

TO: Council of Bond Oversight

FROM: Cheryl Pierce

DATE: December 4, 2024

SUBJECT: OTA Request for COBO to Approve Issuance of up to \$1,175,860,725 Second Senior Revenue Bonds, Series 2025A and up to \$456,070,000 Refunding Second Senior Revenue Bonds, Series 2025B

MY BACKGROUND

Before retirement, I was a Certified Public Accountant serving the City of Oklahoma City for 27 years in various positions. During my tenure with the City, I had the opportunity to serve as the Business Manager for the Oklahoma City Department of Airports. My position required me to become knowledgeable in public trust provisions of the Oklahoma Statutes, various legal documents such as the Oklahoma City Airport Trust Indenture and the Oklahoma City Airport Trust Bond Indenture. I reviewed all of the Official Statements for issuance of Oklahoma City Airport Trust Senior Lien Bonds and Oklahoma City Airport Trust Junior Lien Bonds as well as provided all of the financial data incorporated into those documents. I managed the Finance Division of the Department and was responsible for annual operating budgets, annual capital budgets, annual financial reports, and oversaw day-to-day operations of the Finance Division. I was responsible to ascertain that all of the financial activity of the City's airports complied with its legal documents.

RECENT STUDY OF THE OKLAHOMA TURNPIKE AUTHORITY AND ACCESS OKLAHOMA PROGRAM

Over the last two years I have done an extensive review of documents related to the Oklahoma Turnpike Authority (Authority) which includes the Turnpike Enabling Act and other Oklahoma Statutes applicable to the turnpike system; various Trust Agreements of the Authority from 1950 through the current 1989 Oklahoma Turnpike Authority Trust Agreement with BOKF, NA, including all supplements thereto; annual operating and capital budgets; annual financial reports; Supreme Court bond validation cases; preliminary and final official statements for issuance of bonded debt from 1989 through the 2023 Second Senior Revenue Bond issuance; feasibility studies both engineering and traffic/revenue studies; various Authority agenda items. etc. I believe I am well versed in legal and financial activity of the Authority.

During the course of my review I have made several observations regarding the most recent bond issue of the Oklahoma Turnpike Authority regarding the ACCESS Oklahoma Program, as well as the Authority's current request to issue up to \$1,175,860,725 in Second Senior Revenue Bonds, Series 2025A, and up to \$456,070,000 Refunding Second Senior Revenue Bonds, Series 2025B.

THE PROPOSED BOND ISSUE APPEARS TO VIOLATE SECTION 715(A)(1) OF THE AUTHORITY'S MASTER TRUST AGREEMENT

Section 715(a) of the Authority's 1989 Master Trust Agreement states that OTA is not to issue second senior revenue bonds for a Turnpike Project unless the Authority "can estimate that the revenues of such Turnpike Project in the fifth complete bond year following the completion of construction or the acquisition of such Turnpike Project and in each bond year thereafter will be not less than the Current Expenses and the deposits to the Reserve Maintenance Fund for such Turnpike Project for each such bond year."

The Consulting Engineer for the Driving Forward program and the ACCESS program is Olsson. Their Engineering Studies are attached to the Official Statements for the Driving Forward Bond Issues and the 2023 ACCESS Oklahoma Bond Issue.

The estimates, and supporting computations and information required for compliance with Section 715(a)(1), do not appear in Olsson's Study for the bond issues for the Driving Forward Turnpike Projects (Kilpatrick Section 3 and the Kickapoo). Likewise, the estimates, and supporting computations and information required for compliance with Section 715(a)(1), do not appear in Olsson's Study for the East-West Connector, Tri-City Connector, or South Extension of the ACCESS Oklahoma Turnpike Projects. For historical contrast, note that a prior Consulting Engineer (The Benham Group) did provide the necessary cost information for compliance with 715(a)(1) in its Studies for the Official Statements for 1998A and 1998B bond issues.

It should also be noted that the Chief Executive Officer, as approved by the Consulting Engineer, is required to certify this computation pursuant to Section 209(e) of the Trust Agreement. This certificate is omitted from the 2023 Bond Book, (see the "Certificate of Executive Director Delivered Pursuant to Section 209 of the Trust Agreement" as of October 26, 2023, which reflects the omission of the Section 209(e) computation).

I have not seen where any of the required estimates, computations, or information have appeared in any studies performed or documents associated with the OTA'S currently proposed bond issue for ACCESS Oklahoma. The Authority therefore appears to be out of compliance with Sections 715(a)(1) and 209(e) of its Trust Agreement.

In my opinion, the required estimate for the currently proposed bond issue cannot be legitimately made in the current circumstances. Attached to this memorandum is a spreadsheet I have prepared showing the original cost and revenue projections for the three new Turnpike Projects in the ACCESS Program, as estimated by the Authority in 2022. The spreadsheet also provides updated construction cost information for the three new turnpikes, and revised debt service cost information, as of November 2024. The 2024 information is based upon Joe Echelle's announcement at the last OTA meeting that the cost of the ACCESS program had increased from \$5 billion to \$8.3 Billion.

The other sources of data are also listed on the spreadsheet. The spreadsheet shows that based on the data, the impact of constructing the three new ACCESS turnpikes will be a \$9.8 billion cash flow deficit over 30 years. None of the three turnpike projects appear to be in a position where "the revenues of such Turnpike Project in the fifth complete bond year following the completion of construction or the acquisition of such Turnpike Project and in each bond year thereafter will be not less than the Current Expenses and the deposits to the Reserve Maintenance Fund for such Turnpike Project for each such bond year."

THE PROPOSED BOND ISSUE APPEARS TO VIOLATE THE PAR FORMULA PROVISIONS OF 69 O.S. § 1709

69 O.S. 1709.A. provides that turnpike revenue bonds "shall bear interest at such rate or rates not exceeding the limitations pertaining to public trust indebtedness, ...shall mature at such time or times not exceeding forty (40) years."

69 O.S. 1709 provides additional guidance for issuance of turnpike bonds:

69 O.S. 1709.D.4. provides that the bonds "Bear interest at a rate or rates that may vary as permitted pursuant to a par formula and for such period or periods of time, all as may be determined by the Authority"

69 O.S. 1709.E.2. "Par formula" means any provision or formula adopted by the Authority to provide for the adjustment, from time to time, of the interest rate or rates borne by any such bonds so that the purchase price of such bonds in the open market would be as close to par as possible."

On November 7, 2024, the OTA Board approved Agenda Item 1239, a Resolution authorizing issuance of Series 2025A Revenue Bonds, in an amount sufficient to generate \$1,000,000,000 in Construction Fund Proceeds for the ACCESS Program. Section 3 of the Resolution provides for sale of the bonds to such underwriters pursuant to a bond purchase agreement at a purchase price of not less than 97% nor greater than 140% of the par amount of such Series 2025 Bonds..."

This parameter in the November, 2024, Resolution, which provides that the purchase price of the bonds can be up to 140% of par, appears to be in violation of 69 O.S. 1709.E.2. For example: In 2020 OTA issued \$187 million of 2020A Refunding Bonds. The parameters resolution for that issue likewise provided that the purchase price of the bonds could be up to 140% of par. The 2020A bonds were issued at 105% to 136% of par with interest rates on the bonds of 5%. Actual interest rates on the bonds during the 11-year life of the new issue should have ranged from .5% to 2%, had the statutory law on par formula been followed.

The restriction for the purchase price of bonds on the open market to be as close to par as possible has been ignored in multiple instances since 2010, and most recently, was ignored in the Authority's 2023 bond issue for ACCESS Oklahoma. Again, this statutory requirement was also ignored in the Authority's November 7, 2024 Resolution.

In my opinion, the OTA's November 7, 2024 Resolution for the issuance of bonds fails to comply with the par formula requirements of 69 O.S. 1709. This is a significant violation of statutory law. The COBO should not be approving the Authority's bond issue request, and the COBO should require the OTA to revise its proposed bond issue parameters to comply with the par formula provisions of 69 O.S. 1709.