

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, JANUARY 27, 2020

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2020 JAN 27 P 12: 22

200130103

APPLICATION OF

TOLL ROAD INVESTORS
PARTNERSHIP II, L.P.

CASE NO. PUR-2019-00218

For an increase in the maximum level of tolls

ORDER FOR NOTICE AND HEARING

On January 23, 2020, Toll Road Investors Partnership II, L.P. ("TRIP II" or "Company"), the operator of the Dulles Greenway, completed the filing of 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").¹

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 the Dulles Greenway 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 Company no more than a reasonable return as determined by the Commission.

TRIP II requests approval of "a toll schedule that provides for small increases in the maximum two-axle vehicle peak and off-peak tolls over a five year period."² Specifically, the Company requests approval of increases in the maximum two-axle toll as follows:³

¹ Supporting testimony and other documents also were filed with the initial Application on December 20, 2019. The Company filed Supplemental Direct Testimony on January 23, 2020.

² Application at 1-2.

³ *Id.* at 2.

	January 1, 2021	January 1, 2022	January 1, 2023	January 1, 2024	January 1, 2025
Maximum two-axle toll for all off-peak traffic	\$5.00	\$5.25	\$5.55	\$5.85	\$6.15
<i>Implied % increase</i>	5.3%	5.0%	5.7%	5.4%	5.1%
Maximum two-axle toll for peak traffic (weekday traffic in peak time and direction)	\$6.15	\$6.55	\$6.95	\$7.40	\$7.90
<i>Implied year-on-year increase</i>	6.0%	6.5%	6.1%	6.5%	6.8%

TRIP II also proposes that the maximum toll for three-axle vehicles be established as double the two-axle maximum and that the maximum toll for vehicles with four to five axles be equal to the maximum toll for three-axle vehicles plus an amount equal to 50% of the two-axle maximum toll for each additional axle above three axles.⁴ The Company proposes that vehicles with more than five axles will pay the same toll as vehicles with five axles.⁵ TRIP II asserts that "[t]he proposed tolls will allow TRIP II to continue to provide a safer, more efficient, and well-maintained alternative travel route for drivers."⁶ The Company further states that the requested toll rate increases satisfy the criteria in Code § 56-542 D,⁷ and that the proposed tolls

will allow TRIP II to undertake major capital improvement projects to further improve the Greenway and adjoining public roads which will, among other things: (1) reduce congestion in the surrounding road network; (ii) improve the travel time and experience for TRIP II customers; and (iii) ensure TRIP II remains in compliance with the Comprehensive Agreement [between TRIP II and the Virginia Department of Transportation].⁸

⁴ *Id.* See also Exhibit 2 to the Application.

⁵ *Id.* at 2, Exhibit 2.

⁶ *Id.* at 2.

⁷ See *id.* at 3-8.

⁸ *Id.* at 2-3.

On January 23, 2020, TRIP II also filed a Motion for Protective Ruling and a proposed protective ruling that establishes procedures governing the use of confidential information in this proceeding.

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 participate as a respondent in this proceeding; and the Commission Staff ("Staff") should be directed to investigate the Application and file testimony and exhibits containing its findings and recommendations thereon. 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 for Protective Ruling and filing a final report containing the Hearing Examiner's findings and recommendations.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2019-00218.

(2) Pursuant to Code § 12.1-31 and Rule 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"), a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, concluding with the issuance of a report containing the Hearing Examiner's findings and recommendations.

(3) A public hearing shall be convened on June 9, 2020, at 10 a.m., in the Commission's courtroom, second floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive the testimony of public witnesses and the evidence of the Company, any respondents,

and Staff. Any person desiring to offer testimony as a public witness at this hearing should appear in the Commission's courtroom 15 minutes prior to the starting time of the hearing and identify himself or herself to the Commission's Bailiff.

(4) The Company shall make copies of the public version of its Application, as well as a copy of this Order for Notice and Hearing, available for public inspection during regular business hours at the Company's office, 45305 Catalina Court, Suite 102, Sterling, Virginia 20166. Copies also 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. If acceptable to the requesting party, the Company may provide the documents by electronic means. Copies of the public version of all documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

(5) On or before February 18, 2020, 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 by first class mail or delivery to the customary place of business or residence of the official served.

(6) On or before February 18, 2020, the Company shall publish the following notice on one occasion as display advertising (not classified) 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 AN INCREASE IN THE MAXIMUM LEVEL OF TOLLS
ON THE DULLES GREENWAY
CASE NO. PUR-2019-00218

On January 23, 2020, Toll Road Investors Partnership II, L.P. ("TRIP II" or "Company"), the 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 the Dulles Greenway 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 Company no more than a reasonable return as determined by the Commission.

TRIP II requests approval of "a toll schedule that provides for small increases in the maximum two-axle vehicle peak and off-peak tolls over a five year period." Specifically, the Company requests approval of increases in the maximum two-axle toll as follows:

	1/1/21	1/1/22	1/1/23	1/1/24	1/1/25
Off-peak	\$5.00	\$5.25	\$5.55	\$5.85	\$6.15
Peak	\$6.15	\$6.55	\$6.95	\$7.40	\$7.90

TRIP II also proposes that the maximum toll for three-axle vehicles be established as double the two-axle maximum and that the maximum toll for vehicles with four to five axles be equal to the maximum toll for three-axle vehicles plus an amount equal to 50% of the two-axle maximum toll for each additional axle above three axles. The Company proposes that vehicles with more than five axles will pay the same toll as vehicles with five axles. TRIP II asserts that "[t]he proposed tolls will allow TRIP II to continue

to provide a safer, more efficient, and well-maintained alternative travel route for drivers." The Company further states that the requested toll rate increases satisfy the criteria in Code § 56-542 D, and that the proposed tolls "will allow TRIP II to undertake major capital improvement projects to further improve the Greenway and adjoining public roads which will, among other things: (1) reduce congestion in the surrounding road network; (ii) improve the travel time and experience for TRIP II customers; and (iii) ensure TRIP II remains in compliance with the Comprehensive Agreement [between TRIP II and the Virginia Department of Transportation]."

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

The Commission entered an Order for Notice and Hearing that, among other things, scheduled a public hearing to commence at 10 a.m. on June 9, 2020, in the Commission's courtroom, second floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive testimony and evidence from members of the public the Company, any respondents, and the Commission's Staff. Any person desiring to testify as a public witness at this hearing should appear in the Commission's courtroom fifteen (15) minutes prior to the starting time of the hearing and contact the Commission's Bailiff.

A copy of the Application and the Commission's Order for Notice and Hearing are available for public inspection during regular business hours at the Company's office, 45305 Catalina Court, Suite 102, Sterling, Virginia 20166. Copies also 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. If acceptable to the requesting party, the Company may provide the documents by electronic means.

Copies of the public version of the Application and other documents filed in this case also are available for interested persons to review in the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons also may download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before March 17, 2020, any interested person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Anyone filing a notice of participation simultaneously shall serve a copy of the notice of participation on counsel to the Company at the address set forth above. Pursuant to Rule 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 Rule 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2019-00218.

On or before April 24, 2020, each respondent may file with the Clerk of the Commission and serve on the Commission's Staff, the Company, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth above. Respondents also shall comply with the Commission's 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-2019-00218.

On or before June 2, 2020, any interested person wishing to comment on the Company's Application shall file written comments on the Application with the Clerk of the Commission at the address set forth above. Any interested person desiring to file comments electronically may do so on or before June 2, 2020, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. All such comments shall refer to Case No. PUR-2019-00218.

All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, 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 may be viewed at: <http://www.scc.virginia.gov/case>. A printed copy of the Rules of Practice and an official copy of the Commission's Order for Notice and Hearing in this proceeding may be obtained from the Clerk of the Commission at the address above.

TOLL ROAD INVESTORS PARTNERSHIP II, L.P.

(7) On or before March 2, 2020, the Company shall file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, a certificate of the mailing of the notice prescribed in Ordering Paragraph (5) and proof of the newspaper publication directed in Ordering Paragraph (6). The certificate of mailing shall include the name and address of the officials and officers served.

(8) On or before June 2, 2020, any person or entity may file written comments on the Application with the Clerk of the Commission at the address set forth above. In the alternative, any person or entity may submit comments electronically on or before June 2, 2020, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. Compact disks or any other form of electronic storage medium may not be filed with written comments. All comments shall refer to Case No. PUR-2019-00218.

(9) On or before March 17, 2020, any interested person or entity wishing to participate as a respondent in this proceeding may do so by filing a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (7). The respondent simultaneously shall serve a copy of the notice of participation on counsel for the Company at the address set out in Ordering Paragraph (4). Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's 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-2019-00218.

(10) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon such respondent a copy of this Order for Notice and Hearing, a copy of the public version of the Application, and a copy of the public version of all materials filed by the Company with the Commission, unless these materials already have been provided to the respondent.

(11) On or before April 24, 2020, each respondent may file with the Clerk of the Commission and serve on the Staff, the Company, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case. Each witness's testimony shall include a summary not to exceed one page. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (7). In all filings, the respondent shall comply with the Commission's 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-2019-00218.

(12) The Staff shall investigate the Application. On or before May 8, 2020, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits, and each Staff witness's testimony shall include a summary not to exceed one page. The Staff shall serve a copy thereof on counsel to the Company and all respondents.

(13) On or before May 22, 2020, the Company shall file with the Clerk of the Commission any rebuttal testimony and exhibits that the Company expects to offer, and each rebuttal witness's testimony shall include a summary not to exceed one page. The Company simultaneously shall serve a copy of the testimony and exhibits on the Staff and all respondents. If not filed electronically, an original and fifteen (15) copies of such rebuttal testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (7).

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

(15) 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, 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, or by facsimile, 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.⁹ Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-240 *et seq.*

(16) This case is continued.

⁹ The assigned Staff attorney is identified on the Commission's website, <http://www.scc.virginia.gov/case>, by clicking "Docket Search," and clicking "Search Cases," and entering the case number, PUR-2019-00218, in the appropriate box.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Timothy E. Biller, Esquire, and Andrea D. Gardner, Esquire, Hunton Andrews Kurth, LLP,
Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; and
C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel,
Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A
copy shall be delivered to the Commission's Office of General Counsel and Divisions of Public
Utility Regulation and Utility Accounting and Finance.