

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**REVISIONS IN THE BOARD'S
METHODOLOGY FOR
DETERMINING THE RAILROAD
INDUSTRY'S COST OF CAPITAL**

Docket No. EP 664 (Sub-No. 4)

MOTION FOR CLARIFICATION

Pursuant to 49 CFR § 1117.1, the Association of American Railroads asks the STB to clarify its Notice of Proposed Rulemaking in this proceeding. Specifically, the AAR requests that the Board specify the algebraic formula that it proposes to use in the second stage of the proposed “Step MSDCF” model, because there is an irreconcilable difference between the formula provided by the Board and the illustrative examples set forth in the NPRM and workpapers.¹

The NPRM stated that the algebraic formula for Step MSDCF was described in Appendix A of the NPRM. NPRM at 5 & App. A. The formula announced by the Board for the second stage set forth in Appendix A is

$$\sum_{t=6}^{10} \frac{CF_{i5}(1 + Step_{i1})^{(t-5)}}{(1 + r_i)^t}$$

NPRM at 10.

¹ See Docket No. EP 664 (Sub-No. 4), *Revisions to the Board's Methodology For Determining the Railroad Industry's Cost of Capital*, decision released October 11, 2019, at 1 (announcing that Board will make available workpapers showing the calculations for the values shown in Appendix B of the NPRM). The AAR requested, and received, the workpapers on October 16, 2019.

However, it appears that the Board actually used a different formula from that set forth in the NPRM to achieve the results reflected in Appendix B. Specifically, our review of the Board’s work papers suggest the illustrative examples were derived using the following formula, where $p = t - 5$:

$$\sum_{t=6}^{10} \frac{CF_{i(t-1)}(1 + Step_{ip})}{(1 + r_i)^t}$$

Given that this formula lies at the heart of the NRPM, we urge the Board to clarify its proposed rule. “To meet the rulemaking requirements of section 553 of the APA, an agency ‘must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.’” *National Life Line Ass’n v. FCC*, 921 F.3d 1102, 1115 (D.C. Cir. 2019) (quoting *Florida Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988)).

The AAR requests that the Board clarify whether it is proposing the formula for calculating the second stage of the Step MSDCF described in Appendix A of the NPRM, or the above-described formula actually used to achieve the results set forth in Appendix B of the NPRM.

Respectfully submitted,

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