



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

**December 13, 2023**

IN REPLY PLEASE  
REFER TO OUR FILE

TO ALL PARTIES OF RECORD

Robert Kough Jr. vs Norfolk Southern Railway Company

C-2022-3032616

Corrie Wadel c/o Penn Township, Cumberland County vs  
Norfolk Southern Railway Company.

C-2022-3033315

To Whom it May Concern:

At a location in Penn Township, Cumberland County, Hays Grove Road (SR 3011) crosses, at grade, the tracks of Norfolk Southern Railway Company (DOT 592 532 L). A twin corrugated steel pipe culvert conveying a branch of the Yellow Breeches Creek is located at the subject crossing within the north approach to the crossing.

This matter is before the Commission by reason of formal Complaints filed by Robert Kough Jr. on April 13, 2022, and by Penn Township, Cumberland County on May 11, 2022. In these complaints, both complainants asserted the following: that the subject crossing had been closed for several years due to deterioration of the culvert in the north approach; that no action was taken by either Norfolk Southern Railway Company or Pennsylvania Department of Transportation to repair the culvert; and that Pennsylvania Department of Transportation and Norfolk Southern Railway Company were refusing to cooperate with each other to work towards making repairs and reopening the crossing.

A field investigation and conference was arranged by a Commission staff engineer and held on June 22, 2022, at the site of the subject crossing. Representatives of Pennsylvania Department of Transportation, Penn Township, and Norfolk Southern Railway Company were in attendance. The current condition of the crossing was discussed. The crossing approach roadway was closed. A sinkhole was visible over the twin culvert pipes that conveyed the stream through the approach roadway of the subject crossing. The stability of the railroad's north approach warning signal post (the signal post closest to the stream) was in also question due to the washout of fill in the area.

During the field investigation and conference, representatives of Penn Township elaborated on their complaint and expressed concerns about public safety due to the crossing being closed for such an extended period of time and the lack of emergency access through the crossing.

During the field investigation and conference, Commission staff relayed to the parties that the Commission had not been officially notified immediately of this crossing closure (as would be required by law) and reminded the parties that all closures of public railroad crossings in Pennsylvania need Commission approval to do so.

During the field investigation and conference, none of the parties objected to keeping the crossing closed until such time as it could be repaired and reopened, but no immediate solutions were arrived at to repair the culvert. Commission staff agreed to conduct limited further meetings and phone conferences to see if through negotiations, the parties would agree to cooperate to repair or replace the culvert and re-open the crossing. The complainants, Penn Township and Robert Kough Jr., agreed with this procedure and were willing to allow the Commission staff the opportunity to negotiate a resolution. They requested that the parties cooperate so that the crossing would be repaired and reopened as soon as possible.

The Commission held conference calls in which the Pennsylvania Department of Transportation and Norfolk Southern Railway Company participated in on September 14, 2022, and February 21, 2023. In these conference calls, the Pennsylvania Department of Transportation and Norfolk Southern Railway Company stated their willingness to work together to repair the culvert and reopen the crossing. Also discussed were details of the responsibilities required and shared costs necessary to accomplish this goal. These discussions proved to be fruitful and mutually agreeable terms between the Pennsylvania Department of Transportation and Norfolk Southern Railway Company were reached. These terms will allow both parties to cooperate to replace the existing twin corrugated pipe culvert with a new smooth steel single culvert pipe.

A cost reimbursement agreement between the two parties was developed in which Pennsylvania Department of Transportation agreed to reimburse Norfolk Southern Railway Company for 70 percent of the total project costs incurred by both parties, and Norfolk Southern Railway Company agreed to pay the remaining 30 percent of said costs. The total cost of the project is estimated to be \$435,532.

On November 7, 2023, the Pennsylvania Department of Transportation and Norfolk Southern Railway Company relayed the mutually agreeable terms of settlement to the Commission requesting the said terms be listed in a Commission Secretarial Letter. The parties will be directed by the Commission to adhere to these terms as agreed upon and these terms will be listed below in paragraphs No. 2 and No. 3 of this Secretarial Letter.

Upon completion of the culvert replacement project, the Pennsylvania Department of Transportation, at its sole cost and expense, will assume all future maintenance and inspection of the replaced culvert and the roadway thereon.

Upon completion of the culvert replacement project, Norfolk Southern Railway Company, at its sole cost and expense, will continue to maintain its railway facilities at the subject crossing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that:

1. The public crossing where Hays Grove Road (SR 3011) crosses, at grade, the tracks of Norfolk Southern Railway Company (DOT 592 532 L) in Penn Township, Cumberland County, be altered by the replacement of the existing twin corrugated steel culvert with a new single steel culvert pipe, backfilling above the proposed newly installed steel culvert pipe, installation of new LED lights on the existing masts and gates, and paving Hays Grove Road (State Route 3011) above the proposed culvert after the proposed culvert installation work is completed.

2. Pennsylvania Department of Transportation, at its initial cost and expense, perform the following:

- a. Obtain the GP-11 permit and any other required permits for the Culvert replacement.
- b. Prepare and submit the agreed upon Site-Specific Plans for the culvert replacement.
- c. Construct the temporary protection for the roadway at Hays Grove Road (State Route 3011) for the culvert replacement.
- d. Maintain the temporary protection for the roadway at Hay's Grove Road (State Route 3011) for the culvert replacement for the duration of construction.
- e. Install and maintain pavement markings once the culvert is replaced.
- f. Open the roadway for the general public once Hays Grove Road (State Route 3011) culvert construction is completed and has been evaluated to be in compliance.

3. Norfolk Southern Railway Company, at its initial cost and expense, perform the following:

- a. Install a steel pipe culvert to replace the existing twin corrugated steel culvert in accordance with the Site-Specific Plans.
- b. Provide and install the backfill above the proposed newly installed steel pipe culvert.
- c. Provide construction engineering, administration, signal & electrical and protective services to support the project.

- d. Adhere to Department of Environmental Protection (DEP) requirements and perform required notifications as outlined in the approved DEP permit for the culvert installation.
- e. Pave Hays Grove Road (State Route 3011) roadway above the proposed culvert once the proposed culvert installation work is completed.
- f. Install new LED lights on the existing masts and gates of the active protection of the crossing.

4. Upon completion of the project, the Pennsylvania Department of Transportation reimburse Norfolk Southern Railway Company for 70 percent of the total project costs incurred by both parties, as further delineated in the cost reimbursement agreement between those two parties.

5. Norfolk Southern Railway Company at least fourteen (14) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

6. All work necessary to complete this construction shall be done in a manner satisfactory to this Commission on or before August 15, 2024, and that on or before said date, Norfolk Southern Railway Company report in writing to the Commission the date of actual completion of the work and certify to this Commission that the work has been completed satisfactorily in accordance with the approved plans and this Secretarial Letter.

7. 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.

8. Any relocation of, changes in and/or removal of any adjacent structures, equipment or any other facilities of any public utility other than Norfolk Southern Railway Company located within the limits of the highway, within the Commission's jurisdiction, be made by said public utility at its initial cost and expense, and in such a manner as will not interfere with the construction of the improvement, and said relocated or altered facilities thereafter be maintained by said public utility, at its sole cost and expense.

9. Norfolk Southern Railway Company, cooperate with the Pennsylvania Department of Transportation and conduct its operations in the vicinity of the crossing alteration project in a safe manner and under control during the time the project is being constructed.

10. Norfolk Southern Railway Company, at its initial 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 and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being installed.

11. The non-carrier public utility companies cooperate with the Norfolk Southern Railway Company so that the alteration and/or relocation of their facilities will not interfere with the completion of the crossing alteration project.

12. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company or municipal authority located beyond the limits of the highway, within the 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, and in such a manner as will not interfere with the construction of the project.

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

14. Upon completion of the alteration of the crossing, Norfolk Southern Railway Company cooperate with Pennsylvania Department of Transportation, when the Pennsylvania Department of Transportation conducts any future inspection or maintenance of the subject culvert.

15. Upon completion of the alteration of the crossing, Norfolk Southern Railway Company, at their sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the subject crossing, including the warning devices and all appurtenant equipment, and to 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 rail, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Pennsylvania Department of Transportation at least ten (10) business days advance notice when performing any work that may affect their facilities, as directed by this paragraph.

16. Upon completion of the alteration of the crossing, Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway approach roadway of the subject crossing to points twenty-four (24) inches beyond each outside rail and in addition, inspect and maintain the subject culvert, maintain the grade crossing advance warning signs, stop lines and pavement markings, if required, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Norfolk Southern Railway Company at least ten (10) business days advance notice when performing any work that may affect their facilities as directed by this paragraph.

17. Upon completion of the alteration or relocation of non-carrier public utility company facilities, each non-carrier public utility company, at their sole cost and expense, furnish all material and perform all work required thereafter to maintain their respective facilities that are located within the limits of this Commission's jurisdiction.

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 remaining costs incurred by the non-carrier utility companies 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.

All formal documents must be filed with the Secretary of the Commission. Documents must be eFiled, mailed or hand delivered. All filings should be addressed to the Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120. The Commission will not accept documents delivered by fax or by e-mail. Parties are encouraged to file formal documents by eFiling with the Secretary of the Commission by opening an Efiling account through the Commission's website (the account is free of charge) 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. There are certain filings that cannot be eFiled, such as filings containing confidential or proprietary material. These must be submitted to the Secretary by overnight delivery, priority, or certified mail to allow tracking of your filing.

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 eFiled with the Secretary of the Commission or sent to: Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120, and must be filed 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,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta  
Secretary