



U.S. Department
of Transportation

Memorandum

Federal Highway Administration

Subject: Application to toll I-80

Date: September 11, 2008

From: 
King W. Gee
Associate Administrator for Infrastructure

Reply to
Attn. of: HIPA-1

To: Renee Sigel
Division Administrator
Harrisburg, Pennsylvania

This memorandum is in response to the Pennsylvania Turnpike Commission (PTC) and Pennsylvania Department of Transportation's (PennDOT) July 17 revised joint application to toll I-80 under the Interstate System Reconstruction and Rehabilitation Pilot Program (ISRRPP), established in the Transportation Equity Act for the 21st Century (TEA-21). This application was supplemented by PTC and PennDOT on August 28 with an addendum containing a summary of the metropolitan planning organization (MPO)/rural planning organization (RPO) and I-80 Advisory Committee meetings. This revised application and addendum were submitted in response to the Federal Highway Administration's (FHWA) December 12, 2007 comments and questions regarding PTC and PennDOT's original application to toll I-80, which was submitted on October 15, 2007.

In reviewing the application, we conducted a thorough analysis of the application's merits based on the statutory criteria in TEA-21. This review was conducted by a team of FHWA officials from the Pennsylvania Division office, the Office of Program Administration, TIFIA Joint Program Office, and Office of Chief Counsel. After careful consideration by both the review team and myself of PTC and PennDOT's revised application and addendum, the FHWA has concluded that the agency is unable to move the application forward under the ISRRPP at this time.

The ISRRPP, as established in Section 1216(b) of TEA-21, includes specific eligibility and selection criteria that must be met prior to any potential approval being given. These criteria are more restrictive than the criteria in any other Federal tolling pilot program. Specifically, the ISRRPP, at Section 1216(b)(5)(A) of TEA-21, limits the use of toll revenues to only (1) debt service, (2) reasonable return on investment for a private entity financing the project, and (3) the costs necessary for the improvement and proper operation and maintenance of the facility.

The application cannot move forward because the lease payment, as presented to us, does not meet statutory requirements. The FHWA does consider a lease payment to be an operating cost for purposes of the Federally prescribed permitted use of toll revenues. However, the payments required under the I-80 lease appear to have been predetermined by the Pennsylvania General Assembly based on considerations largely unrelated to the true costs of a leasehold interest in I-80. Because the FHWA has no indication that the lease payments are related to the true costs of the leasehold interest, the FHWA is unable to make a determination that these costs are legitimate and valid operating costs, as required by the statute.

The revised application did not explain how the lease payments from the PTC to PennDOT were calculated, even though the FHWA specifically requested additional information on the lease payment in the December 12, 2007, questions regarding the initial application (see Question #14). The application does not contain sufficient support that the lease payments have a rational relationship to the market value of I-80 or the actual market-based cost to the PTC in acquiring an interest in the facility. The lease was not negotiated pursuant to an arm's-length transaction nor was the price established through a competition. Although not conclusive, evidence of an arm's-length transaction or a competitively determined lease payment would help support a finding that the lease payment is a cost necessary for the proper operation of the facility. There is no evidence that the lease payments are related to the actual costs of acquiring an interest in the facility, and as such, the lease payment cannot be found to be a cost necessary for the proper operation of the facility.

While our decision rests on the above analysis, the review team identified a number of other weaknesses regarding the application. These areas of concern include, but are not limited to, the absence of sufficient traffic and revenue studies and the adequacy of the financial plan. However, because we have no basis for determining that the lease payments are legitimate, we do not reach a decision on whether these other issues in and of themselves would warrant denial of the application.

The FHWA is very mindful of Pennsylvania's transportation funding situation, which is not uncommon throughout the country. We commend Pennsylvania for thinking creatively in trying to find a solution to its transportation needs. As has been clear for some time, the Department believes that States deserve broader flexibility to toll Federal-aid highways than they are currently afforded under Federal law. Unfortunately, the resubmitted application does not meet the legal sufficiency requirements of the ISRRPP. Although we are unable to move the application forward, the FHWA stands ready to assist the Commonwealth in finding other creative ways to fill the funding gap.