COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES

RICHMOND   *Document Control Center 05/07/20@4.52 PM*

DAVE LaROCK
POST OFFICE BOX 6
HAMILTON, VIRGINIA 20159

THIRTY-THIRD DISTRICT

COMMITTEE ASSIGNMENTS:
TRANSPORTATION
COUNTIES, CITIES, AND TOWNS
COMMUNICATIONS, TECHNOLOGY
AND INNOVATION

May 7, 2020

Hon. Joel H. Peck, Clerk
State Corporation Commission
c/o Document Control Center
P.O. Box 2118
Richmond, VA 23218-2118

Re: Application of Toll Road Investors Partnership II, L.P., For an Increase in the Maximum Level of Tolls – Case No. PUR-2019-00218.

Dear Mr. Peck:

Please accept these comments in the above-referenced docket. I write as a member of Loudoun County's delegation to the Virginia General Assembly in opposition to the request by Toll Road Investors Partnership II, L.P. (TRIP II) to increase the maximum level of tolls on the Dulles Greenway. Since 1995, TRIP II has increased tolls in a manner that makes the Greenway unaffordable to many residents of Loudoun County and the surrounding region.

These ever-increasing tolls are driving many citizens and businesses off the Greenway such that Loudoun County, the Northern Virginia Transportation Authority (NVTA) and the Commonwealth of Virginia have been forced to expend significant funds on improving roads and public transportation options while significant capacity on the Greenway sits unused. Indeed, between 2005 and 2019, Loudoun County's population *increased* approximately 60%.[1] During that same time, however, TRIP II's own application acknowledges that usage of the Greenway has *declined* significantly. The requested increase, which would raise tolls by approximately one-third over five years, will certainly force more traffic off the Greenway.

Over the years, numerous bills have been introduced to address the statutory regime governing the Greenway. Some bills were initiated and supported by TRIP II, while others were introduced by legislators representing the interests of Loudoun County and its citizens. Unfortunately, TRIP II has successfully defeated legislative efforts to give the Virginia State Corporation Commission additional tools to review requested toll increases, most recently in the 2020 session with Del. Subramanyam's HB 523 and my HB 771.

In the absence of a legislative fix, **I strongly support Loudoun County's opposition to TRIP II's requested increase.** TRIP II's application is concerning for several reasons, and I respectfully ask the Commission to consider my comments below:

• As a preliminary matter, I am disappointed that TRIP II refused to agree to any extension of the procedural schedule while Loudoun County focused its herculean efforts on protecting the public health, safety and welfare of its citizens during the COVID-19 pandemic. I sincerely appreciate the Hearing Examiner's willingness to extend the procedural schedule in a manner that allows the County and its citizens to meaningfully participate.

---

[1] *Loudoun County Population: 2019 Estimate Series* (Aug. 2019), https://www.loudoun.gov/DocumentCenter/View/149216.

- The unprecedented health and economic challenges associated with the constantly evolving COVID-19 pandemic have introduced great uncertainty. No one knows how long the current challenges will last or what the new "normal" will look like when that time comes. But TRIP II's application and associated analyses are predicated on a reality that no longer exists. Millions of people are losing jobs, being furloughed, and suffering pay cuts. Most of those that are fortunate enough to keep working must do so from home. TRIP II should not be able to justify *any* increase based on data and assumptions that are no longer relevant, let alone year-over-year increases for the next five years.

- Moreover, given the clear intention of Loudoun County's legislative delegation to refine the Highway Corporation Act, any attempt to rush through multi-year toll increases should be denied. I pledge to continue working with legislators from Loudoun County and beyond to develop and propose reform legislation.

- The Commission created a unique measure of foregone equity return known as the Reinvested Earnings Account (REA). TRIP II has sought to characterize the REA as a guarantee of profits for its investors, but no statutes or regulations require the Commission to consider the REA, nor does the REA create any property right or interest on the part of TRIP II, so removing it is not a taking. I respectfully urge the Commission to remove consideration of the REA in this and future rate cases.

- The Virginia Department of Transportation's recent study investigating the feasibility of purchasing all or part of the Greenway stated that "VDOT and its advisors have had no access to Greenway financial models or other equity financial agreements."[2] After meeting with Commission Staff, I understand that financial information is only available to "parties to a proceeding." Given the tenuous financial status of the Greenway, the decreasing usage that is sure to be exacerbated by the COVID-19 pandemic, and the scheduled transfer of the Greenway to the Commonwealth as a public asset, VDOT should be granted the ability to audit financial records and projections and have right-of-refusal for any multi-year toll schedules.

- For the first time since 2012, as part of this case, the SCC is required to consider the §56-542(D) 3-part test for increasing tolls – reasonable return, reasonable price/benefit, and a pricing structure that does not "materially discourage" use of road. I urge the SCC to make robust use of the requirements of §56-542(D). I believe that when this test is properly applied, a 5-year rate increase of the magnitude sought by the Greenway cannot be approved.

Thank you in advance for your consideration of these comments, and I look forward to working with you and other stakeholders in the future to refine how requests for toll increases on the Greenway are evaluated.

Sincerely,

Dave LaRock

---

[2] VDOT, *A Study of the Feasibility of Purchasing All or Part of the Dulles Greenway*, Senate Doc. No. 5 at 18 (2020), https://rga.lis.virginia.gov/Published/2020/SD5/PDF.