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SERVICE DATE – JUNE 11, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 290 (Sub-No. 4)

RAILROAD COST RECOVERY PROCEDURES—PRODUCTIVITY ADJUSTMENT

Docket No. EP 290 (Sub-No. 5) (2010-2)

QUARTERLY RAIL COST ADJUSTMENT FACTOR

Decided: June 7, 2010

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: The Surface Transportation Board seeks comments on a request from the Association of American Railroads (AAR) that the Board restate the previously published productivity adjustment for the 2003-2007 averaging period (2007 productivity adjustment) so that it tracks the 2007 productivity adjustment figure used in the Board's March 26, 2010 calculation of the modified 2008 productivity adjustment, and restate any quarterly RCAF (Adjusted) and RCAF-5 calculations that would be affected by a restatement of the 2007 productivity adjustment.

DATES: Comments are due by July 12, 2010; replies are due by August 10, 2010.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. EP 290 (Sub-No. 4) et al. to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

FOR FURTHER INFORMATION, CONTACT: Valerie Quinn, (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: By decision served on February 1, 2010, in Railroad Cost Recovery Procedures—Productivity Adjustment, EP 290 (Sub-No. 4), the Board provided its proposed 2008 productivity adjustment, as measured by the average change in railroad productivity for the years 2004 through 2008. The February 1, 2010 decision provided an opportunity for interested parties to file comments regarding any perceived data and computational errors in the Board's calculation.

On February 22, 2010, the Board received timely comments from the Western Coal Traffic League questioning, among other things, the 2008 output index as compared to the 2007 output index. In response, we reviewed the calculations for the output indices for both of those years. This review revealed the inadvertent use of masked revenues from the waybill records in both the 2007 and 2008 calculations, and the exclusion of certain waybill records in the 2007 calculations. By decision served March 26, 2010, we announced the restated 2008 productivity adjustment, which, for purposes of that calculation, included modifications to the output indices for 2007 and 2008.

On March 30, 2010, in dockets EP 290 (Sub-No. 4) and EP 290 (Sub-No. 5) (2010-2), AAR submitted its quarterly calculations of RCAF (Unadjusted), RCAF (Adjusted) and RCAF-5, the last two of which are dependent on the annual productivity adjustment. In that filing, AAR also requested that the Board: (1) restate the 2007 productivity adjustment so that it conforms to the modified 2007 output index; (2) recalculate the productivity adjustment factors affected by the modification to the 2007 productivity adjustment; and (3) recalculate the affected RCAF (Adjusted) and RCAF-5 values using the revised productivity adjustment factors.

After examining AAR's calculations, we issued a decision in Quarterly Rail Cost Adjustment Factor, EP 290 (Sub-No. 5) (2010-2) (STB served Mar. 31, 2010), establishing the second quarter 2010 RCAF (Unadjusted), RCAF (Adjusted), and the RCAF-5. In that decision, we noted that we would consider AAR's additional requests at a later date. Id. at 3.

We now seek comments on whether the Board should restate the 2007 productivity adjustment, and, if so, whether the Board should restate the RCAF (Adjusted) and RCAF-5 values that would be affected by a restatement of the 2007 productivity adjustment. Specifically, though not exclusively, we seek input on the degree, if any, of detrimental reliance by stakeholders on these previously published figures.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments are due by July 12, 2010; replies are due by August 10, 2010.
2. Notice of this decision will be published in the Federal Register.

3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.