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Fitch Ratings: Precedents Favor Pennsylvania Turnpike Commission in $6 Billion Truckers' Lawsuit

Fitch Ratings-New York-02 April 2019: Precedents of similar lawsuits indicate that the $6 billion lawsuit filed by commercial truckers is unlikely to have a material adverse effect on the Pennsylvania Turnpike, according to Fitch Ratings. The practice of transferring a portion of tolls for the benefit of transit and other transportation-related purposes is both widespread and long-standing. To the extent a tolling entity must show transferred tolls are benefitting toll payers, courts have tended to take an expansive view regarding the knock-on benefits of transit recipients on toll road congestion. Although these precedents point to a likely favorable outcome for the turnpike, in the event the lawsuit prevailed including through any appellate process, Fitch would consider the terms of the settlement and management responses in assessing potential rating action. Fitch will continue monitoring the lawsuit and will consider any material developments in its rating.

The lawsuit, filed in March 2018 by the Owner Operator Independent Drivers Association (OOIDA), claims that the turnpike is violating the Commerce Clause by raising tolls to fund non-highway transportation projects in the state. Under Act 44, the turnpike must pay PennDOT $450 million a year to support non-highway programs, through fiscal 2022. Act 89 amended Act 44, reducing the payments to $50 million starting in fiscal 2023, with the balance to be made up by the commonwealth from its motor vehicle sales tax revenues. In order to make these payments, the turnpike issued subordinate debt. The higher debt service requirements necessitated toll rate increases in excess of inflation every year since 2009, most recently by 6% in January 2019. The OOIDA requested (1) a preliminary injunction requiring the segregation of all toll receipts in excess of current operating and maintenance costs and funding for the senior revenue bonds, (2) a permanent injunction preventing the issuance of any additional bonds for Act 44 payments outside the turnpike system and (3) a permanent injunction prohibiting the use of toll revenues to make payments on outstanding subordinate bonds issued for Act 44 payments. The lawsuit also requested monetary damages including a refund of a portion of certain tolls. The preliminary injunction was withdrawn, allowing PTC to make its payments on the outstanding subordinate bonds. Since the lawsuit was filed, the turnpike has not issued any additional subordinate debt and thus has not made three Act 44 payments. The Act 44 Lease and Funding Agreement was amended to allow for the deferral of payments through June 2019. Fitch expects that the Agreement would be further amended if the lawsuit is still unresolved.

Similar lawsuits have been filed against state entities and proved unsuccessful. The Ohio Turnpike and Infrastructure Commission was sued in 2015 for raising tolls to divert funds to non-turnpike projects. A federal district court dismissed all except one claim. The court ruled that despite not being spent on the maintenance of the turnpike, the funding spent on non-turnpike projects benefited turnpike users. The outstanding claim that the increased tolls were an unlawful tax or user fee was remanded to state court where it was dismissed in 2017. The judge ruled that the turnpike commission has the legal ability to charge the tolls even if they are considered taxes. The American Trucking Associations (ATA) have filed lawsuits in New York and Rhode Island claiming that tolls on commercial trucks violate the commerce clause of the U.S. Constitution. The lawsuit filed against the New York State Thruway in 2013 was dismissed by a federal appeals court in 2018. The court

ruled that Title 23 of the Intermodal Surface Transportation Efficiency Act of 1991 defined the upstate canal system as an eligible recipient of excess funds from the Thruway. In March 2019, the ATA's lawsuit against the Rhode Island Department of Transportation for tolling tractor-trailers was dismissed by a federal district court judge on the grounds that the matter was more appropriate for state courts because the tolls are a state tax. The state anticipates the case will be refiled in state court.

If the ruling on the Pennsylvania Turnpike lawsuit prohibits future issuance of debt for transfer payments, the turnpike would be able to continue servicing its outstanding debt on the senior and subordinate liens. A ruling could also require the turnpike to pay a lump sum refunding up to the $6.1 billion paid out under Act 44. In that unlikely scenario, Fitch anticipates the turnpike would look to the commonwealth's general government (AA-/Stable) and legislature for assistance. The legislature enacted Acts 44 and 89, which led to the subordinate lien debt issuances and associated toll increases that spurred the litigation. Fitch will continue monitoring developments in the case and assessing potential rating implications. Fitch rates the Pennsylvania Turnpike senior and subordinate bonds 'A+' and 'A-', respectively, with Stable Rating Outlooks.

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