

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

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

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 STATE CORPORATION COMMISSION

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HEARING EXAMINER'S RULING FOR NOTICE AND HEARING

February 15, 2013

On January 30, 2013, the State Corporation Commission (“Commission”) entered an Order Initiating Investigation docketing a formal proceeding pursuant to § 56-542 D of the Code of Virginia (“Code”) to investigate the current rate structure and rate levels charged by Toll Road Investors Partnership II, L.P. (“TRIP II” or the “Company”), the operator of the Dulles Greenway.¹ Among other things, the Order Initiating Investigation stated as follows:

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.²

The Commission appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.³ Furthermore, the Commission directed the Hearing Examiner to enter a Ruling:

¹ The Commission initiated this proceeding in response to complaints filed by The Honorable David L. Ramadan, Member, Virginia House of Delegates, on December 7, 2012, and January 16, 2013.

² Order Initiating Investigation at 3.

³ *Id.*

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) [sic] 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

In accordance with the Order Initiating Investigation, I find it appropriate to enter a Ruling for Notice and Hearing.⁵ Accordingly,

IT IS DIRECTED THAT:

(1) A local public hearing shall be convened on April 9, 2013, beginning at 4:00 p.m. and reconvening at 7:00 p.m. at Loudoun Valley High School Auditorium, 340 North Maple Avenue, Purcellville, Virginia 20132, to receive the testimony of public witnesses participating as provided by 5 VAC 5-20-80 C, *Public witnesses*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"). Any person desiring to make a statement at the hearing should appear at the location set forth above fifteen (15) minutes before the starting time of the hearing and contact the Commission's Bailiff. Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

(2) A public and evidentiary hearing shall commence at 10 a.m. on July 18, 2013, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive evidence of the Company, any respondents, and Staff.

(3) A copy of the Order Initiating Investigation and this Ruling for Notice and Hearing, as well as other orders and documents now or hereafter filed in this matter, shall be available for public inspection 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. In addition, the Commission's Order Initiating Investigation and this Ruling for Notice and Hearing and other orders entered in this docket, Hearing Examiner Rulings, the Rules of Practice, as well as other information concerning

⁴ *Id.* at 3-4.

⁵ This Ruling also grants the Company's Motion to Schedule a Pre-hearing Conference which was filed on February 14, 2013.

the Commission and the statutes it administers, may be viewed on the Commission’s website at <http://www.scc.virginia.gov/case>.

(4) On or before March 1, 2013, the Commission’s Division of Information Resources shall serve a copy of the Order Initiating Investigation and this Ruling 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.

(5) On or before March 1, 2013, the Commission’s Division of Information Resources 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 STATE CORPORATION
COMMISSION’S INVESTIGATION OF THE CURRENT RATE
STRUCTURE AND RATE LEVELS CHARGED BY TOLL ROAD
INVESTORS PARTNERSHIP II, L.P., OPERATOR
OF THE DULLES GREENWAY**

On January 30, 2013, the State Corporation Commission (“Commission”) entered an Order Initiating Investigation docketing a formal proceeding, Case No. PUE-2013-00011, pursuant to § 56-542 D of the Code of Virginia (“Code”). The proceeding will investigate the current rate structure and rate levels charged by Toll Road Investors Partnership II, L.P. (“TRIP II” or the “Company”), the operator of the Dulles Greenway. Among other things, the Order Initiating Investigation stated as follows:

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.

The Commission appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission, to establish procedures for the receipt of evidence in the investigation, and to file a final report. Thereafter, the Hearing Examiner entered a Ruling for Notice and Hearing that, among other things, scheduled a local public hearing to commence on April 9, 2013, beginning at 4:00 p.m. and reconvening at 7:00 p.m. at Loudoun Valley High School Auditorium, 340 North Maple Avenue, Purcellville, Virginia 20132, to receive the testimony of public witnesses participating as provided by 5 VAC 5-20-80 C, *Public witnesses*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"). Any person desiring to make a statement at the local public hearing should appear at the location set forth above fifteen (15) minutes before the starting time of the hearing and contact the Commission's Bailiff. Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

The Ruling for Notice and Hearing also scheduled a public and evidentiary hearing to commence at 10 a.m. on July 18, 2013, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive evidence of the Company, any respondents, and Staff.

A copy of the Order Initiating Investigation and the Ruling for Notice and Hearing, as well as other orders and documents now or hereafter filed in this matter, shall be available for public inspection 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. In addition, the Commission's Order Initiating Investigation and the Ruling for Notice and Hearing and other orders entered in this docket, Hearing Examiner Rulings, the Rules of Practice, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website at <http://www.scc.virginia.gov/case>. A printed copy of the Rules of Practice and official copies of the Order Initiating Investigation and Ruling for Notice and Hearing in this proceeding may be obtained from Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218-2118.

Any interested person may participate as a respondent in this proceeding by filing, on or before March 25, 2013, a notice of participation. If not filed electronically, an original and fifteen (15) copies of a 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. The respondent shall simultaneously serve a copy of the notice of participation on Staff and all others listed on the official Service List for this matter, a copy of which is available from the Clerk of the State Corporation Commission at the above-referenced address. Pursuant to Rule 5 VAC 5-20-80 B of the Rules of Practice, *Participation as a respondent*, 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. PUE-2013-00011.

On or before April 16, 2013, each respondent may file with the Clerk of the Commission and serve on Staff, the Company and on all other respondents, testimony (and associated exhibits) that, at a minimum, responds to the specific requests for analysis made by the Commission in the Order Initiating Investigation. If not filed electronically, an original and fifteen (15) copies of such testimony (and associated exhibits) shall be submitted to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. In all filings, the respondent shall comply with the Rules of Practice, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUE-2013-00011.

The Company has also been directed to file testimony (and associated exhibits) on or before April 16, 2013, that, at a minimum, responds to the specific requests for analysis made by the Commission in the Order Initiating Investigation. In addition, the Staff has been directed to file testimony (and associated exhibits) on or before June 11, 2013. On or before June 25, 2013, respondents may file with the Clerk of the Commission any responsive testimony and exhibits that they expect to offer in this proceeding and simultaneously shall serve the same on Staff, the Company, and all other respondents. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All filings shall refer to Case No. PUE-2013-00011.

On or before July 9, 2013, any interested person may file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the investigation. Any interested person desiring to submit comments electronically may do so on or before July 9, 2013, by following the instructions found on the Commission's website: <https://www.scc.virginia.gov/case>. Compact discs or any other form of electronic storage medium may not be filed with the comments. All comments shall refer to Case No. PUE-2013-00011.

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(6) On or before March 25, 2013, the Commission's Division of Information Resources shall file with the Clerk of the Commission proof of notice and service required in Paragraphs (4) and (5), including the name, title and address of each official served.

(7) Any interested person may participate as a respondent in this proceeding by filing, on or before March 25, 2013, a notice of participation. If not filed electronically, an original and fifteen (15) copies of a 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. The respondent shall simultaneously serve a copy of the notice of participation on Staff and all persons on the official Service List in this matter, a copy of which is available from the Clerk of the Commission at the above-referenced address. Pursuant to Rule 5 VAC 5-20-80 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. PUE-2013-00011.

(8) A pre-hearing conference will be held at 10:00 a.m. on April 5, 2013, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to discuss procedural issues relative to the case.

(9) On or before April 16, 2013, the Company shall file with the Clerk of the Commission at the address set forth in Paragraph (7), and serve on Staff and any respondents, testimony (and any associated exhibits) that, at a minimum, responds to the specific requests for analysis made by the Commission in the Order Initiating Investigation. If not filed electronically, an original and fifteen (15) copies of such testimony (and associated exhibits) shall be submitted to the Clerk of the Commission at the address set forth in Paragraph (7). In all filings, the Company shall comply with the Rules of Practice, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUE-2013-00011.

(10) On or before April 16, 2013, each respondent, including Delegate Ramadan, may file with the Clerk of the Commission at the address set forth in Paragraph (7) and serve on Staff, the Company and on all other respondents, testimony (and associated exhibits) that, at a minimum, responds to the specific requests for analysis made by the Commission in the Order Initiating Investigation. If not filed electronically, an original and fifteen (15) copies of such testimony (and associated exhibits) shall be submitted to the Clerk of the Commission at the address set forth in Paragraph (7). In all filings, the respondent shall comply with the Rules of Practice, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUE-2013-00011.

(11) On or before June 11, 2013, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of Staff's testimony (and associated exhibits) that, at a minimum, responds to the specific requests for analysis made by the Commission in the Order Initiating Investigation. Staff shall promptly serve a copy of its testimony (and associated exhibits) on counsel for the Company and all respondents.

(12) On or before June 25, 2013, the Company and all respondents may file with the Clerk of the Commission any responsive testimony and exhibits that they expect to offer in this proceeding and simultaneously shall serve the same on all other participants in this proceeding, including Staff. 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 Paragraph (7). All filings shall refer to Case No. PUE-2013-00011.

(13) On or before July 9, 2013, any interested person may file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments on the investigation. Any interested person desiring to submit comments electronically may do so on or before July 9, 2013, by following the instructions found on the Commission's website: <https://www.scc.virginia.gov/case>. Compact discs or any other form of electronic storage medium may not be filed with the comments. All comments shall refer to Case No. PUE-2013-00011.

(14) Rule of Practice 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: answers to interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. Except as modified above, discovery shall be in accordance with Part IV of the Rules of Practice.

(15) This matter is continued.



A. Ann Berkebile
Hearing Examiner

Document Control is requested to mail a copy of the above Ruling for Notice and Hearing to: The Honorable David I. Ramadan, House of Delegates, 23465 Rock Haven Way, #105A, Dulles, VA 20166; Richard D. Gary, Esquire, and Timothy E. Biller, Esquire, Hunton & Williams LLP, Riverfront Plaza, E. Tower, 951 E. Byrd St., Richmond, VA 23219; and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 900 East Main St., Second Fl., Richmond, VA 23219.