

SURFACE TRANSPORTATION BOARD

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

QUARTERLY RAIL COST ADJUSTMENT FACTOR

Digest:¹ 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 Surface Transportation Board (Board) is required by law to publish the RCAF on at least a quarterly basis. Each quarter, the Association of American Railroads (AAR) computes three types of RCAF figures and submits those figures to the Board for approval. This decision waives the provision at 49 C.F.R. § 1135.1 requiring that the Board's second quarter RCAF publication be served by March 20, 2019, and directs AAR to submit updated calculations by March 26, 2019.

Decided: March 20, 2019

In Railroad Cost Recovery Procedures, 1 I.C.C.2d 207 (1984), the Interstate Commerce Commission (ICC) outlined the procedures for calculating the all-inclusive index of railroad input prices and the method for computing the rail cost adjustment factor (RCAF). Under the procedures, the Association of American Railroads (AAR) is required to calculate the index on a quarterly basis and submit it to the agency on the fifth day of the last month of each calendar quarter. In Railroad Cost Recovery Procedures—Productivity Adjustment, 5 I.C.C.2d 434 (1989), aff'd sub nom. Edison Electric Institute v. ICC, 969 F.2d 1221 (D.C. Cir. 1992), the ICC adopted procedures that require the adjustment of the quarterly index for a measure of productivity. The provisions of 49 U.S.C. § 10708 direct the Surface Transportation Board (Board) to continue to publish both an unadjusted RCAF and a productivity-adjusted RCAF on a quarterly basis. Under 49 C.F.R. § 1135.1, the Board is required to make its RCAF publication by, as relevant here, the twentieth of March.

On March 5, 2019, AAR submitted its quarterly filing. AAR was unable to use an updated productivity figure in its calculations because, at the time of AAR's filing, the Board had not yet issued the productivity change for 2017 and for the 2013-2017 averaging period.²

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. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² By decision served March 4, 2019, the Board noted that it had not yet issued those figures and advised that AAR's quarterly filing should ensure that its methodology to account for that was clearly explained. Quarterly Rail Cost Adjustment Factor, EP 290 (Sub-No. 5) (STB served Mar. 4, 2019).

Accordingly, AAR used last year's productivity figures in its filing and noted in its pleadings and workpapers that it had done so.

Shortly after AAR's filing in this docket, on March 11, 2019, the Board proposed in Railroad Cost Recovery Procedures—Productivity Adjustment, EP 290 (Sub-No. 4) (STB served Mar. 11, 2019), to adopt 1.005 (0.5% per year) as the measure of average (geometric mean) change in railroad productivity for the 2013-2017 (five-year) period. This represents an increase of 0.9% from the average for the 2012-2016 period.

On March 18, 2019, Timothy D. Crowley, Executive Vice President of L.E. Peabody & Associates, Inc., submitted a comment in response to AAR's March 5, 2019 filing, in which he raised a concern about AAR's calculations. Mr. Crowley refers to the 2017 R-1 revisions ("recalculated figures") submitted in response to the Board's decision in Railroad Revenue Adequacy—2017 Determination, EP 552 (Sub-No. 22) et al. (STB served Dec. 6, 2018). Specifically, Mr. Crowley stated that AAR had not used the recalculated figures in its calculations, although the recalculated figures were factored into the Board's 2017 productivity adjustment.

By decision served March 18, 2019, AAR was directed to file a response addressing Mr. Crowley's comment by March 19, 2019. In the same decision, AAR was also directed to submit updated calculations reflecting the current productivity figure. In its March 19, 2019 response, AAR states that it did not use recalculated figures in its calculations. AAR also agrees with Mr. Crowley's assessment that using recalculated figures in the productivity adjustment but not in the quarterly RCAF calculations creates "an apparent mismatch." AAR states that it takes "no position at this time as to whether the Board should properly use recalculated figures in the quarterly RCAF calculations and, if so, whether the numbers . . . in Mr. Crowley's e-mail are correct."

At this time, to avoid a mismatch between the current productivity adjustment and the RCAF, the Board intends for the RCAF to reflect the recalculated figures. Accordingly, AAR will be directed to resubmit its RCAF calculations using the recalculated figures for this quarter (and the prior two quarters, which are necessary for the calculation of this quarter's RCAF) by March 26, 2019. This will allow the Board to serve an RCAF decision for this quarter by the end of March with an appropriate figure. The Board's RCAF decision for this quarter will establish a comment period to allow any party to submit comment on the inclusion of the recalculated figures in the RCAF.

Under the circumstances here, the Board will waive the provision at 49 C.F.R. § 1135.1 requiring that the Board's second quarter RCAF publication be served by the twentieth day of March.

It is ordered:

1. The provision at 49 C.F.R. § 1135.1 setting the twentieth day of March as the deadline for publication of the Board's second quarter RCAF decision is waived in this instance.

2. AAR is directed to resubmit its RCAF calculations using the recalculated figures for this quarter (and the prior two quarters, which are necessary for the calculation of this quarter's RCAF) by March 26, 2019.

3. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.