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March 4, 2019

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**RE: Application of Norfolk Southern Railway Company for approval to reconstruct the crossing of the North Avenue/Brighton Road bridge crossing above its tracks in the City of Pittsburgh, Allegheny County (DOT No. 507450B), and for an exemption from the Commission's overhead clearance regulations**  
Docket No. A-2018-3006432

Dear Secretary Chiavetta:

Enclosed is the Answer of Norfolk Southern Railway Company in Opposition to Northside Leadership Conference's Motion to Consolidate for filing in the above-captioned action. Copies of the Answer have been served upon all parties of record as indicated on the included Certificate of Service.

Thank you for your attention to this filing request.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCDjr/lp  
Enclosures  
cc: per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Norfolk Southern Railway Company for approval to reconstruct the crossing of the North Avenue/Brighton Road bridge crossing above its tracks in the City of Pittsburgh, Allegheny County (DOT No. 507450B), and for an exemption from the Commission’s overhead clearance regulations	:	
	:	
	:	Docket No. A-2018-3006432
	:	
	:	
	:	
Application of Norfolk Southern Railway Company for approval to reconstruct the Rehabilitation of the below-grade crossing (DOT No. 507446L) where Merchant Street passes under the tracks of Norfolk Southern Railway Company in the City of Pittsburgh, Allegheny County	:	
	:	
	:	Docket No. A-2018-3001039
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	:	
	:	
Application of the City of Pittsburgh for leave to continue prior overhead clearance for certain bridges over tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County	:	
	:	
	:	Docket No. A-00119378
	:	
	:	
	:	
Application of the City of Pittsburgh for approval of the alteration of the railroad crossings at Ridge Avenue, West Ohio Street, and North Avenue and Brighton Road Bridges which carry said streets above the tracks operated by Norfolk Southern Corporation in the City of Pittsburgh, Allegheny County; as amended by the City of Pittsburgh to request approval of the abolition of the railroad crossing at Ridge Avenue	:	
	:	
	:	Docket No. A-00119379
	:	
	:	
	:	
Application of Norfolk Southern Railway Company for approval of an exemption from the Commission’s overhead clearance requirements at 52 Pa. Code §33.121 for a track operated by Norfolk Southern Railway Company in the City of Pittsburgh in Allegheny County	:	
	:	
	:	Docket No. A-2011-2233889
	:	

**ANSWER OF NORFOLK SOUTHERN RAILWAY COMPANY  
IN OPPOSITION TO NORTHSIDE LEADERSHIP CONFERENCE’S  
MOTION TO CONSOLIDATE**

Norfolk Southern Railway Company (“Norfolk Southern”), by and through its counsel, NAUMAN, SMITH, SHISSLER & HALL, LLP, hereby files the within Answer in Opposition to

the Motion to Consolidate filed by the Northside Leadership Conference (“NSLC”), pursuant to 52 Pa. Code §§ 5.61(a) and 1.56(b), responding as follows:

1. Admitted upon information and belief.

2. After reasonable investigation, Norfolk Southern lacks sufficient knowledge to form a belief as to the truth of the averments in Paragraph 2 of the Motion, which is therefore deemed denied.

3. Denied. To the best of its information and belief, the only applications filed by Norfolk Southern to “modify, alter, reconstruct or take other action with regard to various crossings, bridges and/or railroad tracks, within the vicinity of the North Side of the City of Pittsburgh” were the Applications filed in 2018 to reconstruct the North Avenue/Brighton Road bridge crossing and the Merchant Street below grade crossing. Norfolk Southern’s Application filed in 2011 at Docket No. A-2011-2233889 was for the purpose of accommodating the work ordered by the Commission in a 2006 Order to repair the North Avenue/Brighton Road bridge, which work has not been carried out to date, nearly 13 years later. Norfolk Southern filed that Application because the repair work the City of Pittsburgh was ordered to undertake would not have affected any clearances on the present bridge structure and the Norfolk Southern filing allowed the City to proceed with work to rehabilitate the bridge.

4. Admitted in part and denied in part. It is admitted that the five crossings mentioned by NSLC in Paragraph 4 of its Motion, namely Ridge Avenue, West Ohio Street, North Avenue/Brighton Road, Pennsylvania Avenue and Merchant Street are all located within approximately 3,300 feet of each other within the North Side of the City of Pittsburgh. It is denied that there is any present application proceeding regarding Pennsylvania Avenue, or that

Norfolk Southern initiated any pending applications for Ridge Avenue, W. Ohio Street, or Brighton Road (separately from the North Ave./Brighton Road crossing in A-2018-3006432).

5. Admitted. By way of further answer, while the bridge structure at the North Avenue/Brighton Road crossing is in disrepair and in need of replacement as it is reaching the end of its useful life, it does not present an urgent need for immediate action. However, the Merchant Street bridge is in urgent need of replacement within the next several years in order to protect the safety of train traffic and the public as addressed in Norfolk Southern's Application for that crossing. Consideration of the Merchant Street Application should be expedited to enable structural steel to be procured and extended duration track outages to be arranged so that the bridge is replaced before an emergency situation develops. Norfolk Southern's Merchant Street Application has been delayed by actions of the City of Pittsburgh ("City"), which made no objection to Norfolk Southern's Application at the initial field meeting on May 24, 2018, but then objected a month later based on an unspecified request for an increase in roadway clearance under the bridge. Despite Norfolk Southern attempting to engage with the City in this regard, the City did not respond, and sent as its sole representative to the second PUC field meeting on February 7, 2019, an engineer who had no knowledge of the crossing or the nature of the City's objections. The City first provided minimal detail on its stated reason for the objection to the Application in a letter dated February 20, 2019. It is to be noted that Merchant Street involves a replacement in kind of the superstructure, with no effect on present clearances and thus no effect on the surrounding community. While the line has capacity to handle more, 30 to 35 trains currently traverse the Merchant Street bridge daily, carrying a variety of commodities, including hazardous materials such as chlorine, anhydrous ammonia, hydrogen fluoride, crude oil and ethanol, as well

as non-hazardous materials like coal, auto parts and finished vehicles, lumber, agricultural products, and intermodal containers and trailers.

6. Admitted in part and denied in part. It is admitted that the North Avenue/Brighton Road Application was partly initiated within Norfolk Southern's Vertical Clearance Project to allow double-stack container traffic on the rail lines at the crossings at issue. The Merchant Street bridge, however, needs to be replaced regardless of the clearance project. It is admitted that PennDOT has committed funds in the amount of \$20 million toward the \$30 million cost of this clearance project, to support economic development and reduce tractor-trailer traffic on Pennsylvania's highways for environmental and public safety reasons, among other stated benefits. All other factual allegations are denied. It is further denied that the Commission has any jurisdiction to regulate whether "double-stack container" trains may use the rail line or the bridge crossings at issue, as railroad operations are controlled by federal law. 49 U.S.C. § 10501(b).

7. Denied. It is denied that Norfolk Southern has filed any other applications to date that involve the within referenced streets, crossings, or bridges located on the North Side of Pittsburgh.

8. Denied. It is specifically denied that "any modifications, alterations or changes to the height, whether by way of increase or decrease, will have a global effect on all of the five (5) crossings and/or bridges located within the North Side of the City of Pittsburgh," and strict proof thereof is demanded. It is further denied that Norfolk Southern's bridge superstructure replacement at Merchant Street would affect the height of the bridge or clearances in any manner, but will serve to enhance the public safety by removing a column between the roadway and the sidewalk under the bridge.

9. Admitted in part and denied in part. It is admitted that final plans have not yet been completed for the North Avenue/Brighton Road bridge, and 30% plans were attached to Norfolk Southern's Application. It is denied that final plans have not been completed for the Merchant Street bridge, as copies of the plans were filed with Norfolk Southern's Application. By way of further information, although not Norfolk Southern's applications, it is further denied that final plans have not been completed for the West Ohio Street bridge replacement and Ridge Avenue bridge removal, as the City submitted such plans to Norfolk Southern and PennDOT for review on these City projects and approvals have been provided. As the West Ohio Street and Ridge Avenue projects have been fully litigated, in the interest of public safety this work should not be halted.

10. Denied. It is denied that "the full adverse impact of said changes, together with increased traffic from running 'double-stack containers' by Norfolk Southern, has not and cannot be adequately and comprehensively addressed, unless the proceedings before the PUC are consolidated." To the contrary, the public safety and convenience of each crossing and its approaches can and should be evaluated on an individual basis within the confines of the Commission's jurisdiction, as it is believed and therefore averred that Movant is attempting to use this proceeding to prevent double-stack container traffic from using the rail line. Rail operations on the line, as well as environmental considerations, are outside the Commission's limited jurisdiction. City of Philadelphia v. Philadelphia Electric Co., 504 Pa. 312, 318, 473 A.2d 997, 1000 (1984) ("It is axiomatic that the Commission's power is statutory; and the legislative grant of power to act in any particular case must be clear."). In addition, each of the proceedings are at vastly different stages as follows:

- (a) Merchant Street, at Docket No. A-2018-3001039, has final plans, does not alter any present clearances, and is in urgent need of replacement within the next several years in the interest of public safety and so should be handled by the Commission on an expedited basis.
- (b) A final Commission Order exists for the replacement of the West Ohio Street bridge and removal of the Ridge Avenue bridge from the proceeding at Docket No. A-00119379. See Opinion and Order entered August 21, 2006. The City has secured federal funding for these projects and both PennDOT and Norfolk Southern have approved the final plans. In addition, Norfolk Southern recently signed a construction agreement with the City for this project.
- (c) Norfolk Southern's Application for the replacement of the North Avenue/Brighton Road bridge at Docket No. A-2018-3006432 was filed with the Commission on December 8, 2018. A field conference was held on February 7, 2019, and the City filed objections to Norfolk Southern's plans that same date.
- (d) No application has yet been filed for the Pennsylvania Avenue crossing.
- (e) The Applications at Docket Nos. A-00119378 and A-2011-2233889 concern clearance exemption requests in connection with the ordered repair work at the North Avenue/Brighton Road crossing from the 2002 proceeding at A-00119379, which the City never carried out, and so those particular Applications are not relevant to the present matters before the Commission.

11. Denied. Paragraph 11 of the NSLC's Motion shows that its true purpose for consolidation is to try to prevent Norfolk Southern from increasing traffic on the line in general and running double-stack container traffic in particular. The Commission has no jurisdiction over these matters, which are subject to federal law, which therefore negates the NSLC's reason for consolidation. 49 U.S.C. § 10501(b). See, e.g., CSX Transportation, Inc. v. Public Utility Comm'n of Ohio, 901 F.2d 497 (6<sup>th</sup> Cir. 1990) (state public utility commission lacked authority to regulate the transportation of hazardous materials by rail); CSX Transp., Inc.—Petition for Declaratory Order, STB Docket No. 34662 (STB served May 3, 2005) (state or municipality

attempt to restrict by permit rail operations, including routing of commodities such as hazardous material, is preempted).

12. Denied. Whether any “environmental impact statement or study has been completed and/or provided” in regard to any of the projects along Norfolk Southern’s Pittsburgh line is irrelevant to any proceedings before the Commission. To the contrary, environmental matters concerning Norfolk Southern’s Vertical Clearance Project are subject to federal and/or state environmental laws, as applicable. In particular, environmental reviews for bridge projects receiving PennDOT funding are being overseen by PennDOT in accordance with Pennsylvania’s Act 120 process. Environmental matters concerning the project are separate and distinct from matters concerning the crossings over which the Commission has jurisdiction and cannot be utilized as a means for the NSLC or any other entity to attempt to affect or delay the project through the PUC proceedings. See, e.g., Country Place Waste Treatment Co., Inc. v. Pa. Public Utility Comm’n, 654 A.2d 72, 76 (Pa. Cmwlth. 1995) (PUC had no authority to regulate “air contamination sources” producing “air pollution” under the Air Pollution Control Act, 35 P.S. § 4001-4015. “Significantly, nowhere in the Law [i.e., Public Utility Code] is there any grant of authority to the PUC by the Legislature, either directly or indirectly, to regulate air pollution emanating from a public utility.”).

13. Denied. It is denied that the Commission has any jurisdiction over the use of double-stack container trains on Norfolk Southern’s rail lines “in the region,” which are controlled by federal law. 49 U.S.C. § 10501(b). By way of further answer, the rail line where the derailment discussed in Exhibit “B” occurred is Norfolk Southern’s Mon Line on the south side of the Monongahela River, which is subject to periodic rock slides, as has been widely reported and which the NSLC conveniently ignores.

14. Denied. It is denied that any alleged “significant concerns” that the Port Authority of Allegheny County (“Port Authority”) may have regarding the safe operation of freight trains and proper inspections as reported in news articles has any validity or relevance to the Commission’s proceedings. Any such concerns that the Port Authority may have in this regard are under the jurisdiction of the Federal Railroad Administration. See 49 C.F.R. § 213 et seq.

15. Denied. It is denied that the PUC has any jurisdiction whatsoever over rail service or the safety thereof, which are under the jurisdiction of the federal Surface Transportation Board and the Federal Railroad Administration, respectively. The PUC’s jurisdiction, instead, is to protect the public safety in regard to rail-highway crossings. See 66 Pa.C.S. § 2702(b) (the purpose of the Commission’s jurisdiction over rail-highway crossings is to “effectuate the prevention of accidents and the promotion of the safety of the public.”)

16. Denied. It is denied that there are common questions of law and/or fact to each of the proceedings identified by Movant that would make it appropriate for the PUC to consolidate these proceedings. To the contrary, each of the proceedings are at vastly different stages, with one not yet filed and others subject to a final order, as stated in the answer for paragraph 10 above. It is further inappropriate to consolidate these proceedings when the Motion on its face shows that Movant’s true purpose in seeking consolidation is to attempt to control Norfolk Southern’s use of the tracks for double-stack container traffic, over which the Commission has no jurisdiction. Furthermore, consolidation would prevent the Merchant Street matter from proceeding on its own on an expedited basis, thereby potentially endangering the public safety. By way of further answer, Norfolk Southern incorporates its answers for paragraphs 7 through 15 herein.

17. Denied. It is denied that there are any equitable considerations that favor consolidation, “specifically the adverse impact the purported changes will have on the businesses

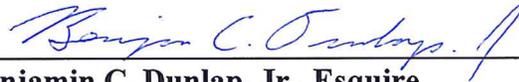
and residents of the North Side of the City of Pittsburgh.” The Commission has no jurisdiction over the matters that Movant is attempting to affect through the PUC proceedings, namely Norfolk Southern’s use of its facilities for double-stack container traffic, and it is attempting to use these proceedings to delay or stop such usage. By way of further answer, Norfolk Southern incorporates its answers for paragraphs 7 through 15 herein.

18. Denied. In particular, it is denied that consolidation of these proceedings would enhance the Commission’s review of these matters. To the contrary, each application should be evaluated on its individual merits, which involve different facts within the Commission’s jurisdiction and are presently at very different stages in the litigation process. The West Ohio Avenue and Ridge Avenue crossings are subject to a final Order; the Merchant Street crossing has final plans and is in urgent need of reconstruction; and no application has even been submitted for the Pennsylvania Avenue crossing. Consolidation would serve only to delay necessary work on these crossings in the interest of public safety in order for Movant to try to affect matters not within the Commission’s jurisdiction. By way of further answer, Norfolk Southern incorporates its answers for paragraphs 7 through 15 herein.

WHEREFORE, for the foregoing reasons, Norfolk Southern Railway Company respectfully requests that the Northside Leadership Conference's Motion to Consolidate be denied.

Respectfully submitted,

**NAUMAN, SMITH, SHISSLER & HALL, LLP**



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**Benjamin C. Dunlap, Jr., Esquire**

**Supreme Court I.D. No. 66283**

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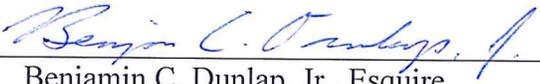
Counsel for Norfolk Southern Railway Company

Date: March 4, 2019

**ATTORNEY VERIFICATION**

I, Benjamin C. Dunlap, Jr., a member of the firm of Nauman, Smith, Shissler & Hall, attorneys for Norfolk Southern Railway Company in the foregoing proceeding, make this verification on behalf of Norfolk Southern Railway Company, and do state that as an attorney for Norfolk Southern Railway Company, I am authorized to make this Verification on behalf of Norfolk Southern Railway Company, and further state that, based on information provided to me by Norfolk Southern Railway Company, the facts set forth in the foregoing ANSWER OF NORFOLK SOUTHERN RAILWAY COMPANY IN OPPOSITION TO NORTHSIDE LEADERSHIP CONFERENCE'S MOTION TO CONSOLIDATE are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. §4904 providing for criminal penalties for unsworn falsification to authorities.

Date: March 4, 2019

  
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Benjamin C. Dunlap, Jr., Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Norfolk Southern Railway :  
Company for approval to reconstruct the :  
crossing of the North Avenue/Brighton : Docket No. A-2018-3006432  
Road bridge crossing above its tracks in :  
the City of Pittsburgh, Allegheny County :  
(DOT No. 507450B), and for an exemption :  
from the Commission's overhead :  
clearance regulations :**

**CERTIFICATE OF SERVICE**

I hereby certify that I served one (1) copy of the ANSWER OF NORFOLK SOUTHERN RAILWAY COMPANY IN OPPOSITION TO NORTHSIDE LEADERSHIP CONFERENCE'S MOTION TO CONSOLIDATE, in the above actions, this day by depositing the same in the United States mail, postage prepaid, in Harrisburg, Pennsylvania, addressed to:

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Bureau of Design, Penn DOT  
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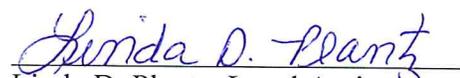
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Date: March 4, 2019

  
Linda D. Plantz, Legal Assistant to  
Benjamin C. Dunlap, Jr., Esquire