

SERVICE DATE – JANUARY 20, 2012

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

Digest:¹ Each year the Surface Transportation Board calculates the change, if any, in the rail industry's productivity, i.e., how efficiently railroads move freight. The Board calculates this productivity adjustment figure by comparing year-to-year the average cost of producing a unit of railroad output. Separately, the Rail Cost Adjustment Factor (RCAF) is an index formulated to represent changes in railroad costs incurred by the nation's largest railroads over a specified period of time. The statute requires the Board to publish the RCAF on at least a quarterly basis. Each quarter, the Association of American Railroads computes three types of RCAF figures, two of which are calculated using the productivity adjustment, and submits the RCAF figures to the Board for approval. Following adoption of the 2007 productivity adjustment and related RCAF figures, a technical error was found in the 2007 productivity adjustment figure. The Board is now restating the 2007 productivity adjustment and the RCAF figures affected by the restatement.

Decided: January 17, 2012

On June 11, 2010, the Board served a decision seeking comments on whether it should restate the 2007 productivity adjustment, and, if so, whether the Board should restate the Rail Cost Adjustment Factor (RCAF) values that would be affected by a restatement of the 2007 productivity adjustment. We publish three RCAF indices: RCAF (Unadjusted), RCAF (Adjusted) and RCAF-5, the last two of which are adjusted by the annual productivity adjustment. We have concluded that we will restate the 2007 productivity adjustment and the affected RCAF (Adjusted) and RCAF-5 values to correct for a technical error.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

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. That 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 (WCTL) questioning, among other things, the 2008 output index as compared to the 2007 output index. In response, the Board reviewed the calculations for the output indices for both of those years. This review revealed computational errors, which included 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, the Board announced the restated 2008 productivity adjustment, which, for purposes of that calculation, included modifications to the output indices for 2007 and 2008. The Board did not restate the 2007 productivity adjustment at that time.

On March 30, 2010, in dockets EP 290 (Sub-No. 4) and EP 290 (Sub-No. 5) (2010-2), the Association of American Railroads (AAR) submitted its quarterly calculations of the three RCAF indices. 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, the Board 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, the Board noted that it would consider AAR’s additional requests at a later date. Id. at 3.

On June 11, 2010, the Board served a decision seeking comments on whether it 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. Notice of the decision was published in the Federal Register on June 11, 2010. 112 Fed. Reg. 33379. AAR, WCTL, and Canadian Forest Products Ltd. (Canfor)² filed comments.

In its comments, AAR argues that the Board has a duty to correct computational errors, and, in support of that claim, AAR cites the Board’s statement that its “ministerial” role in publishing RCAF numbers is “to provide private parties with a neutral and authoritative benchmark for inflation-based escalation of [contract] rates.” Productivity Adjustment—

² In the interest of a complete record and because no party will be prejudiced, we will accept Canfor’s late-filed comment.

Implementation, 1 S.T.B. 739, 746 (1996) (alteration in original) (quoting H.R. Rep. No. 104-422 at 174 (1995) (Conf. Rep.)) (internal quotation marks omitted). WCTL argues that restatement would be a departure from what it claims is the Board's past practice of refusing to restate previously published figures; therefore, WCTL contends that restatement is unjustified, unless the Board also revisits past requests by shippers to restate historical RCAF numbers, the cost of equity, and the cost of capital.

WCTL claims that there is detrimental reliance on the published numbers in Stand-Alone Cost (SAC) proceedings, in controlling certain rail rates in Canada, and by parties to contracts that use the RCAF (Adjusted) or RCAF-5 to adjust rates. WCTL also cites the use of the RCAF (Adjusted) in a study of rail competition and the publication of a forecast for the RCAF (Adjusted). AAR argues that WCTL has not established detrimental reliance in any of the instances it cited, and that the only reliance the Board need concern itself with is the public's reliance on Board's accuracy. Canfor, a shipper operating under the RCAF (Adjusted) Canadian rail rates, claims that restatement would have minimal impact on historical rate levels and would be inconsequential.

DISCUSSION AND CONCLUSIONS

We will restate the 2007 productivity adjustment and the affected RCAF (Adjusted) and RCAF-5 values because the calculation error is material and was raised in a timely manner. In a similar instance, the Board issued a correction of the 2003-2007 productivity adjustment. R.R. Cost Recovery Procedures—Productivity Adjustment, EP 290 (Sub-No. 4), slip op. at 1 (STB served Mar. 20, 2009). The magnitude of the correction issued there, which the Board described as a material error, is the same as the correction at issue here.³

While such errors are rare, we will address this computational error and future computational errors as follows. In deciding whether to reopen a prior decision, pursuant to 49 U.S.C. § 722(c), in order to correct a computational error, we will balance the impact of the computational error on our decision against the timeliness with which a party brought the error to our attention. The smaller the effect, the sooner a party would need to bring the error to our attention to merit reopening and restating prior findings. Conversely, the larger the impact, the more latitude we will offer parties in terms of when the technical error was brought to our attention. But if the error has a large impact, we will also consider the degree of detrimental reliance on the prior decision in our balancing the competing interests of finality and repose against the interest in correcting computational errors.

WCTL claims that we have previously applied a more stringent standard by refusing to restate historical figures, citing Railroad Cost Recovery Procedures, EP 290 (Sub-No. 2) (ICC

³ The March 2009 correction modified the productivity adjustment for the 2003-2007 averaging period from 1.012 to 1.015. The correction under consideration here would change the productivity adjustment for the 2003-2007 averaging period from 1.015 to 1.012.

served June 14, 1984)⁴ and other decisions. However, those other decisions generally involved methodology or policy issues rather than computational or technical errors.⁵ Our decision to correct the technical errors at issue here does not require us to reconsider past decisions on issues of methodology or policy. Rather, we are merely correcting a computational error.

Here, while the impact of the detected computational error on the prior decision is relatively small, the error was timely raised. Calculation of the productivity adjustment factor is based on unmasked waybill data. Because unmasked waybill data is not publicly available, interested parties cannot independently confirm our calculation of the productivity adjustment factor. The possibility of an error in the 2003-2007 productivity adjustment could not have become apparent to the public until after the Board proposed the 2004-2008 productivity adjustment. WCTL raised the possibility of an error promptly after it became apparent and within the time period to comment on the proposed 2004-2008 productivity adjustment.

Under the test articulated on page 3, we need not address the issue of detrimental reliance in this case because the error has a small impact. However, even if the error were large, no party has established any significant detrimental reliance on the erroneously published figures. While WCTL asserts that there is detrimental reliance, it offers no details on who has detrimentally

⁴ In Railroad Cost Recovery Procedures, EP 290 (Sub-No. 2) (ICC served June 14, 1984), the Interstate Commerce Commission (ICC), instead of restating an erroneous calculation of an RCAF value, made a remedial adjustment to a later RCAF calculation to compensate shippers for the error's effect on rates. But railroads and shippers agreed to the remedial adjustment, making the case inapposite as a statement of agency policy.

⁵ For this proposition, WCTL also cites: AEP Texas North Co. v. STB, 609 F.3d 432 (D.C. Cir. 2010) (remanding to the Board to reconsider its 2005 cost of capital calculation method); Cost of Capital—2005, EP 558 (Sub-No. 9) (STB served Feb. 12, 2007), pet. for rev. dismissed without prejudice sub nom. Western Coal Traffic League v. STB, 264 F.App'x 7 (D.C. Cir. 2008) (declining to use WCTL's proposed method to calculate the 2005 cost of equity); Productivity Adjustment—Implementation, 1 S.T.B. at 739-40 (denying a petition to recalculate the RCAF based on a proposed change in the Board's methodology and adopting the RCAF-5); Railroad Cost Recovery Procedures—Productivity Adjustment, EP 290 (Sub-No. 4), slip op. at 1-3 (ICC served Sept. 20, 1989) (addressing the methodological issues of whether to incorporate additional data into the newly created productivity adjustment measure and whether to restate the 1987 third quarter RCAF (Adjusted) based on that newly incorporated data, while noting that the question of whether to restate the 1987 third quarter RCAF (Adjusted) did not involve a computational error); Railroad Cost Recovery Procedures—Productivity Adjustment, 5 I.C.C. 2d 434, 468-73 (1989), aff'd sub nom. Edison Electrical Institute v. ICC, 969 F.2d 1221 (D.C. Cir. 1992) (adopting the RCAF (Adjusted) and declining requests to restate the RCAF index for past productivity, for which the existing index did not provide); Railroad Cost Recovery Procedures 49 C.F.R. Parts 1135 and 1312, 3 I.C.C. 2d 60, 60-61 (1986), aff'd sub nom. Alabama Power Co. v. ICC, 852 F.2d 1361 (D.C. Cir. 1988) (considering rule changes and stating that “[t]his proceeding involves the all-inclusive methodology for calculating the rail cost adjustment factor.”); Railroad Cost Recovery Procedures, 1 I.C.C. 2d 207, 213-14 (1984) (declining to change the index's calculation method to offset cost decreases).

relied on the previously published figures or on the extent of the harm that would result from a correction. For example, WCTL does not cite a SAC proceeding that utilizes the figures at issue, nor does it quantify the effect of a correction on rail rates in Canada or on contracts that use the RCAF (Adjusted) or RCAF-5 to adjust rates. No shipper or carrier that operates under Canadian rail rates or under RCAF (Adjusted) or RCAF-5 contracts has commented that a correction would affect it. To the contrary, Canfor, a Canadian shipper, claims that restatement would have a minimal effect. WCTL does not explain why the use of RCAF (Adjusted) or RCAF-5 as a benchmark creates a reliance interest. Rather, WCTL's examples only indicate that there is use for, and interest in, these figures.

The proposed correction was raised in a timely manner. Although its impact is relatively small, we find the error to be material because it is similar to a previous correction. Accordingly, we will correct the 2003-2007 productivity adjustment and the associated RCAF calculations.

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

It is ordered:

1. The 2007 productivity adjustment and affected RCAF (Adjusted) and RCAF-5 values are restated as shown in Appendix A and Appendix B.

2. This decision is effective on the date of service.

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

APPENDIX A: Productivity Adjustment

The following is a description of the methodology currently used to calculate the railroad industry's productivity adjustment.⁶ The annual rate of productivity change is calculated by dividing an output index by an input index.

The input index uses constant dollar-adjusted expenses. The inputs in this index – freight expenses, fixed charges and contingent interest - are stated on a constant dollar basis using the most recent year as the base, and updating the base by the Series Railroad Cost Recovery (RCR) Index published by the Association of American Railroads. Freight expenses, fixed charges, and contingent interest were obtained from railroad Annual Report (Form R-1) data. The constant dollar adjustment factor for each of the 5 years for the rolling average was calculated by dividing the 2007 RCR index value (415.5) by the RCR index values for 2002 and each subsequent year through 2006, inclusive. Because 2007 is the last year in the trend, no constant dollar adjustment was needed for that year. The calculation of the input indices and values used are shown in Table A.

The 2006 output index was developed from the costed waybill sample, a commonly used data source. The costed waybill sample excludes movements originating in Canada and Mexico and movements lacking sufficient information for the application of unit costs.

Using the costed waybill sample as a base, each movement is assigned to one of the 189 segments or categories used to develop the output index. Segmentation is based on three mileage blocks, seven car types, three weight brackets, and three shipment sizes. The output index is a composite of the year-to-year change in ton-miles for each of the 189 segments weighted by each segment's base-year share of total revenues.

The change in productivity is calculated by dividing the output index by the input index. The multi-year mean for the period 2003-2007 is calculated by taking a geometric mean. The input index, the output index, the annual productivity change, and the calculation of the 2003-2007 mean are shown in Table B.

⁶ The development and application of the productivity adjustment is explained in an earlier decision in EP 290 (Sub-No. 4), found at 5 I.C.C. 2d 434 (1989).

Table A
Calculation of Input Indices
2002-2007

Year	Total Expense Unadjusted (000s) (1)	RCR Indices 2002-2007 (2)	Total Expense Constant Dollars (3)	Input Index Column (3) 2003/2002 etc. (4)
2002	30,635,036	305.7	41,638,395	xxxxx
2003	32,368,909	316.7	42,466,946	1.020
2004	36,097,189	334.1	44,891,895	1.057
2005	38,927,852	376.8	42,926,015	0.956
2006	41,989,707	397.0	43,946,406	1.024
2007	43,778,699	415.5	43,778,699	0.996

Table B
Comparison of Output, Input, and Productivity
2003-2007

Year	Output Index (1)	Input Index (2)	Productivity Change ⁷ Col (1)/Col (2) (3)
2003	1.039	1.020	1.019
2004	1.033	1.057	0.977
2005	1.021	0.956	1.068
2006	1.018	1.024	0.994
2007	1.000	0.996	1.004

The 5-year (2003-2007) productivity trend calculated using a geometric mean is 1.012, or 1.2% per year.

⁷ The values shown in Column 3 are taken from the spreadsheet used to calculate productivity. Due to rounding, these values may not equal numbers calculated using the rounded numbers shown in Columns 1 and 2.

APPENDIX B: RCAF

Restated RCAF (Adjusted)

Quarter	RCAF (Unadjusted)	Original Decision		Restated		Difference
		PAF	RCAF(Adjusted)	PAF	RCAF(Adjusted)	
2Q2009	0.850	2.1959	0.387	2.1944	0.387	0.000
3Q2009	0.938	2.2040	0.426	2.2010	0.426	0.000
4Q2009	0.996	2.2122	0.450	2.2076	0.451	(0.001)
1Q2010	1.038	2.2204	0.467	2.2142	0.469	(0.002)

Restated RCAF-5

Quarter	RCAF (Unadjusted)	Original Decision		Restated		Difference
		PAF-5	RCAF-5	PAF-5	RCAF-5	
1Q2010	1.038	2.3415	0.443	2.3399	0.444	(0.001)