



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 5, 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street 2nd FL
Harrisburg, PA 17120

RE: A-2024-3045709

Dear Secretary Chiavetta,

Enclosed for filing please find the Department's *Answer Objecting to Petition for Reconsideration from Staff Action* in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read 'LJB', followed by a horizontal line.

Leah Jo Bobula
Assistant Counsel

Cc: Parties of Record
Mark Chappell, PennDOT, Division Chief, Right-of-Way, Utilities, Grade Crossing (Email)
Daniel Leonard, PennDOT, Grade Crossing Engineer (Email)
Sarah Fenton, PennDOT, Grade Crossing Engineer (Email)
Michele Acitelli, District 11-0, Grade Crossing Engineer (Email)
Douglas Seeley, Assistant District Executive Design (Email)
Jason Zang, District Executive (Email)
Michael Grace, Senior Civil Engineer Supervisor (Email)
Philip Mutunga, Senior Civil Engineer (Email)

**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	:	Docket No. A-2024-3045709
existing bridge where State Route 0018	:	
(Seventh Avenue) crosses, above grade, one	:	
(1) track of Norfolk Southern Railway	:	Electronically Filed
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 TO PETITION FOR RECONSIDERATION

The Commonwealth of Pennsylvania, Department of Transportation (Department), by its counsel, Leah Jo Bobula, files this Answer Objecting to the Petition for Reconsideration from Staff Action filed before the Public Utility Commission (Commission) by Norfolk Southern Railway Company (Norfolk Southern) and respectfully represents:

1. Admitted.
2. Denied. The Department lacks sufficient information regarding the internal procedures of Norfolk Southern.
3. Denied. The Department lacks sufficient information regarding the internal procedures of Norfolk Southern.
4. Denied. The Department lacks sufficient information regarding the internal procedures of Norfolk Southern.
5. Denied. Because no averment was made, no response is required.
6. Denied. Paragraph 6 contains a request for relief to which no response is required.

To the extent that a response is required, the Department is not in agreement with the proposed

amendments to paragraphs 8 and 9 of the May 28, 2024, Secretarial Letter¹.

7. Denied. By way of further explanation, the proposed amendments to the May 28, 2024 Secretarial Letter's Paragraph 8 will not help to ensure an adequate supply of flaggers nor serve the public interest. Norfolk Southern's proposed amendments attempt to shift the burden to the Department and its contractors; yet any flagging vendor chosen would still be required to be approved by Norfolk Southern. As such, Norfolk Southern's current approved list of vendors, which contains a mere three options, will not ensure an increase of the amount of approved flagging vendors if the Secretarial Letter is modified. By shifting the burden to the Department and its contractors but still requiring the flagging vendor to be pre-approved by Norfolk Southern, the requested amendments eliminate Norfolk Southern's direct connection and oversight over the flagging vendor. This elimination of oversight contradicts Norfolk Southern's assertion that the amendments will serve the public interest, and instead, would only diminish public safety by holding PennDOT legally responsible for activities that Norfolk Southern would have exclusive control over via its internal procedures, which can be revised at any time without PennDOT or Commission input. Therefore, the proposed changes will not help to ensure an adequate supply of flaggers nor better serve the public interest. Norfolk Southern should not, at its "sole option" be able to control a process that the Commission has exclusive jurisdiction under, particularly when it relates to safety.

8. Denied. By way of further explanation, the Department denies that the subject of flagging was not specifically raised on April 2, 2024, during the field investigation and conference, as the parties discussed and agreed that flagging costs would be incurred by the Department. Paragraph 8 of the May 28, 2024 Secretarial Letter properly imposes those terms agreed upon during the field investigation. As such, the Department respectfully requests that Norfolk Southern's Petition for Reconsideration from Staff Action be denied.

¹ Note that the Petition for Reconsideration from Staff Action has a main provision numbered 6 and then sub paragraphs numbered 8 and 9 corresponding to the requested amendments to the Secretarial Letter.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

A handwritten signature in black ink, appearing to read 'LJB', followed by a horizontal line extending to the right.

Leah Jo Bobula, Esq.
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No. (717) 787-3128
Fax Number (717) 772-2741
Pennsylvania Attorney I.D. Number 332184
lbobula@pa.gov

DATED: July 5, 2024

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in the City of Beaver Falls, all in Beaver	:	
County, and the allocation of costs incident	:	
thereto.	:	

VERIFICATION

I, Michele Acitelli, P.E., District 11-0 Utility and Grade Crossing Manager, Pennsylvania Department of Transportation, do state that I am authorized to make this statement on behalf of the Pennsylvania Department of Transportation's District 11-0 and verify that I have read the attached Answer Objecting to Petition for Reconsideration from Staff Action and that the within information is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, Verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Michele Acitelli, P.E.

Date: 07/05/24

Michael Sliper
CSX Transportation, Inc.
1 Bell Crossing
Selkirk, NY 12158
Michael_sliper@csx.com

Garrett A. Rine, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
garrine@pa.gov

US Mail

Christopher Rapone, P.E. AECOM 1700 Market Street, Ste. 1600 Philadelphia, PA 19103	Jim Runatz Duquesne Light Company 1901 Edison Street Pittsburgh, PA 15116
John Morgan Windstream 6305 Farmview Lane Cicero, NY 13039	Mariah Wise Columbia Gas of PA Inc. 4000 Energy Dr. Bridgeville, PA 15017
Paul Hervantine Beaver Falls Municipal Authority P.O. Box 400 1425 Eighth Avenue Beaver Falls, PA 15010	Thomas J. Albanese New Brighton Borough 610 Third Avenue New Brighton, PA 15066

Respectfully submitted,
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Leah Jo Bobula
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 17105-8212
Telephone No.: (717) 787-3128
Fax No.: (717) 772-2741

DATED: July 5, 2024