

AT RICHMOND, SEPTEMBER 11, 2007

APPLICATION OF

TOLL ROAD INVESTORS
PARTNERSHIP II, L.P.

2007 SEP 11 P 4: 12

CASE NO. PUE-2006-00081

Application for an Increase in
the Maximum Authorized
Level of TollsFINAL ORDER

On July 19, 2006, Toll Road Investors Partnership II, L.P. ("Toll Road Investors" or "Partnership"), filed with the State Corporation Commission ("Commission") its Application of Toll Road Investors Partnership II, L.P., for an Increase in the Maximum Authorized Level of Tolls ("Application") for the Dulles Greenway. Toll Road Investors propose incremental increases in the maximum toll for two-axle vehicles over five years. The maximum toll would rise from \$3.00, as of July 1, 2007, to \$4.00 as of January 1, 2012.¹ The Partnership also proposes to change its toll structure for vehicles with more than two axles and to implement congestion pricing during periods of peak usage.

Before the Commission is the Report of Howard P. Anderson, Jr., Hearing Examiner, of June 28, 2007 (hereinafter "Report"). In the Report, Examiner Anderson recommended that the Partnership's application be granted. The Examiner also endorsed a Commission Staff ("Staff") proposal to study modifications of the toll structure to reflect the distance traveled.

¹ In the Final Order of July 6, 2004, in Toll Road Investors Partnership, II, L.P., Case No. PUE-2003-00230, 2004 S.C.C. Ann. Rep. 357, the Commission authorized the Partnership to implement toll increases through July 1, 2007. On May 29, 2007, the Partnership filed its Supplement No. 6 to Virginia S.C.C. Tariff No. 1, Fourth Revised Schedule, which took effect July 1, 2007. This last increase, authorized in Case No. PUE-2003-00230, brought the maximum toll for a two-axle vehicle to \$3.00.

The Commission is impressed by the extent of public comment responding to Partnership's Application. Approximately 600 comments have been received, substantially all of which expressed opposition to the proposed toll increases. We are mindful of these as well as the large number of public witnesses who testified at a public hearing held January 30, 2007, in Leesburg. In his Report, the Hearing Examiner summarized the substance of each of these public witnesses and the Commission has read the transcript of their testimony.

The public witnesses included a number of public officials. The opposition expressed by public witnesses may be fairly characterized as unanimous and vehement, terms such as "highway robbery" and "cash cow" being expressed.

We are particularly sensitive to individual descriptions of the financial burden placed on commuters compelled to use the toll facility because of the extremely congested conditions on alternate routes. We take note of the resolutions adopted by the Board of Supervisors of Loudoun County and the Town Council of Leesburg expressing opposition to the proposed toll increases.

Almost 20 years ago, the Commonwealth made a series of policy decisions that leave us little choice but to make the decision we make in this case. Those decisions led to a regulated private company constructing and operating the Dulles Greenway. This was done pursuant to legislation passed by the General Assembly during its 1988 session. This Commission authorized the construction of the facility and approved its original and subsequent financing. During the progress of the case resulting in that authorization, the Staff filed its report on April 17, 1990. In that report, the Staff compared the cost of construction, timeline for construction, and impact on the consuming public over the life of the project between what appeared to be two competing proposals, one by the Virginia Department of Transportation

the applicant, Toll Road Corporation of Virginia ("TRCV"). The Staff report concluded that "projected total cost of service to the using public over the 40 year life of the project is \$894.8 million for VDOT compared to \$3.5 billion for TRCV." The report explained that the private build option would be significantly higher based on TRCV's higher debt service cost compared to debt issued by government agency, projected dividend payments to its shareholders in excess of \$1.1 billion over the life of the project, and payment of income taxes and property taxes in excess of \$785 million by TRCV that are not required of VDOT. Our Staff was unable to recommend issuance of a certificate because of doubts about the project's viability based on the information in the application at that time.

This Commission had no opportunity to decide between these competitors, for on May 1, 1990, the Commissioner of VDOT filed a letter in the case announcing that: "The department has no plans to build this facility with public funds." The Commissioner testified at the evidentiary hearing that his department was in support of the application and recommended that a certificate be issued.

It is fair to state that it was known with a reasonable certainty that a private toll road would have the burden of greatly increased tolls over those that might be charged by a VDOT constructed highway. This Commission noted that with regards to toll rates, "the VDOT traffic and revenue study projected the VDOT constructed project to require as little as a \$1 toll constant over the life of the project." The Town of Leesburg and the County of Loudoun were among the participants in the certification case, and the Commission noted that there was general support favoring the building of the extension by TRCV. At that point in time the situation presented was that if a private toll road was not to be built, there would be no road at all. In its order dated July 6, 1990, the Commission stated that: "Having found that there is a public need

for the project, it would be inconsistent with the public interest to deny the application on the ground that its relative project life costs greatly exceed those of VDOT which had become totally academic with VDOT having said it does not intend to build the project. Succinctly, the applicant's proposal is the only game in town."

Some of the public witnesses expressed condemnation of the concept of a project built as a "public-private partnership," and well they might in view of their practical experience as users of the Greenway. This case presents the private part of that partnership, and the piper must be paid. The payment is in the form of an amount "which will provide the operator no more than a reasonable return."

Our duty to determine if the earnings derived from this toll facility exceed a reasonable level is fulfilled with relative ease. As Staff witness Oliver states in his pre-filed testimony, the Partnership has lost money every year it has been in existence. Mr. Oliver testified that the Partnership's interest expense alone has exceeded its total revenues over most of the years it has operated, and that it has never earned a positive return on its partner's supplied capital.

The Hearing Examiner states in his report: "Mr. Oliver next addressed TRIP II's rate of return if the proposed toll increases are approved. Based on the Greenway's 2006 traffic totals and assuming that toll rates were already established at \$4 for cars and \$14 for trucks as of January 1, 2006, TRIP II's net income would have been \$8,465,000, a return of approximately 0.62%." This is hardly a "cash cow" enterprise, nor "highway robbery" as some of the public witnesses have asserted.

The financial and economic evidence submitted by the Partnership and by the Staff witnesses is undisputed. We have no credible evidence challenging the accuracy of financial data. Furthermore, this Commission has approved several restructuring and refinancing

arrangements undertaken by this applicant and its predecessors, and has received and reviewed periodic financial reports over the life of the project. The most current financial data filed in this case likely presented no surprises to the Staff.

The record before the Commission supports our determination that the level of tolls will, as required by § 56-542 of the Code of Virginia (hereinafter "Code"), provide the Partnership with no more than a reasonable return. As discussed in the Hearing Examiner's Report, at 18-19, an increase in tolls will almost certainly discourage some use. We recognize that the statutory provision governing initial and revised tolls, § 56-542 of the Code, mandates tolls that will provide no more than a reasonable return while not discouraging use of the Dulles Greenway. Examiner Anderson observed in the Report that it is debatable whether the decline in use will be material.

Further, as in prior cases, the Commission approves a toll structure which authorizes, but does not mandate, increases. Toll Road Investors may implement a lower toll, and toll changes could be implemented on different dates, so long as the maximum toll does not exceed the ceiling as of January 1, 2009, July 1, 2010, and January 1, 2012. The Partnership may, to the extent authorized by this Order, adjust tolls to deter migration from the Greenway.

To offset the impact of the increase, the Partnership may continue its Promotional Discount Plan (VIP Miles), which provides a cash rebate for drivers who accumulate at least 2,800 miles of annual travel on the Greenway. (Exhibit B (Revised) to Ex. 2.) Drivers' vehicles must be equipped with an automatic vehicle identification transponder. While the Application, Ex. 2, does not expressly provide for modification of the calculation of the rebate, the Commission assumes that formula will be revised to reflect the maximum base toll in effect or any variance. We will prescribe clarifying language.

We will require notice to the Commission and to users of the Dulles Greenway of the timing and amount of any increase. Accordingly, we will, prescribe some modification to the language in the illustrative tariff sheet filed with the Partnership's Application, Exhibit B (Revised) to Ex. 2, to specify notice of the amount and timing of any increase.

The Examiner also recommended that the Partnership be authorized to increase tolls during hours of peak use to reduce congestion. The Partnership presented testimony that the Dulles Greenway is now operating at maximum capacity. Congestion pricing would induce some shift of traffic from peak periods. (Report at 19.)

Toll Road Investors' toll structure now in effect provides for reduced tolls on weekends at the Main Toll Plaza and Exits 7 and 8. These discounts would be eliminated in the proposed toll structure. As we noted in our discussion of the increase in base tolls, the Partnership is not obligated to implement the full differential between the base and congestion tolls. After considering the evidence on the increased use of the Dulles Greenway and the resulting congestion during certain periods, the Commission finds that the congestion pricing proposed in the Application should be authorized.

According to the Partnerships' Application, Ex. 2 at 6, the maximum congestion management toll would be set by increasing the maximum base toll by approximately 20 percent. On the illustrative tariff sheet, Exhibit B (Revised) to Ex. 2, increases in the maximum toll were rounded to one-tenth of a dollar. The illustrative tariff sheet shows only maximum base and congestion tolls. As noted previously, Toll Road Investors may implement a lower toll, and toll changes could be implemented on different dates, so long as the maximum base toll or congestion management toll does not exceed the ceiling as of January 1, 2009, July 1, 2010, and January 1, 2012. To address the possibility of a variance from the maximum, we will prescribe

language limiting the congestion management toll to 120 percent of the base toll, rounded down to the nearest tenth of a dollar, if the Partnership should implement less than the maximum authorized.

The language in the illustrative tariff sheet filed with the Partnership's application, Exhibit B (Revised) to Ex. 2, also includes a footnote, which provided for application of the congestion tolls during weekday peak periods. The peak periods were defined as the busiest three-hour periods eastbound in the morning and westbound in the afternoon. TRIP II witness Yelds testified that peak periods were 6:00 a.m. to 9:00 a.m. for eastbound traffic and 4:00 p.m. to 7:00 p.m. for westbound traffic. (Ex. 5 at 6 & n.1.) TRIP II witness Sines testified that frequent modification of the peak periods was not anticipated. (Tr. at 225-26.) To assure understanding of the toll structure, we will direct TRIP II to specify the peak periods in its tariff. Should the peak periods shift, the Partnership shall file a revised tariff provision proposing new peak periods along with supporting information for the Commission's consideration.

As recommended by the Hearing Examiner, the Commission will approve the proposed toll structure for vehicles with three or more axles. We will authorize this modification to take effect on October 1, 2007.²

In the Report, at 19-20, the Hearing Examiner endorsed the Commission Staff proposal that the feasibility of distance-based tolls be studied. We will not adopt the study proposal. The Commission has previously considered the issue of redesigning the toll structure to give heavier weighting to distance traveled and the necessary modification of Dulles Greenway facilities and operations. Most recently, we addressed this issue in the Final Order of July 6, 2004, in Toll

² On May 29, 2007, the Partnership filed its Supplement No. 6 to Virginia S.C.C. Tariff No. 1, Fourth Revised Schedule, which set out Maximum Base Tolls for vehicles with three axles or more. While Supplement No. 7 bore an effective date of July 1, 2007, the Partnership acknowledged in its transmittal letter that the toll could not take effect until entry of this Order.

Road Investors Partnership II, L.P., Case No. PUE-2003-00230, 2004 S.C.C Ann. Rep. 357, 358.

As in 2004, the Commission will not direct the Partnership to conduct a study of a distance-sensitive toll structure. If the Partnership does make such a study, we encourage TRIP II to share the results with the Commission Staff and interested state and local agencies.

As of July 1, 2007, the toll structure provides a discount of \$0.70 at Exits 4, 5, and 6 from the maximum toll of \$3.00. The discount at these exits increases to \$0.85 for vehicles equipped with automatic vehicle transponders. Toll structures have provided for some discount at these exits since the Greenway opened. The proposed toll structure provides for uniform base and congestion management tolls without differentiating between exits or the Main Toll Plaza. Toll Road Investors could, however, implement variances from the maximum toll levels for some exits.

In summary, the Commission finds that the proposed toll structure with its ceilings for two-axle vehicles and other vehicles and phased implementation will satisfy the statutory criteria and should be approved. Further, the introduction of congestion pricing to the toll structure will promote the efficient utilization of the Dulles Greenway.

Accordingly, IT IS ORDERED that:

- (1) The application of Toll Road Investors for an increase in its maximum authorized tolls be granted to the extent found herein and otherwise be denied.
- (2) As soon as practicable after entry of this Order, Toll Road Investors shall file with the Clerk of the Commission, Document Control Center, in Case No. PUE-2004-00103, a complete revised schedule of its tolls and related rules and regulations.³ The filing should

³ By Order of August 27, 2004, the Commission established Case No. PUE-2004-00103 for maintenance of the Partnership's tariff. The revised tariff and any supplements should be filed in that case in accordance with the Order of August 27, 2004.

include a revised tariff sheet or revised tariff sheets setting out the maximum base tolls and the maximum congestion management tolls for two-axle vehicles and vehicles with three axles or more, which generally conforms to the illustrative tariff sheet filed as Exhibit B (Revised) to Ex. 2, as approved in this Order, subject to the revisions prescribed in Ordering Paragraphs (3), (4), and (5) below. Each revised tariff sheet shall bear an effective date of October 1, 2007, and shall indicate that the sheet was filed pursuant to Final Order in Case No. PUE-2006-00081.

(3) The revised tariff sheet or sheets filed as prescribed in Ordering Paragraph (2) above shall include the language in Paragraph 5 in the illustrative tariff sheet filed as Exhibit B (Revised) to Ex. 2 with the additional language shown in italics, or a reasonable variation, as follows:

The Company may implement variance(s) from the maximum toll levels stated in Paragraphs 1 and 2, in accordance with Paragraph 4, provided that no such variance shall cause the actual toll to exceed the maximum toll. *If any variance from the Maximum Base Toll is implemented, the Congestion Management Toll may not exceed 120 percent of the variance from the Maximum Base Toll rounded down to the nearest one-tenth of \$1.00.* The Company shall record such variance(s) in a supplement to the tariff to be filed *with the Clerk, State Corporation Commission, Document Control Center, in Case No. PUE-2004-00103 not less than 30 days* prior to the implementation. As originally set forth in Supplement No. 3 to the Company's Fourth Revised Schedule, included in the Application in Case No. PUE-2003-00230, the VIP Miles promotional discount plan shall continue to remain in effect.

(4) The revised tariff sheet or sheets filed as prescribed in Ordering Paragraph (2) above shall include the language in the footnote identified with a single asterisk in the illustrative tariff sheet filed as Exhibit B (Revised) to Ex. 2 with the additional language shown in italics, or a reasonable variation, as follows:

Congestion management toll price premiums will be applied to weekday peak period traffic traveling in the peak direction. Weekday peak period is defined as *6:00 a.m. to 9:00 a.m. for eastbound traffic and 4:00 p.m. to 7:00 p.m. for westbound traffic.*

(5) The revised tariff sheet or sheets filed as prescribed in Ordering Paragraph (2) above shall delete the date July 1, 2007, from the first column and insert the date October 1, 2007, for Maximum Base Tolls for vehicles with three axles or more as shown in Paragraph 2 of the illustrative tariff sheet filed as Exhibit B (Revised) to Ex. 2. A line for July 1, 2007, showing N/A for the columns headed 4 axles, 5 axles, 6 axles, and 6+ axles may be inserted.

(6) The revised tariff sheet or sheets filed as prescribed in Ordering Paragraph (2) above shall provide that the mileage factor for the Promotional Discount Plan (VIP Miles) be calculated using the Maximum Base Toll or variation for the class of vehicle, two axle vehicle or vehicle with three axles or more, in effect as of the close of the Participating Customer's VIP Miles Period.

(7) This Case No. PUE-2006-00081 be dismissed from the Commission's docket and placed in closed status in the records maintained by the Commission Clerk.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East
Byrd Street, Richmond, Virginia 23219-4074.

A True Copy
Teste:


Clerk of the
State Corporation Commission