

March 5, 2020

Ms. Linda Gehrke
Regional Administrator, FTA
Jackson Federal Building
915 Second Avenue, Suite 3142
Seattle, WA 98174

Re: Enforcement of TriMet capital funding obligations

Dear Ms. Gehrke,

I am writing to inform you that the Tri-County Metropolitan Transit District (TriMet) is violating its contractual agreements with FTA with regard to operations of three, federally-funded light rail lines: the Yellow Line, the Green Line, and the Orange Line. These lines opened for revenue service in 2004, 2009, and 2015, respectively.

We ask that FTA take steps to enforce the terms of the Full Funding Grant Agreements (FFGAs) between FTA and TriMet on these projects, by requiring that TriMet operate the lines at 100% of the contractually obligated service levels, or pay back federal grant funding used for capital construction, as authorized in Chapter VI, Section 12 of FTA Circular 5010.1E.

We also request that until these actions are implemented, FTA ***withhold all capital funding for TriMet's SW Corridor Project***. This proposed light rail line is currently in the New Starts Project Development phase under the FTA's Capital Investment Grants program.

Yellow Line

Summary background

TriMet's Interstate MAX light rail line ("Yellow Line") to North Portland was a 5.8 mile extension of the TriMet light rail system, with 10 station stops. The capital cost was \$350 million, of which 74% came from FTA. The FFGA was signed with FTA in September, 2000, and the project opened for revenue service on May 3, 2004.

Alleged FFGA violations

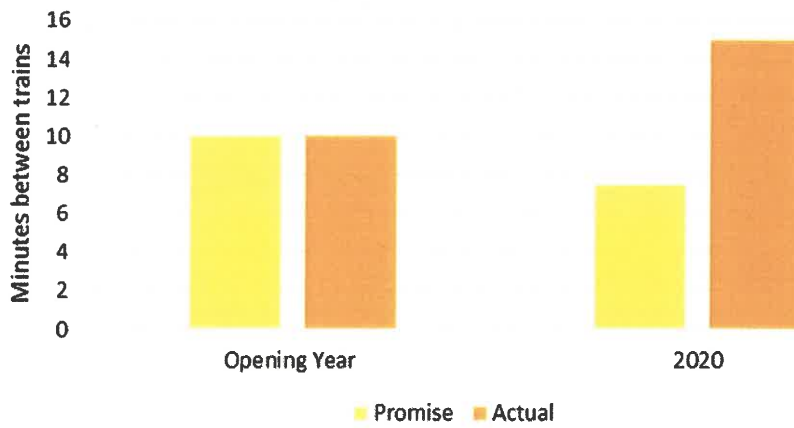
Frequency of service: TriMet promised 10 minute peak-hour headways during the opening year of revenue service in 2004, improving to 7.5 minute headways (8



trains/hour) by 2020.¹ This commitment was made in the published Final Environmental Impact Statement (FEIS) for the project. The FEIS was incorporated by reference into the Yellow Line FFGA; therefore the forecasted service levels of the FEIS are binding on TriMet.²

TriMet has been out of compliance with this requirement for over a decade. As of March 2020, TriMet is only providing 4 trains/peak-hour – 50% of what was promised.³

**Yellow Line Average Peak Hour Train Headways:
Promised vs. Actual Service**



Travel time: In the FFGA, TriMet promised that end-to-end travel time for Yellow Line MAX riders would be 28 minutes.⁴ The current travel time is 35 minutes. Since light rail operates with exclusive ROW and is not affected by traffic congestion, actual travel times should be the same as forecasted levels. This is a significant deviation from FFGA requirements.

Yellow Line			
Distance	Interstate MAX FEIS Year 2020 Predicted Travel Time	Actual PM Peak Period Travel Time in 2020	Scheduled Stops (PM Peak-hour) Pioneer Sq. – Expo
Downtown Portland to N Lombard Street	19	23	5:13 – 5:36

¹ North Corridor Interstate MAX Light Rail Project FEIS Executive Summary, October 1999, Section 3.1.2.

² Interstate MAX Light Rail Full Funding Grant Agreement, FTA, October 1, 1999.

³ TriMet website, MAX schedules, www.trimet.org

⁴ TriMet Interstate MAX Light Rail Before-and-After study, September 2007, 2-11.

Downtown Portland to Kenton	20	25	5:13 – 5:38
Downtown Portland to Expo Center	24	30	5:13 – 5:43

Ridership: The FEIS for the Yellow Line forecasted 13,900 average weekday boardings for opening year of revenue service (2004), and 18,100 boardings in year 2020. Ridership during the opening year only averaged 11,800 boardings, 15% less than predicted levels.⁵ Actual ridership reported in Fall 2019 was 13,430 - 26% less than projected for 2020.⁶

There is little doubt that ridership is affected by levels of service. Since TriMet's peak-hour service is only 50% of what was promised, it is not surprising that ridership is so far below projections. The first step towards boosting ridership is to provide the service promised to FTA and the Portland region back in 1999.

Green Line

Summary background

The South Corridor I-205/Portland Mall light rail project ("Green Line") runs from Pioneer Square in downtown Portland to Clackamas Town Center. Parts of the ROW use tracks previously built in TriMet's first light rail project that opened in 1986; new tracks were laid on the Portland transit mall and along I-205. This rail extension, funded with \$345.4 million in federal New Starts grants plus \$91 million in other federal funds, opened for revenue service in September 2009.

Alleged FFGA violations

Frequency of service: TriMet promised FTA that the Green Line would operate at 10-minute peak-hour headways during the opening year of 2009, improving to 7.5-minute headways (8 trains/hour) by 2020.⁷

TriMet has never fulfilled these obligations. On opening day, Green Line service was 33% below the level promised in the FFGA.⁸ According to the project's Before-and-After

⁵ TriMet Interstate MAX light Rail Before-and-After Study, September 2007.

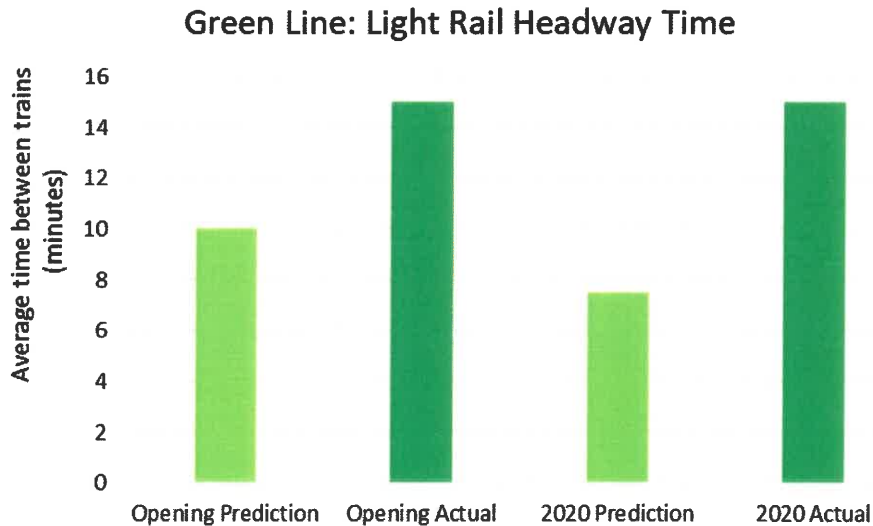
⁶ TriMet Fall 2019 Weekday Route Ridership Report

⁷ South Corridor I-205/Portland Mall Light Rail Project FEIS, November 2004. Chapter 4, page 12.

⁸ TriMet Fall 2010 Financial Forecast, 39.

Study, “[t]he project opened with 15-minute intervals throughout the day and 35-minute intervals in the evenings.”⁹

Current MAX schedules confirm that the Green Line continues to be out of compliance, operating with an average of 15-minute headways.¹⁰



Travel time: The Green Line has failed to provide the promised travel time savings to riders. Actual travel times range from five to eleven minutes longer than predicted for 2020 in the South Corridor SDEIS.¹¹

Travel times on the Green Line have actually increased for some stops since the line opened in 2009, despite the exclusive ROW. Travel times have gone up by two minutes from Pioneer Square to Clackamas TC, and by three minutes from PSU to Clackamas TC.¹²

⁹ Green Line Before-and-After Study, 2014, 6

¹⁰ TriMet MAX Green Line Schedules, accessed February 28, 2020.

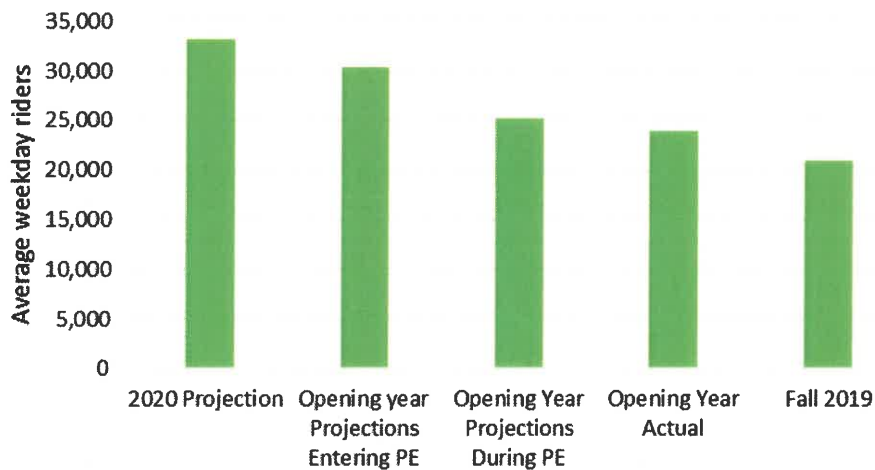
¹¹ South Corridor I-205/Portland Mall Light Rail Project Supplemental Draft Environmental Impact Statement, December 2002, Chapter 4, page 17.

¹² This comparison was made using a screen capture of the Green Line Schedule from November 2, 2009 at 09:32:12 am.

Green Line			
Distance	South Corridor SDEIS I-205 Year 2020 Predicted Travel Time	Actual PM Peak Period Travel Time in 2020	Scheduled Stops (PM Peak-hour)
Pioneer Square to Clackamas TC	37	44	5:19 – 6:03
PSU to Clackamas TC	42	50	5:13 – 6:03
Rose Quarter to Clackamas TC	29	34	5:29 – 6:03
Pioneer Square to Lents	30	36	5:19 - 5:55
PSU to Lents	31	42	5:13 - 5:55
Rose Quarter to Lents	22	31	5:24 - 5:55

Ridership: According to the Before-and-After Study, opening year ridership forecasts for the Green Line were revised down during preliminary engineering from 30,400 to 25,250.¹³ Actual ridership during opening year in 2009 was 24,000 average weekday boardings. The project’s SDEIS predicted that ridership in 2020 would be 33,270; actual ridership in Fall 2019 only reached 20,940.¹⁴

Green Line Ridership Forecasts vs. Actual



¹³ FTA Before-and-After Studies of New Starts Projects Report to Congress, January 2015.

¹⁴ TriMet Fall 2019 Weekday Route Ridership Report.

Orange Line

Summary background:

The Portland-Milwaukie light rail line (“Orange Line”) is a 7.3 mile extension linking downtown Portland to Milwaukie, a suburb situated southeast of Portland. The project included 10 new station stops and cost a total \$1.49 billion in 2015 dollars, 50% of which came from FTA New Starts grant funding. The FFGA for the project was authorized in May 2012 by the FTA and the line opened for revenue service in September 2015.

Alleged FFGA violations

The Orange Line FFGA differs from the previous two TriMet FFGAs in that it includes explicit projections for ridership and level of service during the opening year and in year 2030 within the text of the document itself – rather than referencing forecasts in the FEIS. The relevant passage states:

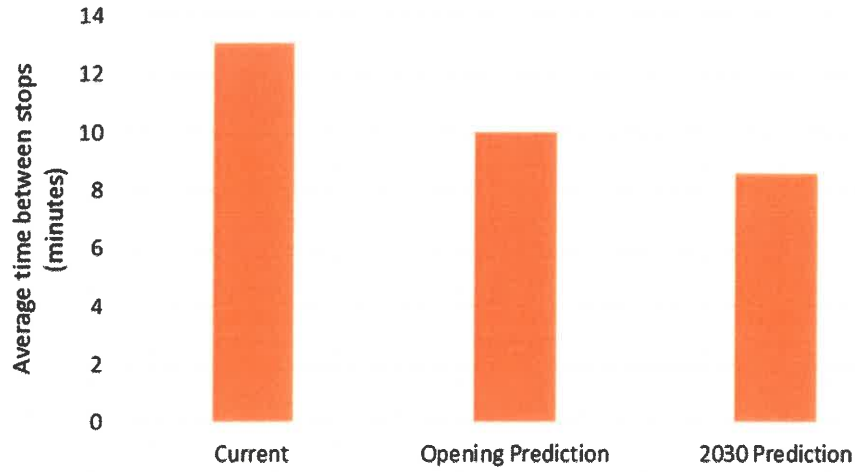
(e) Set forth in Attachment 1 to this Agreement, “Scope of Project,” are the hours of service and headways the Grantee will maintain once the Project is opened to revenue service and for no less than five years thereafter. These specified Levels of Service are a significant term of this agreement. The Grantee’s failure to achieve and maintain these Levels of Service at the Revenue Service Date and for five years thereafter will constitute a breach of this agreement.¹⁵

Frequency of Service: The Orange Line FFGA required TriMet to operate the train with 10-minute headways in the opening year of revenue service (2015-16).¹⁶ TriMet has never been in compliance with that requirement. Current MAX schedules show average weekday peak-hour headways of 13.1 minutes.

¹⁵ Portland-Milwaukie Light Rail Transit Project Full Funding Grant Agreement, October 1, 2011.

¹⁶ Portland-Milwaukie Light Rail Transit Project FFGA, Attachment 1.

Orange Line Service Frequency vs. EIS Predictions



Travel time: Orange line travel times are currently 3.5 minutes longer than they were when the line opened for revenue service in 2015.

Orange Line			
Distance	Opening Year PM Peak Period Travel Time (2015)	Actual PM Peak Period Travel Time in 2020	Scheduled Stops (PM Peak-hour)
Pioneer Square to Milwaukie Park Ave	28	32	5:05 - 5:33 (2015) 5:04 - 5:36 (2020)
PSU to Milwaukie Park Ave	22	26	5:11 - 5:33 5:10 - 5:36
South Waterfront to Milwaukie Park Avenue	17	21	5:16 - 5:33 5:15 - 5:36
Pioneer Square to Milwaukie Main St	26	29	5:05 - 5:31 5:04 - 5:33
PSU to Milwaukie Main St	20	23	5:11 - 5:31 5:10 - 5:33
South Waterfront to Milwaukie Main St	15	18	5:16 - 5:31 5:15 - 5:33

Ridership: The FEIS predicted that opening year ridership would average 19,500 weekday boardings. After local political support was secured, this estimate was dropped 13% to 17,000. This is the official forecast found in Attachment 1 to the Orange Line's FFGA.

Actual ridership during Fall 2016 averaged 11,325 weekday boardings, 33% below the FFGA prediction.¹⁷ Orange Line ridership in Fall 2019 averaged 12,160 weekday boardings,¹⁸ or 72% of the opening year forecast.

Discussion

FTA policy requires that transit districts awarded federal capital grants have sufficient financial resources to successfully operate the completed projects. Recognizing this, TriMet sought and received authority from the Oregon Legislature in 2003 to increase the payroll and self-employment tax rate by one-tenth of one percent over a ten-year period, in order to provide adequate financial resources to operate the planned-for Green Line, which was scheduled to open in 2009. The payroll tax is TriMet's primary source of non-operating revenue.

During the 2003 legislative proceedings, TriMet officials repeatedly used the FTA requirements in public testimony to leverage the requested payroll tax rate increase. TriMet General Manager Fred Hansen testified on March 11, 2003 to the Senate Revenue Committee:

In order to meet the operations requirement for federal funding support, TriMet will need to demonstrate its ability to increase revenue in the years ahead. SB 549 would authorize the TriMet Board to increase the payroll tax by 0.1% -- phased in over ten years.¹⁹

The legislature eventually approved TriMet's request and authorized the payroll tax rate increase to be implemented over a 10-year period.

In July 2004 (prior to adopting an ordinance implementing the first tax rate increment), Mr. Hansen reiterated the following salient points to his Board:

The timing of the payroll tax proposal is linked to the region's application for federal funds for the I-205/Downtown mall light rail project. In order to qualify for federal funding, TriMet must show its

¹⁷ TriMet does not provide a Fall 2016 Route Ridership Report on their website. This figure was calculated by averaging the weekday boardings for the Orange Line in the months of September – December of 2016. Ridership data was retrieved from TriMet's Monthly Performance Reports for these months.

¹⁸ TriMet Fall 2019 Weekday Route Ridership Report.

¹⁹ Fred Hansen, testimony before the Senate Revenue Committee on SB 549, March 11, 2003, p. 3.

ability to pay for the operation of the I-205 project for a period of at least 20 years. The revenues required to operate this addition to the system requires implementation of the payroll tax increase before the project opens in 2009.²⁰

This entire exercise was repeated in 2009, when TriMet sought, and received, legislative approval to raise the payroll tax by an additional 0.1% over a ten-year period. That authorization is currently being implemented through annual tax rate increases, which will continue through 2024.

These payroll tax rate increases, combined with multiple fare increases, have resulted in robust growth levels of TriMet's income. As displayed below, the District's operating budget increased by 105% in real terms between 1998 and 2020:

**TriMet Operating Budget
1998-2020 (000s)**

	1998	2008	2014	2020	% change, net of inflation 1998-2020
Passenger fares	\$35,786	\$80,818	\$114,618	\$130,934	+131%
Tax revenue	\$143,369	\$215,133	\$275,357	\$558,110	+146%
Total operating resources	\$212,150	404,481	\$522,155	\$689,045	+105%

FTA Authority and Remedies

The FFGA for the South Corridor I-205/Portland Mall light rail project ("Green Line") requires that:

... TriMet have stable and dependable funding sources, sufficient in amount and in degree of commitment, to operate and maintain its entire mass transportation system at an adequate and efficient level of service, including the future operation and maintenance of the Project without additional Federal assistance beyond the amounts set forth in the Financial Plan.²¹

The first part of this requirement has clearly been met. Between 1998 and 2020, total revenue available to operate TriMet's transit service increased by 105% in real terms.

²⁰ Fred Hansen, memo to TriMet Board of Directors, regarding proposed ordinance # 279, July 28, 2004.

²¹ Green Line FFGA, Section 12(b).

By any definition, TriMet has “stable and dependable funding sources” sufficient to operate the Green Line and all other federally-funded lines in conformance with its FFGAs.

However, since TriMet has failed to uphold its contractual commitments, FTA has an obligation to enforce the terms of project FFGAs. The agency clearly has this authority, both in policy and in contract. Chapter VI, Section 12 of FTA Circular 5010 states:

If the FTA determines that the grantee willfully misused FTA assistance funds by failing to make adequate progress; to make reasonable use of the project real property, facilities, or equipment; or to honor the terms of the approved grant, FTA reserves the right to require the grantee to refund the entire amount of Federal funds provided herein or any lesser amount as may be determined by FTA.²²

Because TriMet has defaulted on its contractual obligations with the federal government on multiple light rail projects, Cascade Policy Institute requests that the FTA ***withhold all future funding for the SW Corridor Light Rail Project***, until the Green, Yellow and Orange lines are operating at 100% of the originally planned-for service levels.

If such service upgrades cannot be implemented within the next six months, then we request that FTA initiate legal proceedings requiring TriMet to repay the federal government for all capital funding provided for these three projects.

Sincerely,



John A. Charles, Jr.
President & CEO

²² FTA Circular 5010.1D, Grant Management Requirements, Chapter VI, sec. 12.