrupting the business operations of Lessee or other entity in possession of the Units. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

14. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee 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 Paragraphs 6, 9 and 12) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor and Lessee may review appropriate documentation associated with the transaction.

So long as the Lessee shall not be in default under this Lease, the Lessee may with prior written consent of the Lessor which shall not be unreasonably withheld sublease any one or more of the Units or assign this Lease to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment with the prices and rates deleted; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.

The Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the term of this Lease use or fail to use any Unit, in such a way as to disqualify it as **"Section 38 property"** within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use each Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Unit and all deductions allowable to Lessor with respect to each Unit will be treated as derived from, or allowable to, sources within the United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Paragraph 14) or encumber its leasehold interest under this Lease in the Units and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance

resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit or the interest of the Lessor, or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor which shall not be unreasonably withheld, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted herein above or by the provision of the next succeeding paragraph hereof.

Nothing in this Paragraph 14 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Paragraph 16 hereof).

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the operation and maintenance thereof outside the United States of America and that operation of any Unit outside the United States of America will be limited to incidental and temporary use in Canada.

15. Opinions of Counsel. Upon reasonable request the Lessee will deliver to the Lessor a opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that :

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this Lease will not contravene or breach or create a material default under any

legal, organizational or contractual obligation binding upon the Lessee;

16. Recording. Lessor will cause Lease to be filed prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Paragraph 14 hereof, the Lessor will cause this Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection to the satisfaction of the Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails certified, first-class postage prepaid, addressed as follows:

If to the Lessor: Midwest Energy Services Company
P.O. Box 1348
Sioux City, Iowa 51102
ATTN: L. C. Erickson

If to the Lessee: Louisville Gas and Electric Company
P.O. Box 32010
Louisville, Kentucky 40232
Attn: Kevin B. Cardwell
Manager - Coal Supply

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

18. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of 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.

19. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee 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 signatories for the Lessor and the Lessee.

20. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

21. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

22. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of Kentucky; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

**IN WITNESS WHEREOF**, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

**MIDWEST ENERGY SERVICES COMPANY**

By _____

Title V.P.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

By _____ VPC MJ.

Title GENERAL MANAGER POWER PRODUCTION

STATE OF ~~CALIFORNIA~~ Iowa )
) §
COUNTY OF ~~SAN FRANCISCO~~ Woodbury )

On this 26th day of January, 19~~89~~ 90, before me personally appeared ROBERT A. PETERSON, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of **MIDWEST ENERGY SERVICES COMPANY,** that said instrument was signed and sealed on behalf of said corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carolyn M. Sylmar
Notary Public

My Commission Expires: 11/11/91

[Notarial Seal]

STATE OF Kentucky )
) §
COUNTY OF Jefferson )

On this 20th day of December, 1989, before me personally appears Chris Hermann, to me personally known, who, being by me duly sworn says that he is a General Manager of Louisville Gas & Electric Co., that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public State At Large

My Commission Expires: July 6, 1991

[Notarial Seal]

LEASES/RREQUIPM/MESCLGEC.LRE

**ANNEX A**

**to**

**Lease of Railroad Equipment**

**Dated as of December 1, 1989**

KBC 26 ~~28~~ ~~46~~

| Equipment Description | Equipment Numbers | |
|---|---|---|
| 3,800 cubic foot, 100-ton, five pocket rapid discharge open top hopper cars | ~~(To be provided)~~ | |
| | BUKX 78005 | BUKX 80236 |
| | 78016 | 80244 |
| | 78025 | 80257 |
| | 78057 | 80273 |
| | 78065 | 80287 |
| | 78077 | 80297 |
| | 78085 | 80308 |
| | 78089 | 80318 |
| | 78143 | 80322 |
| | 78169 | 80335 |
| | 78178 | 80350 |
| | 80333 | 81461 |
| | 80168 | 81481 |

ANNEX B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Louisville Gas and Electric Company (the "Lessee"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described Units of equipment, which Units are in good order, condition and repair (except for latent defects) and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as of December 1, 1989 between Midwest Energy Services Company and Lessee.

| Equipment Description | No. of Cars | Car Numbers | Date Accepted |
|---|---|---|---|
| 3,800 cubic foot, 100-ton, five pocket rapid discharge open top hopper cars | 26 | (see Annex A) | January 31, 1990 |

Kevin B. Cardwell
Authorized Representative

LEASES/RREQUIPM/MESCLGEC.LRE