

Prepared Testimony of
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Introduction

Thank you, Policy Chair Senator Muth, Senator Williams, Senator Fontana, other members of the Committee, and all others gathered here this morning.

It is my pleasure to join you here today, as Vice-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, PE, Manager of the Transportation Division of the PUC, which includes our Rail Safety Section.

You have asked us to address our role in regulating and inspecting the railroad industry in Pennsylvania including railroad operations and infrastructure, in addition to oversight of nearly 8,800 public rail-highway crossings, where the Commission has exclusive jurisdiction. In light of the recent events near East Palestine, Ohio, it is important to underscore that the Commission is concerned with the safety of all passenger and property transportation by rail.

While I cannot speak on direct behalf of the Federal Railroad Administration (FRA), or other state or federal agencies that have a role in overseeing rail safety or emergency responses, I can provide 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 to understand that mission, as well.

Pennsylvania's relationship with railroads is almost as long as our history as a state, and the railroad network stretching across the state is extensive and diverse. Pennsylvania has 5,600 miles of total rail lines, ranging from busy freight corridors that move large volumes of goods across the state, delivering products to consumers and businesses in our state and moving them to and from communities across the county. Our rail network also

includes heavily traveled and higher-speed passenger lines that run from Harrisburg to Philadelphia, and the Northeast Corridor of the United States, from Philadelphia to New York City and Washington D.C.

The Commonwealth has the most operating railroad companies of any state, with a total of 57 – ranging from the largest “Class 1” railroads, moving long trains of goods along busy main line tracks, to small “short line” railroads that interconnect with the Class 1 railroads and serve a short list of industries in a small area, moving fewer cars at a time. Due to our geographic location, there is a very mixed variety of commodities being transported into, out of, and through our state each day.

The PUC’s Rail Safety unit oversees the Commission’s oversight of railroads by employing both Rail Safety Inspectors and Rail Safety Engineers. Each group performs different functions which are further described herein. The PUC’s Rail Safety Inspectors work under the authority assigned by the FRA in performing inspections. The Rail Safety Engineering group maintains exclusive jurisdiction over the construction, relocation, suspension, and abolition of highway-railroad crossings in Pennsylvania.

PUC Rail Safety Inspection Overview

For more than 50 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. Those efforts are part of a three-layer system of rail safety inspections in Pennsylvania, which includes regional inspectors from the FRA and specialized personnel from the railroads.

The PUC Rail Safety Inspections group includes two (2) working supervisors who manage the FRA State Participation Program with a staff of eight (8) inspectors. The two (2) supervisors also perform motive power and equipment inspections. We are currently working on filling one vacancy in the group. 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 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 in the field performing railroad inspections. The remaining time is spent preparing and submitting inspection reports, documenting violations, and scheduling.

The areas of expertise for our Rail Safety inspectors include:

- **Track** – the physical infrastructure of the railroads. The PUC currently has one inspector and in the process of hiring a second. The track-east inspector position became vacant in 2022. Our attempt at filling the position was unsuccessful as the selected candidate accepted another offer. The position remains open, but we will continue to try to fill the vacancy in 2023.
- **Motive Power & Equipment** – the locomotives and rail cars that cross our state. Two inspectors cover this discipline.
- **Operating Practices (OP)** – the “human element” of railroad activity, including qualifications of rail crew members and the way they operate, including their adherence to best safety practices. Three inspectors handle OP while one of them is also certified in Grade Crossing, which is a separate discipline.
- **Grade Crossing Signal System Safety** – the warning devices located at an at-grade crossing which provide warning to highway users of an approaching railroad crossing. One inspector, who is also certified as an OP inspector, is responsible for this discipline.
- **Hazardous Materials** – the equipment used to transport hazardous materials, along with safe handling practices, labeling/placards, and other related requirements. Currently we have two inspectors fulfilling this function.
- **Signal & Train Control** – the systems which are used to control the safe passage of trains and warning devices at railroad crossings. There is currently one inspector performing these duties.

I think it is noteworthy to underscore the volume of work performed by PUC Rail Safety Inspectors. During the last fiscal year, the PUC's Rail Safety team, which consists of ten positions, generated 1,988 Inspection Reports filed with the FRA, including:

- 471 Motive Power & Equipment inspections.
- 505 Track inspections.
- 380 Operations inspections.
- 457 Hazmat inspections.
- 175 Signal inspections.

Additionally, while conducting those inspections, our staff examined tens of thousands of individual items – ranging from segments of rail and components on a locomotive or rail car, to safety practices, crew certifications or proper radio communications.

A key point related to any discussion about railroad inspections and oversight is that enforcement powers – including decisions about which violations to prosecute and how those cases are resolved – ultimately rests in the hands of the FRA. Concerns that are identified during PUC inspections are submitted as a written violation to the FRA for review. As a general rule, the required standards are set by federal regulation. Therefore, any enforcement actions are brought by the FRA under those regulations and standards.

PUC Rail Safety Engineers and Railroad-Highway Crossings

In addition to Rail Safety inspectors, the PUC has a Rail Safety Engineering group, which oversees highway-railroad crossings throughout Pennsylvania. These crossings include at-grade crossings, where public roads cross railroad tracks; and grade separated crossings with bridges carrying public roads over railroads, bridges carrying railroads over public roads, or bridges carrying railroads over other railroads. The PUC's jurisdiction includes the ability to assign maintenance responsibilities associated with highway-railroad crossings on the interested parties, which typically include the

Pennsylvania Department of Transportation, the railroad, and the municipality. These parties can amicably agree to allocate maintenance responsibilities or litigate the matter before the PUC where the PUC will determine and order future maintenance responsibilities.

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. The Rail Safety Engineering group includes one (1) supervisor who manages a staff of six (6) engineers. Four of our engineers are Professional Engineers (PE) and several have years of bridge design and inspection experience.

Rail Safety Engineers handle applications, complaints, and other miscellaneous docketed proceedings. On occasion, they request the initiation of an investigation docket, where warranted by public safety concerns. In docketed proceedings before the PUC, staff schedules and conducts on-site meetings at the crossings to gather information related to the rail crossing project, involving all interested parties, so that they facilitate the initiation and ultimate completion of the project. Projects are monitored throughout their duration and final inspections are conducted upon completion. Many projects proceed without the necessity of litigation when all parties agree on the appropriate course of action. However, when that is not possible, PUC rail safety engineers must testify before the PUC's Office of Administrative Law Judge (OALJ) when cases cannot be resolved amicably. Prosecutors from the PUC's Bureau of Investigation and Enforcement represent rail safety engineers in these proceedings.

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 Rail Safety Engineering group. In fact, the PUC, FRA, and the railroads have all been working to increase inspections of track, equipment, and operations – especially along mainline train routes. Additionally, our PUC engineers deal exclusively with the safety of the railroad crossings along these routes and other rail lines. Here, we work to

address the disposition of highway-railroad crossings involving many nearly century-old, sometimes structurally deficient, bridges within the state.

Regarding crossing cases (including bridges and at-grade crossings), PUC engineers are involved in an average of 180 formal proceedings per year – which involve everything from field meetings and site inspections, which bring together representatives from the railroads, property owners, local municipalities, other state agencies – such as the Pennsylvania Department of Transportation – and other concerned parties, to formal contested proceedings involving hearings. Safety enhancements to crossings can range from projects to upgrade crossing warning devices, such as lights and gates, to the replacement of at-grade crossings with bridges. Additionally, bridge rehabilitation and replacement projects make up a significant portion of our engineers' workload.

In the last fiscal year, the work of our engineering group resulted in 326 PUC Orders and Secretarial Letters concerning highway-railroad crossing projects, involving more than \$1 billion in infrastructure improvements.

PUC Responsibilities

The PUC's statutory authority over railroads is located in Chapter 27 of the Public Utility Code, 66 Pa.C.S. §§ 2701-2709. The PUC's 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 covered in 49 C.F.R. Parts 200-299. While the FRA 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 effectively preempted much of 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. § 20106.

The Rail Safety Manager and supervisors regularly receive incident reports from both the Pennsylvania Emergency Management Agency (PEMA) and the railroads. Those reports involve rail crossing incidents, trespasser accidents, material spills and derailments. These reports are reviewed to determine if further action is warranted.

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. The two agencies have territories that overlap to ensure maximum inspection coverage. This arrangement allows inspectors to undertake focused inspections with the FRA in problem areas. PUC inspectors also attend yearly training seminars hosted by the FRA. The inspection of railroad equipment or facilities by either a PUC Rail Safety Inspector or an FRA Inspector in some instances requires the physical presence of appropriate railroad company personnel to accompany them.

The PUC offers assistance to the FRA in investigations of derailments or incidents involving the railroad. The FRA is the lead agency in these investigations and advises the PUC when our assistance is needed. When visiting the railroads for inspections, our inspectors share 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 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 conduct 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.

Enhancements

In 2015, a rail safety report was developed for then Governor Tom Wolf (*Assessment of Crude by Rail Safety Issues in the Commonwealth of Pennsylvania, by Dr. Allan Zarembski, August 13, 2015.*) In response to the report, increased volumes of railroad traffic across Pennsylvania, and related concerns about rail safety, the PUC has taken several steps to enhance safety efforts:

- **Increased Number of Rail Safety Inspectors** – The PUC's complement of rail safety inspectors was increased by 25 percent, from eight inspectors to ten inspectors, at the direction of the PUC commissioners, in response to concerns about increased railroad transportation of crude oil and other potentially volatile cargos across Pennsylvania. The increased attention placed on such cargos has not negated the PUC's attentiveness to the safety of passenger transportation by rail in Pennsylvania.
- **Enhanced Oversight on Major Routes** – The Rail Safety Section enhanced oversight of hazardous materials and crude oil train routes, which make up about 700 miles of the nearly 5,600 miles of total rail lines in Pennsylvania. These are typically the highest-volume routes for all cargos, so the added attention initially generated by oil train concerns has resulted in closer monitoring of other critical items being moved by rail.
- **Closer coordination with the FRA** – The PUC Rail Safety Section continues to work with the FRA on focused inspections on mainline routes, including track, turnouts and switches, motive power and equipment, operating practices, hazardous materials, and grade crossings.

Challenges Facing the PUC

- **Rail Safety Enforcement Regarding Violations of FRA Regulations is Outside the Authority of Pennsylvania** – All decisions regarding the prosecution of potential violations of FRA regulations identified during inspections, along with the ultimate decisions about how those cases are resolved with the railroads, rests in the hands of the FRA. While PUC inspectors can raise concerns about their findings, any enforcement actions come under federal rail safety regulations and standards.
- **Financial Barriers to Recruiting and Retaining Skilled Personnel** – The current Commonwealth classifications and state-established pay range that applies to rail safety inspectors places Pennsylvania’s compensation at the third lowest in the nation for these important positions, which can be a barrier to attracting and retaining skilled personnel.

Revisiting Previous Pennsylvania Rail Safety Recommendations

While a 2015 rail safety report developed for then Governor Tom Wolf (*Assessment of Crude by Rail Safety Issues in the Commonwealth of Pennsylvania, by Dr. Allan Zarembski, August 13, 2015*) specifically focused on issues related to bulk transportation of crude oil by rail through Pennsylvania, many of the recommendations included in that report are applicable to current concerns about the volatile substances contained in tank cars that were involved in the East Palestine, Ohio, derailment, and could be further explored.

Many of the recommendations in that report focus on federal actions and/or actions by state agencies outside the Public Utility Commission. Some of the federal railroad-specific recommendations in that report include:

- Voluntary speed reductions by the railroads in more highly populated areas.
- Sufficient hot bearing detector and acoustic units to monitor routes in Pennsylvania.

- Steps to improve braking performance.

At present, the PUC lacks statutory authority to direct railroads to implement the above recommendations, and the PUC may also be preempted by federal law from enforcing these measures against the railroads.

Opportunities Moving Forward

As we move forward, there are opportunities for enhanced discussion, collaboration, and coordination, involving the PUC, the Governor's Office, the House, and Senate. PEMA and other state agencies, the railroads, neighboring states, and various federal agencies, including:

- Review of all findings by the National Transportation Safety Board (NTSB) related to the investigation of the East Palestine incident. The PUC will continue to closely monitor NTSB information about the cause and factors involved in this incident – especially as it relates to equipment, track, operations and other railroad activities subject to rail safety inspections in Pennsylvania. Those findings may help identify any possible similar risks in Pennsylvania and develop focused plans to guide prevention and response activities.
- Streamlined emergency response coordination after a railroad reports a train incident or train accident to the National Response Center.
- Establishing regular state meetings with the FRA and/or US Department of Transportation (USDOT) to discuss how rail safety can be enhanced and ensure a clear understanding of the roles of various agencies and entities.
- Encourage greater information sharing through the FRA and USDOT, especially related to enforcement actions against railroads, to assist state inspectors in identifying higher-risk activities and locations, and enhancing awareness of state leadership.

- Form a state task force that could develop an analysis of routes for high-hazard flammable trains, accounting for proximity to populated areas and related safety considerations.
- Consider the development of a collaborative or working group to explore rail safety risks and potential impacts on Pennsylvania's waterways, given that a good portion of the Commonwealth's railroad infrastructure is located along the state's rivers and waterways. This could include the railroads and rail oversight agencies like the PUC and FRA, as well as PEMA, the Pennsylvania Department of Environmental Protection, water utilities, representatives from major communities along waterways, and other key stakeholders.
- The 2015 Dr. Zarembski report also included Commonwealth specific recommendations, primarily involving emergency response organizations in communities across the state. These recommendations included enhanced information sharing technology between the railroads and emergency response organizations to make more tools available to emergency responders along major routes, full scale state-coordinated emergency response exercises along major routes, appropriate emergency response plans for all communities along major routes, and an inventory of all emergency response resources along major routes, including locations for staging of emergency response equipment.
- Explore multi-state and regional discussions about shared rail safety concerns, via the Mid-Atlantic Conference of Regulatory Utilities Commission (MACRUC), whose current president is PA PUC Chairman Gladys Brown Dutrieuille.
- Encourage broader nationwide discussions through the National Association of Regulatory Utility Commissioners (NARUC), which includes a strong representation from Pennsylvania. (Note: Public Utility Commissions are not universally involved in state rail safety inspections – which may fall to state transportation departments or other state agencies – so national outreach and discussion may best be facilitated by direct communication between state Governors).

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 legal ability, with enhancing railroad safety for all Pennsylvanians.