

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 30, 2013

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE-2013-00011

*Ex Parte:* In the matter of investigating the toll rates of Toll Road Investors Partnership II, L.P., under § 56-542 D of the Code of Virginia

ORDER INITIATING INVESTIGATION

On December 7, 2012 and January 16, 2013, The Honorable David I. Ramadan, Member, Virginia House of Delegates, filed complaints with the State Corporation Commission ("Commission") requesting the Commission to initiate an investigation, under § 56-542 D of the Code of Virginia ("Code"), into the current rate structure and rate levels charged by Toll Road Investors Partnership II, L.P. ("TRIP II"), the operator of the Dulles Greenway. Delegate Ramadan's complaints, among other things, include the following statements:

- I hereby request a full investigation into the current rate structure, and that the current rate be decreased. TRIP II is using among other things, 2011 traffic data and Route 7 comparisons to justify their claim that the current toll rates are in compliance with the clause requiring that tolls not "materially discourage" use of the Greenway. Changed circumstances and overwhelming evidence suggest that the current toll structure is in violation of the Code.<sup>1</sup>
- [T]he multi axle tolls at the Route 606 interchange are set at a level that discourages use of the roadway.<sup>2</sup>
- Much has transpired since the current toll structure was approved by the SCC. The analysis that was used at that time to determine compliance with this part of the Code did not include an analysis of traffic on Sycolin Road, Ashburn Farms

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<sup>1</sup> January 16, 2013 complaint at 2.

<sup>2</sup> *Id.*

Blvd, Waxpool Road, or the Loudoun Connector commuter bus service (along with feeders to these routes). These represent the primary alternative routes for "discouraged" toll road users. All of these alternatives have experienced an increase in usage as the Dulles Greenway tolls have gone higher. Both anecdotal and observable indications provide compelling evidence that the current two axle toll rates "materially discourage use of the roadway by the public".<sup>3</sup>

- [T]he multi-axle toll rates for the Route 606 interchange [should] be investigated to ensure that they comply with the Code. Anecdotal and observable indications suggest that the multi axle tolls at this interchange actually reduce the rate of return for TRIP II because it discourages virtually ALL multi axle use of this interchange, particularly in the eastbound direction. A reduced toll would likely INCREASE total revenues for TRIP II. Furthermore, even TRIP II would probably acknowledge that the multi axle tolls at this interchange discourage use of the toll road by multi axle vehicles.<sup>4</sup>

As it relates to the above complaints, § 56-542 D of the Code provides as follows:

The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear 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 rate of return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission.

NOW THE COMMISSION, upon consideration of this matter, initiates an investigation herein – as provided for in § 56-542 D of the Code – of the toll rates charged by TRIP II.<sup>5</sup>

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<sup>3</sup> December 7, 2012 complaint at 1.

<sup>4</sup> *Id.*

<sup>5</sup> TRIP II and the complainant herein, Delegate Ramadan, hereby are made parties to this proceeding.

Section 56-542 D of the Code sets forth three requirements that the Commission must apply in this investigation. Specifically, if the Commission substitutes new toll rates for the ones currently being charged, such tolls shall be set at a level: (1) "which is reasonable to the user in relation to the benefit obtained"; (2) "which will not materially discourage use of the roadway by the public"; and (3) "which will provide the operator no more than a reasonable return as determined by the Commission." By way of inclusion but not limitation, the participants in this case, including the Commission's Staff ("Staff"), are requested to address and define with specificity the standards that the Commission should apply for each of these three requirements. For example, what must be established for each requirement – both legally and factually – for the Commission to find that these three concurrent criteria have been fulfilled such that the Commission may substitute toll rates in accordance with § 56-542 D of the Code. In addition, as part of addressing with specificity each of the three listed criteria in § 56-542 D, the participants (including Staff) are requested to explain, based on a detailed analysis of the law and the facts, why the current toll rates do or do not meet such criteria.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2013-00011.
- (2) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, *Procedure before hearing examiners*, a Hearing Examiner is appointed to conduct all further proceedings in this matter, concluding with the filing of a Hearing Examiner's report containing the Hearing Examiner's findings and recommendations relating to this investigation.
- (3) As part of the Hearing Examiner's duties, the Hearing Examiner shall forthwith enter a Ruling establishing a procedural schedule in this investigation that, at a minimum, (i) directs

the Commission's Division of Information Resources to provide public notice of the Commission's investigation to the public and appropriate governmental officials, (ii) establishes dates for the filing of written and/or electronic public comments by interested persons, notices of participation for those persons desiring to participate as parties, and comments and/or testimony, as appropriate, by TRIP II and other interested parties, (iv) directs the Commission Staff to investigate whether TRIP II's current toll rates should be revised and file testimony containing the Staff's findings and recommendations, and (v) schedules a public hearing in Loudoun County, Virginia, for the purpose of receiving testimony and comments from interested members of the public and an evidentiary hearing in the Commission's 2nd Floor Courtroom in the Tyler Building, Richmond, Virginia, for the purpose of receiving evidence relating to this investigation.

(4) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: The Honorable David I. Ramadan, House of Delegates, 23465 Rock Haven Way, #105A, Dulles, Virginia 20166; Richard D. Gary, Esquire, and Timothy E. Biller, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Utility Accounting and Finance.

A True Copy  
Teste:



Clerk of the  
State Corporation Commission