

**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. :

Application of the Department of Transportation : A-2023-3043493
of the Commonwealth of Pennsylvania for :
approval to replace the existing bridge where :
West Lackawanna Avenue crosses above the :
track(s) of Norfolk Southern Railway corporation, :
DOT Number 265 971 V in the City of Scranton, :
Lackawanna County and the allocation of costs :
incident thereto. :

Application of the Pennsylvania Department of : A-2024-3051983
Transportation for approval to alter the public :
crossing (DOT# 592 188 M) by the removal and :
replacement of the existing bridge where :
Seventeenth Street crosses, above grade, the :
tracks of Norfolk Southern Railway Company :
in the City of Harrisburg, Dauphin County, and :
the allocation of costs incident thereto. :

Application of Westmoreland County for : A-2024-3052077
Approval to Replace an Above Grade Crossing :
By the Installation of a Single-Span Girder :
Bridge Where West Broadway Avenue/Fourth :
Street Crosses Norfolk Southern Railroad :
(NSRC) BR0028787- PT-331.87; U.S. :
Department Federal Highway Administration :
(FHWA) Will Fund the Bridge Replacement, :
But Westmoreland County Will own and :
Maintain the Bridge Located in the Borough of :
North Irwin, Westmoreland County, Pennsylvania. :

Second Interim Order

On March 24, 2022, the Commonwealth of Pennsylvania, Department of Transportation (PennDOT) filed an application 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. 592 122 M) in Shippensburg Borough, Franklin County, and the allocation of cost incident thereto, which was docketed at A-2022-3031613.

On January 24, 2024, PennDOT filed an application 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, which was docketed at A-2024-3045709.

On May 28, 2024, Secretarial Letters were issued by the Pennsylvania Public Utility Commission (Commission) approving both Applications.

On June 17, 2024, Norfolk Southern Railway Company (Norfolk Southern) filed Petitions for Reconsideration from Staff Action to both dockets/applications.

On June 28, 2024, the Commission's Bureau of Investigation and Enforcement (I&E) filed an Answer in Opposition to the Petitions for Reconsideration from Staff Action in both dockets/applications.

On July 8, 2024, PennDOT filed its Answer to the Petition for Reconsideration from Staff Action for Docket No. A-2024-3045709.

On July 10, 2024, PennDOT filed its Amended Answer to the Petition for Reconsideration from Staff Action for Docket No. A-2022- 3031613.

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

On October 4, 2024, an Opinion and Order was issued for Docket No. A-2022-3031613, ordering: 1) that Norfolk Southern's Petition for Reconsideration from Staff Action granted in part, 2) that Norfolk Southern's Motion to Assign Proceeding to the Office of Administrative Law Judge (OALJ) for Disposition granted, and 3) assigning this matter to the OALJ to conduct such proceedings as necessary to resolve the issue surrounding the assignment of responsibility in providing flagging and watchmen as required to protect the railroad tracks during the time the work is being performed across, above, and adjacent to the tracks.

By Notice dated November 1, 2024, a Telephonic Prehearing Conference was scheduled for December 13, 2024, and the matter at Docket No. A-2022-3031613 was assigned to me.

On November 7, 2024, an Opinion and Order was issued for Docket No. A-2024-3045709, ordering: 1) that Norfolk Southern's Petition for Reconsideration from Staff Action granted in part, 2) that Norfolk Southern's Motion to Assign Proceeding to the OALJ for Disposition granted, and 3) assigning this matter to the OALJ to conduct such proceedings as necessary to resolve the issue surrounding the assignment of responsibility in providing flagging

and watchmen as required to protect the railroad tracks during the time the work is being performed across, above, and adjacent to the tracks.

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

By Notice dated November 19, 2024, a Telephonic Prehearing Conference was formally scheduled for December 13, 2024, and the matter at Docket No. A-2024-3045709 was assigned to me.

On December 11, 2024, Prehearing Memoranda were filed by PennDOT, Norfolk Southern, and the I&E.

A prehearing conference was held as scheduled on December 13, 2024. Counsel for PennDOT, Norfolk Southern, and the I&E participated.

On January 9, 2025, an Order was issued memorializing certain procedural matters addressed at the prehearing conference including a litigation schedule.

On February 19, 2025, Prehearing Order No. 3 was issued granting PennDOT's request to adjust the litigation schedule in order to provide additional time for discovery.

On May 7, 2025, an evidentiary hearing was held as scheduled. Leah Bobula, Esquire and Karen Cummings, Esquire appeared on behalf of PennDOT. Benjamin Dunlap, Esquire appeared on behalf of Norfolk Southern. Grant Rosul, Esquire appeared on behalf of I&E.

The question of Norfolk Southern's duty and the manner of furnishing flagging is at issue in several proceedings currently pending before the Commission:

1. *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. 592 122 M) in Shippensburg Borough, Franklin County, and the allocation of cost incident thereto, Docket No. A-2022-3031613 (Opinion and Order entered October 4, 2024) (Norfolk Southern October 2024);*
2. *Application of Pennsylvania Department of Transportation for approval to alter two (2) public crossings by the rehabilitation of the existing bridge where State Route 0018 (Seventh avenue) crosses, above grade, one (1) track of Norfolk Southern Railway Company (DOT 503 768 L) located in New Brighton Borough and two(2) tracks of CSX Transportation, Inc. (DOT 584 878 T) located in the City of Beaver Falls, all in Beaver County, and the allocation of costs incident thereto, Docket No. A-2024-3045709 (Order entered November 7, 2024)(Norfolk Southern November 2024)*
3. *Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the existing bridge where West Lackawanna Avenue crosses above the track(s) of Norfolk Southern Railway corporation, DOT Number 265 971 V in the City of Scranton, Lackawanna County and the allocation of costs incident thereto, Docket No. A-2023-3043493 (Opinion and Order entered February 6, 2025)(Norfolk Southern February 2025); and*
4. *Application of the Pennsylvania Department of Transportation for approval to alter the public crossing (DOT# 592 188 M) by the removal and replacement of the existing bridge where Seventeenth Street crosses, above grade, the tracks of Norfolk Southern Railway Company in the City of Harrisburg, Dauphin County, and the allocation of costs incident thereto, Docket No. A-*

2024-3051983 (Opinion and Order entered April 24, 2025)(*Norfolk Southern April 2025*).

In referring these matters to the OALJ, the Commission advised that it may be prudent, if it is determined that the same facts and legal issues are involved, to consolidate the matters pursuant to 52 Pa. Code § 5.81 (a). Accordingly, at the outset of the May 7, 2025, I proposed the consolidation of these matters. The parties did not object.

After the hearing was adjourned, the parties agreed to deadlines for the filing of Main Briefs and Reply Briefs.

On May 15, 2025, an Interim Order was issued: (1) consolidating the proceedings at Docket Nos. A-2022-3031613, A-2024-3045709, A-2023-3043493, and A-2024-3051983; (2) establishing a deadline of June 20, 2025, for Main Briefs; and (3) establishing a deadline of June 30, 2025, for Reply Briefs.

On May 22, 2025, the Commission issued an Opinion and Order in:

Application of Westmoreland County for Approval to Replace an Above Grade Crossing By the Installation of a Single-Span Girder Bridge Where West Broadway Avenue/Fourth Street Crosses Norfolk Southern Railroad (NSRC) BR0028787- PT-331.87; U.S. Department Federal Highway Administration (FHWA) Will Fund the Bridge Replacement, But Westmoreland County Will own and Maintain the Bridge Located in the Borough of North Irwin, Westmoreland County, Pennsylvania, Docket No. A-2024-3052077 (Opinion and Order entered May 22, 2025).

The Commission referred this matter to the OALJ and directed the OALJ to examine whether this proceeding shall be consolidated with or stayed pending disposition of the open proceedings at Docket Nos. A-2024-3051983, A-2022-3031613, A-2024-3045709, and A-2023-2043493, to address the assignment of responsibility in providing flagging and watchmen, as required, to protect the railroad tracks during the time the work is being performed across, above, and adjacent to the tracks.

A-2022-3031613 - 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. 592 122 M) in Shippensburg Borough, Franklin County, and the allocation of cost incident thereto.

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