

**BEFORE THE GOVERNOR
OF THE STATE OF WASHINGTON**

In Re: The Denial of a Rulemaking Petition before)	
the Washington State Department of Transportation,)	APPEAL OF THE
Filed by <i>Advocates for Regional Transport Efficiency</i>)	DENIAL OF A
Regarding Least Cost Planning Requirements)	PETITION
_____)	

COMES NOW the Appellant, *Advocates for Regional Transportation Efficiency*, by and through its attorneys, and appeals the denial of a petition to amend an administrative rule brought before the Washington State Department of Transportation (WSDOT) as authorized by the Washington Administrative Procedures Act in RCW 34.05.330(3) (WAPA). The appeal detailed below provides sufficient reasons for granting this appeal and for the Governor to direct WSDOT to initiate a rule amendment as he is empowered to do by the WAPA. That law allows the Governor 45 days to respond to this appeal.

Background

On August 9, 2016, the *Advocates for Regional Transportation Efficiency* filed a petition to amend a rule with WSDOT as authorized by RCW 34.05.330(1). As provided in law, WSDOT is given 60 days from the filing of a petition to either “(a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner . . . or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.” On September 29, WSDOT issued a letter denying the requested rule amendment, signed by Transportation Secretary Roger Miller.

In his denial, Secretary Miller states, “the current informal policy and checklists together with the rule in Washington Administrative Code (WAC 468-86-030 & 080) provide the

*Appeal to the Governor
of the Denial of a Rulemaking Petition
to WSDOT, Regarding Least Cost Planning*

important flexibility in working with the variety of Regional Transportation Planning Organizations (RTPOs) in Washington State.” The letter of denial goes on to state that RTPOs “have very limited resources” such that producing a separate Least Cost Planning Document may not be feasible, and also that timing of least cost planning (LCP), methodologies used, and how to apply these methodologies are best left up to each RTPO. Finally, Acting Secretary Miller notes that those at WSDOT “appreciate and share your interest in making available current practices that will assist the RTPOs in developing informed performance based plans.”

Challenges to WSDOT Denial Letter

The denial letter of Secretary Miller contains a significant misunderstanding, from which his denial stems. He assumes that all RTPOs would be required to apply least cost planning as mandated by RCW 47.80.030. The law, however, applies only if the RTPO is engaged in high capacity transit (HCT) planning. The Puget Sound Regional Council (PSRC) is the only one of the state’s 14 RTPOs approved by WSDOT that is actively involved with HCT.¹ It conducts regional planning for Sound Transit.

Sound Transit is an entity that proposes public expenditures of \$54 billion supported by \$36 billion in local taxes over the next 25 years to expand its transit system as outlined in ST3. Although Sound Transit prepared a report on its benefit-cost analysis, methodology, and results, the report was not released until September 1, 2016. By that point, PSRC’s expert review panel had already held its last public meeting negating the possibility for public input on whether the

¹ The Spokane Transit Authority has a November ballot measure that would fund one rapid transit line but the majority of expenditures in the plan would go toward improving existing bus service. Accordingly, it remains accurate that only PSRC would be impacted by the proposed rule change.

requested \$54 billion in taxes would accomplish the goals of Sound Transit in an efficient and effective manner.

The need for robust public review of Sound Transit's cost-benefit analysis is especially true when one considers changes in urban mobility that are now being deployed and others that are under development. Examples of new transportation modes likely within the next decade include (a) demand-responsive automated public transit buses and vans monitored and controlled by artificial intelligence software using sensor and map inputs, (b) vastly expanded fleets of multi-passenger, smartphone-dispatched commercial vehicles managed by Mobility-as-a-Service (MaaS) vendors (such as Lyft and Uber), and (c) widespread consumer embrace of highly-automated, assisted-driving household vehicles with characteristics that reduce congestion and the motivation for using transit. Many professional analysts (including some at PSRC) and private investors believe these revolutionary developments will fundamentally change urban mobility. Proper LCP analysis would address the uncertainty these alternatives pose by ensuring flexible options are evaluated. Sound Transit's final cost-benefit analysis clearly failed to account for disruptive technologies.

An RTPO needs to know what is involved in least cost planning, so that it can comply with the laws of this state, and give voters a clearer picture of the cost consequences of their vote for or against transit proposals. Failure to comply could lead to challenges to the outcome of voter approvals that are not informed by readily available least cost planning documents. The timing and substance of least cost planning analysis would best be developed with a rule amendment initiated by WSDOT so that all parties affected by high capacity transit planning – including those asked to vote for funding of a specific plan – have access to reliable information

*Appeal to the Governor
of the Denial of a Rulemaking Petition
to WSDOT, Regarding Least Cost Planning*

prior to making a decision on a proposed plan. Least cost planning analysis is especially needed when there are billions of dollars at stake to be collected and spent over many years. Here, PSRC’s expert review panel did not release its final analysis of the proposal until September 26, 2016—long after voter ballots had been prepared.

LCP, or “least cost planning,” is an analytical tool for optimizing infrastructure investments. It was initially developed for use in the electrical utility industry. In 1994, the Washington State Legislature passed SHB 1928 (now codified as RCW 47.80.030) by a House vote of 96-0 and a Senate vote of 44-2. It requires Regional Transportation Planning Organizations (RTPOs) to “develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation. . . a regional transportation plan. . . based on a least cost planning methodology that identifies the most-cost effective facilities, services, and programs.” Senator Drew, who sponsored the legislation, responded to a question on the Senate Floor about the intent of the law. She stated:

I recognize that least-cost planning methodologies for transportation are just being developed, will need to be assessed and will take some time to validate. My intent with this amendment is for regional transportation planning organizations to incrementally implement these methodologies as they are developed, and to be at the forefront in developing and testing these least-cost planning methodologies. . . . Since regional transportation plans are to be reviewed at least every two years, there will be opportunity for least-cost planning methodologies to be implemented for future plan updates. It is my intent that the Department of Transportation should recognize this intent in implementing this bill.

Journal of the Senate, p. 540 (1994).

Prior to the passage of SHB 1928, the legislature enacted comprehensive legislation outlining how regional high capacity transportation systems should be planned and approved in the central Puget Sound region and, separately, in other areas of the

*Appeal to the Governor
of the Denial of a Rulemaking Petition
to WSDOT, Regarding Least Cost Planning*

state. That law states in part: “Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for candidate technologies shall be developed.” RCW 81.104.100(2)(b).

In 2009, fifteen years after RCW 47.80.030 was first codified, WSDOT promulgated WAC 468-86-080 to implement the legislation. WAC 468-86-080 states that LCP methodology:

... shall consider direct and indirect costs and benefits for all reasonable options to meet planning goals and objectives. The methodology shall treat demand and supply resources on a consistent and integrated basis. The regional transportation planning organizations shall consult the guidelines set forth by the department for implementing a least-cost planning methodology. Regional transportation plans should incrementally incorporate least-cost planning methodologies as these concepts are developed. The regional transportation plan adopted after July 1, 2000, shall be based on a least-cost planning methodology appropriate to the region.

Despite this guidance from WSDOT, questions remain as to when in the timing of any given transportation proposal LCP should occur. Developing an amended rule that clearly delineates when LCP should occur and what requirements should be addressed in LCP analysis would go a long way toward ensuring that RCW 47.80.030, now over 20-years old, is fully implemented and that all major transportation proposals receive thorough review with LCP. In addition, requiring RTPOs to produce a publicly available, stand-alone LCP document would improve public access to important information that should be considered by all transportation providers, especially for publicly funded proposals. Nothing significant has been done by

WSDOT in this area in the past seven years. The need for LCP, however, is more important now than ever before.

Need for the Requested Rule Amendment

Without the clarifications of an amended WSDOT rule on what it means to conduct a least cost planning analysis, RTPOs end up presenting proposals for voter approval without knowing if the proposal is efficient and cost effective when compared to transportation alternatives. For example, the Sound Transit board's recent approval of a ballot measure seeking authorization for \$54 billion in public expenditures from taxpayers, federal grants, borrowing, and fares over 25 years occurred without the information provided in a Least Cost Planning analysis. Board members may not have known, and the public could not know, of the cost effectiveness of ST3. It may well be that certain components of the ST3 are *not* cost effective, while other components *are* cost effective.

It may be that a 25-year plan *cannot* be justified after least cost planning is considered, or it may be that it can. It may be that a more efficient and cost-effective transit plan should be offered to the voters, one that may cost far less than \$54 billion, or perhaps there is no better plan. PSRC's expert review panel, for instance, noted in its final report assessing ST3 that cost-effectiveness measures should be employed on individual projects but there are challenges stemming from "the fact that there are no universally accepted means of analysis" for evaluating proposals.² Without a least cost planning analysis, there can be only speculation about the cost and benefits of this proposal. And least cost planning does not dictate a certain outcome; it merely allows those making decisions – including voters – to be aware of the costs and benefits.

² Page 19 of ST3 Expert Review Panel Final Report, dated September 26, 2016.

In this state, any increase in tax revenue is limited by the willingness of voters to approve it. Washington State faces a serious crisis in funding of our public schools. Any voter approval of taxes for one proposal, such as ST3, means it is far less likely that there will be voter approval of an equally costly proposal – such as funding for public schools. The minimum amount needed to meet the McCleary requirement over the next 25 years is \$50 billion from all taxpayers of the state; about the same amount needed to support ST3 from about 40% of the taxpayers of the state. There undoubtedly is a limit to what voters will approve. And the public is far less likely to approve tax revenue for a system that cannot be determined to be cost effective in accordance with least cost planning methodologies. Moreover, Washington’s tax code is one of the most regressive in the country (and one of the least productive in terms of tax productivity).³ Any new tax proposal, whether state or local, should attempt to reduce these indices: proper LCP analysis would help with this.

As noted when the requirement for least cost planning for RTPOs was adopted in 1994, least cost planning methods were expected to evolve over time. A basic requirement today for RTPO least cost planning would be to assess the impact on climate change from methods used in construction. For example, construction of ST3 will generate significant carbon emissions, especially from the proposed tunneling, dirt hauling and use of concrete. The ST benefit-cost analysis takes into account emissions from operations (compared to cars), but not construction. LCP would require analysis of both.

An LCP analysis should be available *before* a plan is presented to the voters for tax approval. This seems axiomatic, yet the Sound Transit board approved a \$54 billion tax increase

³ See <http://dor.wa.gov/content/aboutus/statisticsandreports/2013/Compare13/>.

package without first conducting an LCP analysis. And, again, no LCP analysis is available to voters and Sound Transit’s cost-benefit analysis has only been available for a short time. This appears to be by intention, as emails and letters from PSRC personnel to the Expert Review Panel that oversees the Sound Transit process clearly state that least cost planning analysis would be conducted *after* the Sound Transit board approves the components of the ST3 package for voter approval.⁴ This ‘cart before the horse’ approach to least cost planning is contrary to what is envisioned – and required – in RCW 47.80.030.

Conclusion

There are many shortfalls in the planning methods now used by RTPOs to assess proposals for taxpayer investments in plans such as ST3. Both the timing of least cost planning and the specific methodologies required need to be adopted by WSDOT by amended rule so that there is compliance with state law. This would help reduce any vulnerability to potential challenges to ballot measures that do not comply with law and, more importantly, help inform voters of what is requested of them when asked to approve measures such as the \$54 billion ST3 proposal requested by Sound Transit.

There is a need for increased taxes in Washington State, if for no other reason than to fund public schools. There is a limit, however, to taxing power that is wholly within the political

⁴ On March 31, 2016, PSRC Executive Director Josh Brown wrote Expert Review Panel Chairman Jim Jacobson specifically about Least Cost Planning. Mr. Brown’s letter notes that “PSRC specifically developed a Benefit Cost Analysis (BCA) tool which integrates with its travel demand model to produce [cost effectiveness] information” and that scenarios “were last developed and analyzed in 2010 as part of the development of Transportation 2040.” The letter indicates that, *following approval and inclusion in the long-range plan*, “sponsors are required to submit a quantitative benefit cost analysis to evaluate the economic metrics of the project.” The letter of March 10 from ERP is available at:

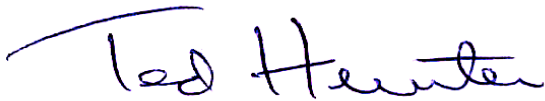
http://www.wsdot.wa.gov/partners/erp/Letters/Panel%20response%20letter%20March10_2016.pdf;

The letter from Josh Brown is available at:

[http://www.wsdot.wa.gov/partners/erp/Letters/PSRC%20response%20to%20ST3%20ERP%20re%20LCP%20\(2\).pdf](http://www.wsdot.wa.gov/partners/erp/Letters/PSRC%20response%20to%20ST3%20ERP%20re%20LCP%20(2).pdf).

realm and cannot be predicted by any economist or politician. This limit is far more likely to be reached if voters believe they are not fully informed by planners when seeking approval for large amounts of taxpayer funds, such as the \$54 billion proposed by Sound Transit. As the Seattle Times editorial board recently noted, the proposal “was rushed onto the presidential-year ballot and pushed by a campaign playing fast and loose with the facts.”⁵ Preparing an LCP Document, consistent with the rulemaking petition brought before WSDOT, and making the results of its application available to voters in a timely manner, would have provided greater accountability in the process and ensure that voter approved taxes are appropriately applied to projects and priorities consistent with the goals of this state.

Submitted this 27th day of October 2016



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Attachments:
Petition for Rulemaking to WSDOT
Letter of Denial
RCW 47.80.030
RCW 81.104.100

⁵ “The Times recommends: Reject Sound Transit 3 and demand a better plan,” *The Seattle Times*, October 19, 2016.

*Appeal to the Governor
of the Denial of a Rulemaking Petition
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