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December 11, 2024

VIA ELECTRONIC FILING

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

***Re: 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***

***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 the Prehearing Conference Memorandum on behalf of Norfolk Southern Railway Company for filing in the above-referenced matters. 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

1. History of the Proceedings.

The Commission issued its Secretarial Letter in the West King Street proceeding on May 28, 2024, approving the Application of the Pennsylvania Department of Transportation (“PennDOT”) to replace the SR 11 (West King Street) bridge in Shippensburg Borough and Southampton Township, Franklin County. Norfolk Southern filed a Petition for Reconsideration on June 17, 2024, with its sole objection to the Secretarial Letter being Ordering Paragraph 10, which assigned flagging services to Norfolk Southern instead of to PennDOT.

Also on May 28, 2024, the Commission approved PennDOT’s Application in the Seventh Avenue matter to rehabilitate the bridge where SR 18 (Seventh Avenue) crosses over one track of Norfolk Southern in New Brighton Borough and two tracks of CSX Transportation, Inc. in Beaver Falls, Beaver County. Norfolk Southern likewise filed a Petition for Reconsideration from the Seventh Avenue Secretarial Letter on June 17, 2024, objecting to Ordering Paragraph 8 of the Secretarial Letter, which would require Norfolk Southern to provide flagging services while the bridge rehabilitation work is performed, rather than ordering PennDOT to do so.

Both Petitions for Reconsideration argued that Norfolk Southern has a system-wide procedure for the sponsors of non-Norfolk Southern projects to arrange for flagging services. Project sponsors must choose from a list of approved vendors, currently numbering three, for any activities on or adjacent to railroad property or that have the potential to foul the railroad’s tracks or operations. Norfolk Southern provides contact information for arranging services from any of the three vendors. The approved vendors must meet rigorous regulatory qualifications and compliance, training and experience standards, as delineated in Norfolk Southern’s Public Improvement Projects Manual. Norfolk Southern believes that this process serves the public

interest by helping to ensure an adequate supply, through market-based forces, of highly qualified flaggers who meet rigorous safety qualifications for public projects.

The Commission's Bureau of Investigation and Enforcement ("I&E") filed Answers in Opposition to Norfolk Southern's Petition for Reconsideration in both the Seventh Avenue and West King Street matters on June 27, 2024. I&E opposed the proposed changes on alleged public safety grounds, contending that Norfolk Southern was in the best position to provide oversight of flagging services and that changing the Order would remove a layer of public safety oversight.

PennDOT likewise filed Answers Objecting to Norfolk Southern's Petitions for Reconsideration in both matters on July 5, 2024. PennDOT's primary objection to Norfolk Southern's proposed change was that it would not help to ensure an adequate supply of flaggers in the marketplace. PennDOT further argued that Norfolk Southern's requested amendments would allegedly eliminate its direct connection and oversight of the flagging vendors and therefore diminish public safety. PennDOT filed an Amended Answer in the West King Street matter on July 11, 2024.

Norfolk Southern filed separate Motions to Assign the Seventh Avenue and West King Street matters to the Office of Administrative Law Judge ("OALJ") for Disposition, due to outstanding factual issues, on July 23, 2024. No objections were filed to either Motion. An Opinion and Order granting, in part, Norfolk Southern's Motion to Assign the Seventh Avenue proceeding to OALJ was entered on November 7, 2024. Commission Vice Chair Kimberly Barrow filed a Motion to Grant Norfolk Southern Motion, in part, to assign the West King Street proceeding to OALJ on September 26, 2024. Both matters were assigned to ALJ Brady and a Prehearing Conference on both matters was set for December 13, 2024.

2. **List of Issues and Sub-Issues in the Proceedings and Norfolk Southern's Position on Each.**

Both proceedings present the same issue, whether it is in the public interest to amend the respective Secretarial Letters to require PennDOT to obtain flagging services to protect its contractors and/or employees for PennDOT projects adjacent to Norfolk Southern's trackage. Norfolk Southern will continue to ensure compliance with its rules for safe railroad operations by briefing, monitoring and inspecting the flagging vendors, so there will be no adverse effect on public safety. Furthermore, it is Norfolk Southern's position that this process will best ensure an adequate supply of flaggers for PennDOT and other projects through market demand and the timing of arranging for services being in the hands of the entity that will be using the services.

3. **Proposed Plan and Schedule of Discovery.**

Norfolk Southern would have limited interrogatories and requests for production of documents to be made upon PennDOT and therefore requests 40 days to do so.

4. **Listing of Proposed Witnesses and Subjects of Testimony.**

At this time, Norfolk Southern anticipates its sole witness being Dustin K. Lange, PE, Senior Director Engineering, Norfolk Southern. Mr. Lange's testimony would address the safety and availability of third-party flagging vendors approved by Norfolk Southern for PennDOT and other outside projects.

Norfolk Southern reserves the right to call additional witnesses or to modify its proposed witnesses as it deems necessary as the case develops.

5. Position on Consolidation of the Proceedings.

As both proceedings concern similar issues of fact and law, Norfolk Southern favors the consolidation of these two proceedings for hearing and decision purposes.¹

6. The Possibility of Settlement.

Norfolk Southern and PennDOT have been negotiating for several months on acceptable order language for PennDOT to obtain flagging services from Norfolk Southern-approved third-party vendors for its crossing projects. PennDOT already has been using Norfolk Southern's approved third-party vendors for other projects affecting its contractors working adjacent to Norfolk Southern's tracks and as such is already familiar with the process to retain and coordinate with such vendors. Although the parties have come close to an agreement, PennDOT counsel has informed the undersigned that it is not thought that further progress can be made at this time. In addition, it is recognized that if Norfolk Southern and PennDOT do agree on order language for obtaining flagging services from third-party vendors, such order language would also need to be agreeable to I&E and any other parties to these proceedings.

7. The Amount of Hearing Time Needed.

Norfolk Southern requests the submission of written direct and rebuttal testimony prior to the hearing. As such, it is anticipated that any hearing would be about a half day to a full day in length.

Norfolk Southern is flexible with dates, but proposes the following as a starting point:

Discovery Deadline – January 27, 2025;

¹ Norfolk Southern is filing a similar Petition for Reconsideration in the proceeding docketed to A-2023-3043493, regarding flagging services for PennDOT's West Lackawanna Avenue bridge replacement project in Scranton, Lackawanna County.

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.

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

Respectfully submitted,

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

By: 
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Counsel for Norfolk Southern Railway Company

Date: December 11, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**
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: **Electronically Filed**
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**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**
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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).

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/s/ Karen L. Gagne
Karen L. Gagne, Secretary to
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Date: December 11, 2024