



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

December 30, 2024

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

RE: A-2023-3043493

Dear Secretary Chiavetta,

Enclosed for filing please find the Department's *Answer Objecting to Petition for Reconsideration from Staff Action* 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", with a long horizontal flourish extending to the right.

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
John Pfeiffer, PennDOT, Asset Manager, District 4-0
Christopher Tomaszewski, Highway Design Manager, District 4-0
Carmen Mancebo Clase, Senior Civil Engineer Supervisor, District 4-0

nor serve the public interest. Norfolk Southern's proposed amendments attempt to shift the burden to the Department and its contractors; yet any flagging vendor chosen would still be required to be approved by Norfolk Southern. As such, Norfolk Southern's current approved list of vendors, which contains a mere three options, will not ensure an increase of the amount of approved flagging vendors if the Secretarial Letter is modified. By shifting the burden to the Department and its contractors but still requiring the flagging vendor to be pre-approved by Norfolk Southern, the requested amendments eliminate Norfolk Southern's direct connection and oversight over the flagging vendor. This elimination of oversight contradicts Norfolk Southern's assertion that the amendments will serve the public interest, and instead, would only diminish public safety by holding PennDOT legally responsible for activities that Norfolk Southern would have exclusive control over via its internal procedures, which can be revised at any time without PennDOT or Commission input. Therefore, the proposed changes will not help to ensure an adequate supply of flaggers nor better serve the public interest. Norfolk Southern should not, at its "sole option" be able to control a process that the Commission has exclusive jurisdiction under, particularly when it relates to safety.

7. Denied. By way of further explanation, the Department denies that the subject of flagging was not specifically raised on December 13, 2023, during the field investigation and conference, as the parties discussed and agreed that flagging costs would be incurred by the Department. Paragraph 13 of the November 22, 2024 Secretarial Letter properly imposes those terms agreed upon during the field investigation.

8. There are two consolidated dockets, A-2022-3031613 and A-2024-3045709, currently before Administrative Law Judge F. Joseph Brady considering the same flagging language issue. As such, the Department respectfully requests that a decision regarding Norfolk Southern's Petition for Reconsideration from Staff Action be stayed until those dockets are fully litigated or closed.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Leah Jo Bobula, Esq.
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DATED: December
30, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of :
Transportation of the Commonwealth of :
Pennsylvania to replace the existing bridge : Docket No. A-2023-3043493
where West Lackawanna Avenue crosses, :
above grade, two (2) tracks owned by :
Norfolk Southern Railway Company and :
operated thereon by Delaware- : Electronically Filed
Lackawanna Railroad Company, Inc. :
(DOT 265 971 V) in the City of Scranton, :
Lackawanna County, and the allocation of :
costs incident thereto. :**

VERIFICATION

I, John Pfeiffer, District 4-0 Asset Manager, Pennsylvania Department of Transportation, do state that I am authorized to make this statement on behalf of the Pennsylvania Department of Transportation's District 4-0 and verify that I have read the attached Answer Objecting to Petition for Reconsideration from Staff Action and that the within information is true and correct to the best of my knowledge, information, and belief. To the extent that the contents of the pleading are that of counsel, Verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



John Pfeiffer

Date: 12/30/24

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(DOT 265 971 V) in the City of Scranton, :
Lackawanna 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:

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Respectfully submitted,
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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