



U.S. Department
of Transportation

**Federal Highway
Administration**

Office of the Administrator
August 11, 2006

400 Seventh St., S.W.
Washington, D.C. 20590

In Reply Refer To:
HCC-30

Mr. Gregory A. Whirley
Acting Commissioner
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219-2000

Dear Mr. Whirley:

The Federal Highway Administration (FHWA) has completed its review of the Virginia Department of Transportation's (VDOT) Special Experimental Project No. 15 (SEP-15) Application to deviate from the definition of Transportation Infrastructure Finance and Innovation Act (TIFIA) "eligible project costs" to include the cost of refunding long-term project debt for the Pocahontas Parkway – Virginia Route 895 (Parkway or Project) that was submitted to the FHWA Virginia Division Office (Division Office) on July 14. The Division Office forwarded the Application to the SEP-15 Steering Committee which coordinated the review of the proposed TIFIA deviation with the TIFIA Joint Program Office (TIFIA JPO); Office of Infrastructure; Office of Planning, Environment, and Realty; Office of Policy; Office of Chief Counsel; and the Division Office. Based on the comments provided by these offices, the SEP-15 Steering Committee recommended, and I concur, that the Application be accepted for administration under SEP-15. The FHWA's response to the proposed experimental feature for Parkway is discussed below.

The FHWA's acceptance of your Application for administration under the SEP-15 Program does not constitute approval of the Parkway for TIFIA credit assistance, which assistance is subject in all respects to complying with TIFIA requirements and terms and conditions acceptable to the U.S. Department of Transportation (DOT) before a commitment of funds can be made. Further, the acceptance of the Parkway for administration under SEP-15 does not waive any other Federal requirement applicable to the Project.

If you wish to proceed with the TIFIA waiver under the SEP-15 program, our next major action will be to work with you to draft an Early Development Agreement (EDA) for the Parkway. The EDA will contain parameters to guide the implementation of the experiment and the performance measures that will be used to evaluate the success of the TIFIA experimental feature.



Background

On June 29, the VDOT executed an Amended and Restated Comprehensive Agreement (ARCA) with Transurban U.S.A. Development, Inc. (TUSA). Under the terms of the ARCA, TUSA acquired the rights to operate, manage, and collect tolls on the Parkway for a period of 99 years. In addition, the TUSA is obligated to construct, maintain, and operate the Richmond Airport Connector (RAC), but only if TUSA secures TIFIA credit assistance in the amount of \$150 million. According to the TUSA plan, the TIFIA loan proceeds would be used to refinance approximately \$95 million of the long-term senior bank debt, fund \$7 million for upgrading the Parkway's electronic tolling system, and fund approximately \$48 million for construction of the RAC.

The Parkway is an 8.8-mile tolled highway 7 miles south of Richmond, Virginia, which was completely opened to traffic in October 2002. The RAC was originally planned to be built simultaneously with the Parkway, but funding limitations prevented its construction. It is envisioned that the RAC will be a 1.58-mile, 4-lane roadway that will provide motorists with direct access from the Parkway to the Richmond International Airport. The VDOT has identified the RAC as a project of critical importance, but it is not economically feasible on a stand-alone basis. The RAC is considered to be critical to the economic development of Henrico County and the greater Richmond area.

The VDOT is conducting the environmental review for the RAC and believes that FHWA may be able to issue a Finding of No Significant Impact in September 2006.

The FHWA concurs with the VDOT that the proposed TIFIA experiment will serve several goals, including: (1) Expediting delivery of the RAC; (2) Maximizing the use of public-private partnerships; and (3) Experimenting with innovative financing, in particular the "European" model of private equity (i.e., regular refinancing of debt to leverage cash flows and produce returns to equity holders). Given the interest of foreign-based private equity seeking infrastructure investments, for both greenfield and existing facilities, in the United States, the proposed experiment would provide valuable information to the DOT as it evaluates changes to the TIFIA program to accommodate non-traditional project financing schemes.

Experimental Feature

The VDOT seeks to deviate from the definition of TIFIA "eligible project costs" to include the costs of refunding long-term project debt. The VDOT proposes that the FHWA consider TUSA's total acquisition price for the Parkway in the amount of \$548 million plus a \$55 million liquidity facility provided by an affiliated company of TUSA to cover interest expenses for the initial years of the project when toll revenue is insufficient to service debt payments.

Purpose: The TUSA determined, through a cost-benefit analysis, that \$150 million is the minimum amount of TIFIA assistance required to provide the economic incentive for TUSA to assume the risk of constructing the RAC. If the TIFIA "eligible project costs" were limited to the cost of the

new investment, approximately \$53 million, this would limit the amount of TIFIA credit assistance to less than \$17.5 million. However, if the definition of "eligible project costs" were expanded to include TUSA's \$548 million acquisition price for the Parkway, this would increase the maximum amount of TIFIA credit assistance available for the refinancing to a level consistent with the cost-benefit analysis. Approximately \$95 million of the TIFIA loan would be used to refinance long-term debt raised by the TUSA, \$7 million for upgrading the Parkway's electronic tolling system, and \$48 million would be used to finance eligible project costs for the RAC.

Deviation from FHWA Requirement(s): By statute and regulation, the total amount of TIFIA credit assistance is limited to 33 percent of "eligible project costs" which is defined as developmental activities, construction expenses, and related financing costs, 23 U.S.C. § 602(a) (3); 49 C.F.R. 80.5. Traditionally, these costs have been associated with the investments required to deliver new infrastructure. In the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, Aug. 10, 2005), Congress gave the Secretary the discretionary authority to allow TIFIA to assist with refinancing long-term debt but it did not address how to determine the maximum amount of TIFIA credit assistance that may be provided when the Secretary approves the use of the refinancing provision.

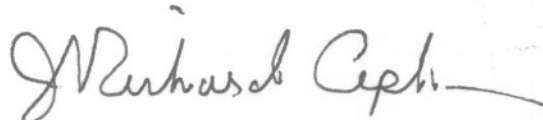
FHWA Response: The FHWA accepts this experimental feature for administration under SEP-15 with the understanding that the TIFIA loan application will provide more detailed information on each of the three project components (the refinancing, the electronic tolling equipment, and the RAC, including the status of its environmental review). In accepting the experimental feature, it is understood that the DOT will adhere to the same credit standards applied to any project seeking TIFIA assistance.

Proposed Performance Measures and Reports

The VDOT proposes to evaluate and report on the experimental feature of the TIFIA deviation. The main points of focus for the evaluation will be financial justification for TIFIA loan size, maximization of capital, innovation in financing, and time-savings. The proposed performance measures and report described in the VDOT application will be reviewed during the development of the EDA and incorporated into a project timeline.

I have asked Mr. A. Thomas Park, FHWA's Chief Financial Officer, and Mr. Roberto Fonseca, Division Administrator for the FHWA Virginia Division Office, to serve as the co-facilitators for the Pocahontas Parkway SEP-15. Mr. Park and Mr. Fonseca will establish an FHWA interdisciplinary team to work with VDOT to develop the provisions of the EDA. They will also assist you in fulfilling the Federal requirements for the RAC and other proposed improvements.

Sincerely,



J. Richard Capka
Administrator