



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

June 27, 2024

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter the public above grade crossing by the replacement of the existing bridge carrying State Route 0011 (West King Street) over track of Norfolk Southern Railway Company (DOT 592 122 M) in Shippensburg Borough and Southampton Township, Franklin County, and the allocation of costs incident thereto.

Docket No. A-2022-3031613

**ANSWER IN OPPOSITION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT TO NORFOLK SOUTHERN RAILWAY COMPANY'S PETITION FOR RECONSIDERATION OF THE SECRETARIAL LETTER OF MAY 28, 2022.**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Answer in Opposition of the Bureau of Investigation and Enforcement to Norfolk Southern Railway Company's Petition for Reconsideration of the Secretarial Letter of May 28, 2024**, in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

Garrett A. Rine  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 327921  
(717) 783-6150  
[garrine@pa.gov](mailto:garrine@pa.gov)

Enclosures

cc: Per Certificate of Service  
Office of Special Assistants (*via email* – [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |   |                           |
|--|---|---------------------------|
| Application of the Department of       | : |                           |
| Transportation of the Commonwealth of  | : |                           |
| Pennsylvania for approval to alter the | : |                           |
| public above grade crossing by the     | : |                           |
| replacement of the existing bridge     | : |                           |
| carrying State Route 0011 (West King   | : | Docket No. A-2022-3031613 |
| Street) over track of Norfolk Southern | : |                           |
| Railway Company (DOT 592 122 M) in     | : |                           |
| Shippensburg Borough and Southampton   | : |                           |
| Township, Franklin County, and the     | : |                           |
| allocation of costs incident thereto.  | : |                           |

---

**ANSWER IN OPPOSITION OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
TO NORFOLK SOUTHERN RAILWAY COMPANY'S  
PETITION FOR RECONSIDERATION OF THE  
SECRETARIAL LETTER OF MAY 28, 2024**

---

**TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to the provisions of 52 Pa. Code §§ 5.44, 5.572(e) and 5.61(e) the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits its Answer in Opposition to the Petition for Reconsideration of the Secretarial Letter of May 28, 2024 (“Secretarial Letter”) in the above captioned proceeding filed by Norfolk Southern Railway Company (“Norfolk Southern”). In support of this Answer, I&E avers as follows:

## I. INTRODUCTION

On March 24, 2022, the Pennsylvania Department of Transportation (“PennDOT” or “the Department”) filed an application with the Commission<sup>1</sup> which requested permission to alter the public above grade crossing by the replacement of the existing bridge carrying State Route 0011 (West King Street) over track of Norfolk Southern Railway Company (DOT 592 122 M) in Shippensburg Borough and Southampton Township, Franklin County, and the allocation of costs incident thereto.

On May 10, 2022, the Commission, by way of letter, notified all parties of record that a field investigation and conference would be held at the site of the crossing along West King Street (SR 0011) in Shippensburg Borough, Franklin County on Thursday, May 26, 2022, at 10:30 a.m., to discuss the Department’s application.

On May 28, 2024, the Commission, by way of letter, notified all parties of record via the Secretarial Letter that the aforementioned application filed by PennDOT had been approved. The order assigned specific requirements to various parties including PennDOT and Norfolk Southern.

On June 17, 2024, counsel for Norfolk Southern filed a Petition for Reconsideration of Staff Action.

---

<sup>1</sup> The original application caption differs slightly from the caption contained in the Secretarial Letter and referenced in this Answer. The original application caption read: *Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the public above-grade crossing by the construction of new bridge where State Route 0011 (West King Street) crosses over the single track of Norfolk Southern Railroad (DOT No. 592 122 M) in Shippensburg Borough, Franklin County, and the allocation of costs incident thereto.*

## II. LEGAL STANDARD

Section 5.44, of the Commissions regulations permits a party to petition for reconsideration of actions taken by staff, other than a presiding officer, under authority delegated by the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

Norfolk Southern's argument within the Petition revolves around the language used in Ordering Paragraph 10 of the May 28, 2024, Secretarial Letter at Docket A-2022-3031613, which reads:

10. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work, and furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.

The language of this paragraph assigns responsibilities and duties of Norfolk Southern in relation to the bridge replacement project that is to be conducted at the sole cost and expense of the PennDOT. The Petitioner's argument is in regard to the specific language, "furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks." Norfolk Southern alleges that, contrary to the language set forth in Ordering Paragraph 10, it has, "a system-wide procedure requiring that the sponsors of non-Norfolk Southern projects arrange their own flagging."

Next, Petitioner contends that its internal procedure requires a project sponsor to choose from a list of three qualified vendors. Norfolk Southern proposes language to delete

and replace Paragraph 10 of the Secretarial Letter and add a new Paragraph 11 with the following proposed language:

10. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work above and adjacent to its tracks.

11. Pennsylvania Department of Transportation, at its sole cost and expense, furnish and maintain qualified flagmen and watchmen as required for work around the operations of Norfolk Southern Railway Company to protect Pennsylvania Department of Transportation or its contractor during the time work is being performed across, above and adjacent to the railroad's tracks, which at the sole option of Norfolk Southern Railway Company may be through railroad forces or qualified contractors. Petition at pg. 2.

### **III. SUMMARY OF ARGUMENT**

I&E opposes Norfolk Southern's proposed revision to the May 28, 2024, Secretarial Letter. Norfolk Southern's proposed amendment to the language of the Secretarial Letter would alter the Railroad's responsibilities and oversight and/or or the oversight of their contractors, to furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks. The proposed language would shift the requirement of providing flagging and watchmen at the subject crossing to PennDOT. Furthermore, the proposed language provides that it will be the *sole option* of Norfolk Southern to provide flagging and watchmen through railroad forces or qualified contractors.

I&E, on behalf of the Technical Utility Services ("TUS") Rail Safety Division ("Rail Safety") believes the proposed amendments to the May 28, 2024 Secretarial Letter create a public safety hazard and therefore urge the Commission to deny the Petition for

Reconsideration. The original language contained in Paragraph 10 of the May 28, 2024 Secretarial Letter reflects the historical position of Rail Safety and the Commission in requiring the Railroad to provide flagging and watchmen with reimbursement from the project applicant. In several recent Secretarial Letters involving Norfolk Southern<sup>2</sup>, the terms for the allocation of flagging and watchmen are consistent with the language contained in the Secretarial Letter’s Paragraph 10, mentioned above.

The language from previous Secretarial Letters consistently assigns the responsibility of Norfolk Southern to provide flagging and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks at the cost of PennDOT. From a safety standpoint, Norfolk Southern is in the best position to provide oversight of flagging and watchmen for their own facilities/utilities via railroad forces or their qualified contractors. Modifying the language as Petitioner proposes would remove a layer of public safety oversight from Rail Safety and the Commission.

Finally, in its Petition, Norfolk Southern alleges that “[i]t is believed that either the subject of flagging was not specifically raised at the field meeting or Norfolk Southern’s representative at the field meeting for this matter was unaware of the new process.”

---

<sup>2</sup> See paragraph 9 of the Secretarial Letter pertaining to Application of the Pennsylvania Department of Transportation for approval to alter the public crossing (DOT 501 500 G) by replacement of the existing bridges where State Route 0083 (Interstate 83) crosses, above grade, the tracks of Norfolk Southern Railway Company and State Route 3029 (Loucks Mill Road) located in Spring Garden Township, York County, and the allocation of costs incident thereto. Docket No. A-2021-3027407; paragraph 5 of the Secretarial letter pertaining to Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter the public above-grade crossing by replacing the existing bridge where State Route 3022 (Maclay Street) crosses above grade the tracks of Norfolk Southern Railway Company (DOT 518 088 K) in the City of Harrisburg, Dauphin County, and the allocation of costs incident thereto. Docket Number A-2023-3037711; and paragraph 8 of the Secretarial Letter pertaining to Application of the Pennsylvania Department of Transportation for approval to alter the public crossing (DOT 592 197 L) by the removal and replacement of the existing bridge where SR 2035 (South Third Street) crosses, above grade, the tracks of Norfolk Southern Railway Company located in Lemoyne Borough, Cumberland County, and the allocation of costs incident thereto. Docket No. A-2021-3023845.

However, Rail Safety, Norfolk Southern, and PennDOT representatives participated in the May 26, 2024, field investigation and conference during which the parties agreed to the terms for flagging and watchmen. This agreement was ultimately reflected in Paragraph 10 of the May 28, 2024, Secretarial Letter.

**IV. CONCLUSION**

I&E respectfully requests, for the reasons discussed above, that Norfolk Southern's Petition for Reconsideration from Staff Action be denied.

Respectfully submitted,



Garrett A. Rine  
Prosecutor  
PA Attorney ID No. 327921

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
Phone: (717) 783-6150  
Email: [garrine@pa.gov](mailto:garrine@pa.gov)

Dated: June 27, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of :  
Transportation of the Commonwealth of :  
Pennsylvania for approval to alter the :  
public above grade crossing by the :  
replacement of the existing bridge :  
carrying State Route 0011 (West King :           Docket No. A-2022-3031613  
Street) over track of Norfolk Southern :  
Railway Company (DOT 592 122 M) in :  
Shippensburg Borough and Southampton :  
Township, Franklin County, and the :  
allocation of costs incident thereto. :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Answer in Opposition to the Petition for Reconsideration of the Secretarial Letter of May 28, 2024**, dated June 27, 2024, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Service by Electronic Mail Only**

Benjamin C. Dunlap, Jr., Esq.  
Cohen Seglias Pallas Greenhall & Furman PC  
240 North Third Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17101  
[bdunlap@cohenseglias.com](mailto:bdunlap@cohenseglias.com)  
*Counsel for  
Norfolk Southern Railway Company*

Karen Cummings, Esq.  
Leah J. Bobula, Esq.  
Pennsylvania Department of Transportation  
P.O. Box 8212  
Harrisburg, PA 17105-8212  
[kcummings@pa.gov](mailto:kcummings@pa.gov)  
[lbobula@pa.gov](mailto:lbobula@pa.gov)  
*Counsel for Department of Transportation*

Shawn Starling, P.E.  
Norfolk Southern Railway Company 650  
West Peachtree Street NW - Box 45  
Atlanta, GA 30308  
[douglas.starling@nscorp.com](mailto:douglas.starling@nscorp.com)

Daniel Leonard, P.E.  
Grade Crossing Engineer  
Pennsylvania Department of Transportation  
Bureau of Design and Delivery  
P.O. Box 3362  
Harrisburg, PA 17105-3362  
[danleonard@pa.gov](mailto:danleonard@pa.gov)

Ahmed Lasloudji, P.E.  
PennDOT  
2140 Herr Street  
Harrisburg, PA 17103  
[alasloudji@pa.gov](mailto:alasloudji@pa.gov)

**Served via First Class Mail**

Kevin Plasterer  
Shippensburg Borough  
111 N. Fayette Street  
Shippensburg, PA 17257

William Dempster  
UGI Utilities Inc.  
1301 AIP Drive  
Middletown, PA 17057

Adam Cubbedge  
250 Lincoln Way East  
Chambersburg, PA 17201

Stuart Miller  
Pennsylvania Electric Company  
1910 West Market Street  
Akron, OH 44313

Mark Chappell, P.E.  
Chief of Utilities a ROW Section  
PennDOT  
PennDOT Bureau of Design  
PO Box 3362  
400 North Street  
Harrisburg, PA 17105-3362

Richard Reisinger, P.E.  
PennDOT  
Design Engineering District 8-0  
2140 Herr Street  
Harrisburg, PA 17103-1699

Sam Cressler  
Southampton Township  
705 Municipal Drive  
Shippensburg, PA 17257



---

Garrett A. Rine  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 327921  
(717) 783-6150  
[garrine@pa.gov](mailto:garrine@pa.gov)