COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF	)	
	)	
TOLL ROAD INVESTORS	)	
PARTNERSHIP II, L.P.	)	**CASE NO. PUR-2023-00089**
	)	
For authorization for an increase in the	)	
maximum levels of tolls	)	

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

Pursuant to the Virginia Highway Corporation Act of 1988 ("Act"), § 56-535 *et seq.* of the Code of Virginia ("Va. Code"), 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"). In support of this Application, TRIP II respectfully states the following:

I. GENERAL INFORMATION

1. TRIP II is a Virginia limited partnership that owns and operates the Greenway under a Certificate of Authority issued by the Commission and a Comprehensive Agreement with the Virginia Department of Transportation ("VDOT"), pursuant to the Act. The Company's name and address is Toll Road Investors Partnership II, L.P., 22375 Broderick Drive, Suite 260, Sterling, Virginia 20166. The names and address of its counsel are Timothy E. Biller, Andrea D. Gardner, and C. Dixon Wallace III, Hunton Andrews Kurth LLP, 951 East Byrd Street, Richmond, Virginia, 23219-4074.

II. WITNESSES AND EXHIBITS IN SUPPORT OF THE APPLICATION

2. TRIP II provides the direct testimony of the following witnesses in support of the Application:

- *Renée N. Hamilton*, Chief Executive Officer of TRIP II. Company witness Hamilton provides a brief history of the Greenway, outlines the benefits the

Greenway provides to the surrounding community, offers background on the financing of the Greenway, how the level of debt service impacts toll rates, and discusses toll pricing on the Greenway. Company witness Hamilton also provides an overview of the Company's toll increase proposed in the Application and explains how the tolls proposed provide the Company with no more than a reasonable return.

- *Steve Weller*, Lead, Forecasting and Analytics, North America, Atlas Arteria. Company witness Weller addresses the impacts of the COVID-19 pandemic on Greenway traffic and discusses improvements to alternative roads and investment in the Greenway. In addition, Mr. Weller supports the tolls proposed in the Company's Application, including the appropriate differential between peak and off-peak tolls.

- *David Cuneo,* Director*,* Steer Group. Company witness Cuneo supports the Company's benefit cost analysis and traffic modeling provided to support that the tolls requested in the Application meet the statutory tests that they be reasonable to the user in relation to the benefit obtained and that they not materially discourage traffic.

III. BACKGROUND

3. The Greenway is a 14-mile toll road located northwest of Washington D.C. in Northern Virginia. The roadway serves as a limited access highway between the western terminus of the Dulles Toll Road ("DTR") on the east side and the Leesburg Bypass on the west side. As set forth in the Comprehensive Agreement between TRIP II and VDOT, tolls are only collected from westbound drivers upon entering the Greenway and from eastbound drivers upon exiting the Greenway.

4. The Greenway is a unique road in Virginia. It is the only road approved and regulated under the Act and will almost certainly be the only road ever approved and regulated under the Act.[1] As the growth in Fairfax County spread to Loudoun County in the 1980s, VDOT and others saw a need to extend the DTR into Loudoun County to provide an arterial east-west route through the county.[2] The idea to build the Greenway as a private road

[1] While Virginia has a significant number of privately operated roadways, such projects since the Greenway was built have generally proceeded under the newer Public Private Transportation Act of 1995, Va. Code § 33.2-1800 *et seq.*

[2] *See* Private Toll Roads in the United States: The Early Experience of Virginia and California, 21-26, John F. Kennedy School of Government, Harvard University, Dec. 1991 ("Harvard Study").

started early on in the planning process and gained traction when it became clear that there was a shortfall of transportation funding in the Commonwealth to meet this need.[3] TRIP II's predecessor, the Toll Road Corporation of Virginia ("TRCV"), stepped up as an interested private party willing to make the investment in building the road. The Commission approved TRCV's application to build the Greenway as a private toll road in 1990.[4] Important to the Commission's decision to approve the application to build the Greenway was the declaration by VDOT that it had no plans to build the roadway with public funds.[5] In addition, Loudoun County and the Town of Leesburg were given the opportunity to object to the project and prevent it from being built by a private entity, a power they did not exercise.[6] The Greenway was built entirely with private funds with the full understanding that such a project would be more expensive both in total cost as well as in tolls to the public over the lifetime of the project than if the road had been built as a public road.[7]

5. Constructing the Greenway entirely with private funds required private financing, particularly as the Act states that the "Commonwealth shall not obligate its full faith and credit on any financing of the operator."[8] Since the 1990 Order, the Commission has reviewed and approved all of TRIP II's plans for financing the construction and operation of the Greenway, including TRIP II's 1999 and 2005 refinancings. As described by Company witness Hamilton, TRIP II's debt service obligations under the approved financings

---

[3] Harvard Study at 26-29.

[4] Opinion and Final Order, *Application of Toll Road Corporation of Virginia*, *For a certificate of authority and approval of rates of return, toll rates and ratemaking methodology pursuant to the Virginia Highway Corporation Act of 1988*, Case No. PUA-1990-00013, 1990 S.C.C. Ann. Rep. 197, 198 (July 6, 1990) (the "1990 Order").

[5] *See* 1990 Order at 198.

[6] *See* Va. Code § 56-539. Indeed, Loudoun County and the Town of Leesburg imposed conditions on the Greenway and entered into agreements with TRCV and TRIP II related to the Greenway, which are incorporated into TRIP II's Comprehensive Agreement.

[7] 1990 Order at 198.

[8] Va. Code § 56-543 A.

are clearly laid out and defined and follow a known path to pay off the debt over time. Total debt service for 2023 will be approximately $69.5 million. This is scheduled to increase to $70.6 million in 2024, and continues to increase annually through 2034, when it reaches $81 million.

6. As a fully private roadway, TRIP II also has significant expenses that are not incurred by public roadways. Specifically, as discussed by Company witness Hamilton, TRIP II pays, among other expenses, significant property taxes to Loudoun County, which have totaled over $65 million since the beginning of the roadway, and fees to the Metropolitan Washington Airport Authority ("MWAA") for use of an easement over the Dulles Airport property. TRIP II also spends nearly $750,000 annually to the Virginia State Police to provide law enforcement response and patrols of the Greenway.

7. Unlike traditional utilities whose rates are regulated by the Commission, TRIP II has no exclusive service territory or monopoly rights; travelers can freely choose between paying tolls to drive the Greenway and using the increasingly numerous free alternatives adjacent to the Greenway to reach the same destination. Further, as a taxpayer subject to Loudoun County's and other property taxes, TRIP II funds the significant investments that have been made for more than a decade in competing road improvements that have caused drivers to shift to these free alternatives, causing declines in TRIP II's traffic and toll revenues. Among TRIP II's property tax obligations, for example, are special additional taxes paid into the Route 28 Highway Transportation Improvement District—which has funded improvements to Route 28, a roadway that is part of a direct, free alternative to the Greenway—and the Dulles Rail Service District, which provides an alternative means of transportation to commuters in the area.[9] Like other regulated utilities whose privately-

[9] Taxes collected by the Dulles Rail Service District have directly funded construction of the Silver Line, an extension of the Metro Rail system, a project for which TRIP II was required to dedicate its median, without compensation, for construction and operation of the line.

owned property is used for a public purpose, TRIP II's revenue (which must cover all of its expenses and capital costs) is directly limited by the rates approved by the Commission. At the same time, like any rate regulated entity, TRIP II is constitutionally entitled to the opportunity to earn a reasonable return on its investment in the roadway.

8. This is TRIP II's fourth application under § 56-542 D for an increase in the maximum tolls on the Greenway. The Commission previously considered and granted increases to the maximum tolls pursuant to § 56-542 D in Case Nos. PUE-2003-00230, PUE-2006-00081, and PUR-2019-00218 (albeit limited as discussed below). During a period that began in 2013, the Commission granted a series of adjustments in tolls pursuant to the provisions of former Va. Code § 56-542 I, which limited increases in tolls to a measure of CPI or GDP. While these increases allowed TRIP II's tolls to keep up with inflation, they ultimately restricted TRIP II's ability to compensate for the loss of revenue from traffic that was enticed onto the alternative routes that were improved substantially during that same period and also prevented TRIP II from raising tolls to meet its increasing financial obligations over time.

9. TRIP II filed its most recent application to increase the maximum level of tolls on December 20, 2019 in Case No. PUR-2019-00218 ("2019 Application"). The 2019 Application requested a series of increases in both the maximum peak and off-peak tolls on the Greenway over a five-year period. In its April 26, 2021 Final Order ("2021 Order"), the Commission approved only the Company's proposed increase to the maximum off-peak tolls and only for years 2021 and 2022. The current maximum base toll for 2-axle vehicles on the Greenway is $5.25 and the congestion management toll is $5.80. The 2021 Order made clear that, while the evidence in the record supported approval of the proposed increase to the peak tolls under the criteria set forth in § 56-542 D of the Act, the Commission used its discretion

under the Act to not approve an increase in peak tolls based on the uncertainty arising from the COVID-19 pandemic.[10]

10. As discussed in the testimony of Company witness Hamilton, the 2021 Order has had a significant negative impact on TRIP II's revenues and cashflow, particularly when coupled with the other impacts that COVID-19 had on TRIP II and traffic on the Greenway. Since that decision, TRIP II's toll revenues have been insufficient to satisfy the Company's obligations related to its debt service, forcing the Company to draw on its cash reserves to cover its required debt service payments. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Denial of significant toll increases also will continue to deny TRIP II the opportunity to earn a reasonable return on its investment.

IV. The Act and the 2021 Amendments

11. Section 56-542 D of the Act states that the Commission:

> 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.

12. While the 2019 Application was pending at the Commission, the General Assembly, in a 2021 Special Session, amended the Act to require, among other things, that any application to increase toll rates include a forward-looking analysis that demonstrates that the proposed toll rates will meet the above criteria. Under the amended Act, the forward-looking analysis must include reasonable projections of anticipated traffic levels, including

---

[10] *See* Final Order, *Application of Toll Road Investors Partnership II, L.P. For an increase in the maximum level of tolls*, Case No. PUR-2019-00218, 2021 S.C.C. Ann. Rep. 172, 174-75 (Apr. 26, 2021).

the impact of social and economic conditions anticipated during the time period that the proposed toll rates would be in effect.

13. The amended Act also defines the term "materially discourage use" as follows:

> to cause a decrease in traffic of three or more percentage points based on either a change in potential toll road users or a change in traffic attributable to the toll rate charged as validated by (i) an investment-grade travel demand model that takes population growth into consideration or (ii) in the case of an investigation into current toll rates, an actual traffic study that takes population growth into consideration.[11]

In addition to the provisions related to the statutory tests for the Commission's consideration of any proposed tolls, the amended Act also states that the "Department [of Transportation] shall review and provide comments upon the analysis to the Commission."[12]

14. The amended Act explicitly limits the Commission to approving no more than one annual increase in tolls at a time.[13] Although Company witness Hamilton proposes a streamlined approach to adjust tolls under the statute in the future to address the issue, the practical implication of this restriction, along with the other changes to the Act, is that toll increases will need to be more infrequent and larger when they are imposed. Specifically, the forward-looking analysis and measure of material discouragement as dictated by the amended Act will require the Commission to decide any prior toll application before TRIP II is able to update its traffic modeling and prepare another application, generating significant lag between toll increases. This process could result in intermittent, yet larger toll price increases in place of the more regular, smaller toll price increases approved by the Commission between 2003 and 2019. Moreover, without a streamlined process, TRIP II, as well as the

[11] Va. Code § 56-542 A.

[12] Va. Code § 56-542 D.

[13] *Id.*

Commission and VDOT, would need to incur significant expenses in connection with near continuous proceedings to adjust TRIP II's tolls under this restriction.

V. THE PROPOSED TOLLS

15. Pursuant to Va. Code § 56-542 D, TRIP II respectfully requests that the Commission approve the following maximum peak (or Congestion Pricing) and off-peak tolls to be effective January 1, 2024, or upon issuance of the Commission Order approving the increases (the "Proposed Tolls"):

MAXIMUM PEAK TOLLS HOURS 6:30 AM – 9:00 AM Eastbound 4:00 PM – 6:30 PM Westbound					OFF-PEAK, MAXIMUM BASE TOLL				
2-Axle	3-Axle	4-Axle	5-Axle	6-axle or more	2-Axle	3-Axle	4-Axle	5-Axle	6-axle or more
$ 8.10	$ 16.20	$ 20.25	$ 24.30	$ 24.30	$ 6.40	$ 12.80	$ 16.00	$ 19.20	$ 19.20

16. The fact that TRIP II has not had an increase in peak tolls and only limited increases in off-peak tolls since 2019 has resulted in TRIP II's tolls not keeping pace with inflation. As discussed by Company witness Weller, the tolls requested in the 2019 Application would have kept TRIP II's tolls flat after adjusting for inflation since 2019. The Proposed Tolls are slightly lower than the requested toll increase for 2024 in the 2019 Application after adjusting for the actual inflation that has occurred since 2019. Accordingly, approval of the Proposed Tolls will have the result of simply keeping TRIP II's tolls in line with, and even slightly below, the level of inflation that has occurred since 2019. As discussed in the testimony of Company witness Hamilton, the Proposed Tolls are the minimum necessary to permit TRIP II to meet its financial obligations and to reach a point in the future where it will be able to have the opportunity to earn a reasonable return on the capital invested in the Greenway, consistent with TRIP II's rights under the U.S. and Virginia

Constitutions.[14] Importantly, these tolls alone will not allow TRIP II to earn any return in the rate year but will instead, under the best conditions, allow TRIP II to approach a cashflow neutral position. Only with approval of the Proposed Tolls along with additional future increases will TRIP II be able to reach a place where it would have an opportunity to provide a reasonable return to its investors.

VI. ANALYSIS OF THE STATUTORY REQUIREMENTS

17. As noted above, under Section 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 (as further defined by the amendments to the Act passed in 2021), 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 and exhibits accompanying this Application, the Proposed Tolls meet all the requirements under the Act and should be approved.

18. For this Application, TRIP II engaged Steer Group ("Steer") to analyze the tolls proposed in this Application. Founded in 1978, Steer is one of the world's largest independent specialist transportation consultancies, with offices in Boston, Los Angeles, New York, Oakland, Pittsburgh, Sacramento, San Diego, San Juan, and Washington, D.C. Having worked on over 500 toll and shadow toll road projects around the world, Steer has developed a recognized specialty in the appraisal of toll-financed facilities, especially in the preparation of robust investment grade traffic and revenue forecasts.

---

[14] TRIP II expressly reserves the right (1) to challenge, based on TRIP II's constitutional rights, any finding in this proceeding that denies TRIP II's proposed toll increase or approves lower tolls and (2) to raise arguments related to TRIP II's constitutional right to compensatory tolls during the course of this proceeding.

A. The Proposed Tolls are Reasonable to the User in Relation to the Benefit Obtained

19. Steer performed a benefit-cost analysis ("BCA") that involved ascribing a value to certain of the benefits enjoyed by travelers using the Greenway as compared to both a full-length un-tolled alternate route and a shorter-than-full-length un-tolled alternate route. To determine the quantitative net benefits, Steer 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 (i) travel time savings, (ii) reliability savings, (iii) vehicle operations savings, and (iv) safety benefits.

20. Based on Steer's analysis and the BCA, the Greenway provides quantifiable benefits across the four categories set forth above. The Greenway's lower congestion and higher posted speed limits, for example, provides users with benefits of travel time reductions and increased reliability on their trips at all times of the day when compared to alternative routes. With respect to the most competitive alternative route to the Greenway, Route 7/VA-28, the time travel savings for all classes of Greenway users during the peak period is over 4.3 minutes and for the off-peak period is 1.85 minutes. The value of these time savings for peak periods is estimated to be $2.79 for personal travel, $3.13 for business travel, $3.77 for airport trips, and $4.47 for truck trips. For off-peak periods, time travel savings are estimated to be $1.18 for personal travel, $1.33 for business travel, $1.60 for airport trips, and $1.91 for truck trips.

21. Results are similar for reliability benefits. The increased predictability in travel time afforded to users of the Greenway results in reliability savings of approximately 7.2 minutes for all auto classes of Greenway users during peak periods and almost 6 minutes for trucks. The value of these reliability savings for peak periods is estimated to be $6.90 for personal travel, $7.73 for business travel, $9.31 for airport trips, and $9.30 for truck trips.

22. The Greenway also provides vehicle operating cost benefits to its users as compared to alternative routes. The cost of fuel, for example, is an important source of variable operating cost savings to vehicle operators. While the price of fuel may not differ across the Greenway and alternative routes, fuel consumption rates are closely tied to vehicle operating speeds, which vary between the Greenway and alternative routes. Unlike the alternative routes, vehicles on the Greenway are able to travel faster and at more consistent speeds, particularly during peak hours, which creates monetary savings through more efficient fuel consumption. When compared to the alternative routes, the Greenway offers vehicle operating cost savings in both peak and off-peak periods, ranging from -$0.23 to $0.53 for cars and $0.87to $3.34 for trucks.

23. Finally, the Greenway provides safety benefits to users by reducing the likelihood of fatalities, injuries, and property damage from vehicle crashes due to lower rates of accidents or levels of each accident's severity. The Greenway's vehicle crash records, for example, show that accident rates are substantially lower than the rates of accidents for all of Loudoun County and the Commonwealth of Virginia. From 2013 through 2021, there have been 167 crashes with injuries and three (3) fatalities. This results in accident rates of less than 12.4 injury crashes and 0.2 fatalities per 100 million vehicle miles. Compared to the nearly 74.9 injury crashes and 0.5 fatalities per 100 million vehicle miles driven on alternative routes in Loudoun County, the Greenway is a significantly safer road.

24. The Greenway, however, offers its users more than just the quantifiable benefits captured in the BCA. As the Commission has long recognized, the Greenway provides its users numerous qualitative benefits that are not captured in a quantitative analysis.[15] Qualitative benefits of driving on the Greenway include, but are not limited to,

[15] *See e.g., Commonwealth of Virginia, ex rel. State Corporation, 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, Order Concluding Investigation (Sept. 4, 2015).

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; and additional enjoyment from driving on a free-flow road with no traffic signals.[16]

25. Beyond these direct benefits provided to the users of the roadway, TRIP II provides broader public benefits to Loudoun County, the Town of Leesburg, and the entire northern Virginia region. As discussed above, TRIP II and its predecessors stepped up to build the Greenway entirely with private funding at a time when both the local governments and the Commonwealth determined they would not invest in building a roadway in the area despite a clear need. As a result, each vehicle that travels on the Greenway benefits Loudoun County and the Commonwealth by easing the burden on the free, alternative public roadways while still meeting the public need. As a privately funded project, the Greenway alleviates congestion and cut-through traffic that would otherwise exist on surrounding public roads. This in turn reduces carbon emissions and improves air quality for those neighborhoods as well as reduces the pressure on local road maintenance and construction budgets.

B. The Proposed Tolls Will Not Materially Discourage Use of the Roadway by the Public

26. Under the amended Act, "materially discourage use" is defined as causing a decrease in traffic of three or more percentage points based on either a change in potential toll road users or a change in traffic attributable to the toll rate charged as validated by an investment-grade travel demand model that takes population growth into consideration.[17] As demonstrated by Steer's analysis, the proposed tolls do not materially discourage use of the Greenway by the public.

---

[16] *See Application of Toll Road Investors Partnership II, L.P. For an increase in the maximum level of tolls*, Case No. PUR-2019-00218, Report of D. Mathias Roussy, Jr., Hearing Examiner (Oct. 13, 2020).

[17] Va. Code § 56-542 A.

27. Although the analyses of material discouragement in prior Commission proceedings have primarily focused on econometric modeling of price elasticity, the amended Act rejects this approach, requiring instead a forward-looking analysis that includes consideration of additional factors like population growth to properly assess changes in traffic. Specifically, the analysis must determine whether the proposed tolls will "cause a decrease in traffic of three or more percentage points based on . . . a change in traffic attributable to the toll rate charged."[18] To meet this statutory requirement, the change in traffic attributable to the proposed toll rates forecasted by the model cannot cause a decrease in traffic on the Greenway of three or more percentage points after the additional factors like population growth are considered.

28. To prepare the forecast required for this assessment, Steer developed a travel demand model specific to the Greenway corridor ("Steer Model") based on the Metropolitan Washington Council of Government's (MWCOG) regional travel demand model. As required under the Act, the Steer Model considers population growth and other socioeconomic factors and incorporates impacts to the road network from projects that are anticipated to be completed in the surrounding road network.

29. To assess material discouragement, the Steer Model estimated the annual average daily traffic ("AADT") on the Greenway during 2024 with the Proposed Tolls in place using the Steer Model and compared that forecasted AADT to the actual AADT for calendar year 2022, the last year the Greenway implemented a toll increase. As explained by Company witness Cuneo, by comparing the forecasted AADT for 2024 with the actual traffic in 2022, the Steer Model properly considers the impacts of additional factors to determine the

[18] Va. Code § 56-542 A. Although the amended Act also references a "change in potential toll road users" in the definition of "materially discourage use," the phrase "change in potential toll road users" is not defined in the Act. At this time TRIP II does not take a position on the appropriate way to read this aspect of the definition of material discouragement and continues to evaluate this phrase and reserves its right to take a position on this during the course of this proceeding should any participant propose use of this portion of the amendment to the Act.

impact of the Proposed Tolls on the Greenway's traffic levels. Comparing the forecasted AADT for 2024 to 2022 traffic is necessary at this time to ensure that the traffic growth on the Greenway since the last toll increase is captured in the analysis. This is especially important in this Application given the Commission's decision to deny additional toll increases in the 2019 Application and given that the amended Act changes how toll increases on the Greenway are implemented by now effectively preventing TRIP II from increasing tolls on an annual basis as it has done for much of the life of the Greenway.

30. The Steer Model confirmed that the Proposed Tolls will not materially discourage use of the roadway as defined by the amendments to the Act. Indeed, the decrease in traffic on the Greenway that would result from the Proposed Tolls is significantly less than the continued growth in traffic on the Greenway from other factors, including the continued recovery from COVID-19 and population growth.

C. The Proposed Tolls Will Provide the Company No More Than a Reasonable Rate of Return as Determined by the Commission

31. There can be no doubt as to whether the Proposed Tolls will provide the Company *no more* than a reasonable rate of return. TRIP II and its investors have never received any return on, or even of, the investments they made to acquire, construct, and maintain the Greenway—let alone a reasonable rate of return. At best, the Proposed Tolls will allow TRIP II to approach a cashflow neutral position and to start down a path to have an opportunity to earn a reasonable return at some point in the future. Put another way, the Proposed Tolls are the minimum tolls necessary to provide TRIP II with any opportunity to earn a reasonable return, which may only be realized only with further toll increases into the future.

32. The Proposed Tolls are also necessary to allow TRIP II to meet its debt service coverage requirements. As explained by Company witness Hamilton, the current and future levels of debt service, which is by far the largest expenditure incurred by TRIP II on an

annual basis, requires the Company to seek steady increases in toll prices to cover its obligations. On two occasions since the Commission's decision on the 2019 Application, TRIP II has failed to generate sufficient net revenues to cover its debt service payments, forcing it to draw down on its reserves to meet its debt service obligations. TRIP II anticipates this scenario to occur again in February 2024.

33. The reinvested earnings account ("REA"), established and approved by the Commission in Case No. PUA-1990-00013, quantifies TRIP II's authorized but unearned return.[19] As explained by Company witness Hamilton, approximately $144 million of equity capital has been contributed to fund the construction and improvement of the roadway since 1993 but only $102 million has been disbursed since that time, which means TRIP II has not yet realized the approximately $11 billion in returns (as of December 31, 2022) it has been authorized to earn on the Greenway. While this full, unearned return is unlikely ever to be recovered, the REA nevertheless allows the Commission to keep track of and consider the prior unearned returns when evaluating whether the Company's requested toll increases will provide no more than a reasonable return.

34. While TRIP II's actual revenues will be impacted by numerous external factors—such as competition from toll-free public roads and alternative modes of transport, population and income growth, toll prices on the Dulles Toll Road, and weather events—to provide context, the Company prepared projected cashflows under several plausible scenarios.[20] Specifically, the Company utilized three scenarios for future traffic during calendar year 2024, when the Proposed Tolls would be in effect, to illustrate the potential

[19] The REA was established to track the hypothetical balance of invested equity capital, authorized by unearned return on equity, and actual disbursements to equity investors in TRIP II. It is solely a tracking mechanism for ratemaking purposes and is not recognized for accounting purposes.

[20] The Company fully acknowledges that there is always a risk that events such as the COVID-19 pandemic could occur again in the future, that neither TRIP II nor the Commission can foresee these events, and that these events present an inescapable risk to the Company's realized revenues. When such events do occur, however, the Commission's subsequent decisions need to consider the impact of these events when setting tolls as part of providing TRIP II with an opportunity to earn a reasonable return.

financial impacts of the increased tolls on the Company's finances. The three scenarios are included as Confidential Exhibit RNH-1 to Company witness Hamilton's direct testimony. As demonstrated in each traffic scenario, the Proposed Tolls are not expected to generate any return on equity, falling far short of the 14.00% per annum allowed rate of return previously authorized by the Commission. In fact, TRIP II is expected to generate insufficient revenue to be in a cashflow neutral position during 2024, even with approval of the Proposed Tolls. Despite this, TRIP II submits that the Proposed Tolls are appropriate (and essential) to return it to a more stable financial position so that it will have a realistic opportunity to generate returns following future toll increases. That the Proposed Tolls will provide the Company no more than a reasonable rate of return cannot be disputed in this proceeding.

VI. CONCLUSION

For the reasons set forth above, TRIP II requests that 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, 2024. In addition, TRIP II asks that the Commission specifically authorize a streamlined process to consider and to approve future increases under § 56-542 D of the Act to reduce the lag between increases in the tolls on the Greenway. This will minimize each increase and provide TRIP II with the opportunity to generate sufficient revenues to meet its financial obligations and have the opportunity to earn a reasonable return in the future.

Respectfully Submitted,

TOLL ROAD INVESTORS PARTNERSHIP II, L.P.

By: ______________________________
Counsel

Timothy E. Biller, Esq.
Andrea D. Gardner, Esq.
Hunton Andrews Kurth
LLP 951 East Byrd Street
Richmond, Virginia 23219
tbiller@HuntonAK.com
agardner@HuntonAK.com
804-788-8756
804-788-8237

July 11, 2023

CERTIFICATE OF SERVICE

I hereby certify that this 11th day of July, 2023, a true copy of the forgoing Application was delivered by email, hand, or mailed, first-class, postage prepaid, to the following:

William H. Chambliss, Esq.
C. Austin Skeens, Esq.
Office of General Counsel
State Corporation Commission
Tyler Building – 10th Floor
1300 East Main Street
Richmond, Virginia 23219

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

____