A Hopeful New Chapter in the "New Starts" Program

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As our long-time readers know, we have been avid observers of the Federal Transit Agency's New Starts Program and have followed its evolution with interest for many years. That is why we took special notice of FTA's publication of the final version of its New Starts Policy Guidance (71 FR 94, May 16, 2006) and the accompanying FY 2008 Reporting Instructions for New Starts. These two documents, along with the Proposed Interim Guidance on "Small Starts," (71 FR 111, June 9) symbolize to us the beginning of a hopeful new chapter in a program that has had its share of successes, failures and controversy over the years.

A Bit of History

With demand for New Starts grants showing no signs of lessening, Congress finally took steps in 2004 that FTA was unwilling or unable to take itself: reforming the New Starts program by introducing more discipline into its rating, evaluation and selection process. The turning point came with the April 2004 hearing of the House Transportation Appropriations Subcommittee on "Rating and Evaluating New Fixed Guideway Systems." In his opening statement, Subcommittee Chairman Ernest J. Istook (R-OK) summarized succinctly the reasons for convening the hearing. "Many cities have built or are building systems that are overpriced or underutlized," he observed. "We need to better emphasize cost-effectiveness and congestion relief as measures of a candidate project's worthiness to receive federal funds. Currently FTA is tracking over 150 transit capital investment studies. ...These projects could seek over $60 billion in federal New Starts funding over the n ext several years...We all know that 60 billion dollars simply will not be available, so we had better start winnowing the field of candidates." (Hearing record, quoted in Rating and Evaluating "New Starts," InnoBriefs, June 2004).

The committee was responding to a situation that clearly required some forceful action. As we commented at the time:

"It has been said that the Federal Transit Administration has never met a New Start project it didn't like.... In FTA's rating game there is no such thing as a failing grade: all projects, to paraphrase Garrison Keillor, eventually end up 'above average'.... What concerns thoughtful rail critics - and not all critics are anti-rail ideologues -is not so much the past as the future. In their view, the number of urban areas that can justify rail investment is shrinking with every passing year- or rather with every award of a federal full funding grant. Indeed, it can be argued that all the "low-hanging fruit" - i.e. cities whose corridor densities

make rail service potentially cost effective - have by and large already been picked. What remains are projects with questionable qualifications." ("It's Time to Take a Fresh Look at the New Starts Program," InnoBriefs May 2004).

In a highly critical report accompanying the FY 2005 transportation appropriations bill, the House Appropriations Committee imposed a number of new requirements intended to rein in FTA's discretion and directed the agency to "develop a New Starts process that better emphasizes cost-effectiveness and congestion relief." (Committee Report 108-671, quoted in "The New Starts Program Receives Low Marks from the House Appropriations Committee," InnoBriefs, Sep/Oct 2004).

To its credit, the FTA took the Committee's concerns to heart. In a "Dear Colleague" letter dated March 12, 2005, FTA Administrator Jennifer Dorn announced that FTA would henceforth require a "Medium" or higher rating for cost-effectiveness as a condition of federal funding. The agency also took steps to revise its project evaluation procedures, reflecting the committee's desire for a more rigorous selection process. The effect of these actions was felt soon thereafter. The combined number of "recommended" and "highly recommended" projects declined sharply, from 27 in the FY 2003 evaluation cycle to 14 in the FY 2004 evaluation cycle, to 10 in the FY 2005 evaluation cycle, while the combined number of "not recommended" and not rated projects rose from 6 to 18, (GAO survey, quoted in New Starts Projects Facing a More Rigorous Competition for Funds, InnoBriefs, Sep/Oct 2005).

But it was only in the new authorization bill (SAFETEA-LU), that Congress finally had a chance to put its own stamp on the New Starts program. The new law amended Section 5309 of Title 49 to spell out in painstaking detail the procedures to be followed in reviewing and approving New Starts projects. The legislation formally established three stages in the project approval process: Alternatives Analysis, Preliminary Engineering, and Final Design & Construction. Before advancing from one stage to the next, projects had to be rated on a 5-point scale: High, Medium-High, Medium, Medium-Low and Low (replacing FTA's former scale of Highly Recommended, Recommended and Not Recommended). In order to qualify for a full-funding grant agreement, a project must be rated as "Medium" or higher, overall as well as for cost-effectiveness. It also had to demonstrate "an acceptable degree of local financial commitment, including evidence of stable and dependable fin ancing sources" to construct and operate the system.

Congress also directed FTA to issue "Policy Guidance" governing the New Starts review and evaluation process. The Notice published on May 16 of this year represents the culmination and a final step in the rule making process undertaken in response to the congressional directive.

The Beginning of a New Chapter

By promulgating the new rule, the agency finally has in place a rigorous and transparent process for selecting new rail projects. The Policy Guidance incorporates all of SAFETEA-LU's statutory requirements and spells out with great specificity the requirements that a project must meet in order to become eligible for federal funding.

Specifically, projects that receive a lower than "Medium" rating for cost-effectiveness - the third-highest (or lowest) rating on the new five-point scale- will not be recommended for funding even though their overall project rating may be "Medium" or higher. Moreover, if a project's cost-effectiveness is rated "Low," the project may not advance to the next stage of development (for example from Preliminary Engineering to Final Design) even if a strong land use rating results in an overall "Medium" rating.

A potentially significant innovation is the establishment of a new category of "Small Starts," defined as projects requesting less than $75 million in federal funding and costing overall less than $250 million. A Small Start project must involve a fixed guideway for at least 50% of its length in the peak period or be a corridor-based bus project having the performance characteristics of Bus Rapid Transit (BRT). A sub-category, called "Very Small Starts," is limited to simple projects "that produce significant transportation benefits at a very low cost," do not include construction of a new fixed guideway, and have a total capital cost of less than $50 million and less than $3 million per mile. Small Starts projects will be subject to a simplified project development process and modified evaluation criteria. Buried in the text of the Small Starts Interim Guidance and Instructions is probably its most consequential policy innovation: incorporation of the Small Starts program as part of the U.S. DOT's new Congestion Mitigation Initiative. Under "Other Evaluation Factors" consideration will be given to whether "a Small Starts project is proposed as a significant element of a comprehensive congestion reduction strategy in general and pricing in particular." Projects that are part of a congestion mitigation plan will receive a higher rating. For the first time in the Department's history, transit investment is explicitly being made part of an overall national strategy to relieve congestion.

The Bottom Line

Will the new procedures and the "Small Starts" program succeed in stemming the seemingly insatiable demand for costly major rail projects? As of today, there are 19 rail projects in the pipeline. Nine of them are "proposed" or "considered" for full funding grant agreements and another ten are in preliminary engineering and rated by FTA as "potentially eligible for full funding." (The Weber-County-to-Salt Lake City Commuter Rail Project has just been awarded a full funding grant agreement, thus removing it from the list of "Proposed" projects).

There is some anecdotal evidence suggesting that FTA's management reforms are already having an effect on the flow of fresh New Starts applications. According to Katherine Siggerud, Director of Physical Infrastructure Issues at the GAO "...The rigorous rating process... has made it difficult for local transportation agencies to secure this funding, according to local officials we spoke with." (Testimony before the House Subcommittee on Highways and Transit hearing on Intermodal Transportation, June 15, 2006).

There are also tantalizing hints that the new "Small Starts" program might refocus local interest on less costly projects. According to a recent survey by the American Public Transportation Association, more than 75 "Small Starts" projects are in various stages of development.

As for major projects already under development, it remains to be seen what effect the new cost-effectiveness criteria will have on their eventual federal funding eligibility. It would seem that after 35 years of sustained investment in transit, a program that equipped no less than 22 cities with new rail systems (6 heavy rail systems and16 light rail systems), the nation would begin to run out of truly cost-effective rail projects- and that some of the projects currently under review might fail to meet the test. However, we are willing to suspend our judgment and let the new rating and evaluation process speak for itself. An early test might come in the upcoming cost-effectiveness evaluation of the Dulles Rail Extension project which calls for a federal contribution of $900 million.

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