

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

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

I. Introduction

1 This is an interpretive and policy statement of the Washington Utilities and Transportation Commission (Commission) pursuant to RCW 34.05.010(8) and (15), RCW 34.05.230, and WAC 480-09-200. The purpose of this statement is to interpret RCW 81.53.271 and RCW 81.53.281, as amended, and to state the Commission’s policy as to how it will implement the law in disbursing grants from the Commission’s Grade Crossing Protective Fund (GCPF) with respect to amendments, effective July 27, 2003.

II. Background

2 The Grade Crossing Protective Fund, administered by the Commission, was created in 1969 to provide funds for installing or improving warning devices at public railroad-highway grade crossings (grade crossings). 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 1980s, 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 matches, respectively, to fund projects.

- 4 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 GCPF to include all rail safety projects that pose a high risk to public safety, including those that may not be related to public grade crossings. Types of projects that were previously ineligible for GCPF funding, but may be eligible as a result of the new law, include those related to pedestrian trespass prevention and safety improvements at private crossings.
- 5 The original statutory apportionment system was also amended to waive the monetary contribution requirements for projects under \$20,000 or the first \$20,000 for projects that exceed that amount. The law also provides future funding for the GCPF by directing the Commission to transfer certain monies from the public service revolving fund to the GCPF as needed to cover legislative appropriations.
- 6 Prior to the changes, the Commission approved projects and authorized disbursements from the GCPF on an as-needed basis. A formal grant allocation system was not developed for disbursement of funds under the original GCPF scope because it was not necessary; the statute set out clearly the standards for grants. The amendments to Chapter 81.53 RCW authorize Commission discretion in choosing projects to fund, and require a GCPF program that is consistent with the intent of the amendments and that guides the disbursement of funds in a fair and reasonable manner with respect to new types of projects that were previously ineligible for GCPF grants.

- 7 On September 9, 2003, the Commission issued a notice announcing that it would hold a workshop on September 30, 2003, seeking information, opinions, and ideas from interested parties about how to 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.
- 8 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. This statement is largely a result of the workshop.

III. Statement of Policy

- 9 This statement is the Commission's current interpretation of statutory changes to Chapter 81.53 RCW concerning the Grade Crossing Protective Fund and its current policy as to how it will implement the law. The Commission intends to use these principles in distributing Grade Crossing Protective Fund monies.

IV. Principles for Disbursement from the Grade Crossing Protective Fund

A. Program Objectives

- 10 The Commission's objectives in distributing monies from its Grade Crossing Protective Fund are as follows:
1. To reduce accident/incident frequency and severity at both public and private railroad crossings; and

2. To reduce pedestrian trespassing and the frequency of trespass-related deaths and injuries along railroad rights-of-way.
- 11 The focus of the GCPF program is to fund projects that demonstrate a need for improved public safety related to one of the following four categories:
1. Grade crossing safety projects (the original GCPF program).
 2. Trespass prevention projects. Examples of projects in this category include fencing or other physical barriers that prevent trespassing on railroad rights-of-way; pedestrian warning devices; establishing new public grade crossings; installing channeling devices; media/public relations campaigns; and enforcement-related activities.
 3. Private crossing safety improvements. Examples of projects in this category include private crossing closures; installation of private crossing-specific warning devices; installation of nighttime/off-hours locked gates; and improvements to reflectorization/conspicuousness of existing warning devices.
 4. Miscellaneous safety projects. Examples of projects in this category include improvements to motorists' ability to see approaching trains, including the removal of physical obstructions; participation in roadway improvements at or approaching grade crossings; and mitigation of crossing closures.

B. Eligibility for GCPF grants

- 12 Under RCW 81.53.281, the Commission may make "grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized and ordered by the Commission." To that end, any public, private or nonprofit entity may submit a GCPF application to the Commission. When reviewing applications, the Commission will consider whether the applicant has

coordinated with and sought approval from the relevant local agency and railroad.

C. Disbursement of GCPF grants

- 13 Disbursement of GCPF monies will occur in a manner that allows for broad application opportunities and review methods that weigh benefits and available funding. The Commission will initiate a “call for projects,” soliciting applications within a specific timeframe from all eligible parties. After the specified application submittal deadline, the Commission will review all projects simultaneously.
- 14 During each biennium, the Commission may earmark a portion of the total available funds for each project category so that each of the four categories is adequately represented in disbursements. In addition, the Commission may limit the amount of funding per project for each project category so that an optimal number of projects may be funded with regard to relative safety benefits and project costs. Funding may also be considered for larger safety projects for which the GCPF grant would constitute some portion of the total cost.
- 15 The Commission will continue to receive and approve applications for grade crossing improvements within the scope of the original GCPF program on an as-needed basis.

1. Application Process

- 16 The Commission will develop an application form with instructions, available at a designated place on the Commission’s website or on request, that requires applicants to include the following information:
- a. A detailed summary of the hazard being addressed, including location, accident/incident histories, and the identities of the relevant railroad company and local agency;

- b. A summary of what the proposal consists of and how its implementation will mitigate or eliminate the hazard;
- c. Cost estimates, including those related to long-term maintenance;
- d. An estimated timeline of project implementation, if approved;
- e. A description of how success of project implementation would be measured;

17 The Commission will make a reasonable effort to ensure that all eligible parties are made aware of any impending GCPF disbursement opportunities. Calls for projects will be advertised via U.S. mail and electronic mail to state and local agencies, railroads operating within the state, and other entities with a known interest in railroad safety, as well as through established “grant alert” mediums, and on the Commission’s website.

2. Project Evaluation

18 After all applications are received, the Commission will review and select projects for funding based on the relative severity of the hazard being addressed, the safety benefits resulting from a project, the costs of implementing a project, and geographic diversity. For proposals that require physical installations, Commission Staff will organize an on-site meeting with representatives of the railroad, local agency, applicant (if different from railroad or local agency), and other entities if appropriate, to verify information from the application and to gain first-hand knowledge of the hazard and proposal. The on-site meeting will also give all relevant parties an opportunity to recommend alternatives or additional safety needs.

19 At the conclusion of the on-site meeting, Commission Staff will incorporate any changes resulting from the meeting into overall project evaluations and draft a recommendation to the Commission for disbursement of funds, including conditions associated with funding any projects.

3. Commission Approval

20 After Commission Staff has determined recommended priorities, Staff will consult with the Commissioners on proposed project awards. Subsequently, Staff will present its recommendations to the Commission at an open meeting, providing its justification for funding each project and any proposed conditions for funding. The Commission will approve at an open meeting all projects that receive GCPF funds, as well as the amount of any GCPF funding, if any, to be awarded to each project.

21 Final award of GCPF grants will be contingent upon the recipient signing an agreement specifying the terms of the grant.

4. Post-grant evaluation

22 The Commission will impose a time limit by which allocated funds are to be used in the interest of expediting funded safety improvements. Commission Staff will periodically track the status of funded projects to ensure that implementation is timely. After a project has been completed, Staff will conduct a follow-up review to verify that the funds were used in a manner consistent with the proposal and any associated conditions or requirements.

23 D. Transfer of funds to grant recipients

Generally, the Commission will reimburse GCPF grant recipients after project completion, however, the Commission will consider paying a portion of the grant in advance, if needed to facilitate design or order materials.

24 E. Changes in the Statement

As the Commission gains more experience with implementing the grant program, it may be necessary to modify or revise this Statement.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK OSHIE, Commissioner