

To: Collin County Commissioners Court
From: George Purefoy
Subject: SH 121
Date: April 30, 2007

Attached to this memorandum is a detailed report concerning the deviations in the Texas Department of Transportation's RFP for SH 121 and the adopted Business Terms for SH 121 in Collin and Denton Counties by the RTC. Even though it has been represented that the RTC policy has been followed in the tolling of SH 121, major changes were made to the RTC business terms by TxDOT which adversely effect the citizens using SH 121.

Specifically, the RTC policy requires that a pilot study be conducted prior to a peak toll rate policy being established and before peak toll rates are allowed. In the RFP, peak toll rates are allowed starting in 2012 at a 30% increase over base toll rates during the 6 hours of peak traffic. This results in a 14% increase in total toll revenue. In addition to requiring a pilot study, the RTC policy indicates that peak toll rates should be revenue neutral.

Also, the inflation factor in the RTC policy provides that the CPI is used when the annual increase in the CPI is less than 3 percent and the household income index is used when annual increases in the CPI are greater than 3 percent. The RFP has a complex formula of four indices which in the end allow the total CPI increase to be applied to tolls.

A telling point is contained in a table in the RFP in which TxDOT uses to clarify the escalation formula and for the year 2020 the TxDOT toll escalation policy yields a 10.6% increase in tolls as compared to a 1.5% increase using the RTC policy. This example is 7 times higher than the RTC policy for this year. The net result in the TxDOT escalation policy is to put in place a system which is more than double the adopted RTC inflation policy.

Another alarming toll escalation charge is that non-toll tag users will be assessed a 45% premium over the base toll rate per user classification plus \$.20 per transaction fee. Thus, a \$1.00 toll grows to \$1.65 for those without a toll tag account, this will include most lower income users and visitors from out of the region/state.

Added to the above are truck toll rates which are over 100% higher than toll rates for similar sized vehicles using the NTTA system. Unfortunately, unless we stand up for our citizens now, toll rates will be set in place which will harm the economic future of citizens, especially our children, grandchildren, and great grandchildren since the Cintra contract is for 50 years.

Report on RTC Toll Policy vs. TxDOT SH 121 RFP

It appears that several of the business terms of the SH 121 toll contract will not be consistent with the business terms adopted by the RTC for TxDOT-Sponsored Toll Roads on State Highways.

Following is a brief comparison of differences:

Issue #1 - Peak Tolling:

RTC policy #1 - Maximum week day peak period toll rate in 2010 is 17 cents/mile. The weekday peak period is currently defined as 6:30 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. The Regional Transportation Council (RTC) would need to approve any changes to this definition.

RTC policy #2 - The maximum off-peak toll rate is 12.5 cents/mile in 2010. The off-peak period is defined as the period outside of the weekday peak period.

RTC policy #3 - These peak and off-peak rates will average approximately 14.5 cents/mile.:

RTC policy #14 - The peak and off-peak toll rates will be set at 14.5 cents/mile or an initial interim period. The North Central Texas Council of Governments (NCTCOG) will conduct a pilot "before" and "after" study in a corridor within the region with the approved "time of day" pricing schedule. Results will be presented to the RTC before region wide implementation of time-of-day pricing. The pilot study and subsequent action will be completed by 2012. (link for RTC policy:

<http://www.nctcog.org/trans/committees/rtc/Toll%20Policies/Business%20Terms.pdf>)

Compare the above to the following Texas Department of Transportation SH 121 RFP Addendum #5 Exhibit 4 (Pages 11 and 12 of 17):

In paragraph 8: Commencing 60 days after TxDOT delivers to Developer written direction, but in no event before January 1, 2012 and continuing until toll rates are adjusted pursuant to Section B.9 below, Developer shall implement a time of day pricing regime throughout the Project for the User Classifications set forth in Table B-1 as follows: (a) Developer will charge a Maximum Peak Period Toll Rate up to 1.17 times the applicable Maximum Base Toll Rate for each such User Classification in each direction of travel for the hours from 6:30 p.m. to 9:00 p.m. and 3:00 p.m. to 6:30 p.m., Monday through Friday.

(b) When Developer is directed under Section B.8.a. above to charge toll rates during such hours above the Maximum Base Toll Rate, the permissible maximum toll rates during all other hours of the week shall not exceed a Reduction Factor \otimes times the Maximum Base Toll Rate calculated under Section B.2 above for each User Classification. Within 30 days after receiving TxDOT's written direction, Developer shall deliver to TxDOT a written proposal for the value of R together with its analysis supporting such proposal, including traffic and revenue studies acceptable to TxDOT. Based on such traffic and revenue studies, the value of \otimes shall be set such that total Toll Revenues will approximate total Toll Revenues in the absence of time of day pricing. The value of R that Developer proposes shall be subject to TxDOT's prior written approval.

The terms quoted in the TxDOT RFP seems to track fairly closely what the RTC policy is attempting to do - that is set a peak toll rate and then offset the peak toll rate by reducing the toll the remainder of the day to achieve approximately the same total revenue. However, Section B.9 is totally different. The Developer has the right to set peak toll rates at "1.3 times the applicable Maximum Base Toll Rate for each User Classification." (TxDOT SH 121 RFP Addendum #5 Exhibit 4 - 9.a.) The offset to the maximum peak rate under this scenario is for the Developer to reduce the Maximum Base Toll Rate by "0.8 times the applicable Maximum Base Toll Rate for "the six hours of highest average Hourly Speeds" for weekdays, "plus (b) 12 hours per day of highest average Hourly Speeds" for specified holidays (TxDOT SH 121 RFP Addendum #5 Exhibit 4 - 9.b.) In layman's terms, this seems to say the tolls go up 30% during the six hours of the heaviest traffic each weekday and go down 20% during the six hours of least traffic each weekday. This approach is not cost neutral. Traffic engineers have told me that you can expect 50% of total daily weekday traffic during the 6 peak hours, the same engineers have stated that less than 5% of the traffic will be on the roadway during the 6 hours of lowest travel.

Thus, it seems that rather than NCTCOG conducting a pilot "before" and "after" study, peak toll rate policies are already in place in the Cintra contract. I'm also told that by 2012, we can expect traffic volumes to be at a level to trigger the 1.3 times peak toll factor. The traffic criteria for establishing the 1.3 times peak rate can be found in TxDOT SH 121 RFP Addendum #4 Exhibit 19 - 4-6 on pages 1 -

2 of the exhibit (link http://www.dot.state.tx.us/publications/tta/sh121_cda_exhibits_clean.pdf pages 114-115 of the pdf document).

Issue #2 - Toll Inflation Policy

RTC Policy #5. Toll rates will be adjusted sooner and later in time using the "all items" Consumer Price Index and "average household income." For Consumer Price Index values of 3 percent and under, the Index will be used and calculated applying annual compounded rates. For values over 3 percent, the "average household income" growth rate will be used. Toll rates will be adjusted every two years. If the Consumer Price Index or the "average household income" growth rates are negative for a two-year period, the growth rate will be set at zero and no adjustments to toll rates will be permitted. (link: <http://www.nctcog.org/trans/committees/rtc/Toll%20Policies/Business%20Terms.pdf>)

Compare the above to the following Texas Department of Transportation SH 121 RFP Addendum #5 Exhibit 4 (Pages 11 and 12 of 17): The first change is that the TxDOT terms allow the "Maximum Base Toll" to be adjusted by the CPI if "over the preceding two-year period is less than or equal to 6.0%." Thus, the 3% per year limit is not used. Another change is rather than using the "average household income" growth rate for a year in which the CPI rose more than 3 percent, the SH 121 RFP provides that if the "Toll Price Index" is greater than 6% for a two year period, a formula be used comparing the Employment Cost Index to the CPI.

In looking through some articles on the proposed Cintra contract I found the following quote which describes the inflation calculation: "The escalation rule is shoddily written in Exhibit 4 referring to an unexplained price index called a TPI or Toll Price Index. There is an unreadable bit of algebra referring to this TPI but we are told to accept that it provides for increases in maximum tolls every two years if the change in consumer price index has risen less than 6% (about 3%/yr). If the increase in the previous two years in the CPI is greater than 6% it will be adjusted by a southern employment cost index (ECI) if the ECI is less than the CPI increase." (from http://tollroadsnews.info/artman/publish/article_1752.shtml)

In Exhibit 4 of the TxDOT SH 121 RFP Addendum #5 - 11. (pages 13-14), a table is provided "as an example of how to determine a Maximum Base Toll Rate under Section B." Rather than the computations being done fairly simply as put forward in the RTC formula, the table presents a matrix of the various indices. As a side note, we haven't found anyone who has heard of either the TPI or the TECI - both appear to be made up indices. Looking back at the table, the years 2018 and 2020 provide a telling example of how the "shoddily written" escalation formula works - since the CPI goes from 134 in 2018 to 136 in 2020, the RTC formula would dictate that the toll increase for that two year period would be

2/134, or 1.5%.for a toll rate of \$.188 (\$.185 times 1.5%); however, the table says that you would take the difference between the last base value of 123 (the ECI and TECI indices value for 2018) and 136 the CPI value for 2020. This differential is 13, or 10.6%, which equates to a toll rate of \$.205 (\$.185 times 10.5%). This increase is 7 times what the RTC policy would be for the year 2020 in this example. I've heard some refer to this methodology as a shell game in order to increase toll rates more than what the RTC policy states. Basically, there is no protection under this methodology for CPI increases over 3% annually, or 6% for two year periods, because the formula as shown in the example above captures all of the accumulated CPI increase.

Issue #3: Non Toll Tag Users

While this issue is not addressed in the RTC policy, I find it alarming at how much non toll tag users of SH 121 will be charged. According to the TxDOT SH 121 RFP Addendum #5 - C.1. - "a Video Transaction Toll Premium" of 45% plus "a \$.20 per Transaction in 2010 escalated in accordance with the rate change mechanism described in Section B.2." Of course, this premium will be leveled primarily on the lower wage earners and out of area/state travelers who do not have toll tag accounts established. This policy places a whole new meaning to "welcome to Texas."

Issue #4: Toll Rates for Different Vehicle Classes

This issue also is not addressed in the RTC policy, however, the proposed toll rates for larger vehicle classes seem way out of line. The 2010 per mile toll rate for an automobile is (the first number is for non peak toll rate, the second number is applying the 30% peak premium, the third number is applying the 45% video transaction number to the peak number) \$.145 (\$.1885)(\$.273), for an automobile with a trailer - \$.29(\$.377)(\$.547), 4 axle truck - \$.435(\$.566)(\$.82), 5 axle truck/trailer - \$.58 (\$.754)(\$.1.093), 6 axle truck/trailer - \$.725(\$.943)(\$.1.37).

It's interesting to contrast the above rates with what the NTTA currently charges per mile for the various rate classes (the first number is for toll tag and the second number is for a cash customer): for an automobile \$.095 (\$.124), for an automobile with a trailer - \$.16 (\$.20), 4 axle truck - \$.20 (\$.25), 5 axle truck/trailer - \$.25 (\$.30), and 6 axle truck/trailer - \$.30(\$.35).