

RECORDATION NO. 23255-B FILED

JAN 31 '01 10-35 AM
75
SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD
ATTORNEYS AT LAW
1600 K STREET, NW
SUITE 200
WASHINGTON, D.C.
20006-2973
—
(202) 393-2266
FAX (202) 393-2156

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

January 30, 2001

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Rail Car Use Agreement, dated as of October 19, 1999, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Equipment Lease and Collateral Assignment which were previously filed with the Board under Recordation Numbers 23255 and 23255-A.

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

Lessor: Kasgro Leasing, LLC
(f/k/a OPM Services, Inc.)
320 East Cherry Street
New Castle, PA 16102

Lessee: Alstom Power
(F/k/a ABB Combustion
Engineering)
2000 Day Hill Road
Windsor, CT 06095

A description of the railroad equipment covered by the enclosed schedule is:

three (3) railcars LNAL 70934, 70935 and KRL 701202

Mr. Vernon A. Williams
January 30, 2001
Page Two

A short summary of the schedule to appear in the index follows:

Rail Car Use Agreement between Kasgro Leasing, LLC, Lessor, and
Alstom Power, Lessee covering three (3) railcars LNAL 70934, 70935
and KRL 701202.

Also enclosed is a check in the amount of \$27.00 payable to the order of the
Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a stylized flourish at the end.

Robert W. Alvord

RWA/anm
Enclosures

RAIL CAR USE AGREEMENT

JAN 3 1 '01 10-35 AM

SURFACE TRANSPORTATION BOARD

THIS RAIL CAR USE AGREEMENT ("Agreement") is made as of October 19, 1999, between OPM SERVICES, INC. ("OPM"), and ABB COMBUSTION ENGINEERING (ABB).

RECITALS:

WHEREAS, OPM is the manager of a fleet of heavy duty railroad marked LNAL ("Rail Cars") for shipping goods and material;

WHEREAS, ABB located at Kings Mountain, NC, or other assembly plants of ABB's choice, has a need for a certain number of Rail Cars to be available primarily for their exclusive use for prompt delivery of goods and equipment to their customers in a timely fashion; and

WHEREAS, the parties hereto intend to provide for the use of Rail Cars in accordance with the terms and provisions of this Agreement.

CAR TYPE AND DESCRIPTION-

QUANTITY OF 4 8-AXLE FM 70' FLAT CAR SIMILAR TO LNAL 70900 SERIES

QUANTITY OF 3 4-AXLE FM 70 FLAT CAR WITH 226,000# CAPACITY

Note These 4-axle cars will not be ready for service until March 2000. The existing 8-axle FM 70' cars (70900 series) shall remain available to ABB until such time when they are replaced by the 4-axle cars.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties agree as follows:

1. Term.

(a) Unless earlier terminated as provided herein, the term of this Agreement ("Term") shall be three years, commencing on the date hereof. Thereafter, the Agreement may be extended by ABB for (and the Term shall include) two successive one-year terms by giving six months prior written notice of extension to OPM.

(b) In the event the option to extend under Section 1(a) is not exercised by ABB for a minimum one-year extension, then OPM shall serve as ABB's preferred source of size and type of heavy duty flat cars as described above for the two-year period following termination by giving OPM reasonable notice and the first opportunity to supply such cars when needed by ABB.

(c) Either party may terminate this Agreement upon the material breach of this Agreement by the other party, provided the breaching party shall have a 30-day period to cure such breach on notice of the same by the non-breaching party.

2. Use of Rail Cars.

(a) ABB shall cause the Rail Cars to be used (each use, a "Use") a yearly minimum of 7 Uses per car for the 12-month period. Inception date of this agreement to be April 15, 1999 with loads which have loaded on the 7 cars as listed on Exhibit A prior to this inception date to be credited toward the Users aggregate yearly total.

(b) In the event ABB's aggregate Uses for any 12-month period of the Term is less than the Yearly Minimum, then ABB shall pay OPM an amount which equals the Yearly Minimum less ABB's aggregate Uses for such 12-month period, multiplied by the sum of: the tariff use charge plus the average per load origin and destination detention of all Rail Cars for such 12-month period. Uses by ABB affiliates shall be credited toward the Yearly Minimum.

(c) By ABB's written notice to OPM, Rail Cars may be released to OPM, and OPM shall use reasonable efforts to re-market released Rail Cars. ABB shall receive credit towards the applicable Yearly Minimum for any loadings of such released Rail Cars.

(d) Upon adequate prior notice to ABB and with the permission of ABB, OPM may substitute identical type Rail Cars for use by ABB.

(e) ABB shall have the right to exchange the 8-axle cars for 4-axle cars when they are manufactured by notifying OPM Rail Services of this desire by Feb. 28, 2000. The 8-axle cars will remain in ABB usage until such a time that the 4-axle cars are available. The charges will be adjusted to the exact type car being used at that time.

3. **Payment for Use.** As consideration for providing Rail Cars for ABB's use as provided herein, OPM shall be entitled to receive payment in amount(s) and payable at such time(s) as determined in accordance with Item 683 of Railway Tariff RPS 6740F, as attached hereto and incorporated by reference herein, as may be amended from time to time.

4. **Miscellaneous.**

(a) **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of delivery personally, (ii) on deposit in the United States mail, postage prepaid by registered or certified mail, return receipt requested, or (iii) on delivery to an overnight courier, costs prepaid, or next day delivery, to the appropriate party at the following address (or at such other address as shall hereafter be designated by one party to the other party by notice given in accordance with this Section):

To OPM: OPM Rail Services, Inc.
1000 W. Ormsby Avenue, Suite 215
Louisville, KY 40210
Attn: Harry Ketterman

To ABB: ABB
2000 Day Hill Road
Windsor, CT 06095
Attn: Frank Rodriguez

(b) **Severability; Waiver.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid or

unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. Failure of either party to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

(c) Benefit; Assignment. The covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the parties and their permitted successors and assigns. Either party may assign its interest hereunder upon the prior written consent of the other party.

(d) Further Assurances. Each party shall execute such instruments and take such other action as shall be reasonably requested by the other in order to effect the transactions contemplated herein.

(e) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the substantive laws of the Commonwealth of Kentucky.

(f) Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and completely supersedes all prior agreements between the parties, whether oral or written. All other agreements with respect to the subject matter hereof between the parties, whether oral or written, are merged herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.

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

OPM SERVICES, INC.

By: [Signature]
Title: President OPM Rail Service

Date: Nov. 15, 1999

ABB

By: [Signature]
Title: Director Project Operations

Date: November 6, 1999

John R. Stratton

Director
Project Operations

ABB Standard Power Boilers
Combustion Engineering, Inc.
P.O. Box 500
2000 Day Hill Road
Windsor, CT 06095-0500
Tel. (860) 285-9166
Fax (860) 285-9004
Internet john.r.stratton@us.abb.com



**RAILROAD CAR USE AGREEMENT
EXHIBIT "A"**

The following cars are deployed under the original rail car use agreement signed on October 19, 1999, between KASGRO LEASING, LLC. - New Castle, PA (formerly contracted under OPM Services, Inc.) and Alstom Power, Inc., formerly know as ABB - Windsor, CT.

LNAL 70935
LNAL 70934
KRL 701202

ACKNOWLEDGMENT, CONSENT AND RELEASE

Pursuant to the terms of that certain Railroad Car Use Agreement dated October 19, 1999 (the "Agreement") between ABB Combustion Engineering ("ABB") and OPM Services, Inc. ("OPM Services"), ABB, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, does hereby acknowledge and fully and completely authorize, approve and consent to each of the following: (i) the execution, delivery and performance of OPM Services, as assignor, and Kasgro Leasing, LLC, a Pennsylvania limited liability company ("Kasgro Leasing"), as assignee, of an Assignment and Assumption Agreement ("Assignment") pursuant to which OPM Services will sell, assign, transfer and convey to Kasgro Leasing all of its right, title and interest in and to the Agreement and Kasgro Leasing will accept, assume and agree to perform and be bound by all of the obligations, responsibilities and covenants arising thereunder, (ii) the transfer and conveyance by OPM Flats, Inc. to Kasgro Leasing of its entire general partner interest in and to Power Flats, Ltd., a Kentucky limited partnership, and all rights relating to or arising by reason of such general partner interest, and (iii) the collateral assignment by Kasgro Leasing to Transamerica Equipment Financial Services Corporation ("Transamerica") of all of Kasgro Leasing's right, title and interest in and to the Agreement. ABB acknowledges that in the event of Kasgro Leasing's default under its agreement with Transamerica, Transamerica (or its agents or assigns) may, but is not obligated to, assume Kasgro Leasing's rights and obligations under the Agreement (provided, however, that in the absence of such assumption, ABB agrees that Transamerica shall not be liable for any of the duties of Kasgro Leasing under the Agreement). ABB agrees that such collateral assignment shall not give rise to any duties or obligations on the part of Transamerica to ABB.

ABB does hereby fully release and forever discharge OPM Services and its officers, directors, shareholders, employees, successors, agents, and affiliates from all duties, obligations, responsibilities, covenants and liabilities arising under or pursuant to the Agreement, such discharge and release to be effective immediately upon the execution and delivery of the Assignment. ABB shall indemnify and hold harmless OPM Services and its officers, directors, shareholders, employees, agents, successors and affiliates from and against all loss, liability, claim, damage or expense (including reasonable attorneys fees) arising from any claim or matter purported to be released pursuant to this instrument.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Acknowledgment, Consent and Release as of this 21 day of September, 2000.

ABB COMBUSTION ENGINEERING

By: [Signature]

Title: TRANSPORTATION MANAGER

0910274619001

** TOTAL PAGE.01 **

ACKNOWLEDGMENT, CONSENT AND RELEASE

Pursuant to the terms of that certain Rail Car Use Agreement dated October 19, 1999 (the "Agreement") between ABB Combustion Engineering ("ABB") and OPM Services, Inc. ("OPM Services"), ABB, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, does hereby acknowledge and fully and completely authorize, approve and consent to each of the following: (i) the execution, delivery and performance by OPM Services, as assignor, and Kasgro Leasing, LLC, a Pennsylvania limited liability company ("Kasgro Leasing"), as assignee, of an Assignment and Assumption Agreement ("Assignment") pursuant to which OPM Services will sell, assign, transfer and convey to Kasgro Leasing all of its right, title and interest in and to the Agreement and Kasgro Leasing will accept, assume and agree to perform and be bound by all of the obligations, responsibilities and covenants arising thereunder, and (ii) the transfer and conveyance by OPM Flats, Inc. to Kasgro Leasing of its entire general partner interest in and to Power Flats, Ltd., a Kentucky limited partnership, and all rights relating to or arising by reason of such general partner interest.

ABB does hereby fully release and forever discharge OPM Services and its officers, directors, shareholders, employees, agents, successors, and affiliates from all duties, obligations, responsibilities, covenants and liabilities arising under or pursuant to the Agreement, such discharge and release to be effective immediately upon the execution and delivery of the Assignment. ABB shall indemnify and hold harmless OPM Services and its officers, directors, shareholders, employees, agents, successors and affiliates from and against all loss, liability, claim, damage or expense (including reasonable attorneys fees) arising from any claim or matter purported to be released pursuant to this instrument.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Acknowledgment, Consent and Release as of this 14 day of July, 2000.

ABB COMBUSTION ENGINEERING

By: 

Title: TRANSPORTATION MANAGER

POWER TRANSPORTATION MANAGER

USE AGREEMENT CERTIFICATION

On this 19th day of January, 2001, I **Harry Ketterman, President** of Kasgro Leasing, LLC, formerly known as OPM Services, Inc., does hereby certify that the use agreement dated October 19, 1999, by and between ABB Combustion Engineering, now known as Alstom Power and OPM Services, Inc., now known as Kasgro Leasing LLC., are true and accurate copies.

KASGRO LEASING, LLC

By: *Harry Ketterman*
Harry Ketterman, President

STATE OF *Indiana*)
)
COUNTY OF *Harrison*) ss:

On this 19 day of January, 2001, before me personally appeared **Harry Ketterman** to me personally known, who, being duly sworn, did say that he is President of Kasgro Leasing, LLC, formerly known as OPM Services, Inc., and that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that execution of the foregoing instrument was the free act and deed of such corporation.

NOTARY PUBLIC: *Brenda Barker*

MY COMMISSION EXPIRES: *5/23/08*