



ASSOCIATION OF
AMERICAN RAILROADS

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July 12, 2010

Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423

ENTERED
Office of Proceedings
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Part of
Public Record

227418

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

227419

Ex Parte No. 290 (Sub-No.5), Quarterly Rail Cost Adjustment Factor (2010-2)

Dear Ms. Brown:

In response to the Board's June 11, 2010 Notice, attached please find the comments of the Association of American Railroads (AAR) for filing in the above proceedings.

Respectfully submitted,

Louis P. Warchot
Counsel for the Association of
American Railroads

Attachments

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 290 (Sub – No.4)

RAILROAD COST RECOVERY PROCEDURES—PRODUCTIVITY ADJUSTMENT

STB Ex Parte No. 290 (Sub – No.5) (2010-2)

QUARTERLY RAIL COST ADJUSTMENT FACTOR

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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Introduction

In a “notice and request for comments” (“Notice”) served June 11, 2010, the Surface Transportation Board (“Board”) sought comments on the March 30, 2010 request of 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) (“RCAF-A”) and RCAF-5 calculations that would be affected by a restatement of the 2007 productivity adjustment.” Notice at 1. The Board “[s]pecifically, though not exclusively, [sought] input on the degree, if any, of detrimental reliance by stakeholders on these previously published figures.” *Id.* at 2.

The Association of American Railroads, on behalf of its member railroads, hereby submits these comments in response to the Board's June 11, 2010 Notice. The AAR notes that in calculating and publishing the quarterly productivity-adjusted rail cost adjustment factor ("RCAF") values, the Board is performing a purely ministerial function. The quarterly RCAF values, consistent with their purpose under 49 U.S.C. § 10708, are commonly utilized as "neutral and authoritative" inflation-adjustment benchmarks by rail carriers and shippers under the terms of their private contractual transportation arrangements.¹ The parties rely on the Board to correctly calculate a number that properly reflects the changes in the input costs of providing rail service. The AAR believes that, in light of the industry use of the Board's quarterly productivity-adjusted RCAF published values in their day-to-day commercial dealings, the Board has a clear ministerial duty to correct its admitted computational errors in calculating the previously published 2007 productivity adjustment (and attendant productivity-adjusted RCAF values).

The corrections to the 2007 productivity adjustment (and attendant RCAF-A and RCAF-5 values) sought by the AAR to correct ministerial, or computational, errors are clearly supported by agency precedent. Decisions of the Board (and its predecessor agency, the Interstate Commerce Committee ("ICC")) pertaining to the RCAF process make clear distinctions between undisputed computational errors (which have resulted in corrective adjustments to the RCAF)

¹ See *Productivity Adjustment—Implementation*, 1 S.T.B. 739, 746 (1996) (noting that, although under the provisions of the ICCTA railroads are no longer required to file tariffs and the quarterly RCAF determinations would no longer provide a statutorily-protected benchmark for the reasonableness of rail tariff rate increases. "in carrying forward, in new 49 U.S.C 10708, the practice of publishing the RCAF (Unadjusted) as a price index and the RCAF (Adjusted) as a productivity-adjusted cost index, Congress sought no more than to provide private parties with 'a neutral and authoritative benchmark for inflation-based escalation of [contract] rates.' See H.R. Rep. No. 422, 104th Cong. 1st Sess. 175 (1995)").

and alleged “errors” predicated on agency policy decisions or methodological applications (where the agency previously has refused to make “corrective” adjustments to the RCAF).

The AAR further notes that it is unaware of any detrimental reliance on the Board’s previously published erroneous numbers by other parties that would compel the Board to refrain from making the requested corrections to the 2007 productivity adjustment.²

The AAR accordingly urges the Board to correct its computational error by: (1) restating the 2007 productivity adjustment to conform to the correct calculation and (2) restating any quarterly RCAF-A and RCAF-5 calculations (as set forth in Attachment A) so that they also conform to the corrected 2007 productivity adjustment.

Background

Under the Board’s established procedures for calculating the quarterly RCAF,³ the AAR is required to calculate the all-inclusive index of railroad input prices⁴ on a quarterly basis and submit it to the Board on the fifth day of the last month of each calendar quarter. In *Railroad Cost Recovery Procedures*, 5 I.C.C. 2d 434 (1989), *aff’d sub nom. Edison Elec. Inst. v. ICC*, 969 F. 2d 1221 (D.C. Cir. 1992), the ICC adopted procedures that require adjustment of the quarterly index (RCAF-Unadjusted) to reflect national average productivity changes as annually calculated

² The RCAF (Unadjusted) and RCAF-A are also used by the Board in full SAC cases to project variable costs of the Stand-Alone Railroad (SARR) into future years and for other SAC cost projections. See *Major Issues in Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1), *aff’d sub nom. BNSF v. STB*, 526 F.3d 770 (D.C. Cir. 2008) (“*Major Issues*”).

³ The procedures were originally adopted in *Railroad Cost Recovery Procedures*, 1 I.C.C. 2d 207 (1984), and subsequently modified in *Railroad Cost Recovery Procedures*, 5 I.C.C. 2d 434, (1989), *aff’d sub nom. Edison Elec. Inst. v. ICC*, 969 F. 2d 1221 (D.C. Cir. 1992) (requiring the adjustment of the quarterly index for a measure of productivity) and *Productivity Adjustment – Implementation*, 1 S.T.B. 739 (1996) (requiring publication of a second productivity-adjusted RCAF called the RCAF-5).

⁴ The “all-inclusive index” of railroad costs measures the changes in input costs, such as labor and fuel, used to produce railroad services and are projected quarterly by the AAR in its RCAF submissions. The all-inclusive index of railroad input prices is prepared by the AAR based on individual railroad and railroad industry data and is verified by STB staff and an outside auditor. See STB Ex Parte No. 290 (Sub-No.2), *Railroad Cost Recovery Procedures* (served January 5, 2000) Slip op. at 1. The quarterly RCAF calculations are also adjusted for forecast error should actual costs differ from the quarterly forecasts.

by the Board (the RCAF-Adjusted or “RCAF-A”).⁵ The RCAF-A was originally adopted as a multi-year average of annual productivity growth but was modified to a five-year moving average period in *Productivity Adjustment—Implementation*, 9 I.C.C. 2d 1072 (1993).

In *Productivity Adjustment—Implementation*, 1 S.T.B. 739 (1996), the Board, at the urging of WCTL, decided to publish a second productivity-adjusted RCAF (the “RCAF-5”). The RCAF-5 is a calculation of the productivity-adjusted RCAF values as if the agency had always used a 5-year rolling average to calculate the productivity adjustment.⁶ The methodology for calculating the RCAF-5 is the same as that used to calculate the RCAF-A. The only difference between the calculation of the RCAF-5 and the RCAF-A is in the timing of the application of the 5-year productivity trend. The RCAF-5 uses 5-year productivity trend data that lag the data used to calculate the RCAF-A by three quarters. See 1 S.T.B. at 749.

As noted in the Board’s June 11, 2010 Notice, the AAR’s March 30, 2010 request that the Board restate its previously published 2007 productivity adjustment (and affected RCAF-A and RCAF-5 calculations) arises out of corrections made by the Board to its proposed calculation of the productivity adjustment applicable to the 2004-2008 averaging period (2008 productivity adjustment). In its February 1, 2010 decision, the Board had initially proposed to adopt 1.010 (1.0% per year) as the productivity adjustment, as measured by the average change in railroad

⁵ Under 49 U.S.C. § 10708 (enacted subsequent to the ICC’s decision requiring the RCAF productivity-adjustment), the Board is directed to publish both an unadjusted RCAF and a productivity-adjusted RCAF.

⁶ The RCAF-5 was adopted as a result of WCTL’s objection that higher productivity data for certain years were not weighted evenly after the ICC (in its 1993 decision) switched to a 5-year average, as they would have been if a straight 5-year average had been used all along. See *Productivity Adjustment*, 1 STB at 748. In adopting the RCAF-5 as a second productivity adjustment, the Board “restated” the existing productivity measure (the RCAF-A) to reflect productivity values that would have been calculated had the 5-year averaging period always been used. *Id.* at 746-747. Because the RCAF, under the ICCTA, was to be used “principally as a benchmark for contracts,” (*Productivity Adjustment*, 1 STB at 746), the Board expected “that the parties, through negotiation, will resolve which RCAF figure might be “right” or “wrong” for their particular transportation contracts” and that if the parties could not resolve such matters privately, ... the determination of which RCAF value ought to be used in a particular case is a determination that should be made only by a court in the context of a specific contractual dispute.” *Id.* at 749.

productivity for the five years 2004-2008.⁷ Pursuant to the Board's established procedures providing parties the opportunity to file comments "regarding any perceived data and computational errors in the Board's calculation" before the Board's proposed productivity adjustment became effective,⁸ the Western Coal Traffic League ("WCTL") filed comments noting concerns about the Board's output index calculation and urged the Board to investigate and, if necessary, correct its calculation. *See* February 22, 2010 WCTL comments at 1-2.

In a decision served March 26, 2010, the Board reexamined its February 1, 2010 output calculations and issued a corrected productivity adjustment for the 5-year period 2004-2008.⁹ In response to the Board's corrected productivity adjustment, the AAR filed comments noting that, although the Board found errors in and modified the output indices for *both* 2007 and 2008 in its March 26, 2010 decision, the Board made no change in the productivity calculation for the 2003-2007 period even though the 2007 output index was wrongly calculated and significantly overstated productivity (1.5 percent vs. 1.2 percent) for the 2003-2007 period. *See* March 30, 2010 AAR comments at 4.

The AAR also submitted a revised RCAF filing for the second quarter of 2010 which (1) incorporated the Board's corrected productivity adjustment for the period 2004-2008 and (2) used in its RCAF calculations the corrected 2007 output index data to calculate the relevant

⁷ *See* Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment* (served February 1, 2010) at 1.

⁸ *Id.*

⁹ The Board noted its 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. As found by the Board, "for the corrected 2008 productivity adjustment, the Board's calculation of the output index for 2007 of 1.014 should be modified to 1.000, and the Board's calculation of the output index for 2008 of 0.967 should be modified to 0.990. As a result, the corrected 5-year geometric mean of the annual change in productivity for the 2004-2008 period is 1.012 (or 1.2% per year)." March 26 Decision at 1.

productivity adjustment factors and RCAF-A and RCAF-5 that result from the corrected productivity adjustment factors. *Id.*¹⁰

In its March 31, 2010 decision, the Board approved the AAR's RCAF-A and RCAF-5 calculations for the second quarter 2010 (including use of corrected productivity adjustment factors for calculation of the RCAF-A and RCAF-5).¹¹ The Board, however, stated that it intended to commence a separate proceeding (i.e., the instant proceeding) with respect to the AAR's request to "correct the productivity calculation for the period 2003-2007" and to "recalculate earlier RCAF (Adjusted) and RCAF-5 values that were determined with the 2003-2007 productivity adjustment factor." *Id.* at 3.

Discussion

A. The Board's Function in Administering the RCAF Process Is Purely Ministerial

The Board's statutorily-assigned role in the RCAF process, under 49 U.S.C. § 10708, is purely "ministerial." *See Productivity Adjustment-Implementation*, 1 S.T.B. at 746. The Board's function is simply to provide private parties with a "neutral and authoritative benchmark" (whether the RCAF-A or the RCAF-5) that may be used for inflation-based escalation of contract rates. *Id.*¹² Assumed within that "neutral and authoritative" ministerial role must be the requirement that the Board's RCAF calculations be diligently made and free from material error.

¹⁰ The AAR noted that the erroneous overstatement of productivity for the 2003-2007 period, in the absence of correction of the productivity adjustment factors resulting from the Board's computational error, affected the current calculation of the RCAF-5 and the RCAF-A and would be carried forward in future productivity calculations.

¹¹ The Board concluded that the adjustments were appropriate "because this is not a case where we are attempting to preserve settled expectations in previously published numbers or where the public has an interest in maintaining the expectation of administrative finality with regard to the Board's release of periodic calculations (citing *Edison Elec. Inst. v ICC*, 969 F.2d 1221, 1228 (D.C. Cir. 1992))." *Id.* at 2, notes 2 & 3.

¹² The provisions of 49 U.S.C. § 10708 were enacted pursuant to the ICC Termination Act of 1995 ("ICCTA"). Prior to ICCTA, the RCAF served as a statutorily-protected benchmark for the reasonableness of rail tariff rate increases. The ICCTA eliminated the tariff-filing requirement and the RCAF's rate reasonableness benchmark function. *See Productivity Adjustment-Implementation*, 1 S.T.B. at 746

The AAR's quarterly productivity-adjusted RCAF submissions to the Board are ultimately dependent for their accuracy on the correctness of the Board's computations in its annual decision determining the productivity adjustment for the respective five-year rolling average period applicable to the RCAF-A and RCAF-5 calculations. To determine the annual productivity adjustment for the most recent year in the applicable five-year rolling average, the Board divides the applicable output index for that year by the applicable input index for that year.¹³ The data used by the Board to calculate the input index are publicly available and readily verifiable.¹⁴ The Board's calculation of the output index, however, is based on the costed waybill sample data, which is competitively sensitive information and is not available to the parties in the Board's annual productivity adjustment determination; the Board's calculations relating to the output index can only be replicated and verified by the Board itself.

Because parties to the Board's annual productivity adjustment proceedings have no way of calculating the output index on their own and are dependent on the Board in administering the index, the Board has a responsibility not only to ensure that the index is correctly calculated, but also to make corrections to the output index (and the annual productivity adjustment resulting from the index) when Board computational errors are in fact discovered.

B. Correction of the Board's Computational Errors Is Supported by Clear Agency Precedent

The Board (and its predecessor agency the ICC) have long distinguished in RCAF proceedings between the restatement of prior RCAF calculations for straight-forward correction

¹³ See Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment* (served March 26, 2010).

¹⁴ Source data for the input index are derived from each railroad's Annual Report Form R-1, plus the annual Railroad Cost Recovery Index ("RCR") published by the AAR for the corresponding year (which is used to put the expense totals on a constant dollar basis). The Board's input index calculations are thus readily replicated. See, e.g., Ex Parte No. 290 (Sub-No. 4), March 13, 2008 Comments of the Western Coal Traffic League ("WCTL") at 1 ("WCTL has replicated the STB's value for the input index for 2006 from publicly available information..."); Ex Parte No. 290 (Sub-No. 4), February 22, 2010 Comments of Western Coal Traffic League at 1 ("WCTL notes that the input index value utilizes publicly-available information and that the calculation is thus transparent.")

of computational errors and the restatement of RCAF calculations to address other non-ministerial forms of purported agency error. For example, in *Railroad Cost Recovery Procedures—Productivity Adjustment*, 1989 WL 239385 (I.C.C.) (1989) (served Sept. 19, 1989), the ICC was requested by shippers to retroactively restate the third quarter 1987 RCAF (Adjusted) to “correct[] for the addition of 1987 data” to the productivity averaging period, which addition the shippers claimed was long overdue. *Id.* at *2. The ICC declined to restate the previous RCAF values noting that one of the precedents relied on by the shippers included a “1984 adjustment to the RCAF [that] corrected a *computational error* in the RCAF published two quarters earlier, and that no such computational error was identified in the third quarter RCAF. *Id.* at *3. (Emphasis added)¹⁵

The other precedent relied on by the shippers and rejected by the Board in the above proceeding was a 1986 “rollback” of the RCAF, mandated by the ICC as part of an agency rulemaking decision adopting a “forecast error” adjustment to the RCAF, “which corrected for prior RCAF overstatements.” *Id.* at *3.¹⁶ The ICC noted that the cited rulemaking was intended to retroactively redress RCAF calculations reflecting forecast errors, and was unlike the shippers’ request to restate the 1987 RCAF values to add later productivity data, which invoked the Board’s policy to determine the timing and duration of implementing additional years’ productivity data. *Id.*¹⁷

The two precedents distinguished in *Railroad Cost Recovery Procedures—Productivity Adjustment*, *supra*, are concomitantly clear precedent for the Board to make the corrective

¹⁵ See Ex Parte No. 290, (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed) (decided June 8, 1984).

¹⁶ See Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 3 I.C.C. 2d 60 (1986).

¹⁷ See also *Railroad Cost Recovery Procedures*, 5 I.C.C. 2d 434, 470 (1989) (adopting a productivity adjustment to the RCAF but declining to retroactively restate the RCAF to reflect prior productivity gains (“[T]he decision to consider a productivity adjustment to the RCAF is based on a change in policy, not the correction of an error in law or method....”).

restatements to the 2007 productivity index (and attendant RCAF-A and RCAF-5) values to correct for the Board's computational errors as requested by the AAR. *See* Ex Parte No. 290, (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed) (decided June 8, 1984) (Attachment B) and Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 3 I.C.C. 2d 60 (1986). *See also* *Productivity Adjustment-Implementation*, 1 S.T.B. at 736, n 14.

The Board (and the ICC) have also in numerous other types of proceedings distinguished undisputed computational errors as especially warranting Board corrective action despite the finality of a prior Board decision. For example, the statutory provisions governing offers of financial assistance (OFA's) in abandonment and discontinuance proceedings provide that decisions of the Board regarding the conditions and amount of compensation are binding on the parties (subject to the offeror's right to withdraw its purchase offer within 10 days). *See* 49 U.S.C. §10904 (f) (2). Despite the statutory language making the agency's compensation finding non-appealable, the Board has routinely reopened its decisions where computational errors have been brought to its attention. *See Buffalo Ridge R.R., Inc.-Abandonment Exemption-Between Manley, MN & Brandon, SD*, 9 I.C.C.2d 778 (Apr. 19, 1993); *Union Pac. R.R. Co.*, AB-33 (SUB 112X), 1998 WL 86073 (S.T.B. Feb. 27, 1998); *Illinois Cent. R.R. Co.--Abandonment Exemption--in Perry County, IL*, AB-43, 1995 WL 129077 (I.C.C. Mar. 16, 1995); *see also Public Serv. Co. of Colo. d/b/a Xcel Energy v. Burlington N. & S.F. Ry.*, STB Docket No. 42057, slip op. at 2 (STB served Dec. 13, 2004), 2004 WL 2866295 (S.T.B.) (Board establishment of special procedures for correcting computational errors in SAC rate decisions); *Otter Tail Power Co. v. BNSF Railway, Co.*, STB Docket No. 42071 (served March 28, 2006), 2006 WL 783396 (S.T.B. Mar. 24, 2006) (same).

In short, the Board has a clear ministerial responsibility under the RCAF process and relevant precedent to correct computational errors in calculating the RCAF values, and it should make the corrective adjustments to the 2007 productivity adjustment (and attendant RCAF-A and RCAF-5 values) as requested by the AAR.

C. The Board Should Not Be Reluctant to Make the Clerical Corrections Requested as a Result of Perceived or Actual Detrimental Reliance

In its Notice, the Board “[s]pecifically...[sought] input on the degree, if any, of detrimental reliance by stakeholders on [the] previously published [2007 productivity-adjustment] figures.” *Id.* at 2. The AAR is unaware of any detrimental reliance here that would compel the Board to refrain from restating the 2007 productivity adjustment to correct for its clerical error.

First, as a general proposition of law, even significant “detrimental reliance” by a party on an agency’s prior decision does not preclude an agency from revisiting and correcting its prior decision once it becomes aware of undisputed computational or clerical errors. *See King v Norton*, 160 F.Supp.2d 755, 761 (E.D.Mich.2001) (noting that the Bureau of Indian Affairs prior decision was the result of mathematical error and finding that “detrimental reliance by a party will not prevent an agency's reconsideration of a decision if the initial decision is in fact erroneous”); *see also Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122, 144 (D.D.C. 2002) (accord); *Belville Min. Co. v. United States*, 999 F.2d 989, 999 (6th Cir. 1993) (accord). Indeed, it is axiomatic that agencies have inherent authority to reopen decisions to correct mathematical or inadvertent ministerial errors even though objecting parties may have significantly relied upon the erroneous decisions. *See, e.g., Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958) (ICC authority to correct inadvertent ministerial error in issuing certificates of authority without restrictions upheld); *City of Long Beach v. Dep't of*

Energy, 754 F.2d 379, 387 (Emer. Ct. App. 1985) (Department of Energy decision requiring party to disgorge revenues obtained through agency computational error in DOE petroleum pricing approval decision upheld).¹⁸

Further, if there has been any “detrimental reliance” by parties other than the AAR and its members on the Board’s erroneous calculations, any such reliance would likely arise in the context of private transportation contracts or rate reasonableness cases. The first category, private transportation contracts, are beyond the Board’s regulatory authority and resolution of issues involving private transportation contracts are subject to the terms of the contracts, the intent of the parties, and the applicable provisions of state contract law. The issue of the effectiveness of the Board’s correction of erroneous 2007 productivity values on the contractual dealings of the parties (and whether an individual party has detrimentally relied on prior calculations) is determined by the nature of the parties agreement and the applicable state law. The Board need not, and should not, attempt to address those issues in this proceeding. As to the second category, rate reasonableness proceedings, the AAR is unaware of any prior or current SAC cases that would be significantly affected by the Board’s correction of its computational error. Moreover, if any such situations should arise, either party to a rate prescription may file for reopening on grounds of material error under the Board’s existing reopening standards. In the context of a particular proceeding, a party would be able to raise any claims of “detrimental reliance” for the Board to consider on a case-by-case basis.

¹⁸ Because the error in this case was purely clerical and ministerial, the Board’s discussion of reliance interests in *AEP Texas North Company v. BNSF Railway Company*, STB Docket No. 41191 (Sub-No. 1) (served May 15, 2009), is inapposite.

Conclusion

The AAR urges the Board to fully correct its computational error in the 2007 productivity adjustment by: (1) restating the 2007 productivity adjustment to conform to the correct calculation and (2) restating any quarterly RCAF-A and RCAF-5 calculations (as set forth in Attachment A) so that they also conform to the corrected 2007 productivity adjustment.

Respectfully submitted,



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July 12, 2010

**RAIL COST ADJUSTMENT FACTOR (4Q/2007=100)
Productivity-Adjusted RCAF (a.k.a. RCAF-A)
Impact of Using Corrected Productivity**

Quarter	Preliminary RCAF	Forecast Error Adjustment	RCAF (Unadjusted)	Original Decision		Corrected		Difference
				Productivity Adjustment Factor	RCAF (Adjusted)	Productivity Adjustment Factor	RCAF (Adjusted)	
1Q 2009	1.008	0.014	1.022	2.1878	0.4675			
2Q 2009	0.949	-0.099	0.850	2.1959	0.3871	2.1944	0.387	0.000
3Q 2009	0.998	-0.060	0.938	2.2040	0.426	2.2018	0.426	0.000
4Q 2009	0.998	-0.002	0.996	2.2122	0.450	2.2076	0.451	(0.001)
1Q 2010	1.045	-0.007	1.038	2.2204	0.467	2.2112	0.469	(0.002)

**RAIL COST ADJUSTMENT FACTOR (4Q/2007=100)
 STB's 2nd Productivity-Adjusted RCAF (a.k.a. RCAF-5)
 Impact of Using Corrected Productivity**

Quarter	Preliminary RCAF	Forecast Error Adjustment	RCAF (Unadjusted)	Original Decision		Corrected		Difference
				2nd-Productivity-Adjusted RCAF	PAF-5 RCAF-5	2nd-Productivity-Adjusted RCAF	PAF-5 RCAF-5	
1Q 2009	1.008	0.014	1.022	2.3120	0.442			
2Q 2009	0.949	-0.099	0.850	2.3189	0.367			
3Q 2009	0.998	-0.060	0.938	2.3259	0.403			
4Q 2009	0.998	-0.002	0.996	2.3329	0.427			
1Q 2010	1.045	-0.007	1.038	2.3415	0.443	2.3399	0.444	(0.001)

EC
FR-7035-01

Exhibit (JRM-4)
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INTERSTATE COMMERCE COMMISSION
EX PARTE NO. 290 (SUB-NO. 2)
RAILROAD COST RECOVERY PROCEDURES

AGENCY: Interstate Commerce Commission

ACTION: Adjustment of Rail Cost Adjustment Factor (RCAF)

SUMMARY: The Commission has decided to adjust the maximum allowable increase downward by .001 (1/10 of 1 percent) for the next quarter that shows an increase in the RCAF in order to compensate shippers for a similar overstatement occurring in the first quarter of 1984.

EFFECTIVE DATE: June 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek (202) 275-0938

or

Douglas Galloway (202) 275-7278

SUPPLEMENTAL INFORMATION:

We have received requests from shippers for refunds or credits because of a computational error in the first quarter 1984 RCAF. The Association of American Railroads (AAR) opposes a mandatory refund but does not oppose a remedial adjustment to the RCAF. We do not believe that refunds would be practical because of the administrative burden entailed in the identification of each movement for which a refund must be made. The shippers and the AAR are in agreement that an adjustment to the next RCAF would be an appropriate method of correcting the computational error that occurred in the previous RCAF. Accordingly, we have decided to reduce by .001 the maximum allowable increase in the next quarter that shows an increase. This reduction will be effective for one quarter only.

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Exhibit (JRM-4)
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The result will compensate shippers for the RCAF miscalculation covering the first quarter of 1984.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities, because it will result in a reduction in maximum allowable rate increases.

Decided: June 8, 1984.

AUTHORITY: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553

By the Commission, Chairman Taylor, Vice Chairman Andre,
Commissioners Sterrett and Gradison.

(SEAL)

James H. Bayne
Secretary