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May 2, 2017

VIA ELECTRONIC MAIL

Marybeth Richardson, Presiding Officer
Maine Department of Environmental Protection
Southern Maine Regional Office
312 Canco Rd.
Portland, ME 04103

RE: MTA York Tollbooth, L-27241-TG-A-N/L-27275-TP-A-N

Dear Marybeth:

In accordance with Section 16(A)(2) of Chapter 3 of the Department's rules, the intervenor Coalition for Responsible Toll Collection ("CRTC") hereby requests that the Department require the Maine Turnpike Authority to submit the following information prior to the hearing: an updated model run by CDM Smith calculating the necessary surcharge for an AET facility to maintain net revenue neutrality with an ORT facility over the correct initial ten year period, 2020 to 2029.

For the following reasons such information is necessary for the Department's evaluation of MTA's compliance with the applicable legal standards at issue in this proceeding. This information has not been submitted in MTA's Application or its pre-filed testimony, and CRTC is unable to re-run CDM Smith's model as it does not have access to the model or all model inputs.

Summary

The conclusions in CDM Smith's 2014 report are based on a financial performance review of AET v. ORT over the time period 2015-2024. These conclusions, which form the basis for the MTA's rejection of an AET (or upland) facility, are now outdated. CDM Smith acknowledges that the financial case for AET improves over time, due to increases in E-ZPass use by tollbooth customers, and MTA has indicated that the new tollbooth will not be operational until 2019 or 2020. Even if CDM Smith's financial assessment was valid for the ten year period starting in 2015, it is no longer valid. As such, CDM Smith should re-run its model starting on the first possible year of tollbooth operations.

Further, for the reasons discussed herein, it does not appear that CDM Smith's conclusions were even accurate in 2014, given what appears to be an inflated proposed \$3

surcharge. As the surcharge impacts anticipated diversions, this figure was also incorrect in 2014.

CRTC does not have access to CDM Smith's model and cannot do this calculation. We have done some rough estimates based on the information in CDM Smith's study, and it appears that when CDM Smith runs its model starting in 2019 or 2020, and reduces the surcharge to maintain the net revenue neutrality sought by MTA, CDM Smith may conclude that no surcharge is necessary. As such, diversion rates would drop to levels anticipated with the ORT facility and then the two primary reasons the MTA rejected the AET alternative may no longer be valid.

The Basis for MTA's Rejection of the Upland Alternative, AET.

As noted in MTA's pre-filed testimony, the MTA Board rejected the AET alternative based on the conclusions in the 2014 CDM Smith study. (P. Mills Pre-Filed Testimony ¶¶ 32-35, 37; M. Jarvis Rebuttal Testimony Ex E). The following are the three primary conclusions relevant to the Board's action:

1. After considering all financial variables, including construction costs, CDM Smith predicted that over the "first ten year period" (2015-2024) the MTA would net a surplus of \$24 million with an AET facility as compared to an ORT facility.
2. This surplus, however, would occur only if MTA imposed a \$3 surcharge on all cash, or pay-by-plate customers; and
3. The \$3 surcharge would result in 3,400 to 5,500 cars per day "diverting" from the Maine Turnpike to avoid the surcharge. (MTA Ex. B, pp. 47-48).

After reviewing these conclusions, the MTA staff informed the MTA Board that the \$3 surcharge and the diversion of 3,400 to 5,500 vehicles per day were unreasonable and "would not work" and would not "likely be tolerated" by drivers and the public. (M. Jarvis Rebuttal Testimony Ex. E (citing P. Mills' email to the MTA Board)); MTA Ex. D (comments by Mr. Van Note to the Board)). In their deliberations, several MTA Board members cited the size of the \$3 surcharge and anticipated diversions of 3,400 to 5,500 cars per day when they voted to reject the AET alternative. (MTA Ex. D).

In evaluating whether the MTA has complied with NRPA, the question for the Department is whether MTA reasonably concluded that the \$3 surcharge and the diversion of 3,400 to 5,500 cars onto Route 1 rendered AET impracticable. CRTC has submitted pre-filed testimony arguing that the diversion figures are too high, and that CDM Smith's model inputs are overly conservative, and thus the surcharge and the traffic diversion figures are artificially inflated. This is the purpose of the scheduled public hearing—to allow the Department to evaluate the conflicting technical information submitted by the parties.

At this point, however, CDM Smith's conclusions are out of date as they were calculated for a 10-year time period beginning in 2015. CDM Smith also made a critical error with its calculation of a \$3 surcharge, which led to an error in calculating diversion rates. As such, CDM Smith should be required to re-run its model with the appropriate figures over the correct

timeframe and to submit this information to the Department prior to the scheduled public hearing.

Relationship of the Surcharge, Rates of E-ZPass Use,
Diversion Rates, and Financial Feasibility.

In order to understand why the conclusions in the 2014 CDM Smith report are invalid and outdated, it is important to understand two things: (1) the goal of the 2014 Study, and (2) the relationship between surcharges, levels of E-ZPass use, and traffic diversions.

As noted in its report, the goal of the CDM Smith study was to evaluate the relative financial impact of AET and ORT. (MTA Ex. B, p. ES-1). All parties concede that when cash lanes are removed for an AET facility, there will be some “leakage,” or some percentage of cash customers who do not pay the toll. This risk required CDM Smith to evaluate whether a “surcharge” on cash customers was necessary in order to offset the revenue lost to such “leakage.” CDM Smith had been instructed to calculate the “optimal” surcharge, or the “lowest surcharge” at which AET “becomes net revenue neutral” with ORT. (MTA Ex. B, pp. 15-16). Thus, if a surcharge was necessary to address leakage or any other revenue collection challenges with AET, the surcharge was supposed to be set at the lowest possible level to maintain net revenue neutrality with the ORT alternative.

CDM Smith failed to do this. Instead, it included a surcharge in its model run that was so high it generated a \$24 million surplus for the AET alternative. (MTA Ex. B, pp. 47-48). This was not the “optimal” surcharge CDM Smith was told to calculate, and instead was higher than necessary to maintain net revenue neutrality with ORT.

This error was problematic because of the relationship of the size of the surcharge to the other issue of concern to the MTA Board, namely “diversion” rates. As noted in Table 4 of CDM Smith’s Study, lower surcharges result in lower diversion rates. (MTA Ex. B, p. 17). This is because cost is a factor in diversion, and the lower the toll, the fewer drivers will divert. The 3,400 vehicle per day figure reported to the MTA Board was based on an assumed \$3 surcharge (Table 4, line 7, 1,259,000 vehicles per year). According to CDM Smith’s own figures, if the surcharge had been set at \$2, diversion would have dropped to 2,145 vehicles per day (783,000 vehicles per year). If the surcharge had been set at zero, diversions would have dropped to 326 vehicles per day (119,000 vehicles per year). Thus, if CDM Smith’s surcharge was too high, its diversion estimate was also too high.

Finally, exacerbating the errors with the diversion figures is the fact that diversion rates also decline over time, as more and more drivers are expected to use an E-ZPass. As noted in line 5 of Table 5 in the 2014 Study, CDM Smith predicts that E-ZPass use will increase from 10,341,000 vehicles in 2015 to 12,518,000 vehicles in 2020. Over the same period CDM Smith predicts that diversion rates will decrease from 1,259,000 per year in 2015 (3,400 per day) to 847,000 in 2020 (2,321 per day, a 33% reduction in diversion). (See line 8 in Table 5). This will occur because over time more drivers will have an E-ZPass and thus fewer drivers are subject to

the surcharge, and so a smaller number will divert to avoid the additional fee.¹

Given that several of these model inputs change over time (and they all change in favor of AET), CDM Smith's 2014 model run and conclusions are no longer relevant to whether AET is a practicable alternative. Also, the use of an inflated surcharge meant that the diversion figures were not even accurate when they were reported to the MTA Board in 2014.²

The Department Should Not Render a Decision in this Proceeding
Without an Updated CDM Smith Report.

At this point, according to MTA, the earliest date of commercial operation of the new tollbooth is 2019.³ As such, CDM Smith should re-run its model for the ten year period starting in 2019.⁴ CRTC does not have access to CDM Smith's model and cannot re-run the figures. We did attempt to use the tables in CDM Smith's report and our rough estimate of the revised "surplus" for AET from 2020-2029, assuming a \$3 surcharge, will be approximately \$32 million, an increase from the \$24 million predicted by CDM Smith in its 2014 model run.

We contend it is important for MTA to confirm this figure, and then calculate the "optimal" surcharge that eliminates this surplus and brings "net revenue neutrality" to AET and ORT. Although we are unable to recreate CDM Smith's model run, based on the figures provided in the CDM Smith report, it appears that if CDM Smith corrects for the proper time period, and reduces the surcharge to maintain net revenue neutrality, CDM Smith will conclude that the surcharge may be significantly reduced, and possibly eliminated.

¹ Please see CDM Smith's comment on page 4 of Appendix 2H of the NRPA Application, confirming that its anticipated decreases in diversion "are largely the result of the assumed continued shift from video transactions to E-ZPass (which has no toll surcharge) over time."

² As neither the \$3 surcharge nor 3,400 vehicle diversions were ever going to occur, and as these factors were expressly cited by the Board when it voted to reject the AET alternative, it does not appear that the MTA Board's 2014 vote can support the pending application.

³ As noted in the 2016 HNTB traffic study, HNTB used the diversion figure from 2019, as MTA indicated that was the "anticipated opening year" of the new AET tollbooth. (NRPA Application, Appendix 2G, p. 4). Thus, when HNTB did its 2016 study, it did not use 3,400 as the diversion figure, but 2,515, the diversion figure in column "2019" from the CDM Smith study. (See 2/25/16 email string between Elizabeth Roberts at HNTB and Bruce Van Note, attached at Exhibit "A"). Mr. Van Note initially disagreed, stating his understanding that CDM Smith's "2015" column was intended to show what would occur in the "opening year," such that the 2015 traffic diversion figure should be used by HNTB for its analysis. Apparently Mr. Van Note was ultimately corrected (we assume by CDM Smith) that the yearly estimates regarding diversion were fixed, regardless of when the tollbooth commenced operation, as the diversion numbers are directly related to the increase in E-ZPass use. Put more simply, CDM Smith predicts that over time E-ZPass use will increase, which will result in less diversion, and those numbers are accurate regardless of when MTA constructs the new tollbooth.

⁴ MTA's prediction of a 2019 commencement date is now a year old, so it appears likely that the earliest "opening year" of the new tollbooth will be 2020.

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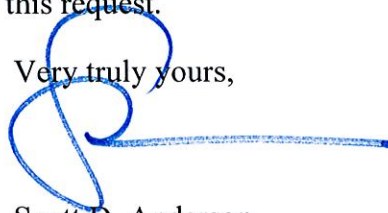
As CDM Smith concedes, a reduction or elimination in the surcharge will have a significant waterfall effect on the diversion estimates, and these figures will drop dramatically over this time period when the surcharge is corrected. Without a new model run by CDM Smith, however, the information in MTA's NRPA application will continue to be outdated and incorrect, and it will be difficult, if not impossible, for the parties or the Department to assess MTA's compliance with NRPA.

Conclusion

It appears that based on CDM Smith's own assumptions its predictions regarding surcharges and diversions were incorrect when they were presented to the MTA Board in 2014, and those errors have only been compounded as time has passed. In order to ensure that the Department and the parties are reviewing current and accurate information regarding the alternatives assessed by MTA, we respectfully request that the Department require MTA to re-run the CDM Smith model (1) over a ten-year time period commencing when MTA reasonably can claim the new tollbooth would be operational (no sooner than 2019 or 2020); and (2) reduce the surcharge to meet MTA's stated goal of the lowest surcharge necessary to maintain net revenue neutrality between AET and ORT.

Thank you for your consideration of this request.

Very truly yours,



Scott D. Anderson

SDA/mtt

Enclosure

cc: Service List (via e-mail to entire service list and US Mail to parties, Applicant, DEP Counsel, and DEP Project Manager in Portland)

EXHIBIT A

Van Note, Bruce A.

From: Van Note, Bruce A.
Sent: Thursday, February 25, 2016 4:45 PM
To: Elizabeth Roberts; Norwood IV, Ralph C.; Zografos, Sara D.
Cc: Davidson, Douglas D.; Paul Godfrey
Subject: RE: York AET traffic impact study

Thanks for the update Elizabeth. Ralph will follow up by phone.

Although I am not a traffic engineer, I don't understand why the DCM Smith diversion numbers would be reduced. I thought the CDM Smith numbers for 2019 represented year 4 after an assumed opening of 2015. Moving the opening to 2019 would not affect the opening year diversion numbers in my view. Again, I know this is a technical issue, so I stand willing to be further educated after you speak to Ralph.

From: Elizabeth Roberts [mailto:earoberts@HNTB.com]
Sent: Thursday, February 25, 2016 4:05 PM
To: Van Note, Bruce A. <bvannote@maineturnpike.com>; Norwood IV, Ralph C. <RNorwood@maineturnpike.com>; Zografos, Sara D. <SZografos@maineturnpike.com>
Cc: Davidson, Douglas D. <DDavidson@maineturnpike.com>; Paul Godfrey <PGODFREY@HNTB.com>
Subject: York AET traffic impact study

All,

I just wanted to send an update regarding York AET Traffic Impact Study. We are still waiting for results of the regional travel demand model from MaineDOT. I have been sending messages to Ed Hanscom regarding the status of the results and am waiting to hear back. As a result, and as I have discussed with Bruce earlier this week, we will not have a draft ready tomorrow.

I also wanted to give everyone an update regarding changes that were made to the methodology of this study during the meeting with the MaineDOT on February 12.

From the scope of February 5, "CDM Smith developed estimates of average daily diversion. HNTB will use those estimates to develop a peak hour diversion of an average week and a peak hour diversion of the 30th highest hour."

During the meeting, Ed mentioned that the MaineDOT's travel demand model could give us more data that we could use in our report. We decided to let Ed run the travel demand model for a summer weekday. We felt that this would be a better way to determine the impacts of a peak day as traffic is high for several hours during the peak day instead of just one hour. So, MaineDOT will be developing most of the data for the report regarding impacts during a peak time.

Also from the February 5 scope we said we would look at traffic in the Opening Year. During the meeting on February 12, Bruce mentioned that the Opening Year would be 2019 (year when a hypothetical facility would be ready to open to traffic). What does this mean in terms of traffic numbers?

CDM Smith gave an estimate of diversion for an average day in their report of 3,400-5,500 vehicles per day. That number reflects values for **2015**. That number also decreases over time (according to Table 5 in the report). So, by 2019, the estimate of diversion that CDM Smith gave is 918,000 vehicles per year, which would result in 2,515 vehicles per day – a 26% decrease.

Also, the MaineDOT's model is for a summer weekday, not an average day. The diversion for a summer weekday in 2019 could be similar to an average day. A summer day has more traffic, but less of a diversion rate. We estimate that the summer diversion for 2019 could be as high as 2,755 using CDM Smith's assumptions. So, we could use the estimate of 2,515 vehicles per day of diversion for MaineDOT's model.

Please let me or Paul know if you have any questions or would like to meet to discuss.

Thanks,

Elizabeth Roberts, P.E.

Tel (207) 228-0877

HNTB CORPORATION

340 County Road Suite 6-C, Westbrook, ME 04092

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