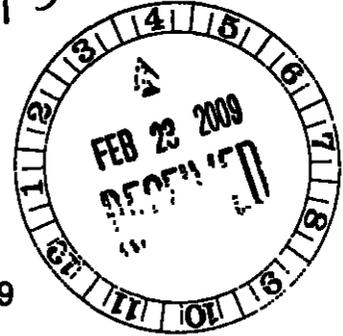




**ASSOCIATION OF
AMERICAN RAILROADS**

Law Department
Louis P. Warchot
Senior Vice President-Law &
General Counsel

224579



February 23, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423

ENTERED
Office of Proceedings

FEB 23 2009

Part of
Public Record

Re Ex Parte No 290 (Sub-No 4), Railroad Cost Recovery Procedures—
Productivity Adjustment

Dear Secretary Quinlan

Pursuant to the Decision of the Board served February 5, 2009, attached please find an original and ten copies of the Comments of the Association of American Railroads (AAR) for filing in the above proceeding. A copy of the AAR's Comments has been served on all parties on the Board's service list in this proceeding.

Respectfully submitted,

Louis P. Warchot
Attorney for the Association of
American Railroads

Attachments

224579

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No 290 (Sub-No 4)



RAILROAD COST RECOVERY PROCEDURES—PRODUCTIVITY ADJUSTMENT

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

ENTERED
Office of Proceedings

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Public Record

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February 23, 2009

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB Ex Parte No 290 (Sub – No 4)

RAILROAD COST RECOVERY PROCEDURES—PRODUCTIVITY ADJUSTMENT

**COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS**

Introduction

In a decision served February 5, 2009, the Board proposed to adopt 1.012 (1.2% per year) as the productivity adjustment for the 2003-2007 averaging period. The proposed effective date for the Board's decision is March 1, 2009. Any comments on the Board's proposed calculation are due February 23, 2009.

The Association of American Railroads (AAR), on behalf of its member railroads, hereby submits these comments in response to the Board's decision. The AAR wishes to raise two issues regarding the Board's decision. The first issue relates to the Board's failure to specify that only a geometric mean may be used to calculate the productivity adjustment. The second issue relates to the Board's failure to provide support for one of its Output Index calculations in Table B so that it may be replicated. The issues are discussed below.

AAR Comments

1 **The Board Should Clarify That Only the Geometric Mean May Be Used to Calculate the Productivity Adjustment**

The Board noted in the second paragraph of its decision on pg. 1 that "the long-run measure of productivity is computed by the Board using a 5-year moving

geometric average ” (emphasis added). In that context, the Board referenced its rulemaking decision in Productivity Adjustment-Implementation, at 9 I C C 2d 1072 (1993) which required the use of a geometric average (See also Railroad Cost Recovery Procedures—Productivity Adjustment, 8 I C C 2d 177 (1991) which adopted the use of the geometric averaging method)

Notwithstanding that the Board has approved and accepted the use of the geometric average for calculating the productivity adjustment, the Board stated, in the first sentence of its decision, that it proposed to adopt 1.012 (1.2% per year) as “ the measure of average (*arithmetic mean*) change in railroad productivity ” (emphasis added) Although, the Board further stated, in the Appendix to the Decision at pg. 3 that the productivity adjustment for 2003-2007 is the same when calculated using either a geometric average or arithmetic mean, the results will not necessarily always be identical

The references in the first sentence in the Decision and in the fifth paragraph of the Appendix to the Decision to an arithmetic mean can give rise to potential confusion – and serve no purpose – because, as noted above, the Board stated in this Decision that an arithmetic mean was not used in calculating the productivity adjustment. Accordingly, the AAR believes that the Board should clarify that only the geometric averaging method has been approved and utilized under the Board’s rules for calculating the productivity adjustment to the Rail Cost Adjustment Factor

2 The AAR does not have the information that would enable it to verify the Board’s Output Index for 2007.

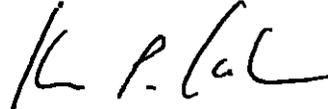
As referenced above, the Board has asked for comments as to whether there are any perceived data or computational errors in its calculations. In order to assess and verify the 2007 Output Index in Table B to the Decision’s Appendix (i.e., 1.000), it is

necessary to review the Board's workpapers and data from the 2006 and 2007 Carload Waybill Samples. The relevant workpapers and data were not made available to the AAR at this time. In the event that the Board were to make such information available, the AAR would undertake to verify the Board's calculations for the 2007 Output Index.

Conclusion

The AAR has only two comments on the Board's productivity adjustment calculations. First, the AAR believes that the Board should clarify that only the geometric mean is used to calculate the productivity adjustment. Second, the AAR cannot verify the 2007 Output Index calculations without access to the relevant Board workpapers and appropriate data from the 2006 and 2007 Carload Waybill Samples.

Respectfully submitted,



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*Counsel for the Association of
American Railroads*

February 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February 2009, I served by first class mail, postage prepaid, a copy of the foregoing on all parties appearing on the Board's current service list as follows

| | |
|------------------|------------------------------------------------------------------------------------------------------------------------|
| Party of Record. | Robert D Rosenberg Slover & Loftus 1224 Seventeenth Street, NW Washington, D C. 20036-3003 |
| Non-Party | Carl Degen Christensen Associates 4610 University Avenue, Ste 700 Madison, WI 53705-2164 |
| Non-Party | Brian Trower City of Ames, Electric Administration P O box 811 Ames, IA 50010-0811 |
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Kenneth P Kolson