
Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the public above-grade crossing by the construction of new bridge where State Route 0011 (West King Street) crosses over the single track of Norfolk Southern Railroad (DOT No. 592 122M) in Shippensburg Borough, Franklin County, and the allocation of cost incident thereto.

| Docket No.
| A-2022-3031613

Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter the public grade crossing by the rehabilitation of the existing bridge where State Route 0018 (7th Avenue) crosses, above grade, the tracks of Norfolk Southern Railway Company (Dot 503 768L) and CSX Transportation, Inc. (DOT 584 878T) in the Borough of New Brighton and the City of Beaver Falls, Beaver County and the allocation of cost incident thereto.

| Docket No.
| A-2024-3045709

Call-In Telephonic Evidentiary Hearing

Pages 39 - 246

Judge's Chambers
State Office Building
801 Market Street
Philadelphia, PA

Wednesday, May 7, 2025
Commencing at 10:01 a.m.

INDEX TO EXHIBITS

Docket Nos. A-2022-3031613 & A-2024-3045709

Hearing Date: May 7, 2025

INDEX TO EXHIBITS (Cont'd)

Docket Nos. A-2022-3031613 & A-2024-3045709

Hearing Date: May 7, 2025

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
NS Statement Number 1	57	61
Written Direct Testimony		
of Dustin K. Lange with		
Norfolk Southern		
Exhibits 1 and 2		
NS Statement Number 2	55	55
Written Rebuttal Testimony		
of David Arant		
NS Statement Number 3		
Written Rebuttal Testimony		
of David Craft	116	118

NS Statement Number 4,		
Written Rebuttal Testimony		
of Dennis Julian Ezell II	132	136
NS Statement Number 5	58	61
Written Rebuttal Testimony		
of Dustin K. Lange		
Norfolk Southern Exhibit 3	114	115
NS Cross Exhibit 1	218	218
Document		
PennDOT Statement 1	146	148
Written Direct Testimony of		
Mark Chappell		
PennDOT Statement 2		
Written Direct Testimony of		
Heidi Mertz	159	160
PennDOT Statement 3		
Written Direct Testimony of	167	168
Michele Acitelli		
PennDOT Statement 4		

Written Direct Testimony of Sarah Fenton	188	190
PennDOT Exhibit A Verification	147	148
PennDOT Exhibit B Verification	167	168
PennDOT Exhibit C Spreadsheet	154	190
I&E Statement 1 Direct Testimony of William Sinick	219	221
I&E Exhibit A Statement of William Sinick	219	221

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2022-3031613
Pennsylvania for approval to alter the public :
above grade crossing by the replacement of : Electronically Filed
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. :
:

Application of Pennsylvania Department of :
Transportation for approval to alter two (2) : Docket No. A-2024-3045709
public crossings by the rehabilitation of the :
existing bridge where State Route 0018 : Electronically Filed
(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. :

**WRITTEN DIRECT TESTIMONY OF DUSTIN K. LANGE, PE,
ON BEHALF OF NORFOLK SOUTHERN RAILWAY COMPANY**

April 8, 2025

NS STATEMENT NO. 1

1 Q. Mr. Lange, please state your full name for the record.

2 A. Dustin Keith Lange.

3 Q. By whom are you employed, Mr. Lange?

4 A. Norfolk Southern Corporation.

5 Q. What is your business address?

6 A. 650 W Peachtree St NW, Atlanta GA, 30308

7 Q. What is your position with Norfolk Southern?

8 A. Senior Director, Engineering.

9 Q. What are your duties in that position?

10 A. Capital Planning, Technology Initiatives, Rail Health, AAR and Governmental Interactions

11 related to the Engineering Department, including Flagging .

12 Q. Please explain your background in flagging matters in particular.

13 A. I have been involved in projects requiring various forms of flagging for my entire career, as a

14 field supervisor, field manager, and in my current role.

15 Q. What is your educational background, Mr. Lange?

16 A. B.S. in Civil Engineering from Michigan State University.

17 Q. Are you a licensed professional engineer, and if so in what state?

18 A. Yes, I am licensed by the State of Michigan.

19 Q. Is Norfolk Southern Railway Company the owner and operator of the line of railroad at the

20 crossings at issue in this proceeding?

21 A. Yes

22 Q. How is Norfolk Southern Railway Company related to Norfolk Southern Corporation?

23 A. It is a wholly owned subsidiary.

24 Q. Are you authorized to testify on behalf of Norfolk Southern Railway Company in these

25 proceedings?

26 A. Yes.

- 1 Q. From now on whenever I refer to Norfolk Southern or NS I will mean Norfolk Southern Railway
2 Company. Is that okay?
- 3 A. Yes.
- 4 Q. Is it your understanding that the matter at issue in these cases solely concerns the issue of
5 flagging?
- 6 A. Yes.
- 7 Q. Describe please if you will what flagging at a railroad crossing entails.
- 8 A. Flagging for non-railroad work entails ensuring the workers and equipment are protected from
9 injury or incident resulting from the passage of trains. Flagging for railroad work is similar.
10 However, because railroad work specifically involves repairs or replacement of the track structure
11 or its components, the person flagging takes on the added responsibility of ensuring that the track
12 work is completed properly.
- 13 Q. How does a flagger perform his or her work?
- 14 A. This is dependent upon the type of work activity, the site constraints, etc. It may be as simple as
15 ensuring one person stays away from the track, or as complex as securing permission from a
16 dispatcher to occupy the track for a number of people and machines for a specific period of time.
17 This can involve monitoring train movements to identify potential contractor work windows and
18 coordinating with the dispatcher to secure the track time. In many cases this involves use of
19 specialty software on their phones or tablets from NS's custom mobile applications.
- 20 Q. With whom must a flagger communicate or coordinate to perform his or her work?
- 21 A. The flagger must communicate and coordinate with the workers and managers on-site, as well as
22 with the railroad supervision and any railroad workers who may have reason to be working in the
23 vicinity. Interaction with yardmasters or dispatchers is often necessary because temporal
24 separation between workers and trains is controlled by these personnel on most of NS's tracks.
- 25 Q. What training is required for a flagger to work on Norfolk Southern property?

- 1 A. A flagger is required to have a combination of classroom training as well as on-the-job work
2 experience. If the flagging will be for railroad work, additional special training may also be
3 required because of their need to understand and ensure the proper performance of the track work.
- 4 Q. Is any certification required?
- 5 A. No. Each employer and rail carrier impose their own training and qualification requirements. In
6 the case of railroad work, these training and qualification requirements are federally regulated but
7 administered by the employers. At NS, we have training and qualification requirements for
8 flaggers of non-railroad work which closely mirror the requirements for flaggers of railroad work,
9 so as to ensure consistent execution by flaggers on our property.
- 10 Q. Are there any Federal Railroad Administration (“FRA”) requirements for flaggers?
- 11 A. There are no FRA requirements for flaggers of non-railroad work, however, the general
12 expectation is that the spirit of the safety requirements should be followed.
- 13 Q. What was the historic process for NS and its predecessor to provide flaggers for third-party
14 projects?
- 15 A. Project sponsors would hire prime contractors, who in turn would request flaggers from NS. NS
16 would provide personnel if available. This would result in unexpected delays, in some cases
17 considerable delays, to the prime contractor, and NS would be deprived of skilled labor while that
18 employee was flagging to protect the third party’s project. Starting around 2018, NS began to
19 allow these prime contractors (or the sponsors themselves) to arrange for flagging from qualified
20 third parties. This allowed sponsors and prime contractors to have better control and planning of
21 their flagging resources and allowed NS to utilize railroad personnel for the railroad work for
22 which they are specially trained.
- 23 Q. What third parties require flagging for their work at railroad tracks?
- 24 A. Governments, utilities, neighboring landowners. Anyone needing access to the right-of-way for
25 construction activities.
- 26 Q. In what circumstances are flaggers required?

1 A. In general, a flagger is required if there will be personnel or equipment within the right-of-way,
2 which is generally 50 feet from the centerline of the outermost track. However, there are cases in
3 which sufficient controls are in place to obviate the need for a flagger. An example would be
4 boundary surveying that does not require the surveyors to cross the track and does not require
5 close proximity to the track on right-of-way, which may be several hundred feet wide.

6 Q. When is flagging required on a PennDOT construction project?

7 A. An example where flagging would definitely be required is a PennDOT bridge inspection, where
8 the PennDOT staff do not intend to obstruct the track but will be working close to the track. A
9 flagger would be required because the margin for error is small and those workers need the
10 protection from trains that only a flagger can provide. Obviously, any work that does intend to
11 obstruct the track requires a flagger as well, such as when bridge piers being inspected by
12 PennDOT are close enough to the track such that the inspection vehicle can only access the pier
13 by obstructing the track. In those cases, a flagger absolutely would be required.

14 Q. How has the process for obtaining flaggers for third-party projects changed under Norfolk
15 Southern?

16 A. NS now requires third parties to provide their own qualified flaggers.

17 Q. When did the process change?

18 A. As mentioned, beginning in the 2018 time frame.

19 Q. I am showing you now a document marked for identification as Norfolk Southern Exhibit 1,
20 which is titled Appendix 1-E from Norfolk Southern's Public Projects Manual. Do you recognize
21 this document?

22 A. Yes.

23 Q. Please summarize if you will, Mr. Lange, the requirements for a third-party vendor to be deemed
24 qualified to operate on Norfolk Southern property?

25 A. The vendor must have a sufficient pool of experienced, well-trained flaggers, managed by
26 experienced, well-trained managers so that the project sponsor or their prime contractor can have

1 confidence that the flagging will accomplish the sponsor's goal, which is to ensure their workers
2 and equipment are not struck while working within the railroad right-of-way.

3 Q. How does this compare to a Norfolk Southern employee to be deemed qualified to operate as a
4 flagger?

5 A. From the perspective of the project sponsor or prime contractor, there is not much difference for
6 non-railroad work, except that there is far more availability since these third-party flaggers are
7 not capable of being utilized by the railroad for other railroad work, regardless of the urgency.

8 Q. How many third-party vendors are currently qualified to operate as flaggers on Norfolk Southern
9 property?

10 A. Three.

11 Q. Who are these vendors?

12 A. R&R Consulting, RailPros, and North Carolina Railroad Company. The letter sent to all project
13 sponsors with the vendors' contact information is attached as Norfolk Southern Exhibit 2.

14 Q. Are these vendors qualified under Norfolk Southern standards to only operate in certain states or
15 throughout the Norfolk Southern system?

16 A. NS does not distinguish among states for qualification, so they are qualified to operate throughout
17 the system.

18 Q. Have there been other vendors who have applied for qualification to operate as flagging vendors
19 on Norfolk Southern's system but were deemed not to be qualified?

20 A. Yes.

21 Q. Why were they deemed not qualified?

22 A. The vendor companies lacked sufficient training programs, management experience, and/or
23 technical requirements.

24 Q. Are you currently in discussions with any other vendors to be qualified to operate as flaggers on
25 NS property?

26 A. Yes.

- 1 Q. How does Norfolk Southern monitor, brief and inspect these third-party flagging vendors when
2 providing flagging services to third parties on Norfolk Southern property?
- 3 A. We require pre-work briefings with our supervision to ensure the flagger understands the railroad
4 operations and rules in effect at the work site, and to ensure that our supervisor understands what
5 the flagger will be doing. Our employees and supervisors check for compliance with NS rules
6 during their normal activities on the right-of-way. The vendor's management meets with me or a
7 member of my staff periodically to review their qualification status and any open concerns either
8 party may have.
- 9 Q. How does this compare to how Norfolk Southern monitors the work of its own employees when
10 performing flagging work?
- 11 A. This is substantially similar, however, there is no periodic, formal staff-level review as there is no
12 dedicated pool of railroad employees who do only flagging work.
- 13 Q. What happens if a flagging vendor's employee is found not to be following Norfolk Southern
14 safety rules?
- 15 A. The individual is removed from the property. An investigation is conducted. If the issue appears
16 to be systemic, rather than isolated to the individual, broader action with the vendor is taken.
- 17 Q. Has this ever occurred and what came of this situation?
- 18 A. Yes. For minor, isolated cases, the individual was removed from the project and the vendor
19 handled their disciplinary process and retraining as deemed appropriate by the vendor. Major
20 infractions resulted in the individual being banned from NS property. More systemic issues have
21 resulted in the entire vendor standing down for several days while process improvements were
22 implemented or training gaps were filled.
- 23 Q. How would such a situation be handled if an NS employee were not following the company's
24 safety rules when flagging?

1 A. The individual would be removed from service pending an investigation, which might result in
2 discipline up to dismissal depending on the infraction. If the investigation reveals a systemic
3 issue, a stand-down would occur until the necessary process or training improvements are made.

4 Q. What if a PennDOT construction contractor's employees were determined to be violating the
5 railroad's safety rules?

6 A. The individual would be removed from the property. An investigation would be conducted. If
7 systemic issues are found, the contractor will be barred from entering the property until the issues
8 are addressed. If NS is not confident in the individual's or the contractor's ability to prosecute
9 their work safely and in accordance with NS rules, the individual or the contractor will be
10 permanently barred from the property.

11 Q. Is it your understanding that the nature of this dispute is not whether there is any safety concern
12 with third-party vendors providing flagging services, but rather with the availability of sufficient
13 flaggers?

14 A. Yes.

15 Q. Do you think this new process of using third party contractors is an improvement over the former
16 process of using Norfolk Southern employees for flagging on third-party projects, and if so, why?

17 A. Absolutely. Project sponsors are able to arrange for flagging resources from a broad pool of
18 individual flaggers and are no longer dependent upon a sole provider (the railroad) for resources.
19 The third-party flagging vendors have a vested business interest in providing flagging services
20 which are high quality and readily available, and are able to pull resources from states in which
21 NS does not even operate to meet demand.

22 Q. How does Norfolk Southern's process for providing flagging services for third-party vendors
23 compare to that utilized by other railroads, to your understanding?

24 A. I believe some other railroads have adopted similar qualification requirements. I am not familiar
25 with any details beyond word-of-mouth.

1 Q. What is your understanding of the availability of third-party flaggers for PennDOT projects
2 specifically?

3 A. My understanding is that there is suitable availability for the presently known demand. I have
4 recently made inquiries with the vendors qualified to operate on NS property and was told at that
5 time that a flagger could be available the next day if necessary. I have asked if PennDOT
6 projects were ever denied flaggers due to lack of available personnel and was told resoundingly
7 “no”.

8 Q. In what ways do you think PennDOT could better work with flagging vendors?

9 A. The larger private utilities enter into contracts with the flagging vendors, such that the utility has
10 assurance of availability, and then plans their work in such a way so as to minimize the total
11 number of flaggers needed at any one time, thereby controlling costs while ensuring their
12 construction activities are uninterrupted. I believe PennDOT could enter into a similar
13 arrangement, in a variety of different forms, which would suit PennDOT’s needs and allow
14 PennDOT to take advantage of the competitive nature of flagging no longer being “sole sourced”.

15 Q. What is the general time frame needed by third party vendors to provide services?

16 A. During the same conversations where I inquired as to availability, I was told 30-45 days, unless a
17 special arrangement by contract has been made between the sponsor and the vendor, in which
18 case it could be sooner. In general, short duration projects are easier to cover on shorter notice.

19 Q. How does this compare to when Norfolk Southern is planning for flagging services for its own
20 projects with its own employees?

21 A. NS utilizes railroad workers as flaggers for its own projects, meaning the flagger is also a worker
22 on the project. There is zero lead time because if there is no flagger, that means there is no
23 worker. In other words, the flagging is incidental to the work itself.

24 Q. What is your understanding of how other states work with flagging vendors?

25 A. Some enter into contracts with the vendors directly, some leave that to their prime contractor.

26 Q. What is your observation of how this process is working in these other states?

1 A. Very well, especially for the states which have planned well, and contracted and coordinated with
2 the flagging vendors.

3 Q. Does Norfolk Southern have designated flaggers for its own projects?

4 A. No. Flaggers for railroad projects are workers who also flag. There is no such position for
5 workers who do solely flagging work within NS.

6 Q. What other work do these employees do when flagging for NS projects?

7 A. In many cases it is the foreman, who is directing the work, taking measurements, making
8 decisions, etc. In some cases, it may be a laborer or a machine operator. There are instances
9 where the person flagging spends the bulk of their day flagging, but even then, they are often
10 assisting with materials, coordinating movements between machines, etc.

11 Q. How would you assess the complaints versus satisfaction ratio for flagging services now
12 compared to when NS provided its own employees for third-party projects?

13 A. During the transition to and expansion of third-party flagging, there were complaints with equal
14 intensity to that of the scenario in which NS attempted to meet flagging demand with its own
15 employees. Now that vendor-supplied flagging is well established, complaints are minimal.

16 Q. Could putting the obligation on Norfolk Southern as back up to provide flagging when PennDOT
17 says it cannot obtain those services result in a disincentive for PennDOT to exercise due diligence
18 in planning ahead for the services it will need at certain points in a project?

19 A. Yes. In that scenario, the cost of failure is borne by the party issuing the guarantee, while the
20 benefits of both failure and success are borne by the party receiving the benefit. NS would
21 effectively be subsidizing PennDOT. Without such an obligation, PennDOT is responsible for
22 securing its own flagging resources, so it will be important to PennDOT to plan well, entering
23 into voluntary contracts as appropriate to ensure its needs are met. If PennDOT views NS as a
24 “get out of jail free” card, it is only human nature that the planning will be less scrupulous,
25 PennDOT’s contract negotiations with vendors more “take it or leave it”, and the needs
26 magnified.

1 To further illustrate why this is not equitable, consider if PennDOT were obligated to provide
2 track maintenance resources for NS to prosecute its own work when NS cannot obtain those
3 services, perhaps asphalt paving services when NS conducts routine crossing maintenance. (NS
4 is entirely responsible for sourcing the materials and services today.) If PennDOT were forced to
5 guarantee the availability of these paving services, it would only be a matter of time before
6 PennDOT would begin to suffer from NS's poor planning, however unintentional.

7 Q. Could Norfolk Southern "guarantee" that it could provide its own flaggers when PennDOT or
8 other entities state that they cannot find them according to their schedule?

9 A. No, this would be a hollow guarantee. It is impossible to ensure an unknown number of people
10 will be employed by NS and available for flagging service rather than necessary railroad work, at
11 an unknown time in the future and for an unknown duration. NS has never maintained a pool of
12 flaggers simply waiting around for someone to need them. For NS to truly guarantee flaggers,
13 NS would need to incur substantial overhead costs and charge PennDOT those full costs simply
14 to insure against the guarantee being called. It would be cheaper for PennDOT to simply start
15 their own flagging program that meets the NS qualifications and staffed by PennDOT employees,
16 if PennDOT wants a true guarantee of availability. However, we think the present system of
17 using third-party flaggers is the most efficient and cost-effective means to meet the need.

**NORFOLK SOUTHERN
EXHIBIT 1**

Public Improvement Projects Manual

Appendix E.1

Minimum Specifications for Third Party Protective Services

This Appendix E.1 provides the minimum specifications for third party contractors and their personnel to qualify as Flagmen for purposes of providing protective services on behalf of a Project Sponsor that performs construction work affecting NS tracks, right of way, or operations. For purposes of this Appendix, references to Project Sponsor includes any contractors of Project Sponsor who are retaining services on behalf of the Project Sponsor. To be eligible for a Project Sponsor to retain an Organization, the Organization, the Management Team, and the contracted Flagman (all as defined herein or elsewhere in this Manual) must meet the minimum requirements set forth in this Appendix E.1 and the Project Sponsor must choose from a list of NS-approved Organizations prior to hiring that Organization to conduct protective services on NS property on behalf of the Project Sponsor.

Once the Organization complies with the requirements set forth for the Organization, its Management Team, and Flagmen in accordance with the minimum qualifications set forth in this Appendix E.1, the Organization may request to be included on NS's list of approved third party contract protective service companies that may be directly hired by Project Sponsors. Organizations must submit along with the request to Norfolk Southern: (1) a document from a third-party contractor/supplier risk assessor, such as ISN Software Corporation, affirming that they have met the qualifications in accordance with this Appendix E.1, (2) certificate(s) of insurance demonstrating coverage as required by NS, and (3) documentation demonstrating that the Organization currently employs at least 25 individuals meeting the eligibility requirements for Flagmen.

1. Definitions

In addition to the definitions set forth in section 3 of the Manual, for purposes of this Appendix E.1, the following definitions apply. Nothing in this Appendix pertains to or changes any requirements regarding flagging conducted by NS employees.

Management Team: The leadership team in the Organization who oversees the workers that are qualified to perform protective services and who are responsible to ensure that all necessary qualifications are met and maintained for Flagmen in their Organization.

Organization: A third party contractor retained by a Project Sponsor who hires workers that are qualified to be Flagmen on NS property on behalf of the Project Sponsor performing work affecting NS tracks, right of way, or operations.

2. Minimum Regulatory Qualifications and Compliance Standards¹ for Organizations

In order to be considered eligible to conduct protective services on NS property, an Organization shall obtain FRA approval (or similar review and acceptance) of and be compliant with its plans covering the following:

- 49 CFR Part 219: Drug and Alcohol Testing for maintenance of way employees
- 49 CFR Part 243: Training, Qualification, and Oversight for Safety-Related Railroad Employees
- Any other regulatory obligations relating to the provision of protective services as may be promulgated by FRA.

The Organization shall qualify its field personnel working as Flagmen under the following, as applicable to the safety of the protective services to be provided:

- 49 CFR Part 213 Subparts B through E: Track & Structures Compliance
- 49 CFR Part 214 Subpart C: Roadway Worker Protection
- Any other regulatory obligations relating to the safety of the provision of protective services as may be promulgated by FRA.

3. Minimum Standards for Organization's Management Team

In order to be considered eligible to conduct protective services on NS property, an Organization's Management Team must have the following, at a minimum:

- an existing relationship in good standing with NS, and
- 15 years of continuous experience with a Class I freight railroad as a railroad officer or a supervisor of a MW&S field contractor, or 10 years of continuous experience with NS as an NS officer or a supervisor of a MW&S field contractor, and
- 5 years of continuous experience providing railroad protective services on Norfolk Southern or serving as a roadway worker in charge (RWIC) on NS OR 10 years of similar continuous experience on other Class 1 freight railroad(s), and
- No large gaps (more than 6-12 months) of experience.

¹ Certain of these federal regulations by their terms may apply only to contractors working on behalf of railroads, but in order for others to provide protective services on NS lines, NS requires the same level of compliance for contractors working on behalf of Project Sponsors, in addition to appropriate coordination and communication with NS personnel in accordance with the Special Provisions.

4. Minimum Standards Organization Must Maintain for Individuals to be Flagmen

In order to be considered eligible to conduct protective services on NS property, Organizations must ensure that each Flagman have the following, at a minimum:

a. Former NS RWIC-Qualified Employees

- Either (1) 20 years' experience with last position held as a supervisor track inspection (STI)/ assistant track supervisor (ATS), Foreman, or higher, OR (2) 20 years' experience as a RWIC, and
- Completed a 24-hour refresher course, and
- Demonstrated to the Organization's Management Team the competency of the individual to safely perform track protection, with minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.

b. Other than Former NS RWIC-Qualified Employees

- (i) A person possessing 20 years of service as RWIC while employed by a Class I or Class II freight railroad must have:
 - Completed of 40 hours of instructor led interactive training, and
 - Completed 80 hours of field training under direct supervision of the Organization's qualified Flagman while on NS lines, and
 - Demonstrated to Organization's Management Team the competency of the individual to safely perform Protective Services, with a minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.
- (ii) A person possessing either an associate's degree in a construction-related discipline, military service (honorable discharge), 10 years as a construction supervisor or foreman, or 5 years of service as RWIC while employed by a Class I or Class II freight railroad, must have:
 - Completed 80 hours of instructor-led interactive training, and
 - Completed either (i) 3 months of field training under direct supervision of Organization's qualified Flagman while on NS lines, OR (ii) 6 months' combined experience serving as the Organization's flagman on another Class I or Class II freight railroad or serving under the direct supervision of the Organization's qualified Flagman while on NS lines, and
 - Demonstrated to Organization's Management Team the competency of the individual to safely perform Protective Services, with a minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.

- (iii) A person not meeting any of the above experience and/or educational requirements, but possessing 12 months' combined experience serving as the Organization's flagman on another Class I or Class II freight railroad or under the direct supervision of the Organization's qualified Flagman while on NS lines must have:
- a. Completed 160 hours of instructor led interactive training, and
 - b. Completed an additional 80 hours of field training under direct supervision of Organization's qualified Flagman while on NS lines, and
 - c. Demonstrated to Organization's Management Team the competency of the individual to safely perform Protective Services, with a minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.
- (iv) All other persons are not to be considered as adequately experienced for the purpose of providing protective services on NS lines.

5. NS Requirements for Project Sponsors Directly Hiring Organizations to Provide Protective Services

The Project Sponsor retaining the Organization will need an agreement with NS permitting it to use a third-party contractor to conduct track protection services for the Project Sponsor's project on NS property. The Project Sponsor may only retain an Organization that is on NS's list of approved protective services Organizations, and the Project Sponsor will ensure, by including in its agreement with the Organization, that the Organization meets the following requirements of NS, which list may be modified by NS from time to time:

- Appropriate insurance coverage
- Participation in the NS vendor safety program (ISN Software Corporation, or other similar entity as determined by NS)
- Participation in software licensing and mobile device management, including:
 - Comply 365
 - Remote Field Operations
 - Delivr
- Compliance with data security requirements
- Appropriate indemnifications inuring to the benefit of NS

Project Sponsors must require that the Organization follow Norfolk Southern's notification and job briefing requirements as set forth in the Manual and applicable NS rules. Organizations are responsible to supply their own radios, derails, cell phones, and any other equipment that may be required for the protective services, and such equipment must be in good working order and compatible with NS systems, and Organizations must obtain all appropriate licenses or make other arrangements as appropriate to ensure access to data systems required by NS. Organizations are responsible for ensuring all employees on NS property have and wear the appropriate personal protective equipment (PPE). Organizations are responsible to ensure all

their employees' PPE is kept in good order, properly fitted, available for their use when needed, and used as needed.

**NORFOLK SOUTHERN
EXHIBIT 2**

All,

Norfolk Southern has determined that this project will utilize **contractor provided protective services** for any activities on or adjacent to Railroad Property and/or have the potential to foul the Railroad's track or operations.

Project Sponsor's Contractor shall be responsible for hiring a protective services provider to staff this project. Please see below for contact information for an NS approved protective services company. An agreement for protective services will need to be executed with this company prior to any work being completed on or near NS ROW. An on-site meeting must be held with NS Supervisor to certify any contractor provided protective service workers on the line and to determine which activities will require protection.

Please use the below when issuing the approved list to Contractors.

North Carolina Railroad Company (Raleigh, NC)

General Inquires: tpp@ncrr.com

John Gass | Senior Safety & Compliance Manager

JGass@ncrr.com; 864-504-0455

<https://www.ncrr.com/>

RailPros (Irving, TX)

Field Support Team

877-315-0513 (option 1)

NS.Info@railpros.com

Adam Brown

334-530-2861

adam.brown@railpros.com

R&R Consulting TEAM (Harrisburg, PA)

David N. Craft

Co-Owner & President

R&R Consulting TEAM, LLC.

717-497-4373 (Cell)

775-521-2495 (E-Fax)

dcraft@rrconsultingteam.com

www.rrconsultingteam.com

Thanks,

Shawn Starling, P.E.
Senior Engineer Public Improvements
Norfolk Southern Railway Company
Engineering - Design & Construction
650 West Peachtree Street NW - Box 45
Atlanta, GA 30308

States Covered: PA, NY, NJ, TN
Phone (470) 463-6721

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2022-3031613
Pennsylvania for approval to alter the public :
above grade crossing by the replacement of : Electronically Filed
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. :
:

Application of Pennsylvania Department of :
Transportation for approval to alter two (2) : Docket No. A-2024-3045709
public crossings by the rehabilitation of the :
existing bridge where State Route 0018 : Electronically Filed
(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. :

**WRITTEN REBUTTAL TESTIMONY OF DONALD H. ARANT, PE,
VP ENGINEERING OF NORTH CAROLINA RAILROAD SERVICES,
ON BEHALF OF NORFOLK SOUTHERN RAILWAY COMPANY**

April 29, 2025

NS STATEMENT NO. 2

1 Q. Mr. Arant, please state your full name for the record.

2 A. Donald Arant

3 Q. By whom are you employed, Mr. Arant?

4 A. North Carolina Railroad

5 Q. What is your business address?

6 A. 2809 Highwoods Boulevard, Raleigh, North Carolina

7 Q. What is your position with North Carolina Railroad?

8 A. Vice President Engineering

9 Q. What are your duties in that position?

10 A. I am responsible for managing a variety of engineering and infrastructure projects and the

11 track protection program.

12 Q. Is NC Railway Services a division of a railroad company?

13 A. NC Railway Services is a subsidiary of North Carolina Railroad.

14 Q. With the exception of flagging, which we'll focus on in a minute, please explain the

15 services offered by NC Railway Services.

16 A. NC Railway Services only provides flagging services.

17 Q. Please explain your background in the railroad industry.

18 A. With over 35 years' experience in roadway, rail, and utility engineering design and

19 construction, I have spent the past 17 years in the rail industry managing freight track

20 design, observation of railroad infrastructure construction, and managing infrastructure

21 capital investment projects from various funding sources.

22 Q. What is your educational background, Mr. Arant?

23 A. BSCE, North Carolina State University, 1986

1 Q. Are you a licensed professional engineer, and if so in what state?

2 A. Yes. North Carolina

3 Q. Is NC Railway Services also known as NCRS?

4 A. Yes.

5 Q. So, from now on, when I say NCRS, I will mean NC Railway Services, okay?

6 A. Yes, okay.

7 Q. Please explain the flagging services offered by NCRS.

8 A. NCRS provides trained and approved flaggers where needed for construction and other
9 projects taking place near railroad track.

10 Q. Mr. Arant, why has Norfolk Southern asked you to provide rebuttal testimony in this
11 matter?

12 A. NCRS is one of Norfolk Southern's approved flagging contractors.

13 Q. Please explain when the company got into offering flagging services.

14 A. Our flagging services were launched in 2024.

15 Q. Please explain the growth of your company in providing flagging services in the little
16 over a year since it has been in operation.

17 A. The growth has been substantial. We started with about 5 flaggers and now have about
18 15 flaggers working for us.

19 Q. Is NCRS providing flagging services in Pennsylvania?

20 A. NCRS has a small number of recent flagging jobs in Pennsylvania and is currently in the
21 process of registering with PennDOT as an authorized Business Partner.

22 Q. Please explain the philosophy of the company in providing flagging services.

1 A. NCRS flaggers are trained in accordance with FRA approved programs. We hire
2 experienced flaggers who typically have extensive railroad experience. Safety is our first
3 priority in providing flagging services.

4 Q. Please explain your dealings with the Pennsylvania Department of Transportation, or
5 PennDOT, at this point in time.

6 A. We have not had direct dealings with PennDOT to date, apart from filing a “Agreement
7 to Authorize Electronic Access to PENNDOT Systems”, which is part of PennDOT’s
8 Business Partner approval process.

9 Q. Does NCRS also provide flagging services to other municipal entities and utilities?

10 A. Yes.

11 Q. What is your usual lead time in providing flaggers?

12 A. It varies, as there is high demand for our services. We offer expedited services when
13 needed. We typically need at least a few weeks’ notice to properly schedule a flagging
14 job.

VERIFICATION

I, Donald H. Arant, PE, VP Engineering of North Carolina Railroad do hereby state that the facts set forth in the foregoing Written Rebuttal Testimony of Donald H. Arant on behalf of Norfolk Southern Railway Company are true and correct to the best of my knowledge, information and belief. I do make this statement pursuant to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

DocuSigned by:
DH Arant
8C5270E06E52485

Donald H. Arant, PE, VP Engineering,
North Carolina Railroad

Date: 5/5/2025 | 15:19:16 EDT

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2022-3031613
Pennsylvania for approval to alter the public :
above grade crossing by the replacement of : Electronically Filed
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. :
:

Application of Pennsylvania Department of :
Transportation for approval to alter two (2) : Docket No. A-2024-3045709
public crossings by the rehabilitation of the :
existing bridge where State Route 0018 : Electronically Filed
(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. :

WRITTEN REBUTTAL TESTIMONY OF DAVID CRAFT,
OWNER OF R&R CONSULTING TEAM LLC
ON BEHALF OF NORFOLK SOUTHERN RAILWAY COMPANY

April 29, 2025

NS STATEMENT NO. 3

1 Q. Mr. Craft, please state your full name for the record.

2 A. David Noel Craft

3 Q. By whom are you employed, Mr. Craft?

4 A. R&R Consulting TEAM, LLC

5 Q. What is your business address?

6 A. PO Box 4739, Harrisburg PA 17111

7 Q. What is your position with R&R Consulting TEAM, LLC?

8 A. Co-Owner and President

9 Q. What are your duties in that position?

10 A. Involved in all aspects of the company and usually the initial contact for requests for

11 flagging services.

12 Q. What is your career background, Mr. Craft?

13 A. Present-2017 Co-Owner & President of R&R Consulting TEAM, LLC

14 2016-2015 CSXT/OSPRE Independent Contractor

15 (Construction Manager for Utility constructing on CSX Transportation Right-of-Way)

16 2016-2012 OSP Engineer and Project Manager with Danella Engineering &

17 Construction for multiple customers

18 2012-1998 Contract Employee, Qwest National Network Services, Northeast Region

19 2012-2007: Project Engineer/Project Manager with Danella Engineering

20 2007-2004: Lead Engineer/Project Manager with MiTech Engineering

21 2004-2003: Assistant Lead Engineer – Quality Inspection Services

22 2003-2002: Design Engineer Superintendent – Sunbelt Inspection

23 2002-2000: Acting Engineer Manager- Sunbelt & CMI Inspection

1 2000-1999: Project Engineer/Redliner –CMI
2 1999-1998: Redliner - CMI
3 Q. Is R&R Consulting TEAM, LLC also known as just R&R?
4 A. Yes
5 Q. Please explain the services offered by R&R.
6 A. R&R provides third-party track protection services through qualified Roadway Workers
7 in Charge (RWICs), commonly referred to as flaggers. Our personnel ensure the safety of
8 worksites and on-track personnel by coordinating directly with railroad dispatchers to
9 manage train traffic and maintain safe working limits.
10 Q. In what states does R&R offer these services?
11 A. Just about every state east of the Mississippi River plus Missouri and excluding most of
12 New England.
13 Q. Please explain the background and history of your company.
14 A. R&R was created in 2017 and obtained service contracts with NS and T-Cubed to
15 provide Inspection and Observation for utility companies installing utilities on NS Right-
16 of-Way. In 2023 we qualified to provide flagging) on NS and direct bill DOT or utility
17 companies.
18 Q. Please explain the process for R&R becoming qualified to operate on Norfolk Southern’s
19 operating property.
20 A. We met the minimum standards as outlined in Public Improvement Projects Manual
21 Appendix E.1. Minimum Specifications for Third Party Protective Services
22 Q. How many flaggers does R&R currently employ?
23 A. We have 49 qualified flaggers currently employed.

1 Q. Where are R&R flagging services presently offered?

2 A. Any state where Norfolk Southern owns or leases track.

3 Q. What are your growth plans for R&R?

4 A. We plan to continue expanding our team of flaggers and observers to meet the growing
5 demand for third-party track protection services. Our growth is paced by the availability
6 of highly qualified personnel to ensure we maintain our high safety and performance
7 standards.

8 Q. How are your flaggers trained?

9 A. By following the minimum standards as noted in Public Improvement Projects Manual
10 Appendix E.1. Minimum Specifications for Third Party Protective Services. To sum it
11 up, our new employees undergo extensive on-the-job training, written testing, and
12 practical evaluations. The timeline varies based on prior experience and learning pace,
13 but full competency typically requires several months to a year of mentorship and field
14 exposure. Due to this, you'll find that a lot of our flaggers are retired from NS with over
15 20 years of experience. This greatly shortens the timeline.

16 Q. Mr. Craft, why has Norfolk Southern asked you to provide rebuttal testimony in this
17 matter?

18 A. Because we work with private contractors, utility companies and state departments of
19 transportation in providing track protection services and to provide testimony how we
20 successfully work with those entities to provide flagging services.

21 Q. Have you reviewed the direct testimony of the witnesses for PennDOT and the PUC's
22 Bureau of Investigation & Enforcement ("I&E")?

23 A. Yes.

1 Q. Please explain your present dealings with the Pennsylvania Department of
2 Transportation, PennDOT, at this point in time.

3 A. We first starting working for PennDOT in January of 2024, about 7 weeks after we
4 became qualified to work on NS trackage. We have completed 18 PennDOT projects to
5 date and are currently working on 5 projects for them.

6 We have had discussions with PennDOT (Starting 8/14/24) about our availability to
7 provide track protection services. We suggested that we could provide flagmen dedicated
8 for use on projects throughout PA, as we do with another state and a utility. However, no
9 progress has been made to date for PennDOT. Our last call concerning a dedicated
10 flagman was 4/3/25.

11 Q. How do you best work with state DOTs in providing flagging services?

12 A. While there is no one-size-fits-all solution, we've found one approach that works best. It
13 involves the DOT securing a dedicated flagger from us, with a weekly pay guarantee to
14 ensure consistent availability for any work on Norfolk Southern property. This
15 contractual arrangement can be for any length of time a DOT desires. This provides
16 flexibility to deploy the flagger wherever needed across active projects.

17 Q. How might PennDOT achieve the most cost savings in working with R&R and other
18 third-party flagging contractors?

19 A. I return to the use of a dedicated flagger secured by PennDOT and better coordination on
20 behalf of PennDOT. Currently a PennDOT contractor contacts us requesting 1 or 2 days
21 of work to inspect a bridge or do a crossing. We have a minimum 5-day charge because
22 we have to travel a flagger to the site, get qualified at the site by the local NS Supervisor,
23 do the work, and travel back home. If PennDOT would coordinate this work among its

1 contractors in the same general area, we could cover multiple projects in one week and
2 reduce the cost back to PennDOT.

3 Q. In reviewing the direct testimony of PennDOT, did you note a series of emails attached to
4 the direct testimony of Mark Chappell as Exhibit A, and the discussion of those emails on
5 page 3 of his testimony, which concern communications between you and Garth
6 Bridenbaugh of PennDOT regarding charges for R&R services on an invoice?

7 A. Yes.

8 Q. Do you have any comments or thoughts about those emails and the underlying exchange
9 that occurred in June of 2024?

10 A. It is common practice that our clients ignore, avoid and delay payments. My intention in
11 that exchange was simply to ensure timely payment for services rendered. I regret if the
12 tone or timing was misinterpreted, but my focus was on maintaining clear and consistent
13 follow-up to resolve the outstanding invoice. I do now understand that PennDOT has a
14 responsibility to understand for what they are being billed, and I would not cut off
15 services to a District for asking questions.

16 Q. Mr. Craft, were you recently contacted by PennDOT and Kinsley Contractors about
17 providing flagging services for PennDOT's contractor to correct a sediment/compost
18 filter sock breach at a crossing project where SR 183 crosses over Norfolk Southern
19 tracks in Reading, PA just a week or so ago in mid-April?

20 A. Yes, Kinsley contacted me on April 16.

21 Q. When Kinsley contacted you inquiring whether you could provide these services for the
22 project fix, did it indicate that the need was urgent?

23 A. No, it did not.

1 Q. When and from whom did you learn that the need for these services was urgent and how
2 soon thereafter could you provide the services?

3 A. I was contacted via a phone call from Dustin Lange on 4/22 and sent an email to offer
4 support for the project on 4/26 & 4/27 (Weekend Work) after we found out it was urgent.
5 Ronald E. Brown with Kinsley Construction turned down those dates (via email 4/23)
6 and requested dates for the “latter part” following week. We have offered the weekend of
7 5/3 & 5/4 via email on 4/23/25. We were notified 4/25/25 by Kinsley that they wished to
8 start 5/3 on the project and we have setup for the project to have a Flagman on site 5/3.

9 Q. What is your usual lead time in providing flaggers?

10 A. Typically, 6 weeks for large projects. Small 1 or 2 day jobs are hard to manage and we
11 do offer weekend work. But if we know we cannot provide anyone in a timely manner
12 we refer them back to the other companies providing protective services.

13 Q. I understand that R&R currently has a backlog on scheduling for bridge inspections and
14 has put a freeze on new scheduling for a few weeks. Could you please comment on that?

15 A. Yes, the PennDOT contractor sent us its request for flaggers for 15 different locations in
16 central and western PA about a month before the first group of inspections was to be
17 scheduled. PennDOT knows that these bridges need to be inspected every two years, and
18 its contractors could schedule flaggers far in advance. Better still, PennDOT could
19 contract with us for dedicated flaggers for these regular inspections, which would not
20 only ensure availability, but likely would be less expensive for PennDOT overall.

21 Q. Has R&R ever not been able to provide flagging services to PennDOT?

1 A. Not that I'm aware of. If we end up not covering a project that was requested by anyone,
2 it's because another company provided a flagger before we could. However, we are
3 never contacted by PennDOT, only by the contractors for PennDOT.

4 Q. How do you handle emergency requests for flaggers?

5 A. We respond to emergency requests by immediately coordinating with our internal
6 management team to assess availability and adjust existing schedules as needed. Our
7 goal is to provide rapid, reliable coverage without compromising ongoing commitments.
8 However, depending on the severity of the emergency we will shut down other projects
9 to handle the emergency.

10 Q. Does R&R also provide flagging services to other municipal entities and utilities?

11 A. Yes

12 Q. What are your growth plans for R&R?

13 A. We plan to continue expanding our team of flaggers and observers to meet the growing
14 demand for third-party track protection services. Our growth is paced by the availability
15 of highly qualified personnel to ensure we maintain our high safety and performance
16 standards. Currently we have 6 people in our training program.

17 Q. Based upon your review of the direct testimony of PennDOT's and I&E's witnesses, is
18 there anything else specifically that you would like to add to your rebuttal testimony at
19 this time?

20 A. Not at this time.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2022-3031613
Pennsylvania for approval to alter the public :
above grade crossing by the replacement of : Electronically Filed
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. :
:

Application of Pennsylvania Department of :
Transportation for approval to alter two (2) : Docket No. A-2024-3045709
public crossings by the rehabilitation of the :
existing bridge where State Route 0018 : Electronically Filed
(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. :

**WRITTEN REBUTTAL TESTIMONY OF DJ EZELL OF RAILPROS
ON BEHALF OF NORFOLK SOUTHERN RAILWAY COMPANY**

April 29, 2025

NS STATEMENT NO. 4

1 Q. Mr. Ezell, please state your full name for the record.

2 A. Dennis Julian Ezell II

3 Q. By whom are you employed, Mr. Ezell?

4 A. RailPros

5 Q. What is your business address?

6 A. 5605 N. MacArthur Blvd, Suite 650, Irving, TX 75038

7 Q. What is your position with RailPros?

8 A. Vice President of RWIC (Flagging) Operations

9 Q. What are your duties in that position?

10 A. Oversight of all RailPros provided RWIC Services through out the entire company,

11 including a variety of things such as but not limited to budget, hiring, disciplinary

12 actions, services being provided in a satisfactory manner, training, etc.

13 Q. What is your background in the railroad industry?

14 A. Completion of NARS training in 2006, Conductor from 2006-2009. (Furloughed), RWIC

15 from 2010-2014, RWIC Supervisor 2014-2015, RWIC Manager 2015-2018, RWIC

16 Director 2018-2024, RWIC Vice President 2024-current

17 Q. What is your educational background?

18 A. High School diploma, NARS, FAA Pilot training

19 Q. Are you a licensed professional engineer, and if so in what state?

20 A. No

21 Q. Please explain the services offered by RailPros overall as a company.

22 A. Program and Project Management, Construction Management, Project Controls,

23 Structural Engineering, Track Engineering, Civil Engineering, RWIC, Construction

1 Observation, Real Estate and ROW Management, Strategic Consulting, Industrial Rail
2 Design, Track Inspection, Operations and Maintenance Support, Railroad Coordination,
3 Training and Media Services.

4 Q. Please explain the flagging services offered by RailPros.

5 A. The flagmen provided by RailPros are specifically trained for each individual property
6 based on rigorous training requirements set in place by the FRA, Railroads and RailPros.

7 Q. In what states does RailPros offer these services?

8 A. All 48 states in the continental US.

9 Q. What is the history of RailPros providing flagging services?

10 A. RailPros has been providing flagging services since 2001.

11 Q. Please explain the process for RailPros becoming qualified to provide services on
12 Norfolk Southern operating property.

13 A. The process is detailed and rigorous. For RailPros to be able to hire an individual, they
14 must fall into one of 3 categories. See attachment. After the required training only then
15 can they work.

16 Q. How many flaggers does RailPros currently employ?

17 A. On NS, 72. Companywide, 700+

18 Q. What are the growth plans for RailPros flagging services?

19 A. As much as possible. We are currently attempting to coordinate 2 “academy” classes this
20 year to assist with the demand.

21 Q. How are your flaggers trained?

22 A. The flaggers are trained both in the classroom and in the field. The length of their training
23 is first determined by NS based on the requirements in its Public Improvement Projects

1 Manual for their previous knowledge/experience in the rail industry. After that we follow
2 the FRA 243 guidelines and in addition complete an evaluation on each person to
3 determine their capabilities.

4 Q. Mr. Ezell, why has Norfolk Southern asked you to provide rebuttal testimony in this
5 matter?

6 A. I was asked to participate to provide additional insight on RailPros flagging operations.

7 Q. Please explain your company's present dealings with the Pennsylvania Department of
8 Transportation, PennDOT, at this point in time.

9 A. We provide flagging services to them on an as needed basis and we have been discussing
10 the possibility of providing them with a dedicated flagger for a few months now.

11 Q. In what ways might the working relationship of PennDOT and RailPros work best?

12 A. In this current situation we are experiencing, 1 or 2 dedicated flaggers would help
13 tremendously.

14 Q. How might PennDOT achieve the most cost savings in working with RailPros and other
15 third-party flagging contractors?

16 A. Through dedicated flaggers as long there is good coordination when determining the
17 work load.

18 Q. Has RailPros ever not been able to provide flagging services to PennDOT when asked?

19 A. Yes, but only not within the time periods requested. Currently RailPros is, on average,
20 scheduling projects 160-180 days after their ROE and paperwork are completed. Some
21 are sooner than that though.

22 Q. How do you handle emergency requests for flaggers?

23 A. An emergency request must be acknowledged as an emergency through NS as well.

1 Q. Mr. Ezell, were you contacted in mid-April by PennDOT or Kinsley Contractors about
2 providing flagging services for PennDOT's contractor relating to a PennDOT project
3 near where SR 183 crosses over Norfolk Southern tracks in Reading, PA?

4 A. No, RailPros was not contacted to provide flagging for that project.

5 Q. What is your usual lead time in providing flaggers?

6 A. Currently 160-180 days on the NS property during the present busy construction season.
7 It is about 90 days during other times of the year.

8 Q. Does RailPros also provide flagging services to municipal entities and utilities in
9 Pennsylvania?

10 A. Yes

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of :
Transportation of the Commonwealth of : Docket No. A-2022-3031613
Pennsylvania for approval to alter the public :
above grade crossing by the replacement of : Electronically Filed
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. :
:

Application of Pennsylvania Department of :
Transportation for approval to alter two (2) : Docket No. A-2024-3045709
public crossings by the rehabilitation of the :
existing bridge where State Route 0018 : Electronically Filed
(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. :

**WRITTEN REBUTTAL TESTIMONY OF DUSTIN K. LANGE, PE,
ON BEHALF OF NORFOLK SOUTHERN RAILWAY COMPANY**

April 29, 2025

NS STATEMENT NO. 5

1 Q. Mr. Lange, have you reviewed the direct testimony of the PennDOT witnesses and the
2 PUC Bureau of Investigation & Enforcement (“I&E”) witnesses in this matter?

3 A. Yes.

4 Q. Before we get into any specific rebuttal, what are your general thoughts in regard to what
5 those witnesses ask of Norfolk Southern in regard to flagging?

6 A. I think they are well-intentioned desires focused on achieving the goals of their employer.
7 Unfortunately, they do not seem to grasp that what they are asking for is a value-transfer
8 from NS to PennDOT, by attempting to make NS financially responsible for PennDOT’s
9 planning, procurement, and execution. While I appreciate the attractiveness of such an
10 arrangement from PennDOT’s perspective, I suspect this “easy button” would not be
11 desirable to PennDOT if it were responsible for the true cost.

12 Q. Why do you think it is neither a good idea nor necessary for Norfolk Southern to act as a
13 back-up in providing flagging services whenever PennDOT states that it could not obtain
14 such services?

15 A. PennDOT and/or their contractors will have no incentive to exercise due diligence in
16 obtaining flagging services for themselves. They will bear little to no risk of failure, and
17 substantial cost will accrue to whomever bears it instead. If the risk-bearing party is NS,
18 we would demand to be compensated by PennDOT sufficiently to cover the financial
19 impact to our business. This will likely be far more expensive than these witnesses
20 realize. Imagine if PennDOT attempted to obtain through the open-bidding process a
21 contract obligating a prime contractor to guarantee future availability of a subcontractor’s
22 services – cranes for example. Such a contract would cost PennDOT quite a lot of money
23 up front and on an ongoing basis for that availability guarantee. PennDOT seeks this

1 type of contractual guarantee here, without regard to the cost and impact on the
2 guarantor's business. A mismatch between risk and value like this will inevitably lead to
3 wasteful abuse of the guarantee by the holder of that privilege through lackluster efforts
4 to perform due diligence before invoking the guarantee, and PennDOT proposes to be
5 granted that exact privilege by the Commission here.

6 Q. Do you have a recent example of PennDOT's contractor not performing due diligence to
7 obtain flagging services?

8 A. Just in the past couple weeks, PennDOT's contractor developed an urgent need to obtain
9 flagging services, attempted to secure the services from only one of the three qualified
10 vendors, then turned around to NS demanding that NS get involved to get them flaggers.
11 They basically threw their hands up in the air and viewed this as NS's problem to solve,
12 when third party flaggers were available.

13 Q. I am showing you now, Mr. Lange, an email string between Shawn Starling of Norfolk
14 Southern and Jonathan Wink of PennDOT between April 17 and April 23, 2025. Do you
15 recognize this document, which is marked for identification as Norfolk Southern Exhibit
16 3?

17 A. Yes

18 Q. Would you please summarize the discussions in this document.

19 A. PennDOT's contractor had created an erosion issue that required the contractor to work
20 within the railroad right-of-way. PennDOT claimed they were unable to obtain flagging
21 services from the qualified flagging vendors and demanded that NS get involved to get
22 them flagging services. Starling (NS) posed a series of questions to understand what
23 steps PennDOT had taken to secure flagging for themselves. As it turned out,

1 PennDOT's contractor, Kinsley, had only attempted to contact one of the three qualified
2 vendors and had not been willing to coordinate to work on the weekend which is when
3 that one vendor had immediate availability. NS staff then took the time to make phone
4 calls to inquire with the vendors about availability and conveyed the results of those
5 questions to PennDOT. Wink thanked Starling for this information and posed some other
6 technical questions in follow up. This is an example of the simple due diligence
7 PennDOT should be performing, yet expects NS to carry the burden of coordinating the
8 PennDOT subcontractors for them.

9 Q. Mr. Lange, in rebuttal to the testimony of PennDOT and I&E witnesses that Norfolk
10 Southern personnel should be made available to provide flagging if third party flagging
11 vendors cannot provide flaggers within a thirty-day period after asking, you mentioned in
12 your direct testimony that the provision of these services would require more highly
13 skilled personnel to be pulled for the work, as Norfolk Southern does not have employees
14 who do just flagging. Could you provide specifics of what it might cost PennDOT for
15 flagging services if say a foreman had to be pulled for this work on a PennDOT project?

16 A. If NS is required to move a foreman off their scheduled job to conduct flagging for
17 PennDOT, we would need to replace that foreman with a different person who is
18 qualified under applicable federal regulations and who could conduct the work that the
19 original foreman would have done. In addition to the potential for incremental cost
20 relating to the replacement foreman, who may have to travel farther or may be at a higher
21 pay rate, this replacement will cause delay in NS's project because of the need to find a
22 qualified person and go through the internal scheduling process. At a minimum, there is
23 cost to NS attributable to that delay, either in having to reschedule other employees who

1 now are not able to do the project during the time of delay or in not completing time-
2 sensitive projects impacting service and safety. Delaying safety-critical projects often is
3 not feasible. In total, these costs could be significant and should not be dismissed.

4 Q. Mr. Lange, because this is important in regard to some of PennDOT's direct testimony,
5 when did Norfolk Southern first require PennDOT to arrange for its own flagging
6 services through third party vendors?

7 A. The requirements were instituted in late 2022. However, in practical terms this generally
8 did not result in PennDOT needing to arrange for its own flagging services until the
9 spring of 2023 due to seasonal effects on construction activities.

10 Q. Mr. Lange, I would like to now direct your attention to PennDOT Hearing Statement No.
11 3, which is the direct testimony of Michele Acitelli. On page 4 of her testimony, she
12 discusses efforts to involve the assistance of Shawn Starling, who is Senior Engineer
13 Public Improvements for NS, when it was having trouble obtaining services through the
14 third-party vendor Railroad Consultants in late 2023 and early 2024. First of all, is
15 Railroad Consultants currently an approved Norfolk Southern flagging vendor?

16 A. No, they have gone out of business.

17 Q. Do you have any comments in explanation or rebuttal to Ms. Acitelli's testimony on page
18 4 of her direct and the emails attached to her testimony as PennDOT Exhibit B?

19 A. This is the crux of the issue. PennDOT's contractor had difficulty obtaining a flagger
20 from one of the three qualified vendors. Rather than attempt to obtain a flagger from the
21 other vendors, the contractor turned to PennDOT who turned right around and expected
22 NS to get involved. As I read Ms. Acitelli's recommendation, she expects the railroad to
23 force flagging of PennDOT projects to take priority over other projects and other

1 governmental agencies, both within Pennsylvania and in other states, even if those
2 utilities and DOTs behaved in a far more responsible manner than PennDOT's contractor
3 by actually contacting more than one supplier. Ms. Acitelli is effectively advocating for
4 an "easy button" with which PennDOT can obtain services without performing due
5 diligence and ahead of others who did.

6 Q. Do you have any comments in rebuttal to Ms. Acitelli's suggestions that a protocol be
7 established that requires primary flagging oversight by Norfolk Southern, as discussed on
8 page 5, lines 11 through 20, of her direct testimony?

9 A. She may not realize it, but what she is proposing is that NS be forced to exert PennDOT's
10 will on the private sector not only in Pennsylvania, but in adjoining states too. She is
11 advocating that NS inject itself, on behalf of PennDOT, into the business dealings of
12 utilities and state and local governments in 22 states, because she expects NS to somehow
13 enforce PennDOT's self-proclaimed priority over the projects of those other entities
14 whenever PennDOT's contractor fails to properly subcontract for services it knows
15 without a doubt it will require. NS should not be forced to intervene when PennDOT's
16 contractor fails to acquire enough asphalt to pave its roads. NS should not be forced to
17 intervene when PennDOT's contractor fails to secure the services of a painting
18 subcontractor. Just as in those subcontractor situations, NS should not be forced to
19 intervene when PennDOT's contractor fails to secure the services of a third party flagger.
20 PennDOT should hold their contractor accountable for securing subcontracted services
21 like every other state DOT. Norfolk Southern is a private enterprise – if we are expected
22 to perform a service another entity sees as valuable, we expect to be compensated for the

1 provision of that service, especially subcontractor coordination for someone else's
2 projects.

3 Q. I would like to now turn your attention to the direct testimony of Sarah Fenton, which is
4 PennDOT Hearing Statement No. 4. On page 4 of her testimony, lines 13 through 17,
5 Ms. Fenton discusses PennDOT's relationship with its own construction contractors.
6 How does this compare to her characterization of Norfolk Southern having "total control"
7 of the approved third-party flagging vendors on page 11, lines 4-7, of her direct
8 testimony?

9 A. Ms. Fenton describes a contracting arrangement in which PennDOT is paying for an
10 outcome, and the contractor is free to determine the means and methods best suited to
11 accomplishing that outcome. Flagging is one of those means and methods. The
12 contractor can arrange their work in such a way so as to minimize the need for flagging,
13 or in such a way that flagging is critical at numerous and very specific times. She seems
14 to suggest that a contractor doing the latter, and failing to adequately secure those
15 subcontracted services, is not the failure of the contractor and is instead the failure of the
16 property owner. Ms. Fenton's description of "total control" is in fact merely the right of
17 a private property owner to restrict entry. She may not realize it, but if Norfolk Southern
18 takes issue with the actions of PennDOT's contractor – any contractor, not merely
19 flagging vendors – even if the contractor is working in another state like the example
20 given, NS absolutely reserves the right to "suspend the work" of that contractor
21 everywhere on its lines until the situation is remedied. She describes a hypothetical
22 scenario in which work is stopped "mid-air," which is a highly unlikely scenario, but NS
23 has absolutely refused entry to contractors mid-project, and has even required alternative

1 contractors brought in to secure the work site to protect against the very concerns she has
2 expressed. This has nothing to do with “control” of contractors or flaggers, rather it is a
3 property owner exercising its right to ensure and enforce its expectations of safe
4 behaviors of the visitors on its property.

5 Q. On page 5 of Ms. Fenton’s direct testimony, lines 10 through 20, Ms. Fenton discusses
6 the procedure for determining when flagging is needed for a project. Do you have any
7 rebuttal, or would you like to clarify her statement there that “Norfolk Southern still
8 determines when a flagger is needed and when one is not.”?

9 A. While NS makes an initial determination based on the work scope whether a flagger is
10 needed generally, the flagging vendor determines the points in the project when
11 PennDOT’s contractor needs to be protected from train operations, and how. This is part
12 of the reason why NS is particular about which vendors PennDOT uses – we have
13 confidence that these vendors know how to properly make this determination, whereas
14 other flagging vendors, PennDOT, and/or PennDOT’s contractor may not.

15 Q. Next, on page 6, lines 2 through 7 of her direct testimony, Ms. Fenton describes the
16 process for obtaining flagging on projects involving the Genesee & Wyoming Railroads.
17 There, G&W still performs the coordination between PennDOT’s contractors and that
18 railroad’s third-party flagging vendors. Would you care to comment on those statements
19 in regard to Norfolk Southern procedures?

20 A. NS has no desire to become actively involved in coordinating services between
21 PennDOT’s contractor and PennDOT’s subcontractor, regardless of the service that
22 subcontractor is performing for PennDOT, and would expect to be compensated for

1 providing such a value-added service if forced to do so. What other railroads do is their
2 business – they have every right to conduct affairs on their property as they see fit.

3 Q. Next, on lines 16 through 18 of Ms. Fenton’s direct testimony on page 6, she states that
4 only two of three vendors on Norfolk Southern’s approved railroad flagging vendor list
5 are registered to work in the state of Pennsylvania. Do you have any rebuttal in regard to
6 that testimony.

7 A. Ms. Fenton is referring to NCRR, North Carolina Railroad, which has a subsidiary called
8 North Carolin Railroad Services, or NCRS, which provides flagging services. I have
9 been informed that NCRS is currently negotiating with PennDOT on contract terms to
10 provide flagging for two projects.

11 Q. Please provide further details from your direct testimony on the current status of your
12 efforts to obtain additional approved flagging vendors.

13 A. PennDOT was very helpful in connecting NS to two other flagging vendors who are
14 interested in obtaining approval to provide those services to PennDOT while on NS
15 property. We are very close to approving one of those vendors, as their latest submission
16 on April 17th addressed one of the primary obstacles which had previously hindered
17 approval. This is a great example of PennDOT working to address their own concerns
18 about availability.

19 Q. From page 7, line 15, through page 8, line 13 of her direct testimony Ms. Fenton
20 discusses several “reasons for the issues PennDOT has securing flagging for projects near
21 Norfolk Southern’s tracks.” Do you have any rebuttal to provide to her testimony in that
22 regard?

1 A. The complaint appears to be that personnel, who take months to properly train, are not
2 readily available within 30 days' notice. If PennDOT expects to need a certain number of
3 flaggers for an upcoming construction season, one option they have is to enter into an
4 agreement with the provider of those services sufficiently in advance for them to find,
5 hire, and train the necessary personnel. With regard to the complaint that PennDOT's
6 contractors were not aware of the existence of some of the qualified flagging vendors,
7 through our many conversations, PennDOT certainly is aware of the various approved
8 vendors, and should inform their contractors. Also, anyone who inquires directly to NS
9 about providing flaggers is given the vendor contact information in Norfolk Southern
10 Exhibit 2.

11 Q. Then, on page 8, lines 17 through page 9, line 20, Ms. Fenton describes issues with
12 flagging in particular in regard to a project on SR 4005, in La Plume, Lackawanna
13 County, in 2022. Would you please comment on that testimony?

14 A. Misbehavior between any of PennDOT's contractors or personnel can result in NS
15 removing those people from its property, regardless of the service they are providing to
16 PennDOT. If an NS employee is misbehaving, they will be removed from the property
17 too. I do not see the relevance of this complaint to the issues at hand. With regard to NS
18 performing maintenance activities out of the line-of-sight of PennDOT's contractor, and
19 that activity impacting PennDOT's productivity, that is an unfortunate consequence of
20 working near railroad tracks which we deal with every single day. I do not see the
21 relevance to the question of whether or not NS should be responsible for addressing
22 PennDOT's contractor's failure to obtain the subcontracted services necessary to support
23 its chosen means and methods.

1 Q. On page 12 of Ms. Fenton’s direct testimony, after outlining certain hypothetical safety
2 concerns, Ms. Fenton states at lines 7 through 10 that because of a possible detrimental
3 outcome, “the Department feels that it is the responsibility of Norfolk Southern to
4 provide a flagger, and that it shouldn’t fall on the Department’s contractor to secure
5 another flagger.” She then further states that due to “the liability and seriousness of the
6 situations outlined above, the Department feels that ‘gentlemen’s handshake’ from an
7 individual from a company does not provide enough assurance that a flagger will be
8 provided in the future should something occur.” Do you have any rebuttal in regard to
9 Ms. Fenton’s testimony in this regard?

10 A. I have always placed safety as paramount, and I take great pride in helping others in any
11 way I can, including connecting people with needs to people who may be able to help.
12 What Ms. Fenton is asking for is something else. She is asking for NS to obligate itself
13 to address the procurement failures of PennDOT’s contractors, and to do so at
14 considerable cost to NS. It is wholly within PennDOT’s power to have the assurances
15 they desire for availability by working directly with the providers of those services,
16 especially for regular bridge inspections, which could be scheduled far in advance and
17 guaranteed through a vendor agreement. It is wholly within the power of PennDOT’s
18 contractors to do the same. If a “gentleman’s handshake” is insufficient for PennDOT,
19 then they should go into the market and procure the services like every other DOT and
20 utility we deal with. Lastly, I will point out that PennDOT appears to be causing some of
21 their own issues – it appears they are holding on to flaggers they do not need on one
22 project, while complaining about flagger availability on the next project. Other DOTs
23 and a number of utilities simply arrange for a handful of flaggers and schedule their work

1 in such a way that the same flagger just bounces from job to job as needed. To “hoard”
2 and then cry “shortage” is not constructive.

3 Q. Are there any matters to which you would like to provide rebuttal testimony concerning
4 the direct testimony of Mr. Sinick for I&E?

5 A. Mr. Sinick evidently does not understand what railroad flagging entails on NS. He is
6 describing starting on line 20 of page 2 of his testimony an antiquated type of track
7 occupancy coordination known as a “lineup” which has not been used anywhere on NS
8 for several decades for safety reasons. He then goes on to draw numerous conclusions
9 about the imperative of onerous obligations being placed on the railroad to mitigate
10 against potential communication failures resulting from this system, which, again, is not
11 even used on NS.

12 Some of his points are irrelevant, such as requiring the railroad to dispatch their
13 operations through the project site – the question of the appropriate method of operation
14 on a specific segment of track is a federal one, and in practical terms no railroad
15 communicates or dispatches any differently at a given location when there is a crossing
16 project underway than it would when there is no such project. He does correctly state
17 that railroad flagging can be costly but fails to understand that this reason is one of many
18 why the procurement and efficient utilization thereof is best left as the responsibility of
19 the entity ultimately paying for the work – in this case, PennDOT.

20 He advocates for proper notification, fines and sanctions for delays, but noticeably fails
21 to advocate for compensation for the cost of delays sustained by the railroad if forced to
22 remove our personnel from possibly safety-critical roles to supply flaggers whenever

1 PennDOT demands, and he fails to advocate for proper compensation for the cost of
2 creating the desired availability in the first place.

3 He is concerned about public expenditures due to delays, demanding that the utility,
4 highway entity, or political subdivision be able to plan their work with their contractors,
5 and on this point I agree with Mr. Sinick completely. PennDOT, the utility or political
6 subdivision SHOULD plan their work with THEIR contractors, including the contractor
7 THEY select to provide for THEIR flagging needs. Requiring NS to coordinate the
8 contracted work on behalf of these entities runs completely counter to Mr. Sinick's desire
9 for efficiency.

10 Q. Is there anything I missed in the direct testimony of PennDOT and I&E for which you
11 would like to provide rebuttal at this time?

12 A. The PennDOT and I&E testimonies seem to reflect a genuine desire to ensure that
13 PennDOT can execute its construction projects in a timely and cost-effective manner. I
14 share these sentiments. Where we disagree seems to be on a few key points.
15 First, PennDOT's project execution is PennDOT's responsibility and PennDOT's alone –
16 any failure to properly plan for and procure services of any kind, flagging or otherwise,
17 cannot be justly placed at the hands of another entity, railroad or not. Second, and
18 related, PennDOT's inability to enter into long-term agreements with the providers of
19 flagging services, who can then in turn hire and train sufficiently to address PennDOT's
20 needs, and which would most certainly save PennDOT costs in the long run, can in no
21 way be allowed to become Norfolk Southern's burden to address.
22 Third, any such burden being placed on NS could only be considered justly compensated
23 if the entirety of the cost of a "PennDOT flagging availability scheme" were paid for by

1 PennDOT, including the full and entire employment costs of the personnel and
2 management being carried on payrolls simply for potential future use by PennDOT.
3 Fourth, any burden placed on NS that would require NS to intervene in the private,
4 national flagging market on behalf of PennDOT and to the detriment of other States,
5 municipalities, and private utilities who did take responsibility for timely securing their
6 own flagging needs could similarly only be considered justly compensated if the injured
7 party is made whole by PennDOT for their delays. Anything less would constitute a
8 subsidy to PennDOT's project.

9 Lastly, a railroad should not be required to disrupt railway operations elsewhere in
10 Pennsylvania and in other states, to disrupt utility construction elsewhere in Pennsylvania
11 and in other states, or to disrupt the construction projects of other states, simply because
12 PennDOT is unwilling to plan in advance, procure suitable flagging resources at market
13 rates, and be good stewards of those resources such that they are not wasted. In short,
14 PennDOT should take responsibility for its own construction services, including flagging,
15 and should not seek Commission orders requiring extensive and unnecessary intervention
16 into the free market or federally regulated railroad operations. If PennDOT opts not to
17 plan sufficiently in advance or of negotiating appropriate free-market contracts that
18 address their scheduling uncertainties, which is to say if PennDOT desires an insurance
19 policy for the risk of specialty subcontractor unavailability, they should be required to
20 pay for that.

**NORFOLK SOUTHERN
EXHIBIT 3**

From: Wink, Jonathan A <jwink@pa.gov>
Sent: Wednesday, April 23, 2025 12:12 PM
To: Starling, Shawn <Douglas.Starling@nscorp.com>; Seibert, Devin <dseibert@pa.gov>; rbrown@kinsleyconstruction.com; Wolfinger, Joel <jwolfinger@tpdinc.com>; Ney, Scott <sney@tpdinc.com>
Cc: Rapone, Christopher <christopher.rapone@aecom.com>; AMER-US-PA Philadelphia-NSGEC <NSGEC@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>; Ward IV, TJ <John.Ward@aecom.com>
Subject: RE: [External] RE: PennDOT Handling of Corrective Measures - Reading, PA - BR0025791 - HP-59.60 - SR 183 OHB (91091) - Task 222

Shawn,

Is Norfolk Southern going to do the Railroad Bed Ballast Remediation?

If so, will NS RR also be remediating the ballast on the railroad bed from the 18 inch Compost Filter Sock up to the side of the tracks/ ties (see photo) ?

Cleaning the ballast between the filter sock and rail will require Kinsley to use different equipment than what would be needed to remove the sediment from between the filter sock and toe of the slope. Please let us know.



Jonathan Wink | Senior Civil Engineer Supervisor
PA Department of Transportation | Engineering District 5-0
1002 Hamilton Street | Allentown, PA 18101-1013
Cell: 610-709-7348 | jwink@pa.gov

From: Starling, Shawn <Douglas.Starling@nscorp.com>
Sent: Wednesday, April 23, 2025 8:24 AM
To: Wink, Jonathan A <jwink@pa.gov>; Seibert, Devin <dseibert@pa.gov>; rbrown@kinsleyconstruction.com
Cc: Rapone, Christopher <christopher.rapone@aecom.com>; AMER-US-PA Philadelphia-NSGEC <NSGEC@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>; Ward IV, TJ <John.Ward@aecom.com>
Subject: RE: [External] RE: PennDOT Handling of Corrective Measures - Reading, PA - BR0025791 - HP-59.60 - SR 183 OHB (91091) - Task 222

Understood

Thanks,
Shawn Starling, PE
Senior Engineer Public Improvements NS
States Covered: PA, NY, NJ, TN, MO, AL

From: Wink, Jonathan A <jwink@pa.gov>
Sent: Wednesday, April 23, 2025 7:28 AM
To: Starling, Shawn <Douglas.Starling@nscorp.com>; Seibert, Devin <dseibert@pa.gov>; rbrown@kinsleyconstruction.com
Cc: Rapone, Christopher <christopher.rapone@aecom.com>; AMER-US-PA Philadelphia-NSGEC <NSGEC@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>; Ward IV, TJ <John.Ward@aecom.com>
Subject: RE: [External] RE: PennDOT Handling of Corrective Measures - Reading, PA - BR0025791 - HP-59.60 - SR 183 OHB (91091) - Task 222

Thanks Shawn,
I will follow up with this Kinsley on this today. We will inform you of our progress.

Jonathan Wink | Senior Civil Engineer Supervisor
PA Department of Transportation | Engineering District 5-0
1002 Hamilton Street | Allentown, PA 18101-1013
Cell: 610-709-7348 | jwink@pa.gov

From: Starling, Shawn <Douglas.Starling@nscorp.com>
Sent: Tuesday, April 22, 2025 2:55 PM
To: Wink, Jonathan A <jwink@pa.gov>; Seibert, Devin <dseibert@pa.gov>
Cc: Rapone, Christopher <christopher.rapone@aecom.com>; AMER-US-PA Philadelphia-NSGEC <NSGEC@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>; Ward IV, TJ <John.Ward@aecom.com>
Subject: [External] RE: PennDOT Handling of Corrective Measures - Reading, PA - BR0025791 - HP-59.60 - SR 183 OHB (91091) - Task 222

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Jon and Devin,

Norfolk Southern contacted the approved Contractor Protective Services vendors and explained the urgency of the on-site situation which was not understood during the initial discussion with Kinsley (PennDOT's Contractor) . Norfolk Southern has since followed up directly with both vendors—R&R Consulting TEAM and RailPros—to explain the situation and emphasize the urgency of the E&S repairs.

R&R Consulting TEAM confirmed they are available to provide Contractor Protective Services over the weekend to support the required work. RailPros indicated they may be able to cover a couple of days but will need to review their schedule before confirming availability. While NCRS was not contacted by Norfolk Southern in regard to this situation, I am sure they would do everything possible to accommodate an urgent request like this.

It is the responsibility of PennDOT to ensure that their contractor (Kinsley) operates in good faith and makes every effort to coordinate with NS's approved Contractor Protective Services prior to contacting Norfolk Southern. Norfolk Southern will make every effort to facilitate Contractor Protective Services scheduling to help resolve any issue on your projects, provided that PennDOT and/or their contractor have exhausted all of the measures above.

Thanks,

Shawn Starling, P.E.
Senior Engineer Public Improvements
Norfolk Southern Railway Company
Engineering - Design & Construction
650 West Peachtree Street NW - Box 45
Atlanta, GA 30308

States Covered: PA, NY, NJ, TN, MO, AL
Phone (470) 463-6721

From: Wink, Jonathan A <jwink@pa.gov>
Sent: Tuesday, April 22, 2025 7:55 AM
To: Shawn Starling <Douglas.Starling@nscorp.com>; Seibert, Devin <dseibert@pa.gov>
Cc: Ward IV, TJ <John.Ward@aecom.com>; Rapone, Christopher <Christopher.Rapone@aecom.com>; AMER-US-PA Philadelphia-NSGEC <NSGEC@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>
Subject: RE: PennDOT Handling of Corrective Measures - Reading, PA - BR0025791 - HP-59.60 - SR 183 OHB (91091) - Task 222

Shawn, Please see responses shown below **Highlighted in Yellow**. Per the phone conversation between you and D.Seibert (DOT) on 4/17/25, you rejected scheduling a meeting to discuss this matter until we provided answers to the below questions. Thus, we have answered your questions and are requesting a meeting again. Please provide your availability for a meeting ASAP.

NS has a few questions to ask you about the soil and erosion control issue.

1. I have the following questions for PennDOT to answer due to the soil and erosion issue that has occurred on this project.
 - a. Who notified PennDOT of the issue, the date of notification and company name? Noone notified DOT. J.Wink (DOT) noticed the sediment/compost filter sock breach during a 4/9/25 site visit. R.Brown (Kinsley) was also onsite at the time and simultaneously discovered the sediment.
 - b. Who (prime contractor, subcontractor, NS consultant, etc.) first notified you, when, date of notification and company name? Noone, see response above.
 - c. Was PennDOT's main contractor aware of the issue? Yes.
 - d. Please advise if any pictures or documents were provided. DOT did not provide pictures or documents, as neither were requested.

- e. What steps have been taken to correct this issue? On 4/9/25, DOT requested Kinsley to add 12 inch compost filter sock near the second H piles on the slopes of the NW & SW quadrant's embankments, all of which is within the Temporary Construction Easement Right of Way. NOTE: DOT's response assumes this question is asking what physical changes have been implemented to correct this issue. Since we have been unable to schedule railroad flaggers, we've been limited as to what we can do outside of NS property.
- f. Was a plan developed and submitted to NS for approval and when? Phone calls to initiate a remediation plan from J.Wink to S.Starling were made on 4/14/25 in AM, as well as 4/16/25 in AM and PM. J. Wink and S.Starling did not have phone conversation. A remediation and corrective plan was submitted to NS via email from J.Wink to S.Starling dated 4/16/25 at 2 PM.
- g. Once established as an urgent (emergency) site condition related situation, what measures were taken to resolve this situation? Upon discovery on 4/9/25, DOT and Kinsley have viewed and treated this situation as urgent. On 4/9/25, Kinsley contacted T.Ward about the situation. On 4/9/25 – 4/11/25, DOT and Kinsley began working with subcontractors and R&R Consultants to secure the quickest response times to initiate remediation and corrective actions. Various phone calls to T.Ward and S.Starling have been made by J.Wink, D.Seibert and R.Brown to facilitate expedited resolution of this situation.
 - i. Company Name, who, when, and date of seeking Contractor Protective Services. Kinsley first sought R&R Consultants' availability via phone calls on 4/11/25.
 - ii. Was the urgency of the situation stressed when requesting Contractor Protective Services? Yes.
 - iii. Were other Contractor Protective Services providers approached about availability of services? If yes, please provide vendor's name, contact person, and date of conversation. No others were approached. Railroad Consultants and Rail Pros declined to work with the project when Kinsley contacted them in the early stages of construction. R&R Consultants were the only CPS available & willing to provide services.
 - iv. How did the vendor(s) reply to the request given the urgent nature of the situation? R&R Consultants relayed that they are not currently scheduling flaggers for new projects. They said to reach back out in mid-May 2025 if other flagging arrangements have not been made.
- h. What steps are now being taken to rectify this situation? DOT and Kinsley are waiting to get Contractor Protective Services availability and scheduling. DOT has requested a meeting with NS to discuss this situation.

Jonathan Wink | Senior Civil Engineer Supervisor
 PA Department of Transportation | Engineering District 5-0
 1002 Hamilton Street | Allentown, PA 18101-1013
 Cell: 610-709-7348 | jwink@pa.gov

From: Starling, Shawn <Douglas.Starling@nscorp.com>
Sent: Thursday, April 17, 2025 2:28 PM
To: Wink, Jonathan A <jwink@pa.gov>; Seibert, Devin <dseibert@pa.gov>
Cc: Ward IV, TJ <John.Ward@aecom.com>; Rapone, Christopher <christopher.rapone@aecom.com>; AMER-US-PA Philadelphia-NSGEC <NSGEC@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>
Subject: [External] PennDOT Handling of Corrective Measures - Reading, PA - BR0025791 - HP-59.60 - SR 183 OHB (91091) - Task 222

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Jon and Devin,

NS has a few questions to ask you about the soil and erosion control issue.

1. I have the following questions for PennDOT to answer due to the soil and erosion issue that has occurred on this project.
 - a. Who notified PennDOT of the issue, the date of notification and company name?
 - b. Who (prime contractor, subcontractor, NS consultant, etc.) first notified you, when, date of notification and company name?
 - c. Was PennDOT's main contractor aware of the issue?
 - d. Please advise if any pictures or documents were provided.
 - e. What steps have been taken to correct this issue?
 - f. Was a plan developed and submitted to NS for approval and when?
 - g. Once established as an urgent (emergency) site condition related situation, what measures were taken to resolve this situation?
 - i. Company Name, who, when, and date of seeking Contractor Protective Services.
 - ii. Was the urgency of the situation stressed when requesting Contractor Protective Services?
 - iii. Were other Contractor Protective Services providers approached about availability of services? If yes, please provide vendor's name, contact person, and date of conversation.
 - iv. How did the vendor(s) reply to the request given the urgent nature of the situation?
 - h. What steps are now being taken to rectify this situation?

Thanks,

Shawn Starling, P.E.
Senior Engineer Public Improvements
Norfolk Southern Railway Company
Engineering - Design & Construction
650 West Peachtree Street NW - Box 45
Atlanta, GA 30308

States Covered: PA, NY, NJ, TN, MO, AL
Phone (470) 463-6721



Pennsylvania Department of State
Bureau of Corporations and Charitable Organizations
PO Box 8722 | Harrisburg, PA 17105-8722
T: 717.787.1057
dos.pa.gov/BusinessCharities

April 30, 2025

NC Railway Services LLC
125 LOCUST ST
HARRISBURG, PA 17101-1411

Entity Name: NC Railway Services LLC
Entity File Date: April 30, 2025
Entity Number: 0014366407
Filing Type: Foreign Limited Liability Company

The Bureau of Corporations and Charitable Organizations is happy to send your filed document. The Bureau is here to serve you and we would like to thank you for doing business in Pennsylvania.

Thank you for registering with the Department of State to do business in Pennsylvania. Like many other businesses, you may have employees, sell taxable products, or provide a taxable service to consumers in Pennsylvania. Please visit www.pa100.state.pa.us to register for business taxes with the Department of Revenue and the Department of Labor and Industry. You may also visit www.Business.pa.gov to find resources for businesses through all stages of development.

Beginning in 2025, annual reports are required for all domestic filing entities, limited liability general partnerships and registered foreign associations. More information will be forthcoming from the Bureau. However, to ensure that you receive notice of how and when to make annual reports, keep all information on file with the Bureau up-to-date, particularly registered office address.



0014366407



COMMONWEALTH OF PENNSYLVANIA
 Department of State
 Bureau of Corporations and Charitable Organizations
 PO Box 8722
 Harrisburg, Pennsylvania 17105-8722
FOREIGN REGISTRATION STATEMENT
 Fee: \$250

Pennsylvania Department of State

-FILED-

File #: 0014366407
 Date Filed: 4/30/2025

E0832-2336 04/30/2025 9:35 AM Received by Pennsylvania Department of State

DSCB:15-412 (rev. 2/2017)

In compliance with the requirements of 15 Pa.C.S. § 412 (relating to foreign registration statement), the undersigned foreign association hereby states that:

Foreign Business Type		
Filing type	Foreign Limited Liability Company	
LLC filing type	Limited Liability Company	
Association Name		
The full and proper name of the foreign association as registered in its jurisdiction of formation is	NC Railway Services LLC	
Business name in Pennsylvania	NC Railway Services LLC	
Effective Date		
The filing shall be effective when filed with the Department of State		
Additional Information		
Jurisdiction of Formation	NORTH CAROLINA	
Select one of the following	The association may not have series.	
The street address of the association's principal office.		
Principal Office Address	2809 HIGHWOODS BLVD RALEIGH, NC 27604-0015	
The mailing address of the association's principal office.		
Mailing Address	2809 Highwoods Blvd Raleigh, NC 27604	
Home Jurisdiction Addresses		
Select one	The association's home jurisdiction does not require the association to maintain a street and mailing address in that jurisdiction.	
Registered Office		
The address of this association's proposed registered office in this Commonwealth is	125 LOCUST ST HARRISBURG, PA 17101-1411 DAUPHIN	
Additional provisions, if any		
Additional provisions		
<input type="checkbox"/>	I qualify for a veteran/reservist-owned small business fee exemption (see help)	
Electronic Signature		
IN TESTIMONY WHEREOF, the above-named association has caused this Foreign Registration Statement to be signed by a duly authorized representative		
	Full Name	Title
	Catherine Knudson	Corporate Secretary
		Date
		04/30/2025



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 8, 2025

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, please find the Department's *Certificate of Service* regarding the Direct Testimony of the Commonwealth of Pennsylvania, Department of Transportation, serviced to both the Norfolk Southern Railway Company and the PUC Bureau of Investigation and Enforcement for filing in the above-captioned matters.

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
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

**DEPARTMENT OF TRANSPORTATION'S TESTIMONY
DOCKET NOS. A-2022-3031613 AND A-2024-3045709
HEARING STATEMENT NO. 1
DIRECT TESTIMONY OF MARK CHAPPELL
HEARING DATE: MAY 7, 2025**

1 **Q: Please state your name and business address.**

2 A: My name is Mark Chappell and my business address is 400 North Street Harrisburg, PA.

3 **Q: What is your educational background?**

4 A: I have my BS in civil engineering technology from the University of Pittsburgh at
5 Johnstown and a Professional Engineer License since August 1995.

6 **Q: By whom are you employed and in what capacity?**

7 A: I work for the Pennsylvania Department of Transportation as a Highway Administration
8 Program Manager 2- Chief of the Right-of-Way, Utility, and Grade Crossing Division.

9 **Q: How long have you been employed by the Department and in what other capacities
10 have you been employed?**

11 A: I have been employed by PennDOT for 22 years – current position since 2007, Civil
12 Engineer Manager - Contract Development and Award Section (2004-2007), Senior Civil
13 Engineer Supervisor - Contract Development and Award Section (2002 – 2004).

14 **Q: Please describe your duties as Chief.**

15 A: I am responsible for developing and ensuring compliance with policies and procedures
16 that comply with applicable laws and regulations for the acquisition of right-of-way,
17 relocation of utilities and alterations to railroad facilities as required by highway and
18 bridge projects. I also provide guidance and direct support to the eleven Engineering
19 District Offices throughout the Commonwealth enabling their staff to perform their right-
20 of-way, utility relocations, and grade crossing duties.

1 **Q: Are you familiar with the crossing at West King St. for docket A-2022-3031613 for**
2 **District 8?**

3 A: No, other than in preparing for this hearing.

4 **Q: Are you familiar with the crossing at Seventh Avenue for docket A-2024-3045709**
5 **for District 11?**

6 A: No, other than in preparing for this hearing.

7 **Q: How did you become familiar with these crossings?**

8 A: I only know of them because of this case, but I do not know the specifics of the crossings.

9 **Q: You've been at PennDOT for 22 years, can you describe how PennDOT would**
10 **acquire flagging in the past involving Norfolk Southern projects.**

11 A: In the past we would work out of the Construction Reimbursement Agreement which,
12 would estimate how much flagging was needed. The Railroad would then provide the
13 necessary flagging for the project.

14 **Q: When an issue arises on-site with a flagging vendor, how does PennDOT work to**
15 **rectify that issue currently?**

16 A: The District handles this issue in the field. The issues are handled differently per
17 situation. Either the issue is worked by the District or the District elevates the issue to
18 Central Office who then contacts the railroad.

19 **Q: When a flagging issue arises and elevates to your level, who does PennDOT contact**
20 **in Norfolk Southern to inform them of the issue?**

21 A: We would contact Shawn Starling of Norfolk Southern and if necessary, Aaron Meyers,
22 who is Shawn Starling's supervisor.

23 **Q: Have any issues arose in the near past with flagging on a Norfolk Southern project?**

1 A: Yes.

2 **Q: Describe what happened during that flagging issue for a Norfolk Southern project.**

3 A: The District Executive asked me to review an email, marked as Department Exhibit A,
4 they received from R&R Consultant Team and to pay attention to the tone and the threat
5 that was a response to a simple question about an invoice. The District and Contractor, in
6 a professional manner, were asking questions about additional charges and needed further
7 explanation/justification so they could approve the invoice.

8 **Q: How was the flagging issue in District 9 you just described resolved?**

9 A: This issue was discussed in June 2024 with Shawn Starling and Aaron Meyers of Norfolk
10 Southern. The Department stated their concerns with the increase in the cost of flagging.
11 Norfolk Southern stated it would be wise to have separate coordination meetings with
12 each third-party flagging vendor individually to coordinate directly with the flagging
13 vendors regarding upcoming Department projects. Norfolk Southern also stated they are
14 unable to force their third-party flagging vendor to work in a district that the flagging
15 vendor does not want to work in. If a qualified third-party flagging vendor for Norfolk
16 Southern is not registered or does not want to work in Pennsylvania, then this limits the
17 Department's options to obtain a qualified flagging vendor for their projects.

18 **Q: What happens when a flagging vendor is no longer available for a current project,
19 where construction is underway?**

20 A: All activities requiring Railroad flagging stop. If the contractor cannot work elsewhere
21 then delay damages start to accumulate. Example: if we are setting beams for a bridge
22 over the railroad and the flagger is no longer available then the operation stops, and we
23 still have to pay for the crane and crew. Also, if we are demolishing a bridge deck and

1 the flagger is no longer available, then we are leaving a partially demolished bridge
2 which is a server safety hazard.

3 **Q: Based on your experience in managing and overseeing grade crossing projects, what**
4 **issues would arise if the Department were required to “furnish” flaggers?**

5 A: The Department is in the business of supporting vehicular traffic throughout the
6 Commonwealth. The Department is not in the railway business and has no knowledge,
7 expertise, and/or experience in railway operations and innerworkings. Based on this, the
8 Department is not qualified to provide or train railroad flaggers. Railroad flagging is a
9 specialized service, and that service is much different than the service provided by
10 highway flaggers on construction projects. At minimum, if the Department was mandated
11 to provide railroad flaggers, the Department would need to add personnel compliment.
12 Not only would the Department need complement, but it would also need the “new”
13 compliment to be filled by capable and qualified individuals who could perform the
14 work. The Department would need to bring on specialized training personnel to train new
15 hires. The Department would also need to add personnel to handle the additional and new
16 coordination necessary for our highway/bridge construction projects as well as for our
17 bridge inspection needs because of this.

18 **Q: Does the Department have any role in qualifying or certifying railroads flaggers**
19 **under state or federal requirements?**

20 A: No.

21 **Q: Does this conclude your testimony?**

22 A: Yes.

**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. :

VERIFICATION

I, Mark Chappell, Chief of the Right-of-Way, Utility, and Grade Crossing Division

Commonwealth of Pennsylvania, Department of Transportation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

DATE: April 4, 2025

 2025.04.04
08:56:30 -04'00'

Mark Chappell
Chief of the Right-of-Way, Utility, and
Grade Crossing Division

EXHIBIT A

Exhibit A

From: [Chappell, Mark](#)
To: [Leonard, Daniel](#); [Fenton, Sarah J](#)
Subject: FW: [External] Fw: R&R Invoice 240305
Date: Monday, June 10, 2024 7:13:55 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image001.png](#)

We need that meeting with Shawn ASAP – we can discuss at 8:30

Mark J. Chappell, P.E. | Chief
PA Department of Transportation
Bureau of Design and Delivery | Right-of-Way, Utilities, and Grade Crossing Division
P.O. Box 3362 | Harrisburg PA 17105-3362
Phone: 717-787-6934 | Fax: 717-705-2380
www.dot.state.pa.us

From: Greenland, Vince <VGREENLAND@pa.gov>
Sent: Friday, June 7, 2024 9:09 AM
To: Chappell, Mark <MARCHAPPEL@pa.gov>
Subject: FW: [External] Fw: R&R Invoice 240305

Hey Mark

Hope all is well!

I know RR flagging is a royal pain, but I wanted to brief you on an issue we had with a project involving NS and their flagger R&R Consulting.

Essentially, they provided service for us on a local project and submitted invoices regarding work when a contractor was on site over a 4 day period for approximately 10 hours/day. However, the flagging invoice essentially is billing us for 7.75 days. We had, what I thought were legitimate questions regarding the invoices to assure we understood exactly what we were paying for. **However, the email from the president of R&R on June 5th was completely out of line and inappropriate.** He essentially is threatening us to never question a bill or will restrict services on future District 9 projects.

I think this needs discussed with NS. Do you agree?

Vince Greenland, P.E. | District Executive
PA Department of Transportation
Engineering District 9-0
1620 North Juniata Street | Hollidaysburg PA 16648
Phone: 814.696.7100 | Fax: 814.696.7149
www.pennidot.gov

From: Brumbaugh, Brad <BRBRUMBAUG@pa.gov>
Sent: Friday, June 7, 2024 8:53 AM
To: Greenland, Vince <VGREENLAND@pa.gov>
Cc: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>
Subject: Fwd: [External] Fw: R&R Invoice 240305

Vince - just looping you in FYI

The process just has become, in my opinion, one where RR and flagging company has all the leverage because if we don't just pay and don't ask any questions, they have the ability to really screw up our ability to deliver the project.

Brad

From: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>
Sent: Friday, June 7, 2024 7:41:52 AM
To: Brumbaugh, Brad <BRBRUMBAUG@pa.gov>
Subject: FW: [External] Fw: R&R Invoice 240305

Brad:

Please see the threat lodged by apparently the only Norfolk Southern approved railroad flagging company that does work in our area and my response. Apparently we are just to pay them whatever they invoice us for and not review it or ask questions. This process is a terrible process in that there are no options available. Anyhow, the invoice is getting paid going forward based on the responses received, but this is all the more reason we need that business that Daryl St. Clair was referring to for NS flagging operations based in PA. We had three weeks' worth of flagging on the Logan Valley Streetcar Trail even though none of the work aside from 150 feet of fence was even on NS property. Also, the flagging company charges for whatever hours they decide they want to be there. There is no opportunity to check or verify any of it in the field because it is just the flagger keeping his own log and then if you question anything invoiced just to make sure everything is legit and correct, "no soup for you".

Just keeping you in the know. You can see the dialog below. Would be a good issue to elevate to high levels (probably already has been) as scheduling and getting flaggers is a nightmare. According to Josiah from GOH this is getting harder and harder. He said that soon getting flaggers may not even be possible and can cause project delays, etc. for PennDOT job requiring flagging. Josiah stressed that we should cover this at winter school so that everyone is aware of the difficulties and significant advanced scheduling efforts needed months and months in advance to secure flagging services.

Thanks and have a great weekend.

Garth D. Bridenbaugh, P.E. | Construction Services Engineer
PA Department of Transportation | Engineering District 9-0
1620 N. Juniata St. | Hollidaysburg, PA 16648
Phone: 814.696.7138 | Fax: 814.696.7146
www.penndot.gov

CONNECT WITH PENNDOT

[Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [YouTube](#)

From: Bridenbaugh, Garth D
Sent: Wednesday, June 5, 2024 4:41 PM
To: dcraft rrconsultingteam.com <dcraft@rrconsultingteam.com>; Josiah J. Murray <jjm@goh-inc.com>
Cc: dbrown@antistownship.org; Dan A. Brown <dab2@goh-inc.com>; William Yocum <wycum@rrconsultingteam.com>; Charles Richardson <crichardson@rrconsultingteam.com>
Subject: RE: [External] Fw: R&R Invoice 240305

David:

Thanks for the explanation. Understand that we are spending federal and state dollars here and are accountable to the taxpayers for every dime spent. We are also audited. I sense here that you are frustrated with our attempts to follow due diligence and our intent is to make sure we meet the requirements. Threatening us with withholding services serves no purpose in a good dialog of trying to understand the charges. Basically from your tone you asking us to just pay every invoice and not make sure the charges are correct? We cannot do that and I think you can appreciate why that is. Please understand that we will and want to pay for all charges that are accurately charged. I also hope you understand why it is a little hard to make sense of this for looking at these for a first time. Basically for a 4 day work week where the contractor worked 10 hour days or less we are being charged for 7.75 days. That will surely be flagged and checked by our auditors. We are very satisfied with the services provided and are just doing our jobs to make sure the invoicing is correct and payable under the terms. Thanks for your prompt responses.

Garth D. Bridenbaugh, P.E. | Construction Services Engineer
PA Department of Transportation | Engineering District 9-0
1620 N. Juniata St. | Hollidaysburg, PA 16648
Phone: 814.696.7138 | Fax: 814.696.7146
www.penndot.gov

CONNECT WITH PENNDOT

[Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [YouTube](#)

From: dcraft rrconsultingteam.com <dcraft@rrconsultingteam.com>
Sent: Wednesday, June 5, 2024 4:21 PM
To: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>; Josiah J. Murray <jjm@goh-inc.com>
Cc: dbrown@antistownship.org; Dan A. Brown <dab2@goh-inc.com>; William Yocum <wycum@rrconsultingteam.com>; Charles Richardson <crichardson@rrconsultingteam.com>
Subject: Re: [External] Fw: R&R Invoice 240305

That is an "Explanation" not a set amount. The agreement also states that if a person's hours go 14 hours or over then the day rate would be 1.5 for the day. Levi lives in Alabama and was the only person available for the project the alternative would have been not to provide services for the project. IF PennDOT continues to challenge the invoicing then NO FUTURE services in District-9 will be provided by R&R. The billing stands AS-IS

Explanation of Accumulative Time for Items # 401 & 402

Day Rate for NSR Flagging and Observation will include all time associated with project on a daily basis but not to exceed more than 12 hours in one day and/or shift. Rate will include vehicle, cell phone, and computer access (if applicable). No up charge for holiday and/or weekend pay. This will be a flat day rate for each day to include all work provided under the described position for Items noted. R&R will furnish employees with all tools and equipment necessary to perform general duties as described below for each position and will be included in the rate for the position. In the event employee's hours go 12 hours or over a day and/or shift, Customer will be charged one-quarter day rate in addition to standard rate for that day's total charge. In the event employee's hours go 14 hours or over a day and/or shift, Customer will be charged one-half day rate in addition to standard rate for that day's total charge. In the event employee's hours go 16 hours or over a day and/or shift, Customer will be charged an additional day rate in addition to standard rate for that day's total charge (16 hours or over is double time). An additional one-quarter day rate increase will be added to employee's time for all nighttime work.

David N. Craft
Co-Owner & President
R&R Consulting TEAM, LLC.



PO Box 4739
Harrisburg, PA 17111
717-497-4373 (Cell)
775-521-2495 (E-Fax)
dcraft@rrconsultingteam.com

From: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>
Sent: Wednesday, June 5, 2024 3:29 PM

To: dcraft rrconsultingteam.com <dcraft@rrconsultingteam.com>; Josiah J. Murray <jjm@goh-inc.com>
Cc: dbrown@antistownship.org <dbrown@antistownship.org>; Dan A. Brown <dab2@goh-inc.com>; William Yocum <wyocum@rrconsultingteam.com>; Charles Richardson <crichardson@rrconsultingteam.com>
Subject: RE: [External] Fw: R&R Invoice 240305

David:

Can I ask why the travel for both non-working days 5/12 and 5/17 was charged at 1.5 days and not at 1 day as per the agreement. See excerpt below from the actual agreement. It seems that invoices overcharged for both 5/12 and 5/17. No work was occurring on site for either day. . . As such we cannot pay for any invoicing that is outside of the agreement. Thanks in advance for the explanation.

Explanation of Travel

Travel from and to home to the job site is charged as (1) Day Rate and (1) Per-Diem (IF the travel does not occur on the same day as work). IF the travel to and from home occurs on a work day then the travel time is added to the work time to determine the rate charged for that day. IF the person is receiving Per-Diem for staying in the area on a non-travel day, no more than (1) hour per day is allowed for travel time per day (½ hour to and from hotel).

Garth D. Bridenbaugh, P.E. | Construction Services Engineer
PA Department of Transportation | Engineering District 9-0
1620 N. Juniata St. | Hollidaysburg, PA 16648
Phone: 814.696.7138 | Fax: 814.696.7146
www.pennDOT.gov

CONNECT WITH PENNDOT

[Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [YouTube](#)

From: dcraft rrconsultingteam.com <dcraft@rrconsultingteam.com>
Sent: Wednesday, June 5, 2024 2:47 PM
To: Josiah J. Murray <jjm@goh-inc.com>
Cc: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>; dbrown@antistownship.org; Dan A. Brown <dab2@goh-inc.com>; William Yocum <wyocum@rrconsultingteam.com>; Charles Richardson <crichardson@rrconsultingteam.com>
Subject: Re: [External] Fw: R&R Invoice 240305

We are instructed by Norfolk Southern to be the first on site and the last to leave, when crews are working on or near the R/W. Once we are confident that the Crews are done and will not return to the site then we cannot leave the site until we debrief with the Local NS Supervisor (at his/her convenience). I am not disputing the sub-contractors' time on site. Our time on site is documented in the time report attached and tracked by NS approved I-Pads. As a rule of thumb, we report 30 minutes before schedule start to check trackline (train traffic), look for any bulletins issued in the area for NS dispatch and basically prepare for the day. Once crew is on site they have a job briefing the Flagman then contacts the NS Supervisor (At his/her convenience). With that being said you can see the first day was 30mins the others days were less and less as we gain confidence in your crew and the section of track. You would see this progress if it was a longer-term project.

Time for each day was over 12 hours and is charged at 1.25 days in accordance with our agreement. Actions taken that day are in accordance with NS policies set for Contract Flagging. Billing stands as-is.

David N. Craft
Co-Owner & President
R&R Consulting TEAM, LLC.



PO Box 4739
Harrisburg, PA 17111
717-497-4373 (Cell)
775-521-2495 (E-Fax)
dcraft@rrconsultingteam.com

From: Josiah J. Murray <jjm@goh-inc.com>
Sent: Wednesday, June 5, 2024 1:58 PM
To: dcraft rrconsultingteam.com <dcraft@rrconsultingteam.com>
Cc: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>; dbrown@antistownship.org <dbrown@antistownship.org>; Dan A. Brown <dab2@goh-inc.com>
Subject: Fw: [External] Fw: R&R Invoice 240305

Dave,

Please see comments below from PDOT in regard to your flagger's invoice for the Blair 0 project (PDOT ECMS 111470 - GOH 23304). I explained to them that the flagger is entitled to one day of travel to and from the job plus per diem as per your agreement, but they bring up a good point on the days that we are being charged 12+ hours. I was not aware of the amount of time that our subcontractor was working on the site each day but they broke it down below and they never worked more than a 10 hour day (+ ½ lunch), which would be 10.5 hours for your flagger on site plus the one hour of travel time to the hotel each day equals a max of 11.5 hours/day. Can you justify the days where they are over 12 hours, please?

Even though this project has PDOT oversight, the local municipality is footing the bill for this flagging and every dollar in their budget matters.

Thanks,

Josiah J. Murray
 Project Manager
 Glenn O. Hawbaker, Inc.
 814-771-2495

From: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>
Sent: Monday, June 3, 2024 3:11 PM
To: Josiah J. Murray <jjm@goh-inc.com>
Cc: ryost@eadsgroup.com <ryost@eadsgroup.com>
Subject: RE: [External] Fw: R&R Invoice 240305

!Warning External Sender!

Josiah:

We are questioning some of the times listed on this invoice as not actually worked by the railroad flagger, or if he was there, it was not because anyone asked him to be there or he just took it upon himself. I will provide the specifics later in the email.

Time by Job Detail

	Date	Name	Hours	Day Rate	Per Diem	
Glenn O Hawbaker:24NSRR085 Antis PA			Invoice: 240305			
401 - Flagman/RWIC						
	05/12/2024	Bonds, Levi	15.00	1.50	1.00	Travel
	05/13/2024	Bonds, Levi	11.58	1.00	1.00	
	05/14/2024	Bonds, Levi	12.10	1.25	1.00	
	05/15/2024	Bonds, Levi	12.33	1.25	1.00	
	05/16/2024	Bonds, Levi	12.03	1.25	1.00	
	05/17/2024	Bonds, Levi	15.00	1.50	1.00	Travel
Total 401 - Flagman/RWIC			78.04	7.75	6.00	

5/12 was Sunday and the inspector traveled in from Alabama he stated when we talked to him on the morning of 5/13. Not sure what is included for this travel in the agreement

5/13 Monday the contractor worked 7 am to 5:30 PM – 10 hours (plus ½ hr lunch) – Craig Fencing the subcontractor doing the fence work that the RR flagman was needed for only worked 7 am to 3:30 PM

5/14 Tuesday the contractor worked 7 am to 5:30 PM – 10 hours (plus ½ hr. lunch) – Craig Fencing the subcontractor doing the fence work that the RR flagman was needed for also worked 7 am to 5:30 PM

5/15 Wednesday the contractor worked 7 am to 5:30 PM – 10 hours (plus ½ hr. lunch)) – Craig Fencing the subcontractor doing the fence work that the RR flagman was needed for only worked 7 am to 4:30 PM

5/16 Thursday the contractor worked 7 am to 5:30 PM – 10 hours (plus ½ hr. lunch)) – Craig Fencing the subcontractor doing the fence work that the RR flagman was needed for only worked 7 am to 4:30 PM

5/17 Friday – no work on the project as the contractor and fencing sub decided to cancel that day. Not sure what is included for this travel in the agreement and whether or not the inspector really travelled back home to Alabama.

Bottom line, we are in disagreement with the hours charged on 5/14, 5/15, and 5/16 that are shown as > 12 hours for each of those days. We are also not sure as to what is to be paid on the days of travel (or that could have been travelled if the inspector decided to return home, which we don't know). Please provide excerpts from the agreement with the RR flagging service to substantiate these charges before we are able to approve any payment for this invoice. It is important to remember that the flagger is only required when working on the RR right-of-way which was only the fencing operation. No one directed the flagger to work any hours beyond the actual hours worked by the contractor and subs.

Please provide a response to explain the charges being submitted. Thanks Josiah and have a great day.

Garth D. Bridenbaugh, P.E. | Construction Services Engineer

PA Department of Transportation | Engineering District 9-0

1620 N. Juniata St. | Hollidaysburg, PA 16648

Phone: 814.696.7138 | Fax: 814.696.7146

www.penndot.gov

CONNECT WITH PENNDOT

[Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [YouTube](#)

From: Josiah J. Murray <jim@goh-inc.com>
Sent: Wednesday, May 29, 2024 9:06 AM
To: Bridenbaugh, Garth D <GBRIDENBAU@pa.gov>
Cc: ryost@eadsgroup.com
Subject: [External] Fw: R&R Invoice 240305

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Garth,

Here is the first invoice for the Railroad Flagging. What do you need from me, other than this invoice, to process as a PDA item?

Thanks,

Josiah J. Murray

Project Manager

Glenn O. Hawbaker, Inc.

814-771-2495

From: dcraft rrconsultingteam.com <dcraft@rrconsultingteam.com>
Sent: Thursday, May 23, 2024 10:48 PM
To: Carol E. Vaughn <cev@goh-inc.com>
Cc: cvogt rrconsultingteam.com <cvogt@rrconsultingteam.com>; Josiah J. Murray <jim@goh-inc.com>
Subject: R&R Invoice 240305

!Warning External Sender!

R&R Invoice 240305

David N. Craft
Co-Owner & President
R&R Consulting TEAM, LLC.



PO Box 4739

Harrisburg, PA 17111

717-497-4373 (Cell)

775-521-2495 (E-Fax)

dcraft@rrconsultingteam.com

**DEPARTMENT OF TRANSPORTATION'S TESTIMONY
DOCKET NOS. A-2022-3031613 AND A-2024-3045709
HEARING STATEMENT NO. 2
DIRECT TESTIMONY OF HEIDI MERTZ
HEARING DATE: MAY 7, 2025**

1 **Q: Please state your name and business address.**

2 A: My name is Heidi Mertz and I work at PennDOT Engineering District 8-0 at 2140 Herr
3 Street, Harrisburg, PA 17103.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed at Pennsylvania Department of Transportation. Currently I am the Design
6 Services Engineer for District 8-0. I changed positions in summer 2024 from the Project
7 Manager of SR 11-095 to the Design Services Engineer.

8 **Q: How long have you been employed by the Department and in what other capacities
9 have you been employed?**

10 A: I have been employed by PennDOT for 22 Years. I started my employment in District 5-
11 0 in the Bridge Unit for 5 years, then Contract Management Supervisor for 4 years, and
12 Construction for 2 years. Then I transferred to District 8-0 and worked in Construction
13 for 7 years, then Bridge Design for 4 years, and now I am the Design Services Engineer.

14 **Q: Please describe your duties as Project Manager.**

15 A: As the Project Manager for this project, I make sure everything that goes into the design
16 of the bridge gets done in a timely manner to get this project out to bid. I coordinate the
17 different submissions with the different approval units (i.e. environmental, utilities,
18 railroad, bridge, traffic, construction, ROW, permits... etc), and ensure each unit gets the
19 appropriate information to issue an approval to keep the project moving forward.

20 **Q: What is your educational background?**

1 A: I received a Bachelor of Science in Civil Engineering from Penn State University main
2 campus in 2003. I received my Professional Engineering license in Pennsylvania in
3 2013.

4 **Q: Are you authorized to testify in this proceeding on behalf of the Department?**

5 A: Yes.

6 **Q: Are you familiar with the crossing at West King St. for docket A-2022-3031613?**

7 A: Yes.

8 **Q: How did you become familiar with this crossing?**

9 A: I was the project manager for this project from fall 2020 to summer 2024.

10 **Q: Describe the type of work that will be completed for West King St. at docket A-**
11 **2022-3031613.**

12 A: The project consists of replacing the entire superstructure and substructure of the existing
13 bridge carrying state route 0011, except a section of existing abutment 2 which will be
14 demolished two feet below finished grade.

15 **Q: When that work will be completed on the crossing, will flagging be required?**

16 A: Yes.

17 **Q: Describe why flagging will be required.**

18 A: Work for demolition of the bridge crossing overhead of the railroad tracks and the
19 reconstruction, including driving piles near the tracks and setting beams over the tracks
20 all require flagging operations. Norfolk Southern determines all work within a certain
21 distance of the centerline of tracks requires flagging services. Demolition work,
22 foundation reconstruction, and beam placement will be within Norfolk's track fouling
23 requirements requiring flagging services.

1 **Q: Currently, how does PennDOT acquire flagging for Norfolk Southern projects in**
2 **District 8-0?**

3 A: PennDOT District 8-0 provides a Special Provision in the contract requiring the
4 Contractor to get the 3rd party flagging vendor. Once the Contractor is awarded the
5 contract they reach out to Rob Hoffer from AECOM, which is Norfolk Southern's
6 representative, to determine who are the acceptable 3rd party flagging vendors that can be
7 used. Then the contractor coordinates directly with the 3rd party flagging vendor for
8 scheduling services.

9 **Q: When an issue arises on-site with a flagging vendor on a Norfolk Southern project,**
10 **how does PennDOT work to rectify that issue currently in District 8-0?**

11 A: The Contractor will contact their District 8-0 Assistant Construction Manager for the
12 project. The Assistant Construction Manager will reach out to the District railroad
13 crossing position who will reach out to AECOM who is Norfolk Southern's Engineering
14 Consultant that works with the District.

15 **Q: When a flagging issue arises in District 8-0, how and who does PennDOT contact in**
16 **Norfolk Southern to inform them of the issue?**

17 A: Based on Norfolk Southern's process, PennDOT contacts AECOM. My understanding is
18 that AECOM then contacts Shawn Starling at Norfolk Southern directly.

19 **Q: What protocol for handling flagging issues best serves the interest of completing the**
20 **work approved by the PUC?**

21 A: I think Norfolk Southern should be providing the flagging services and ensuring there are
22 flagging services for the projects. There were less delays previously when Norfolk
23 Southern was directly providing flagging services. I noticed when I was working in

1 construction, we would have an operation scheduled, then that operation would get
2 cancelled because there was a lack of flaggers, and then get rescheduled again. This
3 could happen multiple times on the same project.

4 **Q: Does this conclude your testimony?**

5 A: Yes.

**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. :

VERIFICATION

I, Heidi Mertz, P.E., District 8-0 Design Services Engineer, Commonwealth of Pennsylvania, Department of Transportation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

DATE: April 4, 2025



Heidi Mertz, P.E.
Design Services Engineer

**DEPARTMENT OF TRANSPORTATION'S TESTIMONY
DOCKET NOS. A-2022-3031613 AND A-2024-3045709
HEARING STATEMENT NO. 3
DIRECT TESTIMONY OF MICHELE ACITELLI
HEARING DATE: MAY 7, 2025**

1 **Q: Please state your name and business address.**

2 A: My name is Michele Acitelli and my business address is PennDOT, Engineering District
3 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed by PennDOT and serve as the District 11-0 Utility and Grade Crossing
6 Manager.

7 **Q: How long have you been employed by the Department and in what other capacities
8 have you been employed?**

9 A: I have twenty years of service, including my current position and former positions in
10 Roadway Design, Local Project Administration and Highway Occupancy Permitting.

11 **Q: Please describe your duties as District 11-0 Utility and Grade Crossing Manager.**

12 A: As the District Utility and Grade Crossing Manager, I oversee the section responsible for
13 utility and railroad coordination as part of state funded projects. Specific to railroad
14 focused responsibilities; this includes coordination of design reviews and construction
15 coordination on state and local projects, coordination of safety related grade crossing
16 projects (Act 130) and PUC coordination associated with the same.

17 **Q: What is your educational background?**

18 A: I have a Professional Engineering license and have a Bachelor of Science in Engineering
19 from the Pennsylvania State University.

20 **Q: Are you authorized to testify in this proceeding on behalf of the Department?**

1 A: Yes.

2 **Q: Are you familiar with the crossing at Seventh Avenue for docket A-2024-3045709?**

3 A: Yes.

4 **Q: How did you become familiar with this crossing?**

5 A: I became familiar with the crossing as part of design/railroad coordination associated
6 with a PennDOT bridge rehabilitation project (SR 18 B62).

7 **Q: Describe the type of work that will be completed for Seventh Avenue at docket A-**
8 **2024-3045709.**

9 A: The Department proposes the following scope of work for its bridge rehabilitation
10 project: 1) hydro-demotion of the existing wearing surface and installation of a 1.25-inch
11 thick latex modified concrete overlay of the entire surface of the deck, 2) replacement of
12 the existing 3-inch, 3.5-inch and 4-inch movement class expansion joints, 3) concrete
13 repairs to areas of spalling, delamination and cracking on the concrete barriers and
14 substructure, 4) concrete beam end repairs, 5) painting of the curved steel superstructure,
15 6) cleaning and flushing of the bridge seats, scuppers and downspouts and 7) bridge
16 barrier and joint sealing.

17 **Q: When that work will be completed on the crossing, will flagging be required?**

18 A: Specific to the Norfolk Southern crossing, work in this span includes concrete abutment
19 and pier repairs, and the other typical preservation work listed above. Note that this span
20 is comprised of prestressed concrete beams, so painting is not required. Yes, flagging is
21 anticipated when working within Norfolk Southern Right-of-Way. Norfolk Southern
22 determines what specific operations require flagging to be present.

23 **Q: Describe why flagging will be required for this project.**

1 A: Work on the abutments, piers, joints and bearings will require workers to be within
2 Norfolk Southern Right-of-Way.

3 **Q: Currently, how does PennDOT acquire flagging for Norfolk Southern projects in**
4 **District 11-0?**

5 A: The current process is to coordinate with Norfolk Southern during the design process as
6 to reimbursement agreements between PennDOT and Norfolk Southern, design approvals
7 and special provision documentation. Once the project is bid and let, the contractor
8 coordinates with Norfolk Southern with regard to Right of Entry, Insurance and the
9 scheduling of a railroad pre-construction meeting. Separately, the contractor also
10 coordinates with a Norfolk Southern Third-Party Flagging Vendor to complete an
11 agreement (between the PennDOT Contractor and the NS Third-Party Flagging Vendor)
12 and meets with the appropriate Norfolk Southern Track Supervisor (to certify flagging
13 vendor employees that will be working on the specific Norfolk Southern rail line and
14 which activities will require protection). Once all of that is complete, the PennDOT
15 contractor can request and coordinate flagging directly with the Northern Southern Third-
16 Party Flagging Vendor.

17 **Q: When an issue arises on-site with a flagging vendor on a Norfolk Southern project,**
18 **how does PennDOT work to rectify that issue currently in District 11-0?**

19 A: Minor on-site issues, or issues not yet impacting the schedule, are typically addressed
20 internal to the PennDOT Contractor and PennDOT Construction Team. If there is an
21 issue with flagger availability specifically, and it remains unresolved after multiple
22 attempts and/or further risks contractor delays, it may be elevated back to the district and
23 my team for assistance, though we are limited in what we are able to resolve. Our

1 support typically involves reviewing the correspondence and timeline of requests and
2 reaching out to our railroad contacts for feedback on overall flagger availability and how
3 we can prioritize particular projects. With CSX, which is the other Class 1 Railroad
4 within District 11-0, we have been holding monthly status meetings to identify and track
5 on-going and upcoming flagging needs. We would include these issues in that discussion.
6 However, with Norfolk Southern, we are more limited, as our primary contact (Shawn
7 Starling) has relayed that he cannot be of assistance, as he is not involved in flagging
8 issues. This email from Shawn Starling has been marked as Department Exhibit B. If
9 there is still no resolution and flagging issues remain critical, we would then reach out to
10 PennDOT's Central Office Grade Crossing Unit to request additional assistance.

11 **Q: Can you please describe what has been marked for identification purposes as**
12 **Department Exhibit B?**

13 A: The contractor had continuous issues scheduling a flagger for project ECMS 63515 for
14 the New Kensington Bridge in Allegheny County. Multiple attempts were made to
15 contact the Third-Party Flagging Vendor, Railroad Consultants, but the contractor did not
16 receive any response. The contractor had reached out to Railroad Consultants in advance
17 to schedule flagging for the 2024 year. When his efforts were not fruitful, he reached out
18 to District 11-0, which is when I got involved. I then emailed Shawn Starling of Norfolk
19 Southern for additional assistance. Shawn Starling replied, stating that "NS does not
20 control 3rd party staffing for contractor protective services."

21 **Q: When a flagging issue arises in District 11-0, how and who does PennDOT contact in**
22 **Norfolk Southern to inform them of the issue?**

1 A: If there is an issue in obtaining or maintaining flagging, the PennDOT Contractor
2 assumes the lead, with support from PennDOT construction personnel. In dealing with
3 Norfolk Southern, the PennDOT contractor contacts are limited to the flagging
4 contractors approved in the Contract Documents. The resolution options are to continue
5 to pursue flagging under their initially coordinated flagging resource, or they can enter a
6 new agreement with an alternate flagging resource, that may have better availability.
7 Since the initiation of the third-party flagging arrangements, Norfolk Southern (Shawn
8 Starling) has declined to become directly involved in flagging scheduling issues, and
9 Norfolk Southern as a whole are not involved in flagging beyond the pre-construction
10 contacts and approvals.

11 **Q: What protocol for handling flagging issues best serves the interest of completing the**
12 **work approved by the PUC?**

13 A: A protocol that allows for primary flagging oversight by Norfolk Southern is needed.
14 This protocol should include an escalation matrix (contact list arranged according to
15 chain-of-command) and also oversight of priorities (with input from PennDOT) for the
16 NS Flagging Vendors when facing completing requests for projects and/or areas. Our
17 monthly flagging status updates with CSX serve as an example of desired coordination
18 and oversight. These meetings review on-going projects, upcoming projects and serve to
19 inform all parties so that everyone is on the same page and understands the needs across
20 the District (or wider area).

21 **Q: Does this conclude your testimony?**

22 A: Yes.

**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. :

VERIFICATION

I, Michele Acitelli, P.E., District 11-0 Utility and Grade Crossing Manager,
Commonwealth of Pennsylvania, Department of Transportation, hereby state that the facts above
set forth are true and correct to the best of my knowledge, information, and belief, and that I
expect to be able to prove the same at a hearing held in this matter. I understand that the
statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

DATE: April 7, 2025

Michele Acitelli

Michele Acitelli, P.E.
Utility and Grade Crossing Manager

EXHIBIT B

Exhibit B

From: [Starling, Shawn](#)
To: [Acitelli, Michele](#)
Cc: [Jayne Marks](#); [Fernau, Hannah](#); [NS-Worksite](#); [Sneddon, Steven A](#)
Subject: [External] RE: 3rd Party Flagging - East Deer Township, PA - BR0027754 - LC-59.13 - SR 1038 (New Kensington Bridge) OHB (ECMS 63515) - Task 568
Date: Tuesday, February 27, 2024 1:50:44 PM

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Michelle,

I am sorry to hear about your contractor protection service issues. However, NS does not control 3rd party staffing for contractor protective services.

Thanks,
Shawn Starling, P.E.
Senior Engineer Public Improvements NS

From: Acitelli, Michele <miacitelli@pa.gov>
Sent: Tuesday, February 27, 2024 1:45 PM
To: Starling, Shawn <Douglas.Starling@nscorp.com>
Cc: Jayne Marks <jayne.marks@aecom.com>; Fernau, Hannah <Hannah.Fernau@aecom.com>; NS-Worksite <Worksite.NS@aecom.com>; Sneddon, Steven A <ssneddon@pa.gov>
Subject: [EXTERNAL] 3rd Party Flagging - East Deer Township, PA - BR0027754 - LC-59.13 - SR 1038 (New Kensington Bridge) OHB (ECMS 63515) - Task 568
Importance: High

Shawn – Our contractor is still having issues confirming flagging with the 3rd party railroad consultants. The most recent set of requests have not gotten any response. In what I am hearing they tried all last year to acquire flagging with no success and this span of the bridge has been unable to be worked on. The PUC completion was recently extended to later this year, so we need to get a window of availability.

Is there anything you can do to assist? We are getting pretty desperate, as we can't continue to delay the work. Steve Sneddon is cc'd and he can get you any other info if you need specific request dates and timelines.

Thanks.

Michele Acitelli, P.E. | District Utility and Grade Crossing Manager
PA Department of Transportation
Engineering District 11-0
45 Thoms Run Road | Bridgeville PA 15017
Phone: 412.429.3798
www.penndot.pa.gov

CONNECT WITH PENNDOT

[Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [YouTube](#)

From: Mutunga, Philip M <pmutunga@pa.gov>

Sent: Thursday, November 30, 2023 12:28 PM

To: Starling, Shawn <douglas.starling@nscorp.com>

Cc: Jayne Marks <jayne.marks@aecom.com>; Fernau, Hannah <Hannah.Fernau@aecom.com>;
Acitelli, Michele <miacitelli@pa.gov>; NS-Worksite <Worksite.NS@aecom.com>

Subject: 3rd Party Flagging - East Deer Township, PA - BR0027754 - LC-59.13 - SR 1038 (New Kensington Bridge) OHB (ECMS 63515) - Task 568

Hello Shawn-

For this project, PennDOT's contractor has been unable to get a response from Railroad Consultants (RC) after multiple attempts. Contractor is trying to coordinate 2024 flagging needs.

We are requesting if NS is able to reach out to them for a response.

Thank you,

Philip M. Mutunga, P.E. | District Grade Crossing Engineer

PA Department of Transportation

Engineering District 11-0

45 Thoms Run Road | Bridgeville PA 15017

Office: 412.429.5070

pmutunga@pa.gov | www.penndot.pa.gov

**DEPARTMENT OF TRANSPORTATION'S TESTIMONY
DOCKET NOS. A-2022-3031613 AND A-2024-3045709
HEARING STATEMENT NO. 4
DIRECT TESTIMONY OF SARAH FENTON
HEARING DATE: MAY 7, 2025**

1 **Q: Please state your name and business address.**

2 A: My name is Sarah Fenton and I work for the Pennsylvania Department of
3 Transportation's (PennDOT or the Department) Bureau of Design and Delivery in the
4 Right-of-Way, Utilities & Grade Crossing Division located at 400 North Street,
5 Harrisburg, PA 17120-0094.

6 **Q: What is your educational background?**

7 A: I possess a Baccalaureate Degree in Civil Engineering from Pennsylvania State
8 University.

9 **Q: By whom are you employed and in what capacity?**

10 A: I am employed by the Pennsylvania Department of Transportation as a Highway Design
11 Manager with the working title of Central Office Grade Crossing Engineer.

12 **Q: How long have you been employed by the Department and in what other capacities
13 have you been employed?**

14 A: I have been employed with the Department for approximately 18 years. During that time,
15 I worked within PennDOT District 4's Highway Occupancy Permits Unit as the Assistant
16 Permit Engineer and I oversaw District 4's Asset Management, District Grade Crossing,
17 Roadway Management System, and Geographic Information System Unit as the
18 Asset/District Grade Crossing Engineer. Currently I am employed in PennDOT's Central
19 Office Right-of-Way, Utilities & Grade Crossing Division as one of two Central Office
20 Grade Crossing Engineers.

1 **Q: Please describe your duties as a Central Office Grade Crossing Engineer.**

2 A: As a Central Office Grade Crossing Engineer, I assist the Department's 11 different
3 Districts throughout the state of Pennsylvania with railroad grade crossing coordination
4 by providing guidance and technical assistance to their District Grade Crossing
5 Administrators. In addition to, I develop and implement Department policy for highway-
6 rail grade crossings consistent with federal and state laws/regulations to ensure
7 compliance with these laws and regulations. I provide liaison between PennDOT and the
8 Public Utility Commission (PUC) for activities related to the process of receiving a PUC
9 Order or Secretarial Letter for a highway-rail crossing. I also oversee the Department's
10 federally funded Section 130 Highway-Rail Crossing Safety Program that provides
11 monetary assistance for the elimination of hazards at public highway-rail crossings in
12 each District throughout the State.

13 **Q: Are you authorized to testify in this proceeding on behalf of the Department?**

14 A: Yes.

15 **Q: Please describe the hierarchy of the grade crossing staff.**

16 A: Central Office: Within Central Office the Grade Crossing Unit has 4 staff members
17 consisting of a Senior Highway Designer, Highway Design Manager, Civil Engineer
18 Consultant, and the Division Chief. The Senior Highway Designer reports to the
19 Highway Design Manager. Both the Highway Design Manager and the Civil Engineer
20 Consultant report to the Division Chief.

21 District Office: The Department's 11 District Offices each have their own Grade
22 Crossing Administrator, ranging in different titles. In some Districts, their District Grade
23 Crossing Administrator has an assistant or multiple assistants. The District Grade

1 Crossing Administrator communicates with the Central Office Grade Crossing Staff for
2 policy recommendations, safety concerns, questions, guidance, and other items.

3 **Q: What qualifications are required for the district grade crossing staff.**

4 A: District Grade Crossing staff need to have good communication skills (reading, writing,
5 listening, and speaking – English) and coordination skills (ability to work simultaneously
6 with multiple parties in resolving issues). They need to have general knowledge of
7 PennDOT’s highway project development process. In addition to, they need to be able to
8 advance minor projects from beginning to end with little to no direct supervision. They
9 need to be able to read deeds, plats, plans, technical documents, and specifications, while
10 also being able to check and prepare cost estimates. They need to have basic knowledge
11 of railroad and PUC operations/policies and common sense understanding of permits,
12 agreements, insurance, reimbursements, and construction staging.

13 **Q: Do the district grade crossing staff typically have experience in the railroad flagging
14 industry?**

15 A: Both Central and District Office Grade Crossing staff have a basic understanding of what
16 flaggers do, however we do not know what the qualifications of becoming a flagger are
17 because we do not train or have employees that perform flagging.

18 **Q: Are you familiar with the crossing at West King St. for docket A-2022-3031613?**

19 A: Yes.

20 **Q: Are you familiar with the crossing at Seventh Avenue for docket A-2024-3045709?**

21 A: Yes.

22 **Q: How did you become familiar with these crossings?**

1 A: I became familiar with these crossing because of my position as Central Office Grade
2 Crossing Engineer. As Central Office Grade Crossing Engineer, I handle reviews of
3 District-crafted railroad reimbursement agreements and PUC applications. In addition, I
4 am also served with PUC correspondence.

5 **Q: How does PennDOT determine when railroad flaggers are needed?**

6 A: The Department does not determine when railroad flaggers are needed, the railroad
7 determines when the flaggers are needed. Department project designers and managers,
8 including Department consultants, will guesstimate how much railroad flagging may be
9 required for a project depending on what work they feel may impact the operating
10 railroad; however, the Department's understanding is that the railroad makes the final
11 determination of when flaggers will be needed to safeguard their active property.

12 **Q: Will these projects, A-2022-3031613 and A-2024-3045709, require flagging?**

13 A: Yes, but the specific portions of the project that need flagging have not been determined
14 yet. The Department cannot require contractors to proceed with construction in a certain
15 manner, and therefore the contractor provides their intended means and methods for
16 acceptance and approval by the Department and by the railroad. Norfolk Southern would
17 then determine when flagging would be required.

18 **Q: You've been at PennDOT for 18 years, can you describe how PennDOT would
19 acquire flagging in the past involving Norfolk Southern projects.**

20 A: In the past, Department project managers or designers, including Department consultants,
21 would provide an estimated number of flagging days that they felt the project might
22 require. With the assistance of the District Grade Crossing Administrator, this would be
23 passed onto Norfolk Southern Railroad and their consultant. As a result, a Force Account

1 Estimate (FAE) would be generated by the railroad and provided back to the Department.
2 As part of the estimate, the number and cost of flagging days Norfolk Southern was to
3 provide would be included. A railroad construction reimbursement agreement would then
4 be crafted by the Department based upon the FAE (which included the estimated railroad
5 flagging costs that Norfolk Southern was providing) and it would be executed by both the
6 Department and Norfolk Southern. At times, a railroad representative and/or their
7 consultant would question/verify the number of requested flagging days based on their
8 review of the proposed work. Since the method of construction would not be determined
9 until after a contract project was awarded, this could add or subtract from the number of
10 days which Norfolk Southern railroad flaggers were needed for the project. Once a pre-
11 construction meeting was held between PennDOT, PennDOT's contractor, and Norfolk
12 Southern/ Norfolk Southern's consultant to talk specifics/ground rules of the project, and
13 the means and methods of construction were approved by both Norfolk Southern railroad
14 and PennDOT, the amount of flagging days would then be refined as needed. Once that
15 occurred, Norfolk Southern would then be contacted by PennDOT's contractor
16 requesting a flagger be onsite for the proposed work that prompted a flagger. Norfolk
17 Southern has always made the final determination of when they wanted a flagger on site
18 for the construction activities, when one was actually sent to the project, and when a
19 flagger would not be needed. Even with the 3rd party railroad flagging vendors, Norfolk
20 Southern still determines when a flagger is needed and when one is not.

21 **Q: Was that method also used when acquiring flagging for other railroad company**
22 **projects?**

1 **A:** Yes, and that is still currently the method except for one other railroad and one other
2 instance. For PennDOT projects involving the Genesee and Wyoming Railroads, their
3 railroads utilize 3rd party flagging vendor services similar to how Norfolk Southern uses
4 them, however the Genesee and Wyoming Railroads still perform the coordination
5 between PennDOT's contractors and the Genesee and Wyoming Railroads' 3rd party
6 flagging vendors. This method of flagging coordination with the Genesee and Wyoming
7 Railroads has been occurring since 2018.

8 The Central New York Railroad, who leases track from Norfolk Southern, was looking to
9 utilize Norfolk Southern's 3rd party flagging vendor(s) via direct hire by PennDOT's
10 contractor on one, and only one, of their jobs due to the size and attention needed. The
11 rest of the PennDOT jobs involving Central New York Railroad, including jobs after the
12 above-mentioned instance, have utilized the Central New York Railroad's own flaggers.

13 **Q: Currently, how does PennDOT acquire flagging for Norfolk Southern projects?**

14 **A:** The Department's contractor contacts, direct hires, and pays a vendor of their choice
15 from Norfolk Southern's approved 3rd party railroad flagging vendor list. The Department
16 then reimburses its contractor. Currently, and to the best of my knowledge, there are only
17 2 out of the 3 vendors on Norfolk Southern's approved railroad flagging vendor list that
18 are registered to work in the state of Pennsylvania.

19 **Q: When an issue arises on-site with a flagging vendor, how does PennDOT work to**
20 **rectify that issue currently?**

21 **A:** Under normal circumstances the District handles the issue in the field. Since each
22 situation is unique, the issue is handled differently, which differs District by District.
23 Either the issue is worked out by the District or the District elevates the issue to Central

1 Office. Normally, when the issue is elevated to Central Office, someone from Central
2 Office reaches out to the railroad.

3 **Q: When a flagging issue arises, how and who does PennDOT contact in Norfolk**
4 **Southern to inform them of the issue?**

5 A: The Department contacts Shawn Starling of Norfolk Southern. Depending on the
6 situation, Aaron Meyers may also be contacted in addition to Shawn Starling. Methods of
7 contact generally include phone calls and emails.

8 **Q: Have any issues securing flagging arose in the near past on a Norfolk Southern**
9 **project?**

10 A: Yes. I gathered the information from our 11 different Districts, acquired additional
11 information from our Engineering and Construction Management System (ECMS), and
12 summarized the findings in the spreadsheet I created, marked as Department Exhibit C.
13 Department Exhibit C accurately reflects my recollection of the information I received
14 from the Districts in preparation for this hearing.

15 **Q: Based on your findings, what are some reasons for the issues PennDOT has securing**
16 **flagging for projects near Norfolk Southern tracks?**

17 A: Flagger availability was a common issue that I found from gathering the data for the
18 spreadsheet, marked as Department Exhibit C. It does not appear that there are enough
19 flaggers employed by Norfolk Southern's 3rd party flagging vendors to cover all of the
20 construction projects along Norfolk Southern's infrastructure, especially during the
21 summer construction season. This has led to longer lead times for our contractors to
22 obtain a flagger. Overall, even when the Department's contractor provided more than 30
23 days' notice to the 3rd party flagging vendor, there were still availability issues that

1 caused delays. Another issue that arose was that for all projects requiring a contractor to
2 be on Norfolk Southern property, Norfolk Southern requires the contractor to submit their
3 right-of-entry forms on RailPros' online portal for review and approval. This same
4 RailPros online portal is also used by the contractor to schedule flagging with RailPros;
5 however, there is no mention of the ability to schedule flagging with the second 3rd party
6 flagging vendor, R&R Consulting Team. To schedule flagging with R&R Consulting
7 Team, the contractor must first be aware of the existence of R&R Consulting Team and
8 then physically call R&R Consulting Team directly to schedule the flagging.

9 Additionally, when one of the three prior Norfolk Southern's flagging vendors, Railroad
10 Consultants PLLC, went out of business, this caused an issue for some of our contractors
11 since they couldn't get ahold of their choice flagger. Prior to going out of business, the
12 data showed that Railroad Consultants PLLC were increasingly harder to get a hold of,
13 until they were out of business. Not much, if any, notice was provided to the contractors
14 using Railroad Consultants PLLC of their intent to go out of business or even when they
15 went out of business. Contractors repeatedly attempted to get ahold of Railroad
16 Consultants PLLC before reaching out to the other 2 flagging vendors. This process took
17 an exorbitant amount of time and thus put projects behind schedule. There was a specific
18 issue that occurred in District 4 on the State Route (SR) 4005 bridge rehabilitation
19 project, titled SR 4005, Lackawanna County, Engineering and Construction Management
20 System (ECMS) # 68853, NS File: La Plume, PA - BR1111684 - HA-657.72 - Seamans
21 Road OHB - Task 538. During District 4's bridge project on SR 4005 in 2022, an
22 observer and flagger, both positions being requirements of Norfolk Southern Railroad,
23 were involved in a disagreement. Based on what had occurred during the disagreement,

1 which did not involve PennDOT employees or PennDOT's contractor, resulted in a work
2 stoppage of PennDOT's project. Norfolk Southern restricted any and all work on this job
3 that required either an observer or flagger. Both the contractor and the Department were
4 told by Norfolk Southern to immediately stop any work requiring a flagger and/or
5 observer until it investigated the situation and came to a conclusion on the matter. The
6 contractor had to immediately halt and stop any work that would potentially foul the
7 tracks, and they were not able to continue with their work that required a flagger/observer
8 until the situation was resolved by Norfolk Southern. Also during this project, District 4-
9 0's construction personnel complained that Norfolk Southern's Maintenance of Way
10 (MOW) personnel would come through the crossing during contractor working hours and
11 would tell the flagger on site that they would be back through in a short amount of time;
12 however, they would not return back through the crossing until hours later, with no
13 indication that their schedule had changed. This had resulted in work stoppage of any
14 work that would have potentially fouled the tracks. It was noted that on several of
15 occasions that Norfolk Southern's Maintenance of Way personnel would not return back
16 through the crossing for 4+ hours after they went through, which prohibited the
17 contractor from working in space that fouled the tracks, and no attempts were made to
18 inform the flagger of the change in plans. It was mentioned there appeared to be
19 animosity between the contracted 3rd party flagger and the Norfolk Southern Maintenance
20 of Way personnel.

21 **Q: Based on your findings, how did the contractors try to resolve the issue of securing**
22 **flaggers?**

1 A: For projects requiring flagging where 3rd party flagging vendor availability was an issue,
2 the contractor was sometimes able to rework their schedule to work on other aspects of
3 the project that did not require flagging. This helped to reduce delay times, but did not
4 always fully eliminate the delays. Additionally, when the first 3rd party flagging vendor
5 was unavailable, often times the contractor would reach out to the other 3rd party flagging
6 vendor to inquire about availability. Exorbitant delays would occur when the second 3rd
7 party flagging vendor was also unavailable. This left the contractor and the Department
8 without any other options because the contractor was/is limited to utilizing only the
9 qualified 3rd party flagging vendors on Norfolk Southern's list. For some projects, as a
10 resolution, the contractor decided to simply keep and pay the 3rd party flagger on site for
11 periods when flagging was not needed. This was necessary to ensure the upcoming parts
12 of the project that required flagging would not be delayed due to the 3rd party flagger
13 moving on to another entity's project.

14 **Q: Based on your findings, when a flagging vendor is unavailable for a project, what**
15 **issues and delays does that cause for PennDOT?**

16 A: It may cause monetary delay claims, additional costs to the project itself due to the added
17 time, time extension(s) to the project, and potential safety issues to both rail and the
18 public. Substantial monetary delay claims as well as added costs to a project may impact
19 the Department's upcoming let schedule. The word Let means when the Department
20 solicits bids and then awards the project to a specific contractor. Due to impacts on
21 funding, projects may be pushed ahead, work scaled back, projects cancelled, etc. It may
22 also impact current projects which might require work to be scaled back. This has the
23 potential to impact safety.

1 **Q: If a current project is delayed because of unavailability of the flagging vendor, what**
2 **safety concerns are there for the public?**

3 A: As a public servant, we are required not only to be good stewards of the taxpayer's dollar,
4 but also to ensure everyone's safety. Since Norfolk Southern is supposed to have total
5 control of the 3rd party flagging vendor and whether or not that they can flag on Norfolk
6 Southern property, they can at any point in time remove, suspend, and/or ban the vendor
7 from their property. The incident resulting in removing, suspending, and/or banning the
8 3rd party flagging vendor doesn't even need to occur in the state of Pennsylvania;
9 however, it still affects flagging on Norfolk Southern's infrastructure in Pennsylvania. A
10 project in District 6 recently saw the effects of this scenario. Norfolk Southern did not
11 agree with the actions of a 3rd party flagger in another state and thus, suspended the work
12 of the 3rd party flagging vendor along their entire line. The project in District 6, ECMS #
13 48175, was immediately stopped for 1 day until the flagging vendor was allowed back to
14 work. Although the stop was made for safety issues, the lack of flagging elsewhere could
15 have also resulted in causing safety issues. Certain construction activities, when
16 suspended, can lead to very unsafe conditions, not only for the public, but also for rail. In
17 this instance, Norfolk Southern did not provide a qualified backup flagger from their own
18 forces to prevent any potential safety issues in the field for this District 6 project. To
19 elaborate more on potential safety issues that could be caused by abruptly removing a
20 flagger from a project, is an example of removing a flagger during a crane setting beams.
21 If this process was to be stopped in mid construction, it may potentially leave beams
22 unwelded/unconnected, or the bridge partially built. Not only are the costs for a crane and
23 operator exorbitant, but the safety issue it leaves outweighs any cost. This scenario could

1 endanger lives as the unconnected pieces of the bridge may fall, or the partially built
2 bridge could even collapse. Another example of a safety issue would be a partially
3 demolished bridge deck. If construction was halted on a partially demolished bridge deck,
4 this would leave a structure's bridge deck compromised structurally. In a weakened state,
5 it may fall at any given point in time. Not only could this derail a train, but it could also
6 kill a person. These are only two examples out of numerous scenarios/possibilities.
7 Because of this possible detrimental outcome, the Department feels that it is the
8 responsibility of Norfolk Southern to provide a flagger, and that it shouldn't fall on the
9 Department's contractor to secure another flagger, especially when only one other
10 company is approved to flag in Pennsylvania. In a case such as the ones described above,
11 not only should Norfolk Southern provide the flagger, but it should do so expeditiously.
12 Due to the liability and seriousness of the situations outlined above, the Department feels
13 that a "gentleman's handshake" from an individual from a company does not provide
14 enough assurance that a flagger will be provided in the future should something occur, as
15 mentioned in the examples above. Norfolk Southern should not be permitted to remove
16 themselves from its flagging obligation in such circumstances.

17 **Q: What protocol do you feel would be best to handle flagging issues on Norfolk**
18 **Southern projects in the future?**

19 A: If the Department were to have any issues obtaining railroad flaggers, we should be able
20 to reach out to a specific Norfolk Southern railroad flagging coordinator to handle the
21 issue and provide a flagger in a timely fashion.

22 **Q: Based on your experience in managing and overseeing grade crossing projects, what**
23 **issues would arise if the Department were required to "furnish" flaggers?**

1 A: The Department is in the business of supporting vehicular traffic throughout the
2 Commonwealth. The Department is not in the railway business and has no knowledge,
3 expertise, and/or experience in railway operations and innerworkings. Based on this, the
4 Department is not qualified to provide or train railroad flaggers. Railroad flagging is a
5 specialized service, and that service is much different than the service provided by
6 highway flaggers on construction projects. At minimum, if the Department was mandated
7 to provide railroad flaggers, the Department would need to add personnel compliment.
8 Not only would the Department need complement, but it would also need the “new”
9 compliment to be filled by capable and qualified individuals who could perform the
10 work. The Department would need to bring on specialized training personnel to train new
11 hires. The Department would also need to add personnel to handle the additional and new
12 coordination necessary for our highway/bridge construction projects as well as for our
13 bridge inspection needs because of this.

14 **Q: Does the Department have any role in qualifying or certifying railroad flaggers**
15 **under state or federal requirements?**

16 A: No, nor should it. The Department is not in the rail business. The Department also does
17 not have any specialized expertise in railroad flagging. The Department is not aware of
18 any employees within the Department who are certified railroad flaggers.

19 **Q: Does this conclude your testimony?**

20 A: Yes.

**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. :

VERIFICATION

I, Sarah Fenton, Central Office Grade Crossing Engineer, Commonwealth of Pennsylvania, Department of Transportation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

DATE: 4/8/25



Sarah Fenton
Central Office Grade Crossing Engineer

EXHIBIT C

A-2022-301613 and A-2024-3045709																		
Delayed Project Details Due To Railroad Flagging Unavailability																		
MPMS #	ECMS #	District	County	SR number/USC/DCM road permit	Involved railroad(s)	PUC ticket # (if applicable)	3rd party flagging vendor used (Y/N)	Name of the flagging vendor and/or subcontractor that provided flagging service	Second flagging company contacted (Y/N)	Name of second flagging company (if applicable)	# of attempts made to obtain a flagger (Est. vendor)	# of attempts made to obtain a flagger (Est. vendor)	When the flagging service was needed/was requested (Est. vendor)	When the flagging service was requested (Est. vendor)	When the flagging service was requested (Est. vendor)	When the flagging service was provided	Monetary Delay (Est.)	Additional pertinent details
9734	9734	1	Mentor	4017	Norfolk Southern	-	Y	Railroad Consultants, PLLC	Y	Railpro	3	1	9/28/2023	7/20/2024	8/30/2023	Never	\$0.00	Neither consultant firm could ever provide flaggers. The project limits were shortened to move the paving joint outside the railroad ROW and eliminate the need for flagging.
105143	105143	1	Essex	0889	Norfolk Southern	-	Y	Railpro	N	-	4+	-	10/9/2023	8/9/2023	-	10/9/2023	\$0.00	Following the contractor project schedule, flagging would have been required on multiple days in the various activities would be performed sequentially over multiple days and not all in one day. The contractor was forced to mobilize and work only on the immediate approaches of the railroad crossing at a standalone activity and do all the needed activities in the one day that they could provide in the next 120 days. -Milling (8/5/23 - 9/12/23) -Base course 1 Levy -Shoulder & Binder (9/13 - 9/24) -Mixing (9/24 - 10/9)
114972	114972	2	Clinton	0120	Norfolk Southern	-	Y	Railroad Consultants, PLLC	N	-	1	-	4/28/2023	3/6/2023	-	5/25/2023	\$0.00	Track time was never needed to complete the contract work. Project scheduling was amended to work with the RR flaggers timeline. At this time NS only had 1 authorized flagging vendor. RR flagger was based out of Alabama, travel time home for weekends prevented them from being available for weekend work.
116833	116833	3	Northumberland	0405	Norfolk Southern	-	Y	Railroad Consultants, PLLC	Y	Railpro	Unknown	6	11/1/2023	5/1/2023	10/1/2023	4/7/2024	\$6,210.20	Contractor had requested flagging beginning with submitting schedule to the vendor in May 2023. Followed up with vendor occurred in fall of 2023. Flagging was not able to be provided by either consultant until spring 2024. Contract was extended over 391 days into the following construction season.
68853	68853	4	Lackawanna	4205 / Seawans Rd.	Norfolk Southern	A-2020-3018031	Y	NS & then Railroad Consultants PLLC	Y	R&R Consulting Team, LLC	2	1	Unverified	Unverified	8/25/2023	Unverified	\$0.00	Alleged altercation between flagger and observer in August of 2023 that led work stopping in and around the tracks from 8/22/23 until 8/22/23. Due to the size and nature of this project, a large portion of the work had impacts on NS ROW/property. No monetary delay claims. Contractor eventually found busy work to fill in time while they waited to be allowed back working.
93630	93630	5	Northampton	0378	Norfolk Southern	A-2024-3048386	Y	Railpro	N	-	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	TBD	Project in Design, Design team had issues getting flagging for core boring contractor.
10613	10613	5	Berks	2005	Norfolk Southern	-	Y	Railpro	Y	Railroad Consultants, PLLC	7	3	Unknown	Unknown	Unknown	Unknown	TBD	Project in Design, Design consultant had issues getting flagging for survey team.
9082	9082	8	Lancaster	0441	Norfolk Southern	-	Y	Railroad Consultants, PLLC	Y	Railpro	15	1	10/10/2023	3/14/2023	3/20/2024	4/15/2024	\$0.00	No monetary damages claimed by contractor. AN started the process of obtaining a subcontract with Railroad Consultants on 3/14/23 but was not able to obtain an executed contract from Railroad Consultants until 7/20/2023. Railroad Consultants was contacted 9 times before an executed contract was signed. Contacted Railroad Consultants again on 12/22/23 trying to schedule a flagger and received no response. Attempted to contact Railroad Consultants 6 more times before discovering they went out of business. AN successfully contacted Railpro after this discovery to schedule flagging services.
100531	100531	8	Lancaster	0023	Norfolk Southern	-	Y	Railpro	N	-	1	-	8/21/2023	3/20/2023	-	9/25/2023	\$43,500.00	Due to the delayed start of the project, contractor was paid to accelerate and for winter cure costs in order to remove barrier and reopen the roadway to traffic. Total cost of these 2 items was: \$43,500. NS emailed Padon on 8/21/23 saying they could not proceed with getting a Right of Entry Agreement until PennDOT executed the amended measurement agreement. On 8/21/23, PennDOT responded with the executed amended agreement that was signed by PennDOT on 8/21/23. Padon received the right of entry agreement on 8/21/23 and sent documentation to Railpro the same day. Padon received an executed agreement with Railpro on 7/13/23 with an expected flagger availability of 8/21/23. Flagger availability was then pushed to 9/25/23.
89288	89288	8	Lancaster	7101 / Rohersdown	Norfolk Southern	-	Y	Railpro	N	-	4	-	1/24/2024	12/1/2023	-	7/22/2024	\$0.00	No monetary damages claimed by contractor. Railpro was unable to provide a flagger when requested in Dec. 2023 for work to be performed in Jan. 2024 prior to an inclement weather of Feb 10th.
21951	21951	9	Blair	0036	Norfolk Southern	-	Y	Railroad Consultants, PLLC	Y	R&R Consulting Team, LLC	1	5+	10/16/2023	04/05/23	01/10/24	1/20/2024	\$0.00	Contractor initially contacted Railroad Consultants in April of 2023 in order to secure flagging for work in October of 2023. As October approached, contractor contacted Railroad Consultants multiple times to confirm a start date. Each time Railroad Consultants was unable to commit to a date due to unavailability of a flagger. This continued until January 9, 2024 when the Department received communication from NS that an additional vendor was approved for use. This vendor was R&R Consulting TEAM. Contractor contacted R&R Consulting TEAM on January 10, 2024 and they provided flagging beginning January 20, 2024.
68519	68515	11	Allegheny	1038 - New Ken Bridge Rehabilitation	Norfolk Southern	A-2019-3030031	Y	Railroad Consultants, PLLC	Y	R&R Consulting Team, LLC	12+	1	08/01/23	05/01/23	02/28/24	03/12/24	\$0.00	We started year 1 (2023) pursuing 3rd party flagging through Railroad Consultants PLLC. Communication was horrible, if not non-existent. They kept telling us that they would have someone soon, until the season was over and no one was provided. They then went out of business leaving us to start from scratch in year 2 in order to find a new 3rd party flagging vendor. Once we had a new 3rd party flagger (R&R Consulting Team), things were better, but there were still issues with getting track time. Specifically, R&R Consulting Team had to request approval from the NS RR track supervisor every time we wanted track time. The NS RR track supervisor frequently only gave us very small windows to work, while allowing us long windows for potential RR traffic to travel through the work area. It was a very inefficient process and the contractor was forced to work inefficiently as they frequently elected not to work because the windows were too small to get any reasonable production. Additionally, 3rd party flaggers and observers were not allowed to give us track time on their own. They had to call the NS RR track supervisor each time. We ended up having to be on our 3rd party flagger/observer for an unnecessarily long time because we were afraid to lose them, which would cause further delays. We more than doubled our original budget for 3rd party flagging by adding \$170k additional to the original \$234 budget for flagging. We went through 4 different flaggers between 3/2024 and 11/2024, all of whom needed to be certified by NS RR before we could do anything with them. We were fortunate to partner with the contractor to avoid delay claims, but the expense and inefficient 3rd party flagging process costed us significant money nonetheless. We were delayed numerous times, but the contractor has not requested monetary compensation because we've been able to adjust operations as mentioned earlier. Dates for flagging are approximate. -Steve Sweddon

A-2022-3031613 and A-2024-3045709

MPMS #	ECMS #	District #	County(s)	SR number(s)/local road name(s)	Involved railroad(s)	PUC Docket # (if applicable)	Name of flagging vendor	Address of flagging vendor	Principal contact of vendor	Date of work	Issues with scheduling flagger and/or their service performance (Y/N)	Issue description (if appl.)	Issues with our contractor doing the scheduling of flaggers or contractor carrying out their duties (Y/N)	Explain resolution
109143	109143	1	Erie	0089	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Daniel Harris	10/9/2023	Y	Flagger only available for 1 day in the next 120 days.	Y	Contractor broke up paving to avoid RR limits until flagger was available. Resulted in extra joints in the roadway, which may affect the future safety
97324	97324	1	Mercer	4017	Norfolk Southern	-	Railroad Consultants, PLLC, then R	213 Uptown Square Murfreesboro, TN 37129 (Railroad Consult. PLLC) 1320 Greenway Drive, Suite 490, Irving, TX 75038 (Railpros)	Jonathan L. Parker (Railroad Consultants), Daniel Harris (Railpros)	9/18/2024	Y	The flagging company was contacted 2 months prior to need, followed up by another contact made on 8/30/2024. Another NS consultant (Railpros) was contacted and they also did not have flaggers available. They were contacted on 9/13 and still no flaggers available. Ended up shortening paving limits to avoid RR ROW.	Y	No flaggers were available with 2 months of notice and constant follow ups. The project was shortened and the paving limits reduced to avoid encroaching into the RR ROW and requiring flaggers.
114972	114972	2	Clinton	120-323	Norfolk Southern	-	Railroad Consultants, PLLC	213 Uptown Square, Murfreesboro TN, 37129	Jonathan L. Parker (Director Safety / Director Field Services)	3/6/23 - 3/8/23; 5/25/23 - 8/23/23	Y	Delays getting flaggers. Delayed tree trimming from fall 2022 to March of 2023 because an agreement was not finalized and an inspector was not available. Additionally, the contractor wanted to start on the 28th of April and a flagger couldn't be found until the 25th of May. The start date of April 28th was communicated to the RR Consultants contact early on in 2023 and was apart of the initial baseline schedule. Another issue was when trying to schedule a Saturday with the flagger that was on site for the project. This would have prevented him from traveling home to southern Alabama on the weekends and returning prior to the following Monday. It was never confirmed if he made the drive home each weekend but we had no way to prove that he did.	Y	Adaptable with construction schedule to get work done efficiently. No track time was ever needed to complete the work. Completion date was changed from 8/14/23 to 9/11/23. The contractor did their due diligence when reaching out to the RR Consultants representative and communicated early and often with them to try and prevent impacts to the schedule.
109587	109587	3	Columbia	0339	Norfolk Southern	A-2019-3010031	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Daniel Harris	4/2024 - 5/2024	Y	Flagger unavailability. Not available timely on short notice. Flagging contractors not calling contractor back. Only one or two flagging companies approved by NS to complete work. NS changed flagging policy after contract was let.	Y	Worked on other items in contract until flaggers were available.
87909	87909	3	Northumberland	0054	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Daniel Harris	4/2024 - 7/2024	Y	Flagger unavailability. Not available timely on short notice. Flagging contractors not calling contractor back. Only one or two flagging companies approved by NS to complete work. NS changed flagging policy after contract was let.	Y	Worked on other items in contract until flaggers were available.
116833	116833	3	Northumberland	0405	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Daniel Harris	10/2023 - 4/2024	Y	Flagger unavailability. The vendor that was used was the second vendor that had been contacted in October 2023 after the first vendor couldn't provide. The second vendor did not have a flagger available to be used in November 2023, so work to pave around the RR crossing had to be delayed until April 2024. The project completion date was extended by 191 days to allow for paving work to be completed.	Y	The vendor that was used was the second vendor that had been contacted in October 2023 after the first vendor couldn't provide. The second vendor did not have a flagger available to be used in November 2023, so work to pave around the RR crossing had to be delayed until April 2024. The project completion date was extended by 191 days to allow for paving work to be completed.
119201	119201	4	Luzerne	0081	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	D.J. Ezell	11/24 to 8/14/24	N		N	
68853	68853	4	Lackawanna	4005	Norfolk Southern	A-2020-3016031	Railroad Consultants, PLLC, then R	213 Uptown Square Murfreesboro, TN 37129/PO Box 4739 Harrisburg, PA 17111 (R&R Consulting Team, LLC)	Jonathan L. Parker/David Craft	4/20/2022	Y	tracks from 8/17/22 until 8/22/22. Due to the size and nature of this project, a la	Y	Contractor eventually found busy work to fill in time while they waited to be allowed back working
57433	57433	5	Lehigh	1004	Norfolk Southern	A-2019-3008985	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	D.J. Ezell	March 2023 and No	Y	Long lead times.	Y	Long lead times. Contractor had minimal issues scheduling R&R flaggers from Railpros as long as advanced notification was given. Each 3rd party utility company was originally required to enter into a railroad flagging agreement in order to perform aerial relocations. This issue was avoided by performing aerial relocations while Norfolk Southern was on site performing gate arm work.
48175	48175	6	Montgomery	Ridge Pike	Norfolk Southern	A-2020-3021678	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Adam Brown	11/1/2023	Y	Flagger pulled for a day due to issues with another flagger putting in a derailer in another state	Y	It was a struggle to get the flagger scheduled initially (usually 1-2 months lead time), but he has been here most of the job. There are safety concerns should something like this occur again but during a vital piece of construction.
99684	99684	8	Cumberland	0074	Norfolk Southern	-	R&R Consulting Team, LLC	PO Box 4739 Harrisburg, PA 17111	David Craft	12/17/2024 (add'l flagging required starting June 2025)	Y	Only needed a flagger for one day but had to pay a minimum charge for an entire week	N	
115631	115631	8	Perry	0034	Norfolk Southern	-	R&R Consulting Team, LLC	PO Box 4739 Harrisburg, PA 17111	David Craft	4/14/2024 - 4/19/2024; 5/20/2024 - 5/24/2024; 5/27/2024 - 5/31/2024	Y	Contractor tried scheduling greater than 2 months in advance and flaggers would not schedule that far out.	Y	Contractor tried scheduling greater than 2 months in advance and flaggers would not schedule that far out. Eventually secured flaggers.
110657	110657	8	Dauphin/ Cumberland	0083 - South Bridge Over Susquehanna	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	D.J. Ezell	12/16/2021; 12/17/2021; 12/20/2021	Y	Flaggers available but issues gaining access over tracks from Railpros. Issue elevated to Shawn Starling and contact provided to call from NS to discuss. After discussing via phone conversation with a gentleman named Brock from NS, he ensured access would be granted on 12/20/21 and was unsure why Railpros would not grant access on this lower volume line.	N	No issues scheduling. Just issues receiving track time from Railpros which NS was able to solve once the situation was discussed. NS talked to Railpros and track time was given.
90852	90852	8	Lancaster	441-032 Water St. Bridge	Norfolk Southern	-	Railroad Consultants, PLLC, then R	213 Uptown Square Murfreesboro, TN 37129 (Railroad Consult. PLLC) 1320 Greenway Drive, Suite 490, Irving, TX 75038 (Railpros)	Jonathan L. Parker (Railroad Consultants), Adam Brown (Railpros)	5/2024-5/31/2024	Y	JVI started the process of obtaining a subcontract with Railroad Consultants on 3/14/23, but was not able to get an executed contract from Railroad Consultants until 7/20/2023. After receiving an executed contract from Railroad Consultants, the company went out of business. The contractor had to start over with RailPros.	Y	JVI started the process of obtaining a subcontract with Railroad Consultants on 3/14/23, but was not able to get an executed contract from Railroad Consultants until 7/20/2023. After receiving an executed contract from Railroad Consultants, the company went out of business. The contractor had to start over with RailPros and had to wait. This resulted in having to redo the flagging process and waste time.
100531	100531	8	Lancaster	0023	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	D.J. Ezell	9/25/2023-5/6/2024	Y	Flagger unavailability. Deblin received an executed agreement with RailPros on 7/3/23 with an expected flagger availability of 8/21/23. Flagger availability was then pushed to 9/25/23.	N	
89288	89288	8	Lancaster	7101 - Rohrertown Rd. Bridge	Norfolk Southern	-	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Adam Brown	7/22/2024 - 11/28/2024	Y	Flagger availability. J.D. Eckman reached out about providing a flagger in Dec 2023 for work to be performed in Jan 2024 prior to an in-stream restriction of Feb 15th. Due to lack of flagger and in stream restriction work moved until restriction was lifted.	Y	Issues with scheduling prior to stream restriction. After stream restriction was listed flagger able to be scheduled.
21951	21951	9	Blair	0036	Norfolk Southern	-	R&R Consulting Team, LLC	PO Box 4739 Harrisburg, PA 17111	David Craft	1/20/2024 - 3/8/2024	Y	Contractor initially contacted Railroad Consultants in April of 2023 in order to secure flagging for work in October of 2023. As October approached, contractor contacted Railroad Consultants multiple times to confirm a start date. Each time Railroad Consultants was unable to commit to a date due to unavailability of a flagger. This continued until January 9, 2024 when the Department received communication from NS that an additional vendor was approved for use. This vendor was R&R Consulting TEAM. Contractor contacted R&R Consulting TEAM on January 10, 2024 and they provided flagging beginning January 20, 2024.	Y	Contractor initially contacted Railroad Consultants in April of 2023 in order to secure flagging for work in October of 2023. As October approached, contractor contacted Railroad Consultants multiple times to confirm a start date. Each time Railroad Consultants was unable to commit to a date due to unavailability of a flagger. This continued until January 9, 2024 when the Department received communication from NS that an additional vendor was approved for use. This vendor was R&R Consulting TEAM. Contractor contacted R&R Consulting TEAM on January 10, 2024 and they provided flagging beginning January 20, 2024.
87756	87756	11	Allegheny	0079 - Neville Island Bridge	Norfolk Southern	A-2019-3011548	RailPros, Inc.	1320 Greenway Drive, Suite 490, Irving, TX 75038	Adam Brown	1/4/23 to 8/16/23	Y	The Railpros 3rd party flagger did not have direct contact with the NS Dispatch. The issue was a concern shared by our PennDOT contractor that the 3rd party flagger didn't have direct contact with trains or dispatch. This created concern by our crews when the flagger, as described to me, just watched and listened for trains, then had our crews back off when he could see or hear trains coming. No accidents ever occurred, just was unnerving.	Y	There was never a resolution. We expressed a concern and again it was never reported to me that the flagger vendor ever obtained a direct contact method with dispatch or the train.
63515	63515	11	Allegheny	SR 1038 AD1, New Ken Bridge	Norfolk Southern	A-2019-3010031	Railroad Consultants, PLLC (went out of business), then R&R Consulting Team, LLC	213 Uptown Square Murfreesboro, TN 37129 (Railroad Consult. PLLC) PO Box 4739 Harrisburg, PA 17111 (R&R Consulting Team, LLC)	Jonathan L. Parker (Railroad Consultants), David Craft (R&R Consulting)	3/2024 - 11/2024	Y	Railroad Consultants, PLLC went under after delaying us a year.	Y	We were able to partner and resequence to avoid RR delay claims from contractors. After we had a 3rd party service with available flaggers, things went better. But there were still problems and inefficiencies getting track time.
109376	109376	11	Beaver	SR 18 B 60 Rochester Monaca Bridge	Norfolk Southern	-	Railroad Consultants, PLLC	213 Uptown Square, Murfreesboro TN, 37129	Jonathan L. Parker	5/27/24 - 9/6/24	Y	Had to give 120 day advance notice	N	
111650	81747	12	Westmoreland	1060	Norfolk Southern	A-2021-3024204	R&R Consulting Team, LLC	PO Box 4739 Harrisburg, PA 17111	David Craft	3/10/2024 to present	Y	If we have a break in contract work, we pay the RR flagger and cannot lay them off, for fear they will not return	Y	The first company that we called told us it would be 4-6 months to get a flagger. The second flagging company had flaggers available within 6 weeks. We are paying the flagger during periods of time when the flagger is not needed.



By: _____

Leah Jo Bobula, Esquire
Supreme Court I.D. #332184
Assistant Counsel
Office of Chief Counsel
P.O. Box 8212
Harrisburg, PA 171105
Telephone: 717-787-3128
Email: lbobula@pa.gov

Date: April 8, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 : Docket No. A-2024-3045709
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. :

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 : Docket No. A-2022-3031613
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. :

**DIRECT TESTIMONY OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

STATEMENT NO. 1

Testimony of: William M. Sinick, P.E., C.B.S.I.
Rail Safety Division
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission

1 **Q: Please state your name for the record.**

2 A: William Michael Sinick.

3 **Q: Are you currently employed?**

4 A: Yes.

5 **Q: By whom are you employed and in what capacity?**

6 A: I work for the Pennsylvania Public Utility Commission's ("Commission") Bureau
7 of Technical Utility Services ("TUS"). I am a Senior Civil Engineer Manager in
8 the Rail Safety Division ("Rail Safety").

9 **Q: How long have you been employed with the Commonwealth and what are**
10 **your credentials?**

11 A: I have worked for the Commonwealth for approximately 26 years and have been
12 with the Commission since June of 2015. Previously, I was employed for more
13 than 3 years at the Pennsylvania Department of Environmental Protection as a
14 Hydraulic Engineer approving bridge waterway permits for the Pennsylvania
15 Department of Transportation, and I worked for roughly 13 years at the
16 Pennsylvania Department of Transportation as a Bridge and Transportation
17 Engineer. I have been a licensed professional engineer in the Commonwealth of
18 Pennsylvania since June of 2005 and a certified bridge safety inspector since
19 March of 2011. I have a Bachelor of Science Degree in Civil Engineering
20 Technology from the University of Pittsburgh at Johnstown, PA.

1 **Q: What are your current job responsibilities as a Senior Civil Engineer**
2 **Manager for the Bureau of Technical Utility Services Rail Safety Division?**

3 A: I supervise the Engineering Section involving intrastate railroad safety and
4 compliance. I act as an engineering representative and liaison between the
5 Pennsylvania Public Utility Commission and the Pennsylvania Department of
6 Transportation, railroad companies, local municipal governments, and non-carrier
7 public utility companies (electric, telephone, gas, water, pipelines, etc.) on
8 complex matters relating to the Commission's authority over the location, design,
9 construction, rehabilitation, abolition and, most importantly, public safety of
10 highway/rail crossings.

11 **Q: Are you familiar with the railroad flagging issues involved with the subject**
12 **docketed cases?**

13 A: Yes.

14 **Q: Speaking for the Commission's Rail Safety Division, what would be the**
15 **concerns for third party vendors performing Railroad flagging.**

16 A: We have no issue with trained third-party vendors/contractors performing railroad
17 flagging.

18 **Q: Just to be clear, what does a railroad flagger do at a public crossing under**
19 **construction, alteration, improvement or maintenance activities.**

20 A: The railroad flagger gets notification of the railroads daily train schedule through
21 the area and its schedule adjustments as necessary. Specifically, they get advanced
22 notification by communication device of an impending train and notify all

1 personnel onsite at the public crossing to clear the tracks and impacted area of all
2 equipment and personnel until the train passes safely through. Often this is done
3 with some type of alarm or horn.

4 **Q: What are the issues pertaining to railroad flagging that Rail Safety is**
5 **concerned with?**

6 A: Public safety, public convenience and accommodation, public expenditures, and
7 Commission enforcement.

8 **Q: Describe each in more detail.**

9 A: **Public safety** – the safety issues revolve around railroad communications and
10 railroad operations. The operating railroad is the sole entity responsible for
11 railroad operations, train movements, speed, the size of the loads, what it's
12 hauling, the length of the train, etc. Once a train is on the move no outside entity
13 can stop a train. If third-party flaggers are utilized to warn and alert the contractors
14 and/or municipal, state or utility personnel, they will only be as good as the direct
15 communication between the operating railroad and the third-party flagger. If that
16 line of communication is broken then the public, the community, the workers, and
17 everything going on at the crossing under this Commission's jurisdiction and order
18 would be in jeopardy of a serious accident at the very least and a catastrophe at the
19 very most. In our view it's imperative that the operating railroad — in this case
20 Norfolk Southern Railway Company — is not alleviated from its responsibility
21 and adheres to the Commission's oversight for that communication and railroad
22 flagger training.

1 **Public convenience and accommodation** –When railroad flagging is ordered
2 through a Commission Secretarial Letter or Order it's essential that it's available
3 when requested so that the Commission applicant — whether it be another utility,
4 highway entity, or a political subdivision or municipality is afforded that service
5 when requested. They must have the ability to plan their work with their company
6 and/or contractors, notify the public and emergency services, and perform the
7 work, improvement, or maintenance activity. That serves the public interest,
8 accommodation and convenience of all involved.

9 **Public expenditures** – Almost all Commission rail applications and/or
10 proceedings that authorize work or maintenance that require railroad flagging at a
11 public crossing involve public funding and expenditures, with the exception of the
12 projects that the railroad is performing for maintenance activities. And even some
13 of those projects involve funds from a public grant. When this work is delayed,
14 rescheduled, or cancelled as a result of railroad flagging, it's a very significant
15 cost and impact on the schedule of that particular project or activity which results
16 in significant additional public funding costs and delay claims. These two cases
17 and all the others impacted by railroad flagging delays are no exception to that.

18 **Enforcement** – Rail safety believes through its experiences dealing with these
19 matters that the Commission and its Commissioners should have more
20 enforcement authority to levy fines, sanctions, and whatever is necessary to
21 alleviate these growing railroad-induced flagging issues, that are under
22 Commission purview for all the reasons mentioned in the testimony above. The

1 issue of railroad flagging not only affects construction or alterations, but it affects
2 federally mandated bridge inspections which are under time constraints,
3 emergency repairs of our highway bridges, bridge maintenance such as bridge
4 cleaning and other necessary activities.

5 **Q: What could the Commission do in your opinion that would strengthen its**
6 **ability to enforce?**

7 A: Use more precise language in the Commission's ordering paragraphs of any
8 Secretarial Letter or Order involving railroad flagging. That includes precise
9 notification times by the applicant to the operating railroad and/or third-party
10 vendors of when railroad flagging is needed; Holding the operating railroad
11 responsible for dispatching and communication of all railroad operations through
12 the project site with the railroad flaggers whether it be third-party vendors or their
13 own forces; Enforcing no unreasonable delays of railroad flagging upon proper
14 notification; and assigning all costs as initial costs, regarding all aspects of railroad
15 flagging, so as to give the Commission a more active role reviewing and assessing
16 the cost allocations, if necessary. Railroad flagging is an enormous cost on a
17 highway bridge replacement project when it's done properly let alone when it's
18 delayed, canceled, or rescheduled, which as I indicated is public money. Lastly,
19 ordering the applicant or operating railroad to provide any agreement, contract,
20 permit, or documentation entered into and upon request involving the
21 Commission's jurisdictional public crossings. The proposed ordering paragraphs

1 to strengthen the Commission's ability to enforce is submitted as Exhibit A of the
2 Bureau of Investigation and Enforcement direct testimony.

3 **Q: Does this conclude your direct testimony?**

4 A: Yes. However, I reserve the right to supplement my testimony as additional issues
5 and facts arise during the course of the proceeding.

I&E Exhibit A

1. Pennsylvania Department of Transportation, at its initial cost and expense, shall require its contractor to furnish and maintain flaggers, selected from a list of vendors qualified to provide protective services on the rail system of and on behalf of Norfolk Southern Railway Company, to protect the Pennsylvania Department of Transportation or its contractors when activities required to alter the subject public crossing(s) have the potential to foul the railroad's tracks or operations on or adjacent to any affected railroad property. Norfolk Southern Railway Company shall ensure compliance with its rules for safe railroad operations by briefing, monitoring and inspecting the flagging vendors.
2. Norfolk Southern Railway Company, at its initial cost and expense, shall be responsible for all railroad operations and dispatching communications with the flagging vendors to and through the subject captioned public crossing(s) during the time alterations and/or construction activities are being performed across, above and adjacent to its tracks, all in accordance with the provisions of this Secretarial letter.
3. Norfolk Southern Railway Company, at the initial cost and expense of the Pennsylvania Department of Transportation, shall furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work; including furnishing construction engineering and inspection services if required as a result of the proposed work.
4. Upon the Pennsylvania Department of Transportation's thirty (30) day advance notice of project start date to Norfolk Southern Railway Company, the railroad shall ensure or make railroad flaggers available without delay through its list of qualified vendors or its railroad personnel to complete the project as necessary for construction, alteration, or maintenance activities.
5. Upon proper notification by the Pennsylvania Department of Transportation to Norfolk Southern Railway Company of the need for railroad flagging services, in accordance with the advance notice provision of Paragraph 4, no unreasonable delay shall occur for construction, alteration, or maintenance activities for any public crossing over which the Commission asserts jurisdiction. All activities associated with railroad flagging services including costs, delays, claims, and any other related issues shall be subject to interim and final review by the Commission upon written request.
6. Upon request of the Commission, the Pennsylvania Department of Transportation and Norfolk Southern Railway Company shall provide the Commission with any permit, agreement, contract, or documentation associated with the activities outlined in this Secretarial Letter or Order.