



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

IN REPLY PLEASE
REFER TO OUR FILE

July 22, 2022

A-2022-3033000

Via Eservice and Email Only
TO ALL PARTIES OF RECORD

Application of Norfolk Southern Railway Company for the approval of the alteration of crossing (DOT 859 631 C) by the changing of the crossing surface where Miller Street crosses at-grade the tracks of Norfolk Southern Railway Company in the City of Wilkes-Barre, Luzerne County.

To Whom It May Concern:

By application filed with the Commission on June 14, 2022, Norfolk Southern Railway Company (NS) seeks Commission approval to alter the crossing (DOT 859 631 C) by replacing the existing high-type concrete panel crossing surface with an asphalt and rail seal crossing surface where Miller Street crosses, at grade, a single track of NS, in the City of Wilkes-Barre, Luzerne County.

The application avers that the road name at the crossing is Mill Street and is referred to as Mill Street in the application and in Federal Railroad Administration and Pennsylvania Department of Transportation records. However, the type 5C map for the City of Wilkes-Barre lists the road name as Miller Street. Therefore, we will refer to the road name as Miller Street in the caption and henceforth in this proceeding.

Upon notification of the proposed alteration, a field investigation and conference was arranged by a Commission staff engineer and held at the site of the subject crossing on July 11, 2022. Representatives of NS, Pennsylvania Department of Transportation, and Plains Township Sewer Authority were in attendance. Luzerne County, City of Wilkes-Barre, AT&T, Verizon Business, UGI Utilities, PPL Electric Utilities, Verizon PA and Pennsylvania American Water Company were not present for the meeting to discuss the application.

At the field conference, it was noted that Miller Street is a two-lane bituminous roadway that crosses, at grade, one track of NS within the public highway right-of-way. The at-grade crossing surface consists of a high-type concrete panel crossing surface and the crossing has crossbucks, flashing-lights warning signals and automatic gates on both approaches. There is a pedestrian gate located in the northeast quadrant of the crossing. Miller Street has no advance warning signs (W10-1), and faded stop lines and faded advanced warning pavement markings.

At the field conference, it was noted that the existing pedestrian gate post in the northeast quadrant does not provide adequate side clearance to exceed the Commission's minimum requirements of Pa. Code 52, Section 33.122. Therefore, the Commission will grant an exemption for the minimum side clearance in this particular instance for ten (10) feet from the centerline of the track to the existing pedestrian gate post in the northeast quadrant.

NS, at its sole cost and expense, proposes to replace the high-type crossing surface with an asphalt and rubber rail seal crossing surface. The approach highways will be unaltered. Funding for construction of the improvement will be one hundred percent (100%) by NS. No estimated cost for construction was provided in the application or at the field conference.

It does not appear that any facilities of any non-carrier public utility will be affected by the alteration of the crossing. It will not be necessary for the Commission to appropriate railroad property to accommodate the improvement.

The Commission hereby establishes its jurisdictional limits at the subject crossing as the area within the confines of the railroad right-of-way and the highway right-of-way.

The proposed alteration was discussed in detail at the field conference with all attending parties of interest and none have advised that it objects to the issuance of a Secretarial Letter, prior to hearing, approving the alteration of the crossing.

Upon full consideration of the matters involved, we determine that it is not necessary to schedule a hearing in this proceeding at this time and that issuance of Secretarial Letter without a hearing is proper since the NS has agreed to alter the crossing, at its sole cost and expense, and none of the parties has expressed any objections to the proposal.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the crossing is necessary and proper for the service, accommodation, convenience or safety of the public.

The alteration of the subject crossing as proposed by Norfolk Southern Railway Company is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. The exemption from the Commission's minimum horizontal clearance requirements of 52 Pa. Code §33.122, be and is hereby granted, in this particular instance, for a horizontal clearance of 10-feet from the centerline of the track to the pedestrian gate post located in the northeast quadrant of the subject crossing.
3. The crossing (DOT 859 631 C) where Miller Street crosses, at grade, one track of Norfolk Southern Railway Company, located in the City of Wilkes-Barre, Luzerne County be altered as herein directed.
4. Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary to alter the crossing by 1) removing the existing crossing surface, including the rails, ties and ballast as necessary; 2) installing a new asphalt and rail seal crossing surface through the full width of the roadway shoulders and sidewalk area to provide a smooth and satisfactory transition to the approach roadway, all in accordance with this Secretarial Letter.
5. Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and do all work necessary to establish and maintain any detours or traffic controls that may be required to properly and safely accommodate vehicular and pedestrian traffic during the time the project is being constructed.

6. Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work relating to its facilities, which may be required as incidental to the performance of the proposed work; furnish construction engineering and inspection service if required as a result of the proposed work; and furnish and maintain flagmen and watchmen, as required, to protect its operations during the time the work is being performed to the track crossing surface.

7. City of Wilkes-Barre, at its sole cost and expense, furnish all material and perform all work which may be required to restore advanced warning pavement markings and stop lines to the approach roadways, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

8. City of Wilkes-Barre, at its sole cost and expense, furnish all material and perform all work which may be required to install advance warning signs (W10-1) on both approach roadways of Miller Street, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices

9. Any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority located within the limits of this Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility company or municipal authority at its initial cost and expense, and in such manner as will not interfere with the construction of the project.

10. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular, pedestrian and railroad traffic will not be endangered or unnecessarily inconvenienced and said requirements of each of the parties will be provided for and accommodated insofar as possible.

11. All work necessary to alter the crossing be completed in a manner satisfactory to this Commission on or before July 31, 2023, and that on or before said date, Norfolk Southern Railway Company report in writing to this Commission the date of actual completion of the work.

12. Norfolk Southern Railway Company pay all compensation for damages, if any, due to the owners of property taken, injured or destroyed by reason of the alteration of the crossing in accordance with this Secretarial Letter.

13. Norfolk Southern Railway Company, at least ten (10) business days prior to the start of work, notify local and county emergency management services and all parties in interest of the actual date on which work will begin.

14. Upon completion of the alteration of the crossing, Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain their railroad facilities at the subject crossing, including the warning devices and all appurtenant equipment, and maintain at all times in a smooth and satisfactory condition the crossing surface located between the rails and for a distance of twenty-four (24) inches beyond the outermost rails, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter; and provide the City of Wilkes-Barre ten (10) business days advance notice when performing any work as directed under this paragraph.

15. Upon completion of the alteration of the crossing, City of Wilkes-Barre, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain its highway approach roadways to the subject crossing to points twenty-four (24) inches beyond each outside rail and in addition, maintain the grade crossing advance warning signs, stop lines and pavement markings, as required, on the approaches thereto, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter; and provide the Norfolk Southern Railway Company ten (10) business days advance notice when performing any work as directed under this paragraph.

16. Any operating railroads over the subject line, issue appropriate notice warning its employees of the restrictive clearances herein, all in accordance with its standard operation practice.

17. Upon completion of the construction of the proposed project, each non-carrier public utility company and municipal authority, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its respective facilities, existing or altered, located within the limits of the improvement.

18. Upon completion of the work herein directed, and upon written request from any party of record, this proceeding be scheduled for a hearing at a time and place to be determined by the Commission, for the purpose of taking testimony upon the final allocation of any costs incurred by the non-carrier utility companies and municipal authorities and other matters relevant to this proceeding.

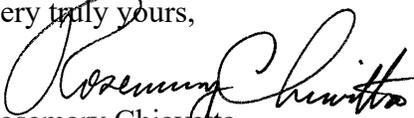
The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

The Commission has waived certain regulatory service provisions as directed by the Commission's Order at M-2021-3028321. Currently, while the Commission's physical facilities are open for business, some of the operational restraints occasioned by the pandemic remain. It is evident that the pandemic and its changing nature require certain procedural flexibility for the public, the regulated community, and the Commission. Toward this end, the Commission will continue to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. An exception to this general waiver is where the Public Utility Code requires service by specified means, e.g., Section 702. Additionally, service on Commission staff in proceedings pending before it, whether staff is a party or otherwise, shall be exclusively electronic unless the parties agree otherwise. Filings must be submitted by e-filing with the Secretary of the Commission by opening an e-filing account through the Commission's website and accepting eservice at <https://www.puc.pa.gov/filing-resources/efiling/>. If your filing contains confidential material, you are required to file by overnight delivery to ensure the timely filing of your submission.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action (Petition) with the Commission within twenty (20) days of the date of this letter. The Petition shall be submitted by e-filing said petition within twenty (20) days, or if no timely request is made, the action will be deemed to be a final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request; (2) the case docket number (it is provided for you at the top right hand corner of this letter); (3) the party on whose behalf the petition is made; (4) a Certificate of Service on the other parties of record; and (5) a Verification with original signature in accordance with 52 Pa. Code § 1.36.

Very truly yours,



Rosemary Chiavetta
Secretary