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July 23, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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***

Dear Secretary Chiavetta:

Enclosed please find a Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition on behalf of Norfolk Southern Railway Company for filing in the above-referenced matter. A copy has been served upon all interested parties of record. Thank you.

Sincerely yours,

Benjamin C. Dunlap, Jr.

BCD:klg
Enclosures
cc: All Parties of Record

**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 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. :
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MOTION TO ASSIGN PROCEEDING TO OFFICE OF ADMINISTRATIVE LAW JUDGE FOR DISPOSITION

Norfolk Southern Railway Company (“Norfolk Southern”), by and through its counsel, Cohen Seglias Pallas Greenhall & Furman, PC, hereby files this Motion to Assign Proceeding to Office of Administrative Law Judge (“OALJ”) for Disposition in the above-referenced matter, based upon the following:

1. Norfolk Southern filed a Petition for Reconsideration from Staff Action on June 17, 2024, in regard to the Secretarial Letter issued in this matter dated May 28, 2024. The basis of Norfolk Southern’s Petition was its request to amend the ordering paragraph on furnishing flagging for the subject project to place the obligation upon the Pennsylvania Department of Transportation (“PennDOT”) to arrange for flagging services from a list of Norfolk Southern approved and qualified vendors.

2. The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed an Answer in Opposition to Norfolk Southern’s Petition on June 27, 2024, and PennDOT filed an Answer Objecting to Norfolk Southern’s Petition on July 5, 2024. Both answers in opposition

questioned the safety of the new process as well as whether it would serve to increase the availability of qualified flaggers for non-railroad projects.

3. Norfolk Southern averred in its Petition that it believed “either the subject of flagging was not specifically raised at the field meeting or Norfolk Southern’s representative at the field meeting was unaware of the new process.” Petition ¶ 8. I&E and PennDOT disputed this averment in their answers. At the very least, these averments show there was no explicit meeting of the minds regarding flagging made at the field meeting.

4. Absent an agreement on flagging, the issue remains open and thus supports Reconsideration of the Staff Action in the Secretarial Letter.

5. While Norfolk Southern provided an appendix from its Public Project Manual demonstrating the stringent qualifications necessary for third party flaggers, it is submitted that an evidentiary hearing would be necessary for Norfolk Southern to provide evidence showing there would be no change in training requirements, rules or the oversight of third party flaggers by Norfolk Southern. Norfolk Southern could likewise present evidence of how the process works by harnessing market forces leading to more flaggers being available through additional vendors seeking qualifying status, thus lessening historic delays in providing flagging for public projects or those of other third parties, such as utilities.

6. An evidentiary hearing would likewise allow I&E and PennDOT to challenge Norfolk Southern’s evidence in regard to the proposed changes through cross examination.

7. While Norfolk Southern intends to schedule meetings with PennDOT and I&E to discuss and address their concerns and attempt to reach resolution regarding the issue, Norfolk Southern believes that initiating the hearing process would permit all sides to thoroughly address

the issue and obtain a disposition in the public interest if the parties are not able to resolve the matter among themselves.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that this matter be assigned to the Office of Administrative Law Judge for hearing and disposition.

Respectfully submitted,

**COHEN SEGLIAS PALLAS
GREENHALL & FURMAN, PC**

By: *Benjamin C. Dunlap, Jr.*
Benjamin C. Dunlap, Jr., Esquire
Supreme Court I.D. #66283

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Counsel for Norfolk Southern Railway Company

Date: July 23, 2024

VERIFICATION

I, Dustin K. Lange, Senior Director Engineering of Norfolk Southern Corporation in the foregoing proceeding, make the following statement subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authority, and do state that as Senior Director Engineering for Norfolk Southern Corporation, I am authorized to make this statement on behalf of Norfolk Southern Railway Company, and that the facts set forth in the foregoing **“Motion”** are true and correct to the best of my knowledge, information and belief.



Dustin K. Lange, PE
Senior Director Engineering

Date: 7/18/24

**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 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. :
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participants 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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/s/ Karen L. Gagne
Karen L. Gagne, Secretary to
Benjamin C. Dunlap, Jr., Esquire

Date: July 23, 2024