

Susman, Catherine – Analysis of the Cancellation of the Hudson River Tunnel Project

The largest transit project in the nation’s history, the Hudson River Tunnel Project, commonly known as Access to the Region’s Core or ARC project, was cancelled in October 2010 (United States Government Accountability Office, 2012, p. 3). This cancellation came just over one year after construction started on the ARC project and less than one year after a new Governor Chris Christie took office (pp. 3-6). The reasons Governor Christie gave for cancellation were ostensibly based on budgetary concerns due to cost overruns on the ARC project (Christie, 2010). The purpose of this paper is to examine whether the cancellation of the ARC project was appropriately justified based on the stated fiscal responsibility concerns for the State of New Jersey.

In examining this question, first we examine need for and the history of the ARC project.

Starting in 1995, the three major transportation agencies in the region, Port Authority of New York and New Jersey¹ (“Port Authority”), New Jersey Transit², and Metropolitan Transportation Authority³ conducted a study for the improvement of traffic and access between New Jersey and Manhattan (United States Government Accountability Office, 2012, pp. 3-4). This study identified many different alternatives, which were eventually narrowed down to the alternative that became known as the ARC project (p. 4).

The alternative selected, the ARC, was to alleviate congestion on existing crossings over the Hudson between New York and New Jersey that were already either at or near capacity (United States Government Accountability Office, 2012, p. 9). This congestion was projected to increase

¹ The Port Authority is an independent municipal corporation that is responsible for the operation of the New York/New Jersey region’s three main airports, the six tunnels and bridges connecting New Jersey and New York, the rapid transit system known as the Port Authority Trans-Hudson (“PATH”), and several of transportation facilities.

² New Jersey Transit is New Jersey’s public transportation corporation.

³ Metropolitan Transportation Authority is New York’s public transportation corporation.

by an estimated 38% by the year 2030 (p. 9). In addition to alleviating congestion in numerous ways, the following were identified as other anticipated benefits for the project: thousands of additional jobs during construction and after; millions of dollars in increased business activity; increased home values; increased tax revenues; and long-term reduction in air pollution (pp. 11-13). Unfortunately, as Marlowe, Riverbark, & Vogt (2009), it is extremely difficult to quantify, especially in monetary terms, the social welfare benefits of capital projects (p. 61). This inability to clearly and unambiguously put a monetary amount on all of the benefits gained, may have led to those benefits being absent from the analysis of the overall costs of the ARC project (Christie, 2010).

In terms of monetary costs, the project had several different estimates over a multi-year period (United States Government Accountability Office, 2012, pp. 15-16). The initial baseline cost estimate for the ARC project in 2006 and 2007 was approximately \$7.4 billion (p. 15). That estimate was increased to \$7.6 billion in 2008 as a result of a modification to the plans (p. 15). Then in the summer of 2008, the results of the Federal Transportation Authority's ("FTA") risk assessment, after consultation and feedback from New Jersey, established a baseline project cost range from \$8.7 to \$9.1 billion (p.15). This baseline cost continued for the next two years, until the FTA issued a new risk assessment in August of 2010 outlining costs between \$10.9 to 13.7 billion (p.16). New Jersey disputed the costs as too high citing the ARC project would not exceed \$10 billion (p.16). The FTA, after consultation and feedback from New Jersey, in October 2010, established a new baseline cost for the ARC project between \$9.8 to 12.4 billion (p. 16).

During this same period, agreements and commitments to pay for the ARC project were being put in place (United States Government Accountability Office, 2012, pp. 5-6). In late 2007, the

Port Authority included \$3 billion in funding for the ARC project in its ten-year capital improvement plan (Securities and Exchange Commission, 2017, p. 4). The Port Authority also approved a bond issuance for the ARC project in June 2008 (p. 4). By April of 2010, New Jersey Transit had obtained federal funding in the form of a New Starts federal grant⁴ as well as other federal highway funds (United States Government Accountability Office, 2012, pp. 5-6). Additionally, the State of New Jersey through its New Jersey Turnpike Authority⁵ had agreed to commit funds for the ARC Project (pp 18-19). Based on the funding commitments, in the summer of 2009, the FTA and New Jersey Transit entered into an initial agreement to allow for early system work (p. 19). This agreement was revised in 2010 to allow the start of construction work (p. 19). Also in 2010, and as noted above, the FTA issued an updated cost estimate as part of its 2010 risk assessment (p. 19). The new 2010 risk assessment and related updated baseline cost was to be the precursor to the final grant funding agreement (p. 18).

Also, during the same time period of 2009 to 2010, New Jersey elected a new Governor Chris Christie. While Governor Christie supported the ARC project during his 2009 campaign and during the first part of his first year in office, he cancelled the ARC project ten months after assuming the governorship of New Jersey (Zernikea, 2012). As noted above, Governor Christie cancelled the project citing the extreme likelihood of cost overruns as demonstrated in the increased cost estimate contained in the latest FTA risk assessment (Christie, 2010). However, as Gerston (2010) notes, “it is wise to determine whether the actual concerns are those that . . . have been expressed, heard, and accepted by policy makers,” or if there is a hidden agenda (p. 50). A closer analysis of the events surrounding the ARC project’s history and the events taking

⁴ New Starts is a federal grant program that competitively awards federal grant money to public agencies to allow such public agencies to expand existing fixed-guideway transportation systems or construct new fixed-guideway transportation systems.

⁵ The New Jersey Turnpike Authority is a New Jersey state agency that operates the New Jersey Turnpike, one of the nation’s largest and busiest toll roads, and the Garden State Parkway.

place in the new administration run by Governor Christie show there was a hidden agenda behind the cancellation of the ARC project (Securities and Exchange Commission, 2017, pp. 4-6).

Governor Christie expressed that he only learned of the potential cost overrun of up to \$13.7 billion in August of 2010 (Christie, 2010). In actual fact, New Jersey was aware that estimates for the ARC project could be as high as \$12.4 billion by early 2008 (United States Government Accountability Office, 2012, pp. 15-16). Further, Christie claimed there was an 83% chance the project would reach the upper cost range of \$13.7 billion (Christie, 2010). However, his own administration had previously stated the costs for the ARC project would not exceed \$10 billion (United States Government Accountability Office, 2012, p. 18). Further, mudding the waters of the cited cost overruns was the fact that Christie included certain costs that either were not included in the federal estimates or were to be paid by parties other than the state of New Jersey (Zernikea, 2012).

As noted by Marlowe, Rivenbark, & Vogt (2009), costs changes in capital projects, especially large complex capital projects are common, not necessarily cause for concern, and may be foreseeable (pp. 240-241). Governor Christie, however, portrayed these routine updates to the ARC cost estimates as a project with out-of-control costs (Christie, 2010). In fact, as the ARC project design was completed and construction commenced, a more accurate estimate of the cost became known, as in common for capital projects (United States Government Accountability Office, 2012, p. 16). Further, even with these fluctuating estimates, the baseline and cost range for the ARC project did not vary substantially from estimates in 2008 (pp. 18). Governor Christie also claimed all costs overruns would be the responsibility of the taxpayers of New Jersey (Christie, 2010). However, the existing written agreement between New Jersey and the

FTA included only a good faith agreement of the parties to seek additional funding for overruns (United States Government Accountability Office, 2012, p. 20). This agreement, while including a moral obligation debt of New Jersey to seek additional funds, was not a binding legal commitment requiring New Jersey to pay all cost overruns (Marlowe, Rivenbark, & Vogt, 2009, pp. 178-179).

The misstatements and mischaracterizations for the cancellation of the ARC Project were part of a hidden agenda. Investigations by the United States Government Accountability Office and the Securities and Exchange Commission taking place after the cancellation of the project found the actual basis for the cancelation of the ARC project was the looming shortfall in another part of New Jersey's budget, its Transportation Trust Fund ("TTF")⁶ (Reitmeyer, 2017). Since Governor Christie campaigned for the governorship on a platform of not raising the gas tax, he needed to fund the shortfall in the TTF in another way (Reitmeyer, 2017). Governor Christie's chosen option for funding the TTF was to utilize the funding from the ARC project (Securities and Exchange Commission, 2017, pp. 4-9). Governor Christie may have a basis for refusing to add to New Jersey's debt load that he stated was the "third highest debt load in America," however, using one-time capital funding as a stop-gap fix to a recurring expenses is not fiscally wise (Marlowe, Rivenbark, & Vogt, 2009, pp. 137-139). As could have been predicted, Governor Christie ultimately had to raise the gas tax to provide a more permanent solution to the shortfall in the TTF (Reitmeyer, 2017). The raising of the gas tax, however, was able to be postponed until after Governor Christie's re-election for another term (Reitmeyer, 2017). Overall, prioritizing projects and funding some projects and not others is a common part of capital budgeting, such evaluation and prioritization need to take place within a defined,

⁶ New Jersey's TTF is the main funding source for New Jersey's transportation infrastructure improvements. The TTF is funded primarily through gas tax as well as tolls, and vehicle fees.

transparent capital planning process (Office of the New York State Comptroller, 2009, p. 1). In this case, the evaluation and cancelation of the ARC project was neither undertaken with transparency nor within a defined process (Securities and Exchange Commission, 2017, p. 2). The reasons given by Governor Christie did not match the actual agenda carried out (p. 2). Compounding the problems with Governor Christie's approach was that the funding reallocations were undertaken in a manner that violated both federal law and the legal authority of the issuer of the debt funding (Securities and Exchange Commission, 2017, pp. 9-11). Ultimately, the failure of New Jersey to carry through in good faith on its moral obligation debt as well as its lack of stable, consistent, transparent capital budgeting will likely result in its credit rating continuing to decline (Marlowe, Rivenbark, & Vogt, 2009, pp. 189-196).

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