



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 Pennsylvania Department of Transportation for approval to alter two (2) public crossings by the rehabilitation of the existing bridge where State Route 0018 (Seventh Avenue) crosses, above grade, one (1) track of Norfolk Southern Railway Company (DOT 503 768 L) located in New Brighton Borough and two (2) tracks of CSX Transportation, Inc. (DOT 584 878 T) located in the City of Beaver Falls, all in Beaver County, and the allocation of costs incident thereto.

Docket No. A-2024-3045709

**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.**

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
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Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania Department	:	
of Transportation for approval to alter two	:	
(2) public crossings by the rehabilitation	:	
of the existing bridge where State Route	:	
0018 (Seventh Avenue) crosses, above	:	
grade, one (1) track of Norfolk Southern	:	Docket No. A-2024-3045709
Railway Company (DOT 503 768 L)	:	
located in New Brighton Borough and two	:	
(2) tracks of CSX Transportation, Inc.	:	
(DOT 584 878 T) located in the City of	:	
Beaver Falls, all in Beaver 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 January 22, 2024, the Pennsylvania Department of Transportation (“PennDOT” or “the Department”) filed an application with the Commission¹ which requested permission to alter two (2) public crossings by the rehabilitation of the existing bridge where State Route 0018 (Seventh Avenue) crosses, above grade, one (1) track of Norfolk Southern Railway Company (DOT 503 768 L) located in New Brighton Borough and two (2) tracks of CSX Transportation, Inc. (DOT 584 878 T) located in the City of Beaver Falls, all in Beaver County, and the allocation of costs incident thereto.

On February 27, 2024, the Commission, by way of letter, notified all parties of record that a PUC field investigation and conference would be held for the above-captioned crossing on Tuesday, April 2, 2024, at 10:00 a.m., to discuss the matters involved.

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.

¹ 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 alter the public grade crossing by the rehabilitation of the existing bridge where State Route 0018 (7th Avenue) crosses, above grade, the tracks of Norfolk Southern Railway Company (DOT 503 768L) and CSX Transportation, Inc. (DOT 584 878T) in the Borough of New Brighton and the City of Beaver Falls, Beaver 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 8 of the May 28, 2024, Secretarial Letter at Docket A-2024-3045709, which reads:

8. Norfolk Southern Railway Company and CSX Transportation, Inc., at Pennsylvania Department of Transportation's 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 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 altered.

The language of this paragraph assigns responsibilities and duties of Norfolk Southern in relation to the bridge rehabilitation project that is to be conducted at the sole cost and expense of the Pennsylvania Department of Transportation ("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 8, it has, "a system-wide procedure requiring that the sponsors of non-Norfolk Southern projects arrange their own flagging."

Next, the 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 8 of the Secretarial Letter and add a new Paragraph 9 with the following proposed language:

8. CSX Transportation, Inc., at Pennsylvania Department of Transportation's 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 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 altered.

9. Norfolk Southern Railway Company, at Pennsylvania Department of Transportation's 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 and furnish any 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 altered. Pennsylvania Department of Transportation, at its sole cost and expense, furnish any watchmen and flagmen as required for work around the operations of Norfolk Southern Railway Company, as applicable, to protect Pennsylvania Department of Transportation or its contractor during the time work is being performed across, above and adjacent to the railroads' tracks, which at the sole option of Norfolk Southern Railway Company, as applicable, may be through railroad forces or qualified contractors. Petition at 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 8 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 Southern², the terms for the allocation of flagging and watchmen are consistent with the language contained in the Secretarial Letter’s Paragraph 8, 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

² 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.

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.”

However, Rail Safety, Norfolk Southern, and PennDOT representatives participated in the April 2, 2024, field investigation and conference during which the parties agreed to the terms for flagging and watchmen. This agreement was ultimately reflected in Paragraph 8 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,



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Dated: June 27, 2024

**BEFORE THE
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Application of Pennsylvania Department :
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(DOT 584 878 T) located in the City of :
Beaver Falls, all in Beaver 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

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