

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**APPLICATION OF** )  
 )  
**TOLL ROAD INVESTORS** )  
**PARTNERSHIP II, L.P.** ) **CASE NO. PUR-2019-00218**  
 )  
**For authorization for an increase in the** )  
**maximum levels of tolls** )

**APPLICATION AND  
DIRECT TESTIMONY**

**Filed: December 20, 2019**

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STATE CORPORATION COMMISSION**

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**APPLICATION FOR APPROVAL OF A TOLL INCREASE UNDER  
SECTION 56-542 D OF THE CODE OF VIRGINIA**

Toll Road Investors Partnership II, L.P. (“TRIP II” or “Company”), by counsel, files this application (“Application”), seeking approval from the State Corporation Commission (“Commission” or “SCC”) for an increase in the maximum level of tolls for the Dulles Greenway (“Greenway”) pursuant to the Virginia Highway Corporation Act of 1988 (“Act”), § 56-535 *et seq.* of the Code of Virginia (“Code”). Pursuant to § 56-542 D of the Act, the Commission has the duty and authority to approve or revise toll prices for the Dulles Greenway, upon application and after investigation, 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.<sup>1</sup>

**THE PROPOSED TOLL INCREASES**

Pursuant to § 56-542 D of the Code, TRIP II respectfully requests that the Commission approve a toll schedule that provides for small increases in the maximum two-axle vehicle peak

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<sup>1</sup> In 2008, the General Assembly enacted § 56-542 I of the Act, which established a framework for determining annual increases in the maximum level of tolls for the period January 1, 2013, through January 1, 2020. During this period, and upon annual application, tolls could be increased by a percentage that was equal to the greater of: (i) the increase in the Consumer Price Index (“CPI”) plus 1%; (ii) the increase in the Annual Real Gross Domestic Product (“real GDP”); or (iii) 2.80%. The final toll increases under this section were approved on April 4, 2019. *See Application of Toll Road Investors Partnership II, L.P., For an increase in tolls pursuant to § 56-542 I of the Code of Virginia*, Case No. PUR-2019-00026, Final Order (Apr. 4, 2019). Following the sunset of the permitted toll increases under § 56-542 I of the Act, any increase in the maximum toll on the Greenway after January 1, 2020 must be in conformance with § 56-542 D.

and off-peak tolls over a five year period. This schedule will result in a maximum toll beginning January 1, 2025, of \$7.90 for peak traffic and \$6.15 for off-peak and weekend traffic. TRIP II requests these increases in the maximum two-axle toll be implemented at the following times and in the following increments:

	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 requests that the Commission approve a schedule of increases in the tolls for multi-axle vehicles on the Greenway. Specifically, TRIP II proposes that maximum toll for 3-axle vehicles be established as double the two-axle maximum, and that the maximum for vehicles with 4 to 5 or more axles be the maximum toll for 3-axle vehicles plus an amount equal to 50% of the two-axle maximum toll for each additional axle above 3-axles. Vehicles with more than 5 axles will pay the same toll as vehicles with 5 axles. This is detailed in Exhibit 2 and is a methodology consistent with previously approved maximum toll rate calculations.

These proposed tolls will allow TRIP II to continue to provide a safer, more efficient, and well-maintained alternative travel route for drivers. In addition, the maximum authorized 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: (i) 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.<sup>2</sup>

### **ANALYSIS OF STATUTORY REQUIREMENTS**

Pursuant to § 56-542 D of the Act, the Commission has authority to approve the requested increases in toll rates for the Greenway if it finds that such rate increases (i) are reasonable to the user in relation to the benefit obtained, (ii) are not likely to materially discourage use of the roadway, and (iii) provide the operator no more than a reasonable rate of return as determined by the Commission. As detailed below and in the testimony accompanying this Application, the toll rate increases requested by TRIP II satisfy these requirements and should be approved.

TRIP II engaged WSP USA Inc. (“WSP USA”)<sup>3</sup> to provide an independent and objective expert analysis for the first two statutory requirements. With regard to the third criteria, whether the requested toll rate increase provides no more than a reasonable rate of return as determined by the Commission, TRIP II’s analysis is supported by the testimony of Company witness Graeme Bevans. The analysis supporting all three statutory criteria is consistent with the methodologies and findings previously approved by the Commission in analyzing the tolls on the Greenway.<sup>4</sup>

#### **1. The Proposed Maximum Toll Prices are Reasonable to the User in Relation to the Benefit Obtained**

As previously recognized by the Commission, the benefits to the user under this standard consist of both quantitative benefits and qualitative benefits, many of which may not be captured

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<sup>2</sup> The Comprehensive Agreement is the agreement between the Virginia Department of Transport (“VDOT”) and TRIP II for guiding the design-engineering, construction, operations, maintenance and expansion of the Greenway consistent with § 56-544 B of the Act.

<sup>3</sup> Via its wholly owned subsidiary Louis Berger U.S., Inc. WSP USA is an internationally recognized consulting firm with 9,500 employees across the U.S., specializing in the buildings, transportation, energy, water and environment markets with a strong group of infrastructure specialists who have extensive toll road experience in economic and demand analysis, near and long-term forecasting, toll elasticity analysis, and rate setting evaluations.

<sup>4</sup> See, for example, 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 Concluding Investigation (Sept. 4, 2015).

in a quantitative analysis. Qualitative benefits of driving on the Greenway include, but are not limited to, peace of mind from driving on a well-maintained, limited access highway; an increased sense of safety from driving on a roadway with limited truck traffic; or additional enjoyment from driving on a free-flow road with no traffic signals. Nevertheless, many of the quantitative benefits are routinely calculated in the industry and the Commission has previously recognized the use of industry-standard analysis of such benefits to assess whether tolls on the Greenway satisfy this statutory requirement. For this Application, WSP USA performed a benefit-cost analysis (“BCA”) that involved ascribing a value to the total net benefits enjoyed by travelers using the Greenway as compared to an un-tolled alternate route. To determine the quantitative net benefits, WSP USA calculated the difference between the cost of using the Greenway (i.e. the toll price) and the incremental benefit users realize from using the Greenway. These quantifiable benefits include:

- Travel time savings: there are attractive travel time savings from traveling on the Greenway at all times of day due to higher free flow speeds, lower levels of congestion, and lower incidence of recurrent and non-recurrent delays (not including expected improvements in travel times as a result of the major capital projects currently underway at the eastern end of the road and planned for the western end of the road);
- Reliability savings: travel times on the Greenway are also more consistent and predictable than those on alternate routes, with 95% of weekday peak trips varying from the average travel time by less than 1.4 minutes. This is a substantially more predictable travel time than on the main alternative route along

Route 7 and Route 28, where 95% of weekday peak trip travel times vary by 5.8 minutes from the average;

- Vehicle Operating Cost (“VOC”) savings: the Greenway offers users a non-stop option compared to alternate routes, which all have multiple instances of stopping and starting at traffic signals and lower travel speeds. This non-stop option provides users of the Greenway valuable savings on vehicle operating costs from reduced vehicle wear and tear and more efficient fuel consumption; and
- Safety benefits: the rate of accidents on the Greenway is substantially lower than on alternate routes in Loudoun County. Over the past five years, there have been just 7.2 crashes with injuries and no fatal accidents on the Greenway for every 100 million vehicle miles traveled. This compares to 80 crashes with injuries and 0.5 fatalities for every 100 million vehicle miles driven on alternate routes in Loudoun County, demonstrating that the Greenway is a significantly safer road.

Based on WSP USA’s analysis and the BCA, all users of the Greenway across all times of travel receive a total weighted average benefit of \$10.35. This compares to a weighted average toll price of \$5.30, which amounts to an approximate two (2) times benefit to cost ratio, demonstrating that the value of the benefits obtained by users of the Greenway is indeed significantly higher than the Greenway toll price. The direct testimony of Company witness Albert Racciatti provides further detail and explanation of this analysis.

## **2. The Proposed Maximum Toll Prices Will Not Materially Discourage Use of the Roadway by the Public**

A determination of whether increased toll rates will discourage use of the Greenway requires an analysis of price elasticity of demand. This principle indicates that demand for a good or service is often influenced by the price charged for use of that good or service. In the case of the

Greenway, it is a measure of how traffic, on average, is expected to respond to changes in the level of tolls charged to use the road.

Importantly, price elasticity of demand captures a range of behaviors exhibited by users in response to changes in toll prices, such as switching to alternate routes, riding the bus rather than driving, or even working from home periodically. Other methods of analysis can consider one aspect of this behavior but may miss other aspects. For example, simply comparing changes in market share across the corridor might capture route choice decisions (i.e. taking the Greenway versus alternate routes) but may miss other aspects such as mode switches (i.e. taking the bus rather than driving).

Because factors other than toll price are also likely to influence the level of demand in any given month or year, it is critical to isolate the effect of price from the effects of other factors through statistical analysis. For the Greenway, WSP USA utilized an econometric regression analysis, a standard practice in traffic and revenue analysis, to determine the elasticity of demand to price while controlling for the effect of these other factors. In doing so, WSP USA identified changes in demand attributable to several factors, including Loudoun County population growth, Dulles Toll Road toll prices, and improvements on un-tolled alternate routes that compete with the Greenway. Through this analysis, WSP USA concluded that demand for use of the Greenway is relatively inelastic with respect to toll prices. Indeed, WSP USA found that since 2005, capacity improvements and removal of signals on alternative routes, and toll rate increases on the Dulles Toll Road have had more substantial negative impacts on use of the Greenway than increases in the toll rate for use of the Greenway. The direct testimony of Company witness Albert Racciatti provides further detail and explanation of this analysis.

### **3. The Proposed Maximum Toll Prices Will Provide the Company No More Than a Reasonable Rate of Return as Determined by the Commission**

Infrastructure projects such as the Greenway typically entail significant risks, especially in their early years as substantial capital is invested up-front based on projected usage over a long period of time. As these projects mature over the long term, risk profiles decrease because usage levels and patterns become known. In recognition of this unique risk profile, the Commission authorized a changing level of return during the early years of the road and established the reinvested earnings account (“REA”) in Case No. PUA-1990-00013.<sup>5</sup> The REA is a mechanism to track the hypothetical balance of invested equity capital, authorized but unearned return on equity, and actual disbursements to equity investors in TRIP II.<sup>6</sup> The 1990 Order approved the REA as “a factor in establishing toll rates and the capital on which the Applicant will have an opportunity to earn a reasonable return, subject to the Commission’s continuing jurisdiction to set tolls prospectively which provide no more than a reasonable return and do not discourage use of the road.”<sup>7</sup>

Since construction began on the Greenway in 1993, approximately \$144 million of equity capital has been contributed to fund the construction and improvement of the roadway, but equity investors have yet to fully recover their investment, having only received total disbursements of approximately \$102 million as of June 30, 2019. The last disbursement to investors occurred in 2006. Since that time, investors have not earned any further return of their investment and have certainly not earned any reasonable return on their investment. As a result, TRIP II has accumulated a deficit REA balance as of June 30, 2019 of approximately \$7.1

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<sup>5</sup> See *Application of Toll Road Corporation of Virginia for a certificate of authority and approval or rates of return, toll rates and ratemaking methodology pursuant to the Virginia Highway Corporation Act of 1988*, Case No. PUA-1990-00013, Final Order (July 6, 1990) (“1990 Order”).

<sup>6</sup> The REA is a tracking mechanism for ratemaking purposes only and is not recognized for accounting purposes.

<sup>7</sup> *Id.* at 8.

billion, which represents authorized but unearned returns since the construction of the roadway. Exhibit 3 presents further detail and supporting calculations. Notwithstanding the current amount of the unearned return that exists in the REA, the toll increases in this Application are not specifically designed to reduce the REA balance.

### **CONCLUSION**

For the reasons set forth above, TRIP II requests the Commission find that the increases requested in this Application meet the requirements of § 56-542 D of the Act and that TRIP II be permitted to implement its proposed increases beginning January 1, 2021, and implement the subsequent increases over a five-year period. In further support of this Application, TRIP II provides the following Exhibits:

- Exhibit 1: Procedural history of TRIP II
- Exhibit 2: Schedule of proposed Maximum Authorized Tolls
- Exhibit 3: TRIP II REA Calculation
- Direct Testimony of Graeme Bevans
- Direct Testimony of Albert Racciatti

WHEREFORE, Toll Road Investors Partnership II, L.P. respectfully request the Commission (1) approve the proposed toll schedule as noted in the table immediately below;

	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>	<i>5.3%</i>	<i>5.0%</i>	<i>5.7%</i>	<i>5.4%</i>	<i>5.1%</i>
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>	<i>6.0%</i>	<i>6.5%</i>	<i>6.1%</i>	<i>6.5%</i>	<i>6.8%</i>

(2) approve TRIP II's proposal that effective January 1, 2021, the maximum toll for 3-axle vehicles will be double the two-axle maximum, and the maximum for vehicles with 4 to 5 or more axles will be the maximum toll for 3-axle vehicles plus an amount equal to 50% of the two-axle maximum toll for each additional axle above 3-axes and that vehicles with more than 5 axles will pay the same toll as vehicles with 5 axles; and (3) grant such other further relief as deemed necessary and appropriate.

Respectfully Submitted,

**TOLL ROAD INVESTORS  
PARTNERSHIP II, L.P.**

By:   
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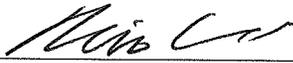
December 20, 2019

## CERTIFICATE OF SERVICE

I hereby certify that this 20th day of December, a true copy of the forgoing Application was delivered by hand, or mailed, first-class, postage prepaid, to the following:

William H. Chambliss, Esq.  
Office of General Counsel  
State Corporation Commission  
Tyler Building – 10<sup>th</sup> Floor  
1300 East Main Street  
Richmond, Virginia 23219

C. Meade Browder, Jr., Esq.  
Division of Consumer Counsel  
Office of Attorney General  
202 N. 9<sup>th</sup> Street  
Richmond, Virginia 23219

  
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## **Exhibit 1: Procedural History of TRIP II**

In its Opinion and Final Order issued on July 6, 1990, in Case No. PUA-1990-00013 (“1990 Final Order”), the Commission, among other things, issued a certificate pursuant to Va. Code § 56-539 authorizing the Toll Road Corporation of Virginia (“TRCV”) to construct and operate the Dulles Greenway (“Greenway”) and approved the initial levels of tolls for the Greenway (“Certificate”). The initial tolls were set at \$1.50 from the opening of the roadway (then anticipated to be April 1993) through December 31, 1993, \$1.75 for the period of January 1, 1994 through December 31, 1995, and \$2.00 for the period of January 1, 1996 through December 31, 1997.

On June 28, 1991, the Commission, in its Order Amending Certificate in Case No. PUA-1990-00013, authorized the transfer of the Certificate from TRCV to a limited partnership, Toll Road Investors Partnership II (“TRIP II”) and approved a revised financing plan for the Greenway.<sup>8</sup> TRCV transferred the Certificate to TRIP II on September 28, 1993. The Greenway opened to traffic on September 29, 1995. Consistent with the toll schedule approved in the 1990 Final Order, the Greenway’s initial tolls were \$1.75 for 2-axle vehicles and \$3.50 for all other vehicles.

Greenway ridership levels were lower than originally projected soon after it opened to the public. In response, on February 22, 1996, TRIP II filed an application in Case No. PUA-1996-00009 for an order modifying its tariff to permit TRIP II to implement temporary toll reductions and promotional discounts designed to increase patronage on the Greenway. On March 1, 1996,

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<sup>8</sup> The Commission again reviewed and permitted changes to the partnership structure and financing plan in its July 21, 1992 Second Order Amending Certificate and its August 19, 1993 Third Order Amending Certificate in Case No. PUA-1990-00013. The Second Order Amending Certificate also permitted TRIP II to collect certain tolls on behalf of VDOT for use of the Dulles Toll Road (“DTR”). The Commission’s December 14, 1994 Fourth Order Amending Certificate reviewed and approved the final, initial financing plan for the Greenway and established the initial date upon which the Certificate would terminate—April 2, 2036—pursuant to Va. Code § 56-551.

the Commission issued a Final Order on TRIP II's Application that set the toll structure approved in the 1990 Order as the maximum level of tolls that could be charged. Accordingly, the Commission allowed TRIP II to offer promotions and discounts so long as tolls do not exceed the maximum levels approved by the Commission. Further, the Commission found that so long as TRIP II did not increase tolls above the maximum levels, prior notice to the public was not necessary to implement adjustments of the tolls other than filing supplements to its tariff with the Commission.<sup>9</sup> In making this finding, the Commission noted that establishing the current tolls as a ceiling would reduce the administrative burden associated with TRIP II filing multiple applications related to these toll adjustment while continuing to preserve the Commission's control over the approved maximum toll levels.

On September 27, 1997, TRIP II filed an application in Case No. PUF-1997-00030 seeking Commission approval to again modify its tariff by deleting the December 31, 1997 expiration date of its maximum tolls (consistent with the toll schedule initially approved in the 1990 Opinion that set initial tolls at \$2.00 through December 31, 1997). The Commission's October 14, 1997 Order Granting Application granted the TRIP II's application, extending the expiration date of the maximum level of tolls set in its 1990 Order.

On May 30, 2003, TRIP II filed an application Case No. PUE-2003-00230 seeking Commission approval to increase the maximum authorized toll level from \$2.00 to \$3.00. In its July 6, 2004 Final Order the Commission approved the increase in the maximum authorized tolls and directed that it be implemented using a phased approach, with the maximum (or ceiling) for the tolls increasing to \$2.40 on the date of the Final Order, to \$2.70 on December 31, 2005, and to \$3.00 on July 1, 2007 ("2004 Final Order").

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<sup>9</sup> Final Order, *Application of Toll Road Investors Partnership II, L.P., for an order modifying its tariff*, Case No. PUA-1996-00009, 1996 S.C.C. Ann. Rep. 153 (Mar. 1, 1996).

As contemplated by the 2004 Final Order, TRIP II introduced congestion pricing effective September 7, 2004, which the Commission acknowledged in its November 15, 2004 Order in Case No. PUE-2004-00104. This congestion pricing provided separate tolls for peak and off-peak hours. In that Order, the Commission established Case No. PUE-2004-00103 to permit TRIP II to file additional revisions to its congestion pricing tariff supplement.

TRIP II filed its most recent application pursuant to Va. Code § 56-542 (D) on July 19, 2006 in Case No. PUE-2006-00081. In that application, TRIP II proposed incremental increases in the maximum toll levels over a 5 year period. Specifically, TRIP II sought to increase the maximum level of tolls as follows:

January 1, 2009 - \$3.40

July 1, 2010 - \$3.70

January 1, 2012 - \$4.00

In addition, TRIP II sought to implement congestion pricing whereby the maximum tolls during peak hours would increase by approximately 20% above the base maximum tolls. TRIP II also requested authority to increase tolls for multi-axle vehicles. Following multiple hearings and extensive testimony, the Commission approved TRIP II's application as set forth in its September 11, 2007 Final Order, finding that the approved tolls would meet the statutory criteria under Va. Code § 56-542 (D) ("2007 Final Order").

Following the 2007 Final Order, the General Assembly amended the Highway Corporation Act to include Va. Code § 56-542 (I). This new Code section provided a defined framework for determining annual increases in the maximum level of tolls for the period following the increases approved in the 2007 Final Order. Specifically, from January 1, 2013 through January 1, 2020, upon annual application, tolls could be increased by a percentage that

was equal to the greater of: (i) CPI plus 1%; (ii) real GDP; or (iii) 2.80% as well as permitting an additional increase to recover certain incremental increases in the property taxes paid by TRIP II. TRIP II filed its initial application under Va. Code § 56-542 (I) on November 14, 2012, in Case No. PUE-2012-00136. The Commission approved a 3.02% increase in tolls in its January 16, 2013 Final Order in that proceeding (“2013 Final Order”).

After the 2013 Final Order and in response to complaints filed by a then-current member of the General Assembly, the Commission established Case No. PUE-2013-00011 to investigate TRIP II’s tolls. Following extensive hearings and briefing before the Commission, the Commission issued its Order Concluding Investigation on September 4, 2015, finding that “new tolls are not required to be substituted for existing tolls as a result of the instant investigation, and that the investigation shall be concluded.”<sup>10</sup> In its Order Concluding Investigation, the Commission specifically found that the tolls on the Greenway were “reasonable to the user in relation to the benefit obtained”<sup>11</sup>; “will not materially discourage use of the roadway by the public”<sup>12</sup>; and “will provide the operator no more than a reasonable return as determined by the Commission.”<sup>13</sup> The Commission’s findings and conclusions were subsequently affirmed by the Virginia Supreme Court.<sup>14</sup>

TRIP II continued filing annual applications for increases in tolls pursuant to Va. Code § 56-542 (I). In Case No. PUE-2013-00139, the Commission approved a 2.8% increase in tolls plus an additional \$0.03 increase related to property tax increases. In Case No. PUE-2014-00129, the Commission approved a 2.8% increase in tolls. The Commission approved an

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<sup>10</sup> Order Concluding Investigation at 3.

<sup>11</sup> Order Concluding Investigation at 6-8.

<sup>12</sup> Order Concluding Investigation at 8-9.

<sup>13</sup> Order Concluding Investigation at 9.

<sup>14</sup> *Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444 (2016).

increase in tolls of 2.8% plus an additional \$0.0182 related to property taxes in Case No. PUE-2015-00137. In Case No. PUE-2016-00146, the Commission approved a 3.04% increase in tolls plus an additional \$0.0213 increase related to property taxes. The Commission then approved an increase of 3.17% plus an additional \$0.0004 related to property taxes in Case No. PUR-2018-00003. TRIP II's final application pursuant to Va. Code § 56-542 (I) was filed on February 5, 2019 in Case No. PUR-2019-00026. On April 4, 2019, the Commission issued its Final Order, approving an increase in tolls of 2.91% as proposed in the Company's application.

**Exhibit 2: Schedule of Proposed Maximum Authorized Tolls**

<b>Off-Peak</b>					
<b>Vehicle Type</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
2-axle	\$5.00	\$5.25	\$5.55	\$5.85	\$6.15
3-axle	\$10.00	\$10.50	\$11.10	\$11.70	\$12.30
4-axle	\$12.50	\$13.10	\$13.85	\$14.60	\$15.35
5-axle or more	\$15.00	\$15.75	\$16.65	\$17.55	\$18.45

*Note: Off-Peak periods defined as all other times of day and days of week outside Peak periods*

<b>Peak</b>					
<b>Vehicle Type</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
2-axle	\$6.15	\$6.55	\$6.95	\$7.40	\$7.90
3-axle	\$12.30	\$13.10	\$13.90	\$14.80	\$15.80
4-axle	\$15.35	\$16.35	\$17.35	\$18.50	\$19.75
5-axle or more	\$18.45	\$19.65	\$20.85	\$22.20	\$23.70

*Note: Peak periods defined as 6:30am to 9:00am and 4:00pm to 6:30pm Monday to Friday*

### **Exhibit 3: TRIP II Reinvested Earnings Account Calculation**

As part of its initial application for the Certificate of Authority submitted on February 2, 1990,<sup>15</sup> TRIP II presented financial forecasts that demonstrated the business was expected to generate a loss in the early years of operations as the toll rates would not be set at a level expected to generate sufficient revenues for any return on equity, and that equity would in fact be used to meet the cash requirements of the business during these early years. As a result, a mechanism was proposed for investors to be able to recover these “reinvested” earnings in later years if and when ridership and revenues increased.

The mechanism put forward in the application, and approved by the Commission in the Final Order of Case No. PUA-1990-00013 dated July 6, 1990 (“1990 Order”), was the Reinvested Earnings Account (“REA”), which is a hypothetical ‘account’ that accumulates earnings shortfalls at authorized rates of return on equity for recognition in setting tolls and later reimbursement to equity investors. As such, the REA was established for the sole purpose of tracking the extent to which the project has or has not generated a reasonable return to equity investors, and the accumulated balance demonstrates the current value of forgone earnings where equity investors did not earn the authorized rate of return on their equity investment.

The Commission’s 1990 Order further determined that the REA shall be a factor in establishing toll rates and the capital on which TRIP II will have an opportunity to earn a reasonable return. The Commission’s June 28, 1991 Order Amending Certificate of in Case No. PUA-1990-00013 amended the original Certificate of Authority and ordered effective per annum returns on equity as follows:

- 30% until 1.15 x debt service coverage or 5 years, whichever is longer;

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<sup>15</sup> Refer pages 38 and 39 of Preston Miller’s testimony in the 1990 application.

- 25% until 1.25 x debt service coverage or 2 years, whichever is longer;
- 20% until 1.5 x debt service coverage or 4 years, whichever is longer;
- 15% until 1.75 x debt service coverage or 5 years, whichever is longer;
- 14% for the remaining term;

subject to the Commission's jurisdiction to alter allowed rates of return prospectively.

The REA balance (i.e. accumulated unearned returns), as shown in the table below, has risen to a level above \$7 billion. This continued level of balance in the REA has been due to substantial early losses experienced by the business and weaker than expected traffic performance over the life of the road. Indeed, this past performance and the level of expenses incurred by the business has caused TRIP II to be in financial lock-up since 2007 based on the requirements of its debt covenants. Given the current balance of the REA and the operating and debt service requirements of TRIP II going forward, TRIP II recognizes that the vast majority of the REA will never be recovered by equity investors as they only have the opportunity to recover these losses based on tolls approved by the Commission.

In prior cases, the Hearing Examiner has been "unable to find that current Greenway toll rates are providing the Company with more than a reasonable rate of return" and the Commission agreed that TRIP II's partners have "never received any return on their investment." This is demonstrated by the fact that equity investors have received \$101,716,551 in disbursements from TRIP II but have invested a total \$144,259,000 of equity into the partnership to construct and improve the Greenway.

The REA balance since construction of the road through to June 30, 2019, when it reached \$7 billion, is shown in the table below. Staff have previously supported the accuracy of this calculation.<sup>16</sup>

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<sup>16</sup> See page 64 *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*, Case No. PUE-2013-00011, Report of A. Ann Berkebile, Hearing Examiner (Jan. 30, 2014)

## Dulles Greenway REA Calculation<sup>1</sup>

Date	Equity Contributions/ (Distributions) <sup>2</sup>	Authorized Return on Equity	Allowed Return	Balance
29-Sep-93	\$40,000,000	30%	\$0	\$40,000,000
31-Dec-93	\$0	30%	\$3,057,534	\$43,057,534
31-Dec-94	\$0	30%	\$12,917,260	\$55,974,795
31-Oct-95	\$2,000,000	30%	\$13,986,031	\$71,960,825
31-Dec-95	\$4,435,000	30%	\$3,607,899	\$80,003,724
8-Jul-96	\$14,757,000	30%	\$12,493,732	\$107,254,457
19-Jul-96	\$80,000,000	30%	\$969,698	\$188,224,154
31-Dec-96	\$0	30%	\$25,526,289	\$213,750,444
1-May-97	\$3,067,000	30%	\$21,257,921	\$238,075,365
31-Dec-97	\$0	30%	\$47,745,525	\$285,820,890
31-Dec-98	\$0	30%	\$85,746,267	\$371,567,157
31-Dec-99	\$0	25%	\$92,891,789	\$464,458,946
31-Dec-00	\$0	20%	\$93,146,287	\$557,605,233
31-Dec-01	\$0	20%	\$111,521,047	\$669,126,280
31-Dec-02	\$0	20%	\$133,825,256	\$802,951,536
31-Dec-03	\$0	20%	\$160,590,307	\$963,541,843
31-Dec-04	\$0	15%	\$144,927,253	\$1,108,469,096
2-Mar-05	(\$69,643,064)	15%	\$27,787,650	\$1,066,613,682
29-Dec-05	(\$19,802,752)	15%	\$132,376,986	\$1,179,187,915
31-Dec-05	\$0	15%	\$969,196	\$1,180,157,111
31-Dec-06	(\$12,270,735)	15%	\$177,023,567	\$1,344,909,943
31-Dec-07	\$0	15%	\$201,736,491	\$1,546,646,434
31-Dec-08	\$0	15%	\$232,632,573	\$1,779,279,007
31-Dec-09	\$0	14%	\$249,099,061	\$2,028,378,068
31-Dec-10	\$0	14%	\$283,972,930	\$2,312,350,998
31-Dec-11	\$0	14%	\$323,729,140	\$2,636,080,137
31-Dec-12	\$0	14%	\$370,062,318	\$3,006,142,456
31-Dec-13	\$0	14%	\$420,859,944	\$3,427,002,400
31-Dec-14	\$0	14%	\$479,780,336	\$3,906,782,736
31-Dec-15	\$0	14%	\$546,949,583	\$4,453,732,319
31-Dec-16	\$0	14%	\$625,230,805	\$5,078,963,124
31-Dec-17	\$0	14%	\$711,054,837	\$5,790,017,961
31-Dec-18	\$0	14%	\$810,602,515	\$6,600,620,476
30-Jun-19	\$0	14%	\$458,245,816	<b>\$7,058,866,292</b>
<b>Net Contributions/ (Distributions)</b>	<b>\$42,542,449</b>			

Notes:

- 1) The allowed return and account balances for years 1999 through 2002 do not agree with those presented in Attachment B to the TRIP II application in Case No. PUE-2003-00230. The current calculation uses the return on equity approved in the Opinion and Final Order, Case No. PUA900013.
- 2) With respect to the items set forth in the Equity Contribution/(Distribution) column, please note the following:
  - a) The amount of \$40,000,000 represents the original paid-in equity contemplated in the originally approved financing in 1993;
  - b) The amounts of \$2,000,000, \$4,435,000, and \$14,757,000 represent additional equity contributions from the partners required under an agreement with the lenders to TRIP II;
  - c) The amount of \$80,000,000 represents the sum of a draw of \$40,000,000 under the standby equity letter of credit plus a draw of \$40,000,000 under the supported revolver letter of credit. The \$80,000,000 is additional paid-in equity. The letters of credit were established in connection with the originally approved financing in 1993;
  - d) The amount of \$3,067,000 represents additional equity contributions from certain limited partners required under an agreement with the lenders to TRIP II; and
  - e) The amounts of \$69,643,064, \$19,802,752 and \$12,270,735 represent distributions to investors.