

Prepared Testimony of
Gladys M. Brown
Chairman
Pennsylvania Public Utility Commission

before the

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Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120
Telephone (717) 787-4301
<http://www.puc.pa.gov>

Thank you, Chairmen Rafferty, Wozniak, Yaw and Yudichak, other members of the Committees, and all others gathered here this morning.

It is my pleasure to join you today, as Chairman of the Pennsylvania Public Utility Commission (PUC) – on behalf of my fellow Commissioners and the dedicated staff at the PUC – to discuss our role in a multi-layered system that works to ensure the safe transportation of goods and passengers by rail across our state. With me this morning is Rodney Bender, the Manager of the Transportation Division of the PUC, which includes our Rail Safety Section.

You have asked us to address the federal perspective related to the safe transportation of energy products across Pennsylvania by rail – with an emphasis on Bakken crude oil. While my testimony focuses on your desire to explore those unique issues, I will note that the PUC is attentive to the safe transport of all cargoes, including crude oil, chemicals, hazardous materials and even passengers.

While I cannot speak on direct behalf of the Federal Railroad Administration (FRA), or other agencies, I am happy to give you an overview of the PUC's rail safety inspection work – which is performed in conjunction, and in close coordination with, our colleagues at the FRA. In addition, the PUC also conducts specialized rail safety engineering work, under state statutory authority, and I believe it is important for all gathered here today to understand that mission, as well.

PUC Overview

For the past 45 years, federal law has addressed rail safety with a set of nationally established standards, enforced by the FRA. The work performed by PUC's Rail Safety Inspectors is done in conjunction with FRA Inspectors, with interactions almost daily.

The PUC Rail Safety Inspections group includes one (1) supervisor who manages the FRA program with a staff of seven (7) inspectors. Our Rail Safety Inspectors are certified by the FRA, and each inspector specializes in a specific railroad discipline. Additionally, PUC Rail Safety staff who are involved in the inspection of passenger trains are also certified by Amtrak.

The areas of expertise for our Rail Safety inspectors include:

- Track – the physical infrastructure of the railroads. We currently have one (1) inspector in this area and are in the process of hiring a second inspector.
- Motive Power & Equipment – the locomotives and rail cars that cross our state. We currently have two (2) inspectors in this area.
- Operating Practices – the “human element” of railroad activity, including qualifications of rail crew members and the way they operate, including their adherence to best safety practices. We currently have one (1) inspector in this area and are in the process of hiring a second.
- Hazardous Materials – the equipment used to transport hazard materials, along with safe handling practices, labeling/placards and other related requirement. We currently have one (1) inspector in this area.
- Signal & Train Control – the systems which are used to control the safe passage of trains. We currently have one (1) inspector in this area.

Additionally, the PUC Rail Safety Section also includes a Rail Safety Engineering group, which includes one (1) supervisor who manages a staff of six (6) professional engineers.

Both the Rail Safety Inspection and Rail Safety Engineering groups fall within the PUC Transportation Division – overseen, as I mentioned a few moments ago, by Rodney Bender – as part of the Bureau of Technical Utility Services.

PUC Inspection Activities

I think it is noteworthy to underscore the volume of work performed by the PUC Rail Safety Inspectors. In 2014, we filed 941 Inspection Reports filed with the FRA, including:

- 351 Motive Power & Equipment inspections;
- 241 Track inspections;
- 175 Operations inspections;
- 113 Hazmat inspections; and
- 61 Signal inspections.

Additionally, in the course of conducting those inspections, our staff examined a total of 82,106 individual items – ranging from pieces of rail and components on a locomotive or rail car, to safety practices, crew certifications or clear radio communications.

So far in 2015, PUC inspectors have filed 297 Inspection Reports with the FRA:

- 117 Motive Power & Equipment inspections;
- 97 Track inspections;
- 28 Operations inspections;

- 34 Hazmat inspections; and
- 21 Signal inspections.

Those inspections have examined a total of 28,270 individual items.

Any concerns identified during PUC inspections were submitted to the FRA for review and enforcement under federal rail safety standards.

It is also important to note that the PUC's inspectors are part of a tri-layer system of rail safety inspections in Pennsylvania, which also includes regional inspectors from the FRA and specialized personnel from the railroads.

Highway-Railroad Crossing

In addition the Rail Safety Inspectors, we also have a group of Rail Safety Engineers, who oversee highway-railroad crossings throughout Pennsylvania – including at-grade crossings, where public roads cross railroads track; bridges carrying public roads over railroads; bridges carrying railroads over public roads; and bridges carrying railroads over other railroads.

Under Pennsylvania statute, the PUC has exclusive jurisdiction over the construction, relocation, suspension and abolition of public highway-railroad crossings. There are approximately 5,600 public at-grade rail crossings in Pennsylvania and 3,200 bridge crossings. Our engineering staff includes one (1) supervisor who manages a staff of six (6) professional engineers.

Rail Safety Engineers handle applications, complaints and miscellaneous proceedings; and, on occasion, they request the initiation of an investigation docket in the matter of public safety.

Staff schedules and conducts on-site meetings at the public railroad crossings (both at-grade and

bridge crossings) to gather information related to the rail crossing project so that they can prepare Commission Secretarial Letters and Orders for issuance. Projects are monitored to completion. Final inspections are performed upon project completion and at times the engineers must testify before the PUC's Office of Administrative Law Judges (OALJ) when cases cannot be resolved amicably.

Identifying ways to address our aging transportation infrastructure, and the safety concerns related to both crossings and bridges, is the focus of a great deal of work for the PUC's engineering group. In fact, while the PUC, FRA and the railroads have all been working to increase inspections of track, equipment and operations – especially along oil train routes – our PUC engineers deal exclusively with the safety of the railroad at-grade crossings and bridges along these routes and other rail lines. Here, we work to address the disposition of highway-railroad crossings involving many nearly century-old, structurally deficient bridges within the state – while also promoting enhanced safety for at-grade crossings.

Regarding crossings (including bridges and at-grade crossings), PUC engineers are involved in an average of 180 formal proceedings per year – from field meetings and site inspections to formal conferences regarding repair, replacement, safety upgrades and other enhancements – which bring together representatives from the railroads, property owners, local municipalities, other state agencies – such as PennDOT – and other concerned parties. Safety-enhancements to crossings can range from projects to upgrade active warning devices, such as lights and gates, to the replacement of at-grade crossings with bridges, such as the recent elimination of the last three public at-grade crossings on Amtrak's Keystone Line, between Harrisburg and Philadelphia.

On average, the Commission receives five to 10 accident reports per month involving railroad related incidents either at a crossing or along railroad lines. In all of these situations, our engineers carefully weigh the factors that could be the difference between a non-incident and a crash between a train and a motor vehicle, which could result in a catastrophic incident.

In the last fiscal year, the work of our engineering group resulted in 200 PUC Orders and Secretarial Letters concerning highway-railroad crossing projects, involving more than \$600 million in infrastructure improvements.

The PUC Rail Safety Engineering staff works out of the Keystone Building in Harrisburg, but they travel throughout the entire state to handle Commission proceedings, field conferences, hearings and field inspections.

The PUC Rail Safety Inspectors have specific territories within the state for which they are responsible (typically center-east and center-west) and spend 80 percent of their time performing railroad inspections. The remaining time is spent filing inspection reports, writing violations and scheduling.

PUC Responsibilities

The Commission railroad regulations can be found in the Pennsylvania Code, Title 52 Chapter 33, Railroad Transportation.

Additionally, pursuant to an agreement under the provision of the Federal Railroad Safety Act of 1970, the PUC Rail Safety Inspectors enforce regulations promulgated by the FRA. While the

FRA had originally provided funding for that service, FRA funding has decreased over time. Currently, there is no FRA funding provided for rail safety inspections at the state level.

The 1970 federal law had effectively preempted rail safety regulation by individual states because Congress concluded that rail safety would be best served by a set of nationally established standards, instead of subjecting railroads to a variety of standards in 50 states. Congress then delegated railroad safety to the FRA, and specifically provided that the FRA regulations preempt all conflicting state laws and regulations. 49 U.S.C. Section 20106.

The Rail Safety Manager and supervisors regularly receive incident reports from both the Pennsylvania Emergency Management Agency (PEMA) and the railroads that are related to collisions, spills and derailments. These reports are reviewed to determine if further action is warranted.

The PUC has no enforcement authority regarding potential rail safety violations. That enforcement authority resides with the FRA, and any defects or violations observed by PUC Inspectors are reported to the FRA for further review and potential enforcement actions.

Interface with FRA and Railroads

PUC Inspectors interface almost daily with FRA Inspectors in each of their disciplines. The working locations of each inspector are determined to ensure that areas of the state are not neglected. It also allows our inspectors to undertake focused inspections with the FRA in problem areas. PUC Inspectors also attend yearly training conferences hosted by the FRA, and the two agencies have territories that overlap to ensure maximum inspection coverage. The

inspection of railroad track by either a PUC Rail Safety Inspector or an FRA Inspector requires the physical presence of appropriate railroad company personnel to accompany them.

The PUC offers assistance to the FRA in investigations of derailments, track inspection record checks, drug and alcohol record checks and hours-of-service records. When visiting the railroads for inspections, our inspectors discuss their findings with railroad employees and railroad officials. Inspectors do not always notify the railroads that they are on their property; often they will wait to contact the railroad officials only after their inspection has been completed. At that time they discuss their findings and review any recommended corrections that may be needed.

It is important to note that under federal law, the railroads are required to perform regular self-inspections of their track and equipment. When PUC Rail Safety staff conducts an inspection, they are not only examining equipment or facilities, but they are also reviewing the railroad's inspection activities to ensure that they are giving proper time and attention to these details. The same applies to FRA oversight of both the railroad-conducted inspections and PUC-conducted inspections.

Combined, this results in a tri-layered system that constantly monitors rail facilities and activities across the state.

Staffing

At any point in time, the PUC carries a number of vacancies that are in the process of being filled. So, like the rest of the agency, the Rail Safety Section continuously conducts interviews to fill vacancies as they occur.

Two (2) new engineers, working within the Engineering group, recently began work at the Commission. That group is now at full complement. In addition, we are in the process of hiring two (2) Rail Safety Inspectors to fill vacancies in that group.

I would note that we face continued challenges filling vacancies, especially in the Rail Safety Inspections group. We have found it difficult to attract qualified candidates who have the required railroad experience to work for the PUC in this capacity. One obstacle is the Civil Service-established pay level associated with these positions. Like most state government positions, the private sector (in this case the railroads, as well as the FRA) pays substantially higher salaries than state government – and in this instance – the PUC. When we do hire staff to fill the positions, they are trained and become certified by the FRA to perform their duties. Once they reach this certification, they are able to bid on FRA job openings where they can nearly double their salary. Over the past 12 years, we have had three (3) inspectors leave the Commission to work for the FRA and one inspector who returned to the railroad, all based on salary considerations.

Upon the closing of postings for two (2) inspector positions about a month ago, we were provided one candidate by Civil Service for our consideration. This individual was interviewed and found not to be qualified for the position. The candidate lacked much experience in the track discipline, which is required. Civil Service will be opening the list again for new candidates to

apply and, when a pool of candidates is available, we will again be notified and will repost the positions. We encountered similar problems in 2013 when we attempted to fill three (3) positions. We were able to fill all three (3), but we selected a second equipment inspector, instead of a track inspector, for the eastern part of the state because there were an insufficient number of qualified candidates. The previous two (2) PUC track inspectors moved to positions with the FRA.

In 2012, the FRA conducted a survey of states that showed Pennsylvania to be the next-to-lowest paying state for these positions; only West Virginia paid less. At that time, the average salary in Pennsylvania was \$41,100, versus the national average of \$56,600.

At full complement, the PUC has eight (8) Rail Safety Inspectors for nearly 5,600 miles of track. By comparison to neighboring states, New York has 13 inspectors covering 4,860 miles of track; West Virginia has 10 inspectors covering 2,226 miles of track; and Maryland has three (3) inspectors covering 758 miles of track.

In addition, Pennsylvania has the most operating railroad companies of any state, with a total of 57 operating across the state – ranging from the largest Class I railroads, moving long trains of goods along busy main line tracks to small “short line” railroads that may serve a short list of industries in a small area, moving a few cars at a time. Also due to our geographic location, there are a very mixed variety of commodities being transported into, out of, and across our state each day.

The primary factor affecting our ability to make a change in compensation for these inspectors is that these are Civil Service, bargaining-unit positions. As such, they are Commonwealth classifications and a change in pay levels for these positions will have an anticipated “ripple”

effect to other positions in the Rail Safety Section, and in the rest of the PUC – e.g. motor carrier enforcement officers and gas safety inspectors. There would need to be discussions and agreements with the Civil Service Commission and the Union if we attempt to make changes to the current classifications and compensation levels.

Additional Thoughts Regarding Staffing

At current salary, benefit, vehicle and travel costs, each new inspector would require an additional \$120,000 a year – based upon a mid-range annual salary of \$50,000. There are currently no additional state monies available for new Rail Safety Inspectors. Any additional complement and costs associated with the PUC budget would need to be added to our current request.

Rather than the current PUC practice of dividing the state into two parts as it relates to rail safety inspections, it may be better to establish three territories, so that our inspectors could spend more time inspecting railroad facilities rather than traveling to sites.

Closing

As I close today, I want to underscore the PUC's role as part of a tri-layer safety inspection system – including railroad companies, the PUC and the FRA. We work closely with the FRA to monitor ALL of the factors that can impact the safe movement of trains across Pennsylvania, including track, motive power and equipment, operating practices, hazardous materials and grade crossings.

When incidents do occur, such as the Amtrak derailment in Philadelphia last month, we offer assistance to the FRA and the National Transportation Safety Board, who are the lead responders for major accidents. In the Philadelphia incident, one of our equipment inspectors – who is also certified on Amtrak equipment – was dispatched to the scene to support the investigation.

We have worked to enhance our oversight of oil train routes – which make up about 700 miles of the nearly 5,600 miles of total rail lines in Pennsylvania – including our ongoing efforts to bring additional inspectors and engineers into our Rail Safety Section. However, we are also sensitive to issues involving passenger rail – especially the heavily traveled and higher-speed runs from Harrisburg to Philadelphia, and the Northeast Corridor, from Philadelphia to New York City and Washington D.C.

I thank you again for the opportunity to testify this morning, and I would be happy to address any of your questions. The PUC stands ready to assist, to the best of our ability, efforts to continue improving rail safety in Pennsylvania.