



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 11, 2024

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

**RE: A-2022-3031613 and A-2024-3045709 (Consolidated)**

Dear Secretary Chiavetta,

Enclosed for filing please find the Department's *Prehearing Memorandum* 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'.

Leah Jo Bobula  
Assistant Counsel

Cc: Parties of Record  
Mark Chappell, PennDOT, Chief, Right-of-Way, Utilities, Grade Crossing Division  
Sarah Fenton, PennDOT, Grade Crossing Engineer  
Ahmed Lasloudji, District 8-0, Senior Civil Engineer  
Heidi Mertz, P.E., District 8-0, Senior Civil Engineer Manager  
Richard Reisinger, District 8-0, Assistant District Executive  
Michele Acitelli, District 11-0, District Utility Manager  
Michael Grace, District 11-0, Senior Civil Engineer Supervisor  
Douglas Seeley, District 11-0, Assistant District Executive Design  
Jason Zang, P.E., District 11-0, District Executive

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation	:	A-2022-3031613
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	:	
the allocation of costs incident thereto.	:	

Application of Pennsylvania Department of	:	A-2024-3045709
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.	:	

**PREHEARING MEMORANDUM**

The Commonwealth of Pennsylvania, Department of Transportation (Department), by its counsel, Leah Jo Bobula, files this Prehearing Memorandum filed before the Public Utility Commission (Commission) and respectfully represents:

**A. History of the Proceedings**

On March 24, 2022, the Department filed its application for docket A-2022-3031613. On May 26, 2022, a field conference was held for docket A-2022-3031613.

On March 21, 2023, the Department filed its Final Right-of-Way Plan. On July 11, 2023, Norfolk Southern filed its Objection to the signed Drawing Authorizing the Acquisition of Right-of-Way Plans.

On January 24, 2024, the Department filed its application for docket A-2024-3045709. On April 2, 2024, a field conference was held for docket A-2024-3045709.

On May 28, 2024, a Secretarial Letter was issued for each docket.

Norfolk Southern Railway Company (Norfolk Southern) filed a Petition for Reconsideration from Staff Action on June 17, 2024, for both dockets. On June 28, 2024, the Bureau of Investigation and Enforcement (I&E) filed an Answer in Opposition to the Petition for Reconsideration from Staff Action for both dockets. On July 8, 2024, the Department filed its Answer to the Petition for Reconsideration from Staff Action for docket A-2024-3045709. On July 10, 2024, the Department filed its Amended Answer to the Petition for Reconsideration from Staff Action for docket A-2022-3031613.

On July 23, 2024, the Department filed its Final Drawings for Construction for docket A-2022-3031613.

On July 24, 2024, Norfolk Southern filed a Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition for both dockets.

The Final Revised Erosion and Sediment Pollution Plan was filed by the Department on July 30, 2024, for docket A-2022-3031613. On August 21, 2024, a Secretarial Letter was filed approving the plan.

On September 26, 2024, Vice Chair Barrow filed a Motion moving to 1) grant Norfolk Southern's Petition for Reconsideration from Staff Action in part; 2) Grant the Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition; 3) refer the Application to the Administrative Law Judge to resolve the assignment of responsibility regarding flagging; and 4) the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

On November 1, 2024, a Telephonic Prehearing Conference Notice was issued, scheduled for December 13, 2024, for docket A-2022-3031613.

On November 7, 2024, an Opinion and Order was issued for docket A-2024-3045709, ordering 1) the Petition for Reconsideration from Staff Action be granted in part; 2) the granting of the Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition; and 3) the referral of the Application to the Administrative Law Judge to resolve the assignment of responsibility regarding flagging.

On November 15, 2024, a consolidated Prehearing Conference Order was filed for both dockets, confirming the December 13, 2024 Prehearing Conference and requiring a Memorandum on or before December 11, 2024<sup>1</sup>.

**B. Issue**

Norfolk Southern's Petitions for Reconsideration seek to change the following language in the Secretarial Letters:

For docket A-2022-3031613, Norfolk Southern seeks to delete paragraph 10, replace paragraph 10 with the below language, and add a new paragraph 11 with the below language:

- (to be deleted) 10. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work, and 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.
- (replacement) 10. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work above and adjacent to its tracks.

---

<sup>1</sup> On November 19, 2024, a Telephonic Prehearing Conference Notice was sent for docket A-2024-3045709, scheduled for December 13, 2024.

- (new ordered paragraph) 11. Pennsylvania Department of Transportation, at its sole cost and expense, furnish and maintain qualified flagmen and watchmen as required for work around the operations of Norfolk Southern Railway Company to protect Pennsylvania Department of Transportation or its contractor during the time work is being performed across, above and adjacent to the railroad's tracks, which at the sole option of Norfolk Southern Railway Company may be through railroad forces or qualified contractors.

For docket A-2024-3045709, Norfolk Southern seeks to delete paragraph 8, replace paragraph 8 with the below language, and add a new paragraph 9 with the below language:

- (to be deleted) 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.
- (replacement) 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.
- (new ordered paragraph) 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.

Norfolk Southern asserts these changes will serve the public interest by helping to ensure an adequate supply of flaggers who meet rigorous safety qualifications. The Department disagrees because the proposed changes shift the responsibility to the Department and its contractors, but Norfolk Southern would still control the list of qualified flagging vendors, thereby limiting the amount of flagging vendors available. This does not serve the public interest because it does not place Norfolk Southern as the primary party responsible for the oversight of flagging. Additionally, it does not provide the Department with any options when no flagging vendors are available from the qualified flagging vendor list or from Norfolk Southern railroad forces as to not delay a project. I&E's Answer supports the Department's position.

Additionally, the Department supports I&E's position in their Prehearing Memorandum, stating that the Commission needs to maintain its jurisdiction so it can enforce rail safety regulations. The Department needs to have the ability to hold Norfolk Southern responsible for flagging, but in order to move projects forward, the Department has engaged in negotiations regarding the specific language concerning flagging.

The issue for the Administrative Law Judge to determine is the assignment of responsibility for the provision of flagging and watchmen as required while work is being performed across, above, and adjacent to the railroad tracks.

The parties have exhausted discussions and are unable to come to agreed-upon language.

**C. Plan and Discovery**

The Department does not anticipate the need for discovery on this issue, however, if the need does arise the parties will complete discovery informally.

**D. Witnesses and Testimony**

The Department intends to offer the following witnesses to address the issue and any questions which are directed to the Department:

Mark J. Chappell, P.E.  
Bureau of Design and Delivery  
Chief of the Right-of-Way, Utilities, and Grade Crossing Division  
P.O. Box 3362  
Harrisburg, PA 17105

Sarah Fenton  
Grade Crossing Engineer- Central Office  
Bureau of Design and Delivery  
Right-of-Way, Utilities, and Grade Crossing Division  
400 North Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17120

Ahmed Lasloudji  
Senior Civil Engineer  
Engineering District 8-0  
2140 Herr Street  
Harrisburg, PA 17103

Michele Acitelli, P.E.  
Utility and Grade Crossing Manager  
Engineering District 11-0  
Bridgeville, PA 15057

Mark J. Chappell will be testifying in his position as Chief as to the processing and field

implications that could result because of changes to the flagging vendor language and past issues that have led to the Department's concerns with flagging.

Sarah Fenton will be testifying in her position as a Grade Crossing Engineer as to the specific applications at issue, the processing and field implications that could result because of changes to the flagging vendor language, and past issues that have led to the Department's concerns with flagging.

Ahmed Lasloudji will be testifying in his capacity as Senior Civil Engineer for Engineering District 8-0 as to the details of the application at issue and the need for flagging.

Michele Acitelli will be testifying in her capacity as Utility and Grade Crossing Manager for Engineering District 11-0 as to the details of the application at issue and the need for flagging.

The Department reserves the right to call additional witnesses deemed necessary or to modify its proposed witnesses as the case develops.

**E. Position Regarding Consolidation**

The Department is in agreement with the consolidation of dockets A-2022-3031613 and A-2024-3045709.

**F. Possibility of Settlement**

After months of negotiations and proposed language options, the Department does not believe there is a possibility of settlement. However, the parties will continue to discuss the issue and have agreed to file a Joint Stipulation pursuant to 52 Pa. Code §§ 5.232, 5.234, to reasonably expedite this proceeding because some language regarding flagging has been agreed to.

**G. Amount of Time for a Hearing**

The Department requires approximately half a day for a hearing.

## **H. Proposed Litigation Schedule**

The Department is flexible with dates, but proposes the following as a starting point:

Joint Stipulation – Friday, January 31, 2025;

Written Direct Testimony – Friday, February 7 2025;

Written Rebuttal Testimony – Friday, March 7, 2025;

Witness schedule due 3 business days before the hearing;

Hearing to occur – the week of March 24;

Briefing schedule to be established at the hearing.

The Department is agreeable to either an in-person hearing or telephonic hearing, but telephonic would be preferred.

## **I. Other Matters**

The Department has no additional matters regarding these dockets at this time.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION



---

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](mailto:lbobula@pa.gov)

DATED: December 11, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation : A-2022-3031613  
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 :  
the allocation of costs incident thereto. :

Application of Pennsylvania Department of : A-2024-3045709  
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. :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa. Code §1.54, by:

**Electronic Mail**

Benjamin C. Dunlap, Jr.  
Cohen Seglias Pallas Greenhall & Furman, PC  
240 North Third Street, 7th Floor  
Harrisburg, PA 17101  
[bdunlap@cohenseglias.com](mailto:bdunlap@cohenseglias.com)

Shawn Starling, P.E.  
Norfolk Southern Railway Company  
650 West Peachtree Street NW-Box 45  
Atlanta, GA 30308  
[douglas.starling@nscorp.com](mailto:douglas.starling@nscorp.com)

Philip Colavincenzo, Esquire  
Attorney at Law  
255 College Avenue  
Beaver, PA 15009  
[Jp.cola@verizon.net](mailto:Jp.cola@verizon.net)

Michael Sliper  
CSX Transportation, Inc.  
1 Bell Crossing  
Selkirk, NY 12158  
[Michael\\_sliper@csx.com](mailto:Michael_sliper@csx.com)

Christopher Rapone, P.E.  
AECOM  
1700 Market Street, Ste. 1600  
Philadelphia, PA 19103  
[christopher.rapone@aecom.com](mailto:christopher.rapone@aecom.com)

Jim Runatz  
Duquesne Light Company  
1901 Edison Street  
Pittsburgh, PA 15116  
[jrunatz@duqlight.com](mailto:jrunatz@duqlight.com)

John Morgan  
Windstream  
6305 Farmview Lane  
Cicero, NY 13039  
[john.r.morgan@windstream.com](mailto:john.r.morgan@windstream.com)

Mariah Wise  
Columbia Gas of PA Inc.  
4000 Energy Dr.  
Bridgeville, PA 15017  
[mwise@nisource.com](mailto:mwise@nisource.com)

Paul Hervantine  
Beaver Falls Municipal Authority  
P.O. Box 400  
1425 Eighth Avenue  
Beaver Falls, PA 15010  
[herv@bfwater.net](mailto:herv@bfwater.net)  
[info@bfwater.net](mailto:info@bfwater.net)

Thomas J. Albanese  
New Brighton Borough  
610 Third Avenue  
New Brighton, PA 15066  
[manager@newbrightonpa.org](mailto:manager@newbrightonpa.org)

Charles Jones Jr.  
City Of Beaver Falls  
715 15th Street  
Beaver Falls Pa 15010  
[cjones@beaverfallspa.org](mailto:cjones@beaverfallspa.org)

Grant Rosul  
PUC  
400 N. Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120  
[grosul@pa.gov](mailto:grosul@pa.gov)

Adam Cubbedge  
Century Link  
250 Lincoln Way East  
Chambersburg, PA 17201  
[adam.cubbedge@centurylink.com](mailto:adam.cubbedge@centurylink.com)

Dwain Koser  
Cumberland/Franklin Joint  
Municipal Authority  
204 West King Street  
Shippensburg, PA 17257  
[dkoser@cfjma.com](mailto:dkoser@cfjma.com)

Stuart Miller  
Pennsylvania Electric Company  
1910 West Market Street  
Akron, OH 44313  
[smiller@firstenergycorp.com](mailto:smiller@firstenergycorp.com)

Gary Redondo  
Verizon Pennsylvania, LLC  
3151 Pioneer Avenue  
Pittsburgh, PA 15226  
[Gary.redondo@verizon.com](mailto:Gary.redondo@verizon.com)

Kevin Plasterer, Manager  
Shippensburg Borough  
111 N. Fayette Street  
Shippensburg, PA 17257  
[kplasterer@shippensburg.pa.us](mailto:kplasterer@shippensburg.pa.us)

John Yurko  
Comcast Cable Communications, Inc.  
339 Baltimore Street  
Shippensburg, PA 17257  
[john\\_yurko@cable.comcast.com](mailto:john_yurko@cable.comcast.com)

Sam Cressler  
Southampton Township  
705 Municipal Drive  
Shippensburg, PA 17257  
[scressler@southamptontownship.org](mailto:scressler@southamptontownship.org)

Julianne Freeman, Esquire  
Norfolk Southern Railway Company  
650 West Peachtree Street NW-Box 45  
Atlanta, GA 30308  
[Jullianne.freeman@nscorp.com](mailto:Jullianne.freeman@nscorp.com)

David Binger  
Century Link  
200 Technology Drive  
Pittsburgh, PA 15219  
[David.binger@lumen.com](mailto:David.binger@lumen.com)  
[relocations@lumen.com](mailto:relocations@lumen.com)

**Via First-Class Mail**

William Dempster  
UGI Utilities Inc.  
1301 AIP Drive  
Middletown, PA 17057

CSX Transportation Inc.  
c/o CT Corporation  
600 N. Second St.  
Suite 601  
Harrisburg, PA 17101

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: December 11, 2024