

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the)	DOCKET NO. TR-031384
)	
Implementation of Amendments)	ORDER NO. 01
to Chapter 81.53 RCW)	
)	ORDER ISSUING
)	INTERPRETIVE AND POLICY
)	STATEMENT REGARDING
)	DISBURSEMENT OF FUNDS
)	FROM THE GRADE CROSSING
)	PROTECTIVE FUND
.....)	

I. BACKGROUND

1 During the 2003 legislative session, the Legislature passed and the Governor signed into law HB 1352, Chapter 190, Laws of 2003. The new law amends Chapter 81.53 RCW, broadening the purpose of the Commission’s Grade Crossing Protective Fund (GCPF) to include all rail safety projects that pose a high risk to public safety, including projects that may not be related to public railroad-highway grade crossings (grade crossings). The new law also provides that the Commission may make “grants or subsidies” from the GCPF for these rail safety projects.

2 The Grade Crossing Protective Fund, administered by the Commission, was created in 1969 to provide funds for installing or improving warning devices at grade crossings. By statute, the Commission is required to evaluate petitions for the installation or improvement of warning devices, and the apportionment of costs for the warning device, through a hearing process. *See RCW 81.53.261, RCW 81.53.271.* Costs for such improvements were originally apportioned by RCW 81.53.271 as follows: sixty percent to the GCPF, thirty percent to the highway authority, and ten percent to the railroad company. In the 1980’s, the

federal government increased its funding for such projects and required only a one percent match, which was paid from the GCPF.

- 3 Currently, projects that are selected for federal funding receive 100 percent of the project costs. The majority of these projects are located at heavily traveled public crossings. Public safety improvements are often needed, however, at grade crossings that cannot compete effectively for federal aid due to factors such as relatively low train and/or vehicle volumes. Although GCPF grants are available for projects that do not receive federal funds, smaller towns and smaller railroads often cannot afford to pay the 30 percent and 10 percent contributions, respectively, to fund projects.
- 4 Under the new law, types of projects that were previously ineligible for GCPF funding may now be eligible, including those related to pedestrian trespass prevention and safety improvements at private crossings. The original statutory apportionment system was also amended to waive the monetary match requirements for projects under \$20,000 or the first \$20,000 for projects that exceed that amount. In addition, the new law provides for distribution of funds for rail safety projects through grants or subsidies, while petitions for warning devices must still be evaluated through a formal application process that may require a hearing.
- 5 The change in law necessitated a reevaluation of the GCPF program, particularly the process by which the Commission will allocate funds among different types of projects, as well the development of a formal document that provides policy and administrative guidance for the amended GCPF program. The options for policy and administrative guidance include developing rules or an interpretive and policy statement.
- 6 On September 9, 2003, the Commission issued a notice that it would hold a workshop on September 30, 2003, seeking information, opinions, and ideas from

interested parties about how to design, implement, and administer the grant program according to the legislative changes. The Commission mailed the notice to railroad companies, persons interested in railroad matters, a number of state and federal agencies, and others involved in administration of grant programs.

- 7 Representatives of the Washington State Department of Transportation, the Federal Railroad Administration, the County Road Administration Board, the state Transportation Improvement Board, and the Union Pacific Railroad Company attended the September 30, 2003, workshop. Discussions at the workshop covered the following topics: types of non-grade crossing projects that should be eligible for funding; funding considerations for private crossing improvements; apportioning funds between different categories of projects; who may apply for GCPF grants; application review and prioritization; and post-grant follow-up considerations.
- 8 Based upon the information gathered at the September 30, 2003, workshop, Staff recommended use of an interpretive and policy statement as an appropriate and preferable mechanism for implementing and interpreting the statutory changes. Staff prepared a draft interpretive and policy statement to interpret RCW 81.53.271 and RCW 81.53.281, as amended during the 2003 legislative session, and to explain how the Commission will implement the law in disbursing grants from the Grade Crossing Protective Fund.
- 9 On October 27, 2003, the Commission issued a notice to all interested persons, requesting comments on the draft interpretive and policy statement by November 10, 2003. No comments were filed with the Commission.
- 10 Staff recommends the Commission issue the interpretive and policy statement. The Commission accepts the proposal as a reasonable approach to new statutory responsibilities that is both efficient and effective. By this order the Commission issues the interpretive and policy statement.

II. FINDINGS AND CONCLUSIONS

- 11 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the railroad safety, including the construction, closure, alteration, or safety of grade crossings, and warning devices in the state. *RCW 80.01.040(2), Chapter 81.04 RCW and Chapter 80.53 RCW.*
- 12 (2) Under RCW 81.53.271 and RCW 81.53.281, as amended by HB 1352, Chapter 190, Laws of 2003, the Commission may allocate funds from the Grade Crossing Protective Fund not only for the installation and maintenance of grade crossing warning devices, but for all rail safety projects that pose a high risk to public safety, including those that may not be related to public grade crossings.
- 13 (3) Following a workshop held on September 30, 2003, Commission Staff prepared a draft interpretive and policy statement to interpret RCW 81.53.271 and RCW 81.53.281, as amended during the 2003 legislative session, and to explain how the Commission will implement the law in disbursing grants from the Grade Crossing Protective Fund.
- 14 (4) The Commission issued a notice on October 27, 2003, requesting comments on the draft interpretive and policy statement, but no comments were received.
- 15 (5) Staff recommends use of an interpretive and policy statement as an appropriate and preferable mechanism for implementing and, under the provisions of RCW 34.05.230, interpreting the statutory changes to the GCPF and recommends issuance of the interpretive and policy statement.

- 16 (6) This matter came before the Commission at its regularly scheduled meeting on November 26, 2003.
- 17 (7) After review of the proposal in Docket TR-031384 at the Commission's open meeting of November 26, 2003, and finding it to be a reasonable, effective, and efficient means to implement the 2003 statutory amendments, the Commission determines that it should issue the attached Interpretive and Policy Statement.

III. ORDER

THE COMMISSION ORDERS:

- 18 (1) The Commission issues the interpretive and policy statement regarding disbursement of funds from the grade crossing protective fund attached to this order and by this reference included herein.

DATED at Olympia, Washington, and effective this 26th day of November, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner