



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • TTY (360) 586-8203

November 30, 2015

Westway and Imperium Terminal Services Expansion Projects EISs
c/o ICF International
710 Second Ave., Suite 550
Seattle, Washington 98104

Diane Butorac, Regional Planner
Southwest Regional Office
Department of Ecology
P.O. Box 47775
Olympia, Washington 98504-7775

Sent via Email and First Class Mail

Subject: Commission Comments on Westway and Imperium Draft Environmental Impact Statements

Dear Ms. Butorac and ICF International:

The Utilities and Transportation Commission (commission) appreciates the opportunity to comment on the Draft Environmental Impact Statements (DEISs or Draft Statements) for the proposed Westway and Imperium projects in Grays Harbor County, Washington. The projects would significantly expand the storage capacity for crude oil at adjacent facilities at the Port of Grays Harbor, and increase transportation of volatile Bakken crude oil by rail from the Midwestern United States to Grays Harbor. Oil would be shipped to the facility by Puget Sound and Pacific Railroad (PS&P).

The commission has responsibility under state law for regulating the safety of more than 2,800 public railroad crossings in Washington state and private crossings located on rail routes that carry crude oil tanker cars. Among other things, the commission inspects the surface conditions of railroad crossings and establishes clearances over and beside railroad tracks. The commission also reviews railroads' intent to increase train speeds, construct new crossings and alter or close existing crossings. The commission partners with the U.S. Department of Transportation Federal Railroad Administration (FRA) and employs staff who perform inspections in hazardous

materials, signal and train control, track conditions, operating practices, and motive power and equipment in support of FRA's regulatory and inspection program.

Bridges

The commission has concerns about the load capacity of bridges on the PS&P line between Centralia and the project sites. These concerns are shared by many members of the public, as evidenced by the comments made in response to the initial proposal for both Westway and Imperium. The Draft Statements of both the Westway and Imperium project proposals provide very brief and general descriptions of the 52 bridges on this line (see pages 3.15-10), and equally brief reference to a future maintenance project to upgrade three steel bridges (see pages 3.15-13). This lack of detail is insufficient to determine whether the infrastructure can safely accommodate the increased loads envisioned in the proposed projects.

The FRA regulates bridge safety standards under 49 Code of Federal Regulations (CFR) Part 237. The CFR requires each track owner to have a "bridge management program" in place (Subpart B – 237.31) with specific criteria, including an accurate inventory of bridges,¹ information about safe load capacity, and specific program for bridge inspections (237.33). Each bridge management program must include scheduling inspections by a qualified inspector once per calendar year for each bridge in railroad service (237.101). In addition, each track owner is required to keep bridge inspection records (237.109).

Recommendations:

- Require PS&P to:
 - Make inventory and inspection records available to the public process for all 52 bridges.
 - Demonstrate that a qualified inspector has verified that all 52 bridges have the load capacity to safely handle a unit train of 120 loaded tank cars.
 - Describe its bridge inspection program that includes annual inspections by a qualified inspector.
 - Describe in detail which bridges are scheduled for upgrade, the nature of the upgrade and approximate start date and completion date.

Private Crossing Safety

The Draft Statements do not adequately address safety at private railroad crossings between Centralia and the project sites. While both Draft Statements state that they analyzed private crossings using the FRA general accident prediction formula (see page L-5), in fact the various lists of the 81 crossings identified between Centralia and the project sites include only a handful of private crossings. Many private crossings between Centralia and the Port of Grays Harbor that appear on the FRA crossing inventory do not appear anywhere in the Draft Statements.

¹ The inventory must include a unique identifier for each bridge, its location, configuration, type of construction, number of spans, and span lengths.

House Bill 1449, which became effective July 1, 2015, gave the commission limited authority over private crossings on crude oil transportation routes. The commission is currently promulgating rules establishing minimum standards for signs at all private grade crossings on crude oil routes and a process for ordering additional signage or other safety measures at private crossings with restricted sight distances or other safety deficiencies.

Recommendations:

- Require PS&P to provide an accurate list of all private crossings along the route between Centralia and the Port of Grays Harbor.
- Require PS&P to be required to comply with the new rules before transporting crude oil over the Centralia to Port of Grays Harbor route.

Public Crossing Safety

The Westway (see pages 3.16-27, 3.16-28 and L-5) and Imperium (see 3.16-27, 3.16-29 and L5) Draft Statements both purport to address public rail crossing safety, but as discussed below fail to address 17 public crossings identified by the commission as “at-risk crossings.” The Draft Statements must address more fully how the companies intend to address safety at these crossings.

The Draft Statements state on page L-5 that the companies have analyzed public grade crossings using the FRA GradeDEC.Net modelling software. This is an accident prediction software sponsored by the FRA that is used nationwide by railroad safety specialists, including the commission. However, the GradeDEC.Net model has its limitations and is useful as only one tool of many.

First, the underlying data used by the model comes from the FRA’s crossing inventory and cannot be changed in the computer modeling. If a data element in the FRA inventory is incorrect, which happens frequently, it cannot be changed in the model, and the only option is to recalculate the results using the general accident prediction formula. The general accident prediction formula is a complex, manual calculation using a myriad of data elements. The chance for misinterpretation or error is high.

Second, the GradeDEC.Net model captures only the most basic of data elements and produces a very basic result. For instance, the model captures such things as accident history, train and traffic volumes, level of protection, and number of roadway lanes, but does not capture other site specific characteristics such as the angle of the crossing, train and vehicle speeds, and sight distances.

The use of the GradeDEC.Net (and manual calculation using the general accident prediction formula when necessary) has produced some good, but very basic and very preliminary results in the Draft Statements. However, the Draft Statements err in assuming that these results are determinative in deciding whether additional safety devices are necessary at the 81 grade crossings between Centralia and the project sites.

The Draft Statements state on page 3.16-27:

The Railroad-Highway Grade Crossing Handbook- Revised Second Edition (Federal Highway Administration 2007) indicates that active devices with automatic gates should be considered when certain criteria are met. One criterion is if the expected accident frequency, as calculated by the U.S. Department of Transportation Accident Prediction formula, exceeds 0.075. As shown in Appendix L, *Vehicle Traffic Analysis*, no grade crossings would exceed this frequency using the formula. Therefore, using this threshold, no crossings under the no-action alternative would require consideration of automatic gates.

While this statement about this one criterion is true, this particular criterion is just *one of 19* to be considered when determining whether active warning devices are necessary at a particular crossing. Other criteria (e.g., inadequate sight distance in at least one quadrant, a crossing angle of less than 60 percent, and the presence of a highway intersection less than 75 feet from the crossing) are not discussed.

Based on the USDOT Federal Highway Administration (FHWA) publication *Guidance on Traffic Control Devices at Highway-Rail Grade Crossings*, published November 2002, the commission has identified 17 crossings that require further study and field analysis before any crude oil is transported over this line.

These 17 are crossings with a combination of passive protection and flashing lights only (i.e., they have no gates). Some of these crossings are listed in both the Westway and Imperium Draft Statements (see page L-11, Table L-6, identified as “Grade Crossing Infrastructure Projects Planned but Not Funded – No-Action Alternative (2017 and 2037).”²

² Two crossings, Tower Street and Pearl Street, should be removed from Table L-6. These crossings were recently upgraded as part of WSDOT’s Section 130 program.

The 17 crossings are:

	USDOT #	COUNTY	ROAD	ANGLE < 60%		# OF TRACKS	LIMITED	PROTECTION
1	092577 M	Thurston	Moon Rd SW		X	2	X	Passive. No lights. No stop or yield signs.
2	092583 R	Grays Harbor	Blockhouse Rd			1	X	Passive with stop signs.
3	092595 K	Grays Harbor	Elma-Gate Rd W	0-29		2	X	Passive with stop signs.
4	096510 U	Grays Harbor	Dunlap Rd	30-59	X	1	X	Passive with stop signs.
5	096515 D	Grays Harbor	Blockhouse Rd N	30-59		1	X	Passive with stop signs.
6	096518 Y	Grays Harbor	Blockhouse Rd N	30-59		1	X	Passive with stop signs.
7	096525J	Grays Harbor	N 2nd St			2	X	Passive with stop signs.
8	096638P	Grays Harbor	N 10th St			1	X	Passive with stop signs.
9	096641 X	Grays Harbor	N 17th St-Baily			1	X	Passive with stop signs.
10	096642E	Grays Harbor	Calder Rd			1	X	Passive with stop signs.
11	096649 C	Grays Harbor	Hewitt Street		X	1	X	Passive with stop signs.
12	096657 U	Grays Harbor	Glenn Rd		X	1	X	Passive with stop signs.
13	096659 H	Grays Harbor	Beacon Rd	30-59		1	X	Lights only.
14	096677F	Grays Harbor	County Farm Rd			1	X	Passive with stop signs.
15	096678 M	Grays Harbor	Devonshire Rd	30-59		1	X	Lights only.
16	096679 U	Grays Harbor	Heikkinen Road			1	X	Passive with stop signs.
17	096682 C	Grays Harbor	Central Park Dr			1	X	Lights only.

The Westway DEIS at page 3.16-28 and the Imperium DEIS at 3.16-29 describe “Other Measures to be Considered” to mitigate hazards at railroad crossings on the line. Bullet #3 for both reads:

To reduce the risk of an accident at grade crossings, PS&P should install flashers, gates, and/or cantilevers at crossings where warranted to improve vehicle and rail safety conditions. Begin to install these upgrades before initiating oil train traffic.

In our view, this measure is insufficiently precise and should be clarified.

Recommendation:

- Move this measure in both Draft Statements to Section 3.16.7.1, Applicant Mitigation, and changed to the following:
 - To mitigate the risk of an accident at the 17 grade crossings identified by the commission as at-risk crossings, PS&P will conduct on-site diagnostic reviews with commission staff and representatives of the affected road authority (city or county). PS&P will implement the recommendations of the diagnostic team, which may include installation of flashers, gates, and/or cantilevers, and other crossing safety upgrades on a timeline recommended by the diagnostic team. Some grade crossing upgrades and installations may be required prior to PS&P initiating oil train traffic and the applicant(s) will be solely responsible for funding these projects.

Emergency Notification Signs (ENS)

The Westway (at pages 3.16-28, S-46, S-63) and Imperium (at pages 3.16-29, S-47, S-65) Draft Statements address ENS issues within the sections titled “Applicant Mitigation” and “What are the applicant measures that would address these impacts.” Both Draft Statements state:

To address potential vehicle safety impacts each of the public at-grade crossings on the rail line, the applicant will work with PS&P to provide permanent signs that prominently display both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Administration regulations (23 Code of Federal Regulations 655). The toll-free number would enable drivers to promptly report any accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions. The signs will be in place prior to the beginning of operations involving transport of crude oil.

This language is unnecessary. These measures are already mandated by federal regulation, which required PS&P to install such signage by Sept. 1, 2015. If the railroad has not yet installed the required signage, the commission will address this as a compliance issue before any oil is transported on this line.

Recommendation:

- Do not include language related to these signs in the final EIS.

Stop and Yield Signs

The Westway (at page 3.16-28) and Imperium (at 3.16-29) Draft Statements both address Stop and Yield signs within the section titled "Other Measures to Be Considered." The Draft Statements state:

To reduce the risk of an accident on the PS&P line, PS&P should work with local jurisdiction including WSDOT and the Washington Utilities and Transportation Commission to ensure all of the public grade crossings meet Manual on Uniform Traffic Control Devices (23 U.S.C. 109(d) guidance to include a yield or stop sign on every cross-buck post.

The commission will assist PS&P in assessing its public crossings for Manual on Uniform Traffic Control Devices (MUTCD) compliance and in installing Yield signs at appropriate crossings. Installation of a Stop sign at a crossing currently protected only by cross bucks requires an engineering study at PS&P's expense (MUTCD 8B.04 Standard 05). Commission staff fully expects to be invited by PS&P to participate in a corridor study of every grade crossing on the line to make determinations on MUTCD compliance as well as any other safety related issue.

Track Issues

The Westway (at page 3.15-11) and Imperium (at page 3.15-11) Draft Statements both address track issues within the section titled "Federal Railroad Administration Class of Track and Speeds," bullet number four. Both state:

For about 1,000 feet at a point about 4 miles west of Montesano, the speed limit is 10 mph. The track is on the bank of the Chehalis River. The soil condition is such that maintenance to the tolerance required for 25 mph speed limit is difficult.

The integrity of the track, ballast, sub-ballast and subgrade are critical to the safe transportation of the train over the rail line. The commission is very concerned that PS&P experienced three derailments on this line in 2014 due in large part to poor soil conditions..

Recommendation:

- Require PS&P to address the underlying soil issues before it transports volatile Bakken crude oil, regardless of the speed at which the trains travel. Any derailment involving crude oil is potentially disastrous in terms of human injury or death, and extensive property and environmental damage.

Blocked Crossings

The commission has significant concerns about blocked crossings from the cumulative effect of both the Westway and Imperium proposals. The Draft Statements indicate that PS&P will be blocking public crossings at both the Centralia interchange location and in the city of Aberdeen. Recent court decisions have determined that state rules addressing blocked crossings, such as the commission rule at Washington Administrative Code (WAC) 480-62-220,³ are preempted by federal law and therefore unenforceable.

Blocked crossings pose both an inconvenience to the public and a safety hazard as motorists and pedestrians make unsafe moves to avoid becoming trapped by a stationary train. Where trains blocking the crossing include tank cars containing volatile crude oil, the safety concerns are heightened due to the higher risk of damage or injury in the event of an accident, collision, or terrorist act. The commission has no jurisdiction over blocked public grade crossings, but commission staff will continue to work actively with railroads when blocked crossings are reported.

Switching Operations

The Draft Statements address switching operations on pages 3.15-23 and 3.15-24. According to the Imperium DEIS, it appears that PS&P is planning switching operations that will occupy public crossings longer than other feasible switching movements. Its DEIS states that although other switching movements may block the crossings for a shorter period, they are not the “most time-efficient and cost-efficient.”

Choosing to inconvenience businesses and citizens and create unnecessary safety problems related to blocked public crossings because it is more “time-efficient and cost-efficient” to the railroad is not acceptable.

The Westway Draft Statement raises similar concerns. Under its proposal, 120-car trains will be brought into the city of Aberdeen to a small PS&P yard. Because the Westway facility can only receive 20 cars at a time, PS&P will conduct a switching operation at the yard that breaks the train into six 20-car trains. This means significant longer times for switching operations, which will block crossings for excessively long periods of time both east and west of the yard, during which time no vehicles will be able to cross the tracks.

The Westway (at page 3.16-27) and Imperium (at page 3.16.28) Draft Statements address mitigation of these problems under the sections entitled “Applicant Mitigation.” The Draft Statements propose mitigation by tasking various entities, including the cities of Hoquiam and Aberdeen, Port of Grays Harbor, Grays Harbor Council of Governments, and PS&P, with addressing solutions to the vehicle delay that the proposed switching operations will cause.

³ The Commission rule would prohibit blocking a public crossing for more than 10 minutes and define a blocked crossing as a crossing where a train sits without moving for 10 minutes or more.

While the commission has no jurisdiction over public crossings within Aberdeen city limits, it does have experience and expertise in switching operations in other locations across the state. Compared to switching operations elsewhere in Washington, the commission finds the proposal here to be ill conceived, poorly designed, and unworkable. It is unfair and unsafe to businesses and patrons in the Olympic Gateway Plaza as well as the general public and affected businesses west of Poynor Yard.

The applicants are required to ensure acceptable mitigation measures are in place prior to beginning project operations. The Westway (at page S-34) and Imperium (at page S-35) Draft Statements describe under the heading "Vehicle Traffic and Safety" the crossing blocking problem at the Olympic Gateway Plaza and Port areas of Aberdeen as "unavoidable and significant adverse impacts." They go on to say that mitigation plans and infrastructure improvements would reduce the impacts but not completely eliminate them. The commission strongly disagrees. Every other railroad company in Washington has figured out how to conduct its switching operations without blocking public crossings. While such solutions are likely to be more expensive than the companies would like, it should be the responsibility of the applicants, the port, and PS&P to solve this problem to the satisfaction of the city of Aberdeen, its businesses, and its citizens before any oil moves to the project sites.

Recommendation:

- Require the applicants, the Port, and PS&P to solve this problem to the satisfaction of the city of Aberdeen, its businesses, and its citizens before any oil moves to the project sites.

Financial Responsibility

In reviewing the two DEISs, one of the more glaring omissions is the ability of the parties involved to pay for any costs associated with an accident, spill, or explosion. There is no federal requirement detailing financial responsibility outside of limited liability insurance ranging from \$50 million to 250 million and railroad companies are not required to report or verify how much insurance they carry. Absent a dedicated clean-up fund established by the railroad, any damage from a spill or accident would likely be borne by the state. There needs to be dedicated funds available to pay for the damage resulting from an oil spill and the cost of clean-up.

Currently, Class I railroads submit to the commission annual reports that contain the state portion of reports they file annually with the Surface Transportation Board (STB). The STB has authority to collect financial data, limited by statute to that necessary for the economic oversight of the regulated industry. Class II and III railroads do not have the same accounting or reporting requirements, but do file annual reports with the UTC. Neither the federal or state reports state address whether PS&P has the financial means to address a spill or accident involving a volatile product like Bakken crude oil.

Westway and Imperium Terminal Services Expansion Projects EISs
Diane Butorac and ICF International
November 30, 2015
Page 10 of 10

Recommendation:

- Require PS&P to show financial responsibility in the event of a worst case spill or accident.

Thank you for the opportunity to comment on the Draft Statements for the proposed Westway and Imperium projects in Grays Harbor County. Please contact Jason Lewis, Transportation Policy Advisor, at 360-664-1206 or jlewis@utc.wa.gov for additional information.

Sincerely,



Steven V. King
Executive Director and Secretary