

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120**

Pennsylvania Department of Transportation

**Public Meeting held September 26, 2024
3031613-OSA
Docket No. A-2022-3031613**

MOTION OF VICE CHAIR KIMBERLY BARROW

On March 24, 2022, the Pennsylvania Department of Transportation (PennDOT) filed an Application to alter a public highway bridge crossing over Norfolk Southern Railway Company's (Norfolk Southern) tracks in Shippensburg Borough and Southampton Township, Franklin County.

A Secretarial Letter was issued on May 28, 2024, approving the Application. The project was estimated to cost approximately \$6,000,000 and be paid 100% through state funding. The project was to be completed by December 31, 2026.

On June 17, 2024, Norfolk Southern filed a Petition for Reconsideration from Staff Action, objecting to Ordering Paragraph 10 which directs Norfolk Southern to provide flagging and watchmen and to furnish construction engineering and inspection service at the sole cost and expense of PennDOT. In support of its Petition, Norfolk Southern averred that it has a system-wide procedure requiring sponsors of non-Norfolk Southern projects to provide their own flagging, which includes choosing a vendor from a Norfolk Southern approved list. PennDOT and the Commission's Bureau of Investigation and Enforcement (I&E) filed answers objecting to the request.

On July 23, 2024, Norfolk Southern filed a Motion to Assign the Proceeding to the Office of Administrative Law Judge (OALJ). Neither PennDOT nor I&E filed a response to the Motion.

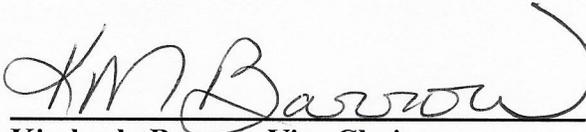
I believe the amendments requested by Norfolk Southern raise factual issues that must be resolved prior to determining how PennDOT and Norfolk Southern must proceed. Specifically, Norfolk Southern's proposed amendment to the language of the May 2024 Secretarial Letter would alter the Parties' responsibilities and oversight over a critical safety aspect of the project.

Accordingly, I believe it is appropriate to refer the matter to OALJ to conduct such proceedings as deemed necessary to resolve the issue surrounding the assignment of responsibility in providing flagging and watchmen as required to protect the railroad tracks during the time the work is being performed across, above, and adjacent to the tracks. As the matter will be referred to OALJ to address the assignment of responsibility for flagging and watchmen, Norfolk Southern's Motion is granted.

THEREFORE, I MOVE THAT:

1. The Petition for Reconsideration from Staff Action, filed by Norfolk Southern Railway Company, on June 17, 2024, is granted, in part, consistent with this Motion.
2. The Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition filed by Norfolk Southern Railway Company on July 23, 2024, is granted, consistent with this Motion.
3. The Application of the Pennsylvania Department of Transportation is hereby referred to the Office of Administrative Law Judge for assignment to a presiding officer which shall conduct such proceedings as necessary. The scope of this referral shall expressly include whatever is deemed necessary to resolve the issue surrounding the assignment of responsibility in providing flagging and watchmen as required to protect the railroad tracks during the time the work is being performed across, above, and adjacent to the tracks.
4. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

September 26, 2024


Kimberly Barrow, Vice Chair