

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 7, 2023

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APPLICATION OF

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TOLL ROAD INVESTORS
PARTNERSHIP II, L.P.

CASE NO. PUR-2023-00089

For authorization for an increase in the
maximum level of tolls

ORDER FOR NOTICE AND HEARING

On July 11, 2023, Toll Road Investors Partnership II, L.P. ("TRIP II" or "Company"), the owner and operator of the Dulles Greenway, filed an application ("Application") with the State Corporation Commission ("Commission") for an increase in the maximum level of tolls pursuant to the Virginia Highway Corporation Act of 1988, § 56-535 *et seq.* of the Code of Virginia ("Code"). On July 11, 2023, TRIP II also filed a Motion for Protective Ruling ("Motion") and a proposed protective ruling that establishes procedures governing the production and use of confidential information in this proceeding.

Section 56-542 D of the Code provides that, upon application and after investigation, the Commission has the duty and authority to approve or revise toll rates charged by TRIP II that (i) are "reasonable to the user in relation to the benefit obtained;" (ii) "will not materially discourage use of the roadway by the public;"¹ and (iii) "will provide the operator no more than a reasonable return as determined by the Commission." Code § 56-542 D further provides that

¹ Under Code § 56-542 A, "Materially discourage use" "means to cause a decrease in traffic of three or more percentage points based on either a change in potential toll road users or a change in traffic attributable to the toll rate charged as validated by (i) an investment-grade travel demand model that takes population growth into consideration or (ii) in the case of an investigation into current toll rates, an actual traffic study that takes population growth into consideration."

"the Commission shall not approve more than one year of toll rate increases proposed by the operator."

In addition, Code § 56-542 D requires the Company to include with its Application a forward-looking analysis.² Specifically, Code § 56-542 D states that:

Any application to increase toll rates shall include a forward-looking analysis that demonstrates that the proposed toll rates will be reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway, and provide the operator no more than a reasonable return. Such forward-looking analysis shall include reasonable projections of anticipated traffic levels, including the impact of social and economic conditions anticipated during the time period that the proposed toll rates would be in effect.

The Code further requires the Virginia Department of Transportation ("VDOT") to "review and provide comments upon the [Company's forward-looking] analysis to the Commission."³

Through its Application, TRIP II requests approval of increases in the maximum peak (or Congestion Pricing) and off-peak tolls to be effective January 1, 2024, or upon issuance of a final order in this case, as follows:⁴

² Trip II's forward-looking analysis is attached to the Direct Testimony of David Cuneo as Exhibit DC-2.

³ Code § 56-542 D.

⁴ Application at 8, 16. To the extent TRIP II is requesting a final order be issued in this matter by January 1, 2024, the Commission denies this request. TRIP II has control over the timing of filing its Application and a period of less than six months does not provide sufficient time to fully review the issues presented in the Application. The Commission has established herein a reasonable procedural schedule designed to balance the interests of TRIP II as well as other interested parties who may wish to participate in this proceeding.

Maximum Peak Tolls					Off-Peak, Maximum Base Toll				
Hours 6:30 AM – 9:00 AM Eastbound									
4:00 PM – 6:30 PM Westbound									
2-Axle	3-Axle	4-Axle	5-Axle	6-Axle or More	2-Axle	3-Axle	4-Axle	5-Axle	6-Axle or More
\$8.10	\$16.20	\$20.25	\$24.30	\$24.30	\$6.40	\$12.80	\$16.00	\$19.20	\$19.20

The Company states that the proposed tolls are the minimum necessary to permit TRIP II to meet its financial obligations and to reach a point in the future where it will be able to have the opportunity to earn a reasonable return on the capital invested in the Dulles Greenway.⁵

TRIP II also requests that the Commission specifically authorize a streamlined process to consider and to approve future increases under § 56-542 D of the Code to reduce the lag between increases in the tolls on the Dulles Greenway.⁶ The Company asserts that this will minimize each increase and provide TRIP II with the opportunity to generate sufficient revenues to meet its financial obligations and have the opportunity to earn a reasonable return in the future.⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Application should be docketed; that the Company should provide public notice of its Application; a public hearing should be scheduled for the purpose of receiving testimony and evidence on the Application; interested persons should have an opportunity to file comments on the Application or to participate as a respondent in this proceeding; and Commission Staff ("Staff") should be directed to investigate the Application and file testimony and exhibits containing its findings and recommendations thereon.

⁵ *Id.*

⁶ *Id.* at 16.

⁷ *Id.*

We also find that a Hearing Examiner should be assigned to conduct all further proceedings in this matter on behalf of the Commission, including ruling on the Company's Motion and filing a final report containing the Hearing Examiner's findings and recommendations.

To promote administrative efficiency and timely service of filings upon participants, the Commission will, among other things, direct the electronic filing of pleadings, unless they contain confidential information, and require electronic service on parties to this proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUR-2023-00089.
- (2) All pleadings, briefs, or other documents required to be served in this matter shall be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"), 5 VAC 5-20-10 *et seq.* Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.
- (3) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent

practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(4) As provided by § 12.1-31 of the Code and Rule 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, including ruling on the Company's Motion and filing a final report containing the Hearing Examiner's findings and recommendations. A copy of each filing made with the Commission's Clerk's office in this matter shall also be sent electronically to the Office of the Hearing Examiners.⁸

(5) The Commission hereby schedules a telephonic hearing for the receipt of testimony from public witnesses on the Company's Application, as follows:

- (a) A hearing for the receipt of testimony from public witnesses shall be convened telephonically at 10 a.m. on January 30, 2024, with no witness present in the Commission's courtroom.⁹
- (b) To promote fairness for all public witnesses, each witness will be allotted five minutes to provide testimony.
- (c) On or before January 24, 2024, any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Hearing Examiner to call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling (804) 371-9141.

⁸ Such electronic copies shall be sent to: OHEParalegals@scc.virginia.gov.

⁹ The Hearing Examiner will convene counsel of record in this proceeding to attend the public witness hearing virtually.

- (d) Beginning at 10 a.m. on January 30, 2024, the assigned Hearing Examiner will telephone sequentially each person who has signed up to testify as provided above. This hearing will not be convened, and the parties will be notified of such, if no person signs up to testify as a public witness.
- (e) This public witness hearing will be webcast at scc.virginia.gov/pages/Webcasting.

(6) A public evidentiary hearing shall be convened at 10 a.m. on January 31, 2024, in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive testimony and evidence offered by the Company, respondents, and the Staff on the Application.

(7) An electronic copy of the public version of the Company's Application may be obtained by submitting a written request to counsel for the Company: Timothy E. Biller, Esquire, Hunton Andrews Kurth, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, or tbiller@HuntonAK.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

(8) On or before September 8, 2023, the Company shall cause the following notice to be published as display advertising (not classified) on one (1) occasion in a newspaper or newspapers of general circulation in Fairfax and Loudoun Counties:

NOTICE TO THE PUBLIC OF THE APPLICATION
OF TOLL ROAD INVESTORS PARTNERSHIP II, L.P.,
FOR AUTHORIZATION FOR AN INCREASE IN THE MAXIMUM
LEVEL OF TOLLS ON THE DULLES GREENWAY
CASE NO. PUR-2023-00089

On July 11, 2023, Toll Road Investors Partnership II, L.P. ("TRIP II" or "Company"), the owner and operator of the Dulles Greenway, filed an application ("Application") with the State

Corporation Commission ("Commission") for an increase in the maximum level of tolls pursuant to the Virginia Highway Corporation Act of 1988, § 56-535 *et seq.* of the Code of Virginia ("Code").

Section 56-542 D of the Code provides that, upon application and after investigation, the Commission has the duty and authority to approve or revise toll rates charged by TRIP II that (i) "are reasonable to the user in relation to the benefit obtained;" (ii) "will not materially discourage use of the roadway by the public;" and (iii) "will provide the operator no more than a reasonable return as determined by the Commission." Code § 56-542 D further provides that "the Commission shall not approve more than one year of toll rate increases proposed by the operator."

In addition, Code § 56-542 D requires the Company to include with its Application a forward-looking analysis. Specifically, Code § 56-542 D states that:

Any application to increase toll rates shall include a forward-looking analysis that demonstrates that the proposed toll rates will be reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway, and provide the operator no more than a reasonable return. Such forward-looking analysis shall include reasonable projections of anticipated traffic levels, including the impact of social and economic conditions anticipated during the time period that the proposed toll rates would be in effect.

Code § 56-542 D further requires the Virginia Department of Transportation to "review and provide comments upon the [Company's forward-looking] analysis to the Commission."

Through its Application, TRIP II requests approval of increases in the maximum peak (or Congestion Pricing) and off-peak tolls to be effective January 1, 2024, or upon issuance of a final order in this case, as follows:

Maximum Peak Tolls				
Hours 6:30 AM – 9:00 AM Eastbound				
4:00 PM – 6:30 PM Westbound				
2-Axle	3-Axle	4-Axle	5-Axle	6-Axle or More
\$8.10	\$16.20	\$20.25	\$24.30	\$24.30

Off-Peak, Maximum Base Toll				
2-Axle	3-Axle	4-Axle	5-Axle	6-Axle or More
\$6.40	\$12.80	\$16.00	\$19.20	\$19.20

The Company states that the proposed tolls are the minimum necessary to permit TRIP II to meet its financial obligations and to reach a point in the future where it will be able to have the opportunity to earn a reasonable return on the capital invested in the Dulles Greenway.

TRIP II also requests that the Commission specifically authorize a streamlined process to consider and to approve future increases under § 56-542 D of the Code to reduce the lag between increases in the tolls on the Dulles Greenway. The Company asserts that this will minimize each increase and provide TRIP II with the opportunity to generate sufficient revenues to meet its financial obligations and have the opportunity to earn a reasonable return in the future.

TAKE NOTICE that the final toll rates approved by the Commission in this proceeding may be different from those proposed by the Company.

To promote administrative efficiency and timely service of filings upon participants, the Commission has directed the electronic filing of testimony and pleadings, unless they contain confidential information, and has required electronic service on parties to this proceeding.

The Commission entered an Order for Notice and Hearing that, among other things, scheduled public hearings on the Company's Application. On January 30, 2024, at 10 a.m., a Hearing Examiner appointed by the Commission will hold a telephonic hearing, with no witness present in the Commission's courtroom, for the purpose of receiving the testimony of public witnesses. On or before January 24, 2024, any person desiring to offer testimony as a public witness shall provide to the Commission (a) your name, and (b) the telephone number that you wish the Hearing Examiner to call during the hearing to receive your testimony. This information may be provided to the Commission in three ways: (i) by filling out a form on the Commission's website at scc.virginia.gov/pages/Webcasting; (ii) by completing and emailing the PDF version of this form to SCCInfo@scc.virginia.gov; or (iii) by calling (804) 371-9141. This public witness hearing will be webcast at scc.virginia.gov/pages/Webcasting.

Beginning at 10 a.m. on January 30, 2024, the Hearing Examiner will telephone sequentially each person who has signed up to testify as provided above.

On January 31, 2024, at 10 a.m., in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, a Hearing Examiner appointed by the Commission will convene a hearing to receive testimony and evidence offered by the Company, any respondents, and the Staff.

An electronic copy of public version of the Company's Application may be obtained by submitting a written request to counsel for the Company: Timothy E. Biller, Esquire, Hunton Andrews Kurth, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074, or tbiller@HuntonAK.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

On or before January 24, 2024, any interested person may submit comments on the Application electronically by following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box

2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00089.

On or before October 3, 2023, any person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at: scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may file such notice by U.S. mail to the Clerk of the Commission at the address listed above. Such notice of participation shall include the email addresses of such parties or their counsel, if available. A copy of the notice of participation as a respondent also must be sent to counsel for the Company. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"), any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00089.

On or before November 3, 2023, each respondent may file with the Clerk of the Commission, at scc.virginia.gov/clk/efiling, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable, as a practical matter, to file testimony and exhibits electronically may file such by U.S. mail to the Clerk of the Commission at the address listed above. Each witness's testimony shall include a summary not to exceed one page. All testimony and exhibits shall be served on the Staff, the Company, and all other respondents simultaneous with its filing. In all filings, the respondent shall comply with the Rules of Practice, including 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2023-00089.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Hearing, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The Commission's Rules of Practice, the public version of the Company's Application, the Commission's Order for Notice

and Hearing, and other documents filed in this case may be viewed on the Commission's website at: scc.virginia.gov/pages/Case-Information.

TOLL ROAD INVESTORS PARTNERSHIP II, L.P.

(9) On or before September 8, 2023, the Company shall serve a copy of this Order for Notice and Hearing on the mayor of the Town of Leesburg, the chairmen of the boards of supervisors of Fairfax and Loudoun Counties, the chair of the Metropolitan Washington Airports Authority, the chair of the Commonwealth Transportation Board, and the Secretary of Transportation of the Commonwealth. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(10) On or before September 8, 2023, the Company shall serve a copy of its Application on the Secretary of Transportation of the Commonwealth such that VDOT can review and provide comments upon TRIP II's forward-looking analysis to the Commission, pursuant to Code § 56-542 D.

(11) On or before September 29, 2023, the Company shall file proof of the notice and service required by Ordering Paragraphs (8), (9), and (10), including the name, title, address, and electronic mail address (if applicable) of each official served, with the Clerk of the State Corporation Commission, at scc.virginia.gov/clk/efiling.

(12) On or before January 24, 2024, any interested person may submit comments on the Application by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State

Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All comments shall refer to Case No. PUR-2023-00089.

(13) On or before October 3, 2023, any interested person or entity, including VDOT, wishing to participate as a respondent in this proceeding may do so by filing a notice of participation with the Clerk of the Commission at scc.virginia.gov/clk/efiling. Those unable, as a practical matter, to file a notice of participation electronically may submit such notice by U.S. mail to the Clerk of the Commission at the address listed in Ordering Paragraph (12). Such notice of participation shall include the email addresses of such parties or their counsel, if available. The respondent simultaneously shall serve a copy of the notice of participation on counsel to the Company. Pursuant to 5 VAC 52080 B, *Participation as a respondent*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2023-00089.

(14) Within three (3) business days of receipt of a notice of participation as a respondent, the Company shall serve a copy of the public version of its Application and supporting materials on the respondent, unless these have already been provided to the respondent.

(15) On or before November 3, 2023, each respondent may file with the Clerk of the Commission, at scc.virginia.gov/clk/efiling, and serve on the Staff, Company, and any other respondents, any testimony and exhibits by which the respondent expects to establish its case. Any respondent unable, as a practical matter, to file testimony and exhibits electronically may file such by U.S. mail to the Clerk of the Commission at the address in Ordering Paragraph (12).

Each witness's testimony shall include a summary not to exceed one page. In all filings, the respondent shall comply with the Commission's Rules of Practice, including 5 VAC 520140, *Filing and service*, and 5 VAC 520240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUR-2023-00089.

(16) On or before November 3, 2023, VDOT shall file with the Clerk of the Commission, at scc.virginia.gov/clk/efiling, VDOT's comments upon TRIP II's forward-looking analysis to the Commission, pursuant to Code § 56-542 D. Alternatively, VDOT may file such by U.S. mail to the Clerk of the Commission at the address in Ordering Paragraph (12).

(17) On or before December 20, 2023, the Staff shall investigate the Application and file with the Clerk of the Commission its testimony and exhibits concerning the Application, and each Staff witness's testimony shall include a summary not to exceed one page. A copy thereof shall be served on counsel to the Company and all respondents.

(18) On or before January 17, 2024, the Company shall file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer, and each rebuttal witness's testimony shall include a summary not to exceed one page. The Company shall serve a copy of its rebuttal testimony and exhibits on the Staff and all respondents.

(19) Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified herein, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(20) The Commission's Rule of Practice 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: responses and objections to written interrogatories and requests for production of documents

shall be served within seven (7) calendar days after receipt of the same. In addition to the service requirements of 5 VAC 5-20-260 of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff attorney, if the interrogatory or request for production is directed to the Staff.¹⁰ Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice, 5 VAC 5-20-240 *et seq.*

(21) This matter is continued.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹⁰ The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2023-00089 in the appropriate box.