



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

December 11, 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

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 all the allocation of costs incident thereto.
Docket No. A-2022-3031613

I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matter.

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

Sincerely,

Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov

Enclosures

cc: Per Certificate of Service
Hon. F. Joseph Brady, Administrative Law Judge (*via email* – fbrady@pa.gov)
William Sinick, P.E. (*via email* – wilsinick@pa.gov)

I. HISTORY OF THE PROCEEDING

A. APPLICATION A-2022-3031613 FILED BY PENNDOT

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

By Secretarial Letter dated August 21, 2024, the Pennsylvania Public Utility Commission approved the application and directed the alteration of the crossing where State Route 0011 (King Street) crosses track of Norfolk Southern Railway Company, above grade, in Shippensburg Borough and Southampton Township, Franklin County. All work at the subject crossing is to be completed on or before December 31, 2026.

On June 17, 2024, Norfolk Southern filed a Petition for Reconsideration from Staff Action, objecting to Ordering Paragraph 10 which directed Norfolk Southern to provide flagging and watchmen at the sole cost and expense of PennDOT.

On July 23, 2024, Norfolk Southern filed a Motion to Assign the Proceeding to the Office of Administrative Law Judge.

On September 26, 2024, Vice Chair Kimberly Barrow moved to assign the matter to the Office of Administrative Law Judge to resolve the issue of assigning responsibility to provide flagging and watchmen to protect the railroad tracks.

On November 1, 2024, a Prehearing Conference Notice was issued in this case, setting December 13, 2024, as the date for a Prehearing Conference in this matter.

On November 14, 2024, the Honorable F. Joseph Brady, Administrative Law Judge, contacted the parties via e-mail to inquire if there were any objections to addressing both A-2024-3031613 and A-2022-3031613 at the December 13, 2024, Prehearing Conference.

Hearing no objection from any party, on November 15, 2024, a Prehearing Conference Order was issued, consolidating this matter with A-2024-3045709 for purposes of the Prehearing Conference and ordering that a Prehearing Conference Memorandum be filed by the Parties no later than December 11, 2024.

B. APPLICATION A-2024-3045709 FILED BY PENNDOT

On January 22, 2024, PennDOT filed an application to alter two above-grade railroad crossings by rehabilitating an existing bridge over railroad tracks belonging to Norfolk Southern (DOT 503 786L) and CSX Transportation (“CSXT”) (DOT 584 878T).

By Secretarial Letter dated May 28, 2024, the Commission approved the application and directed the alteration of two (2) public crossings 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, Beaver County.

On June 17, 2024, Norfolk Southern filed a Petition for Reconsideration from Staff Action in this matter.

On June 24, 2024, the Commission’s Bureau of Investigation and Enforcement, Enforcement Division, filed an Answer in Opposition to Norfolk Southern’s Petition, objecting to the ordering paragraph directing Norfolk Southern to furnish flagging and watchmen for the railroad during the project.

On July 5, 2024, PennDOT filed an Answer Objecting to Norfolk Southern’s Petition.

On July 23, 2024, Norfolk Southern filed a Motion to Assign Proceeding to Office of Administrative Law Judge.

On November 7, 2024, the Commission entered an order granting, in part, Norfolk Southern’s Motion to Assign Proceeding to Office of Administrative Law Judge for the express

purpose of determining “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.”

On November 14, 2024, the Honorable F. Joseph Brady, Administrative Law Judge, contacted the parties via e-mail to inquire if there were any objections to addressing both A-2024-3031613 and A-2022-3031613 at the December 13, 2024, Prehearing Conference.

Hearing no objection from any party, on November 15, 2024, a Prehearing Conference Order was issued, consolidating this matter with A-2024-3031613 for purposes of the Prehearing Conference and ordering that Prehearing Conference Memoranda be filed by the parties no later than December 11, 2024

On November 19, 2024, a Prehearing Conference Notice was issued in this case, setting December 13, 2024, as the date for a Prehearing Conference in this matter.

II. I&E PREHEARING CONFERENCE MEMORANDUM

A. Service

All service on and communication to I&E in this proceeding should be addressed to:

By Mail: Grant Rosul, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

By Telephone: (717) 783-5243

By E-mail: grosul@pa.gov

B. Issue to be Addressed

The issue for the Court to address is whether Norfolk Southern's Petition for Reconsideration should be granted. Norfolk Southern does not want to provide flaggers and watchmen during the alteration of the crossings. Instead, it would prefer to outsource this task to a third party over whom the Commission would have no jurisdiction to enforce rail safety regulations. I&E's position is that Norfolk Southern's Petition for Reconsideration should be denied.

C. Proposed Plan and Schedule of Discovery

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321, *et seq.*

D. Witnesses

Should this matter proceed to a hearing, I&E's witness will be William Sinick, P.E., Senior Civil Engineer Manager, Pennsylvania Public Utility Commission, Bureau of Technical Utility Services, Rail Safety Division. He would testify that providing flaggers and watchmen is a responsibility of railroads during crossing alterations and is imperative for the safety of those working near the railroad and the protection of the tracks.

William Sinick's contact information is as follows:

William Sinick, P.E.
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services - Rail Safety Division
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-5936
wilsinick@pa.gov

I&E reserves the right to modify the identified witness and/or present additional witnesses as it deems necessary based on the issues identified by the parties.

E. Position Regarding Consolidation

I&E supports consolidation of the 2022 and 2024 PennDOT Applications because the same issue is central to both cases — namely, whether Norfolk Southern’s Petition for Reconsideration should be granted and whether it should provide flaggers and watchmen on its railroad during PennDOT’s construction activities on the above-grade crossings.

F. Statement Regarding Settlement

I&E is open and willing to discuss settlement of this matter. However, it is unclear how this matter may be settled as there is a binary set of options — Norfolk Southern provides its own flaggers and watchmen, or PennDOT engages a third party to do so. There does not appear to be a compromise solution.

G. Amount of Hearing Time Needed

I&E estimates that one half day (4 hours) for a hearing would be sufficient. This estimation may change depending on the witnesses offered and testimony presented by Norfolk Southern and PennDOT

H. Plan and Schedule of Discovery

I&E proposes that discovery be conducted consistent with the Commission’s regulations at 52 Pa. Code §§ 5.321, *et seq.*

I. Proposed Litigation Schedule

I&E proposes the following litigation schedule:

1. Written direct testimony due on December 20, 2024.
2. Written rebuttal testimony due on January 3, 2025.
3. Witness schedule due 3 business days before the hearing.

4. Hearing to occur the week of January 27, 2025.
5. Briefing schedule to be established at the hearing.

Respectfully submitted,



Grant Rosul
Prosecutor
PA Attorney ID No. 318204

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Bureau of Investigation and Enforcement
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400 North Street
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Phone: (717) 783-5243
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Dated: December 11, 2024

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