

MAY 18 '11 -3 01 PM

**HELM CHESAPEAKE  
LIMITED PARTNERSHIP**

505 Sansome Street, Suite 1800 • San Francisco, CA 94111

**SURFACE TRANSPORTATION BOARD**

415/398 4510

FAX 415/398-4818

May 18, 2011

Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street S.W.  
Washington, D.C. 20423-0001

RE: Assignment and Assumption Agreement dated as of February 28, 2011 ("Assignment") between General Electric Railcar Services Corporation ("Assignor") and Helm Chesapeake Limited Partnership ("Assignee")

Dear Section Chief:

Attached for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) is a copy of the original Assignment.

The attached document relates to the Memorandum of Railroad Car Full Service Master Leasing Agreement and Rider No. 13 being filed under Recordation Number 25450-L.

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

Assignor: General Electric Railcar Services Corporation  
161 N. Clark Street  
Chicago, IL 60601

Assignee: Helm Chesapeake Limited Partnership  
505 Sansome Street, Suite 1800  
San Francisco, CA 94111

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

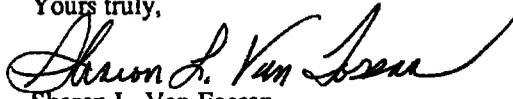
127 Coal Gondola Railcars PNJX 51360-51489 (Not Inclusive)

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement

The recordation filing fee of \$41.00 is on account.

Yours truly,

  
Sharon L. Van Fossan  
Supervisor Contract Administration

/svf  
Attachment

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EXECUTION VERSION

SURFACE TRANSPORTATION BOARD

### ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of February 28, 2011 (this "Agreement"), is between General Electric Railcar Services Corporation, a Delaware corporation (the "Seller"), and Helm Chesapeake Limited Partnership, a Delaware limited partnership (the "Buyer").

#### RECITALS

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of February 28, 2011 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

#### AGREEMENT

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. **Assignment.** Effective as to each unit of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such unit and assigns to the Buyer all of the Seller's rights and obligations under the Lease (including the rider referenced in the definition thereof and, solely as they pertain to the rider, the Master Lease and the Guaranty) (collectively, the "Operative Agreements") as they relate to each unit. Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any right to indemnification for tax or other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** The Buyer accepts the assignment contained in Section 2 hereof and assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Operative Agreements and each reference in the Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller is released of all obligations accruing under the Operative Agreements.

4. **Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

**Bill of Sale:** the bill of sale in the form of Exhibit I hereto.

**Closing Date:** the date of the Bill of Sale.

**Equipment:** the equipment described in Schedule 1 to this Agreement together with every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller on the Closing Date (individually each railcar is referred to as a "unit" or "unit of Equipment").

**Guaranty:** that certain Guaranty of Payment and Performance dated as of February 18, 2005 by NRG Energy, Inc. in favor of Seller, as modified by that certain Reaffirmation of Guaranty dated August 16, 2005 by Guarantor and by that certain that certain Reaffirmation of Guaranty dated March 25, 2008 by Guarantor.

**Lease:** that certain Rider No. 13 dated as of July 29, 2005 between Seller and Lessee, which incorporates by reference the terms of the Master Lease.

**Lessee:** NRG Power Marketing LLC, formerly known as NRG Power Marketing Inc.

**Master Lease:** that certain Railroad Car Full Service Master Leasing Agreement dated as of February 18, 2005 between Seller and Lessee, as amended by (i) that certain Amendment No. 1 dated as of August 2, 2005 between Seller and Lessee, (ii) that certain Amendment No. 2 dated as of August 29, 2006 between Seller and Lessee, (iii) that certain Amendment No. 3 dated as of March 20, 2008 between Seller and Lessee, and (iv) that certain Amendment No. 4 dated as of March 25, 2008 between Seller and Lessee.

**Ownership Interest:** the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Operative Agreements.

5. **Amendments.** No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. **Notices.** All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Illinois, without giving effect to its conflict of law rules.

**10. Entire Agreement.** This Agreement, the Purchase Agreement, and the Bill of Sale (together with their exhibits and schedules) represent the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

*[Remainder of this page left blank intentionally.]*

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

**GENERAL ELECTRIC RAILCAR SERVICES CORPORATION**

By:  \_\_\_\_\_

Name: Mark Stefani

Title: Vice President

**HELM CHESAPEAKE LIMITED PARTNERSHIP**

By: Helm General Corporation  
Its: General Partner

By: \_\_\_\_\_

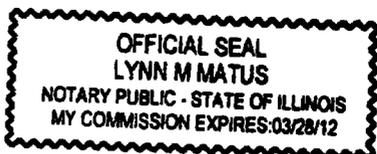
Name: Courtney A. O'H. Williams

Title: President & CEO

State of Illinois )  
 )  
County of Cook )

On this, the 24<sup>th</sup> day of February, 2011, before me, a Notary Public in and for said County and State, personally appeared Mark Stebani, a Vice President of General Electric Railcar Services Corporation, who acknowledged himself to be a duly authorized officer of General Electric Railcar Services Corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



Lynn M. Matus  
Name: Lynn M. Matus  
Notary Public

My Commission Expires: 3/28/12  
Residing in: Cook County

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

**GENERAL ELECTRIC RAILCAR SERVICES CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HELM CHESAPEAKE LIMITED PARTNERSHIP**

By: Helm General Corporation

Its: General Partner

By: Courtney A. O'H. Williams

Name: Courtney A. O'H. Williams

Title: President & CEO

State of California )

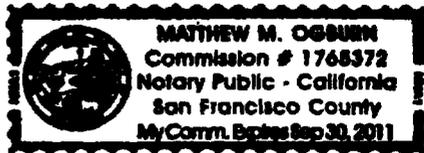
County of San Francisco )

On February 25, 2011 before me, Matthew M. Ogburn, personally appeared Courtney A. O'H. Williams, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Matthew M. Ogburn (Seal)



**EXHIBIT I  
TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

**FORM OF BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, General Electric Railcar Services Corporation ("Seller"), does hereby sell, transfer and assign to Helm Chesapeake Limited Partnership ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Schedule I hereto, subject to the terms and conditions of the Purchase Agreement, dated as of February 28, 2011, between Seller and Buyer, and the Assignment and Assumption Agreement, dated February 28, 2011, between Seller and Buyer.

**General Electric Railcar Services Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule 1**

**(List of Equipment)**

127 286,000 lb GRL Coal Gondola Cars 122 Ton Aluminum manufactured in 2005 by Johnstown America, bearing marks and numbers:

<u>Count</u>	<u>Car</u> <u>Mark</u>	<u>Car</u> <u>Number</u>									
1	PNJX	51360	33	PNJX	51394	65	PNJX	51426	97	PNJX	51458
2	PNJX	51361	34	PNJX	51395	66	PNJX	51427	98	PNJX	51459
3	PNJX	51363	35	PNJX	51396	67	PNJX	51428	99	PNJX	51460
4	PNJX	51364	36	PNJX	51397	68	PNJX	51429	100	PNJX	51461
5	PNJX	51365	37	PNJX	51398	69	PNJX	51430	101	PNJX	51462
6	PNJX	51366	38	PNJX	51399	70	PNJX	51431	102	PNJX	51463
7	PNJX	51367	39	PNJX	51400	71	PNJX	51432	103	PNJX	51464
8	PNJX	51368	40	PNJX	51401	72	PNJX	51433	104	PNJX	51465
9	PNJX	51369	41	PNJX	51402	73	PNJX	51434	105	PNJX	51466
10	PNJX	51371	42	PNJX	51403	74	PNJX	51435	106	PNJX	51467
11	PNJX	51372	43	PNJX	51404	75	PNJX	51436	107	PNJX	51468
12	PNJX	51373	44	PNJX	51405	76	PNJX	51437	108	PNJX	51469
13	PNJX	51374	45	PNJX	51406	77	PNJX	51438	109	PNJX	51470
14	PNJX	51375	46	PNJX	51407	78	PNJX	51439	110	PNJX	51471
15	PNJX	51376	47	PNJX	51408	79	PNJX	51440	111	PNJX	51472
16	PNJX	51377	48	PNJX	51409	80	PNJX	51441	112	PNJX	51473
17	PNJX	51378	49	PNJX	51410	81	PNJX	51442	113	PNJX	51474
18	PNJX	51379	50	PNJX	51411	82	PNJX	51443	114	PNJX	51475
19	PNJX	51380	51	PNJX	51412	83	PNJX	51444	115	PNJX	51476
20	PNJX	51381	52	PNJX	51413	84	PNJX	51445	116	PNJX	51477
21	PNJX	51382	53	PNJX	51414	85	PNJX	51446	117	PNJX	51478
22	PNJX	51383	54	PNJX	51415	86	PNJX	51447	118	PNJX	51479
23	PNJX	51384	55	PNJX	51416	87	PNJX	51448	119	PNJX	51480
24	PNJX	51385	56	PNJX	51417	88	PNJX	51449	120	PNJX	51482
25	PNJX	51386	57	PNJX	51418	89	PNJX	51450	121	PNJX	51483
26	PNJX	51387	58	PNJX	51419	90	PNJX	51451	122	PNJX	51484
27	PNJX	51388	59	PNJX	51420	91	PNJX	51452	123	PNJX	51485
28	PNJX	51389	60	PNJX	51421	92	PNJX	51453	124	PNJX	51486
29	PNJX	51390	61	PNJX	51422	93	PNJX	51454	125	PNJX	51487
30	PNJX	51391	62	PNJX	51423	94	PNJX	51455	126	PNJX	51488
31	PNJX	51392	63	PNJX	51424	95	PNJX	51456	127	PNJX	51489
32	PNJX	51393	64	PNJX	51425	96	PNJX	51457			

**Cash Purchase Price per unit: \$53,641**