



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

June 25, 2025

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
400 North Street 2nd FL
Harrisburg, PA 17120

**RE: A-2022-3031613, A-2024-3045709, A-2023-3043493, A-2024-3051983, and A-2024-3052077
(Consolidated)**

Dear Secretary Homsher,

Enclosed, please find the Department's *Main Brief* 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

Application of Westmoreland County for approval : A-2024-3052077
to replace an above grade crossing by the :
Installation of a single-span girder bridge where :
West Broadway Avenue/Fourth Street crosses :
Norfolk Sothern 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. :

**MAIN BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION**

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Dated: June 25, 2025

TABLE OF CONTENTS

| | <u>PAGE</u> |
|--|--------------------|
| Table of Citations | ii |
| History of the Proceedings | 1 |
| Statement and Summary of the Case | 10 |
| Argument | |
| A. Legal Standard | 11 |
| B. It is just and reasonable to continue to require Norfolk Southern Railway Company to furnish flaggers for grade crossing projects..... | 12 |
| 1. The Commission historically has assigned responsibility for furnishing flaggers to the railroads and should continue to do so to ensure public safety..... | 13 |
| 2. Norfolk Southern should remain responsible for furnishing flaggers because it possesses expertise in the requirements for flaggers, controls whether a flagging vendor is qualified to work on or around its tracks, and provides oversight of flaggers on all projects in or around its property..... | 16 |
| C. Continuing to require Norfolk Southern to furnish flaggers is necessary for the Commission to ensure public safety during grade crossing projects because the Commission does not have direct jurisdiction over railroad flagging vendors..... | 19 |
| Conclusion | 23 |
| Proposed Findings of Facts | 24 |
| Proposed Conclusions of Law | 32 |
| Proposed Ordering Paragraphs | 34 |

TABLE OF CITATIONS

| <u>Cases</u> | <u>Page</u> |
|---|--------------------|
| <i>AT&T v. Pa. P. U. C.</i> , 737 A.2d 201, 209 (Pa. 1999) | 12, 33 |
| <i>Greene Twp. Bd. of Supervisors v. Pa. P.U.C.</i> , 642 A.2d 541, 543 (Pa. Cmwlt. 1994) | 12, 33 |
| <i>Greene Twp. Bd. of Supervisors v. Pa. P.U.C.</i> , 668 A.2d 615, 619 (Pa. Cmwlt. 1995) | 12, 33 |
| <i>Millcreek Twp. v. Pa. P.U.C.</i> , 753 A.2d 324 (Pa. Cmwlt. 2000) | 12, 33 |
| <i>N. Lebanon Twp. v. Pa. P.U.C.</i> , 962 A.2d 1237, 1247 (Pa. Cmwlt. 2008) | 12, 33 |
| <i>Norfolk & Southern Ry. v. P.U.C.</i> , 971 A.2d 545, 551 (Pa. Cmwlt. 2009) | 12 |
| <i>SEPTA v. Pa.P.U.C.</i> , 592 A.2d. 797 (Pa. Cmwlt. 1991) | 11, 32 |
| <i>SEPTA v. Pa. P.U.C.</i> , 802 F. Supp. 1273, 1273 (E.D. Pa. 1992) | 12, 33 |
| <u>Statutes</u> | |
| 66 Pa.C.S. §§ 501 | 32 |
| 66 Pa.C.S. § 502 | 11, 19 |
| 66 Pa.C.S. § 2702 | 11, 16, 19, 32 |
| 66 Pa.C.S. § 2704(a) | 11, 19, 32, 33 |
| <u>Other</u> | |
| <i>Application of the City of Wilkes-Barre</i> , Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981) | 12, 33 |

History of the Proceedings

This matter was referred to the Public Utility Commission's (Commission) Office of Administrative Law Judge (ALJ) at the request of Norfolk Southern Railway Company (Norfolk Southern or NS) in its petitions for reconsideration from staff action under the application dockets described below.

A-2022-3031613

On March 24, 2022, the Department of Transportation (Department or PennDOT) filed its application for docket A-2022-3031613. On May 26, 2022, a field conference was held. On March 21, 2023, the Department filed its Final Right-of-Way Plan. On July 11, 2023, Norfolk Southern filed its Objection to the signed Drawing Authorizing the Acquisition of Right-of-Way Plans. On May 28, 2024, a Secretarial Letter was issued.

Norfolk Southern filed a Petition for Reconsideration from Staff Action on June 17, 2024. On June 28, 2024, the Bureau of Investigation and Enforcement (I&E) filed an Answer in Opposition to the Petition for Reconsideration from Staff Action. On July 10, 2024, the Department filed its Amended Answer to the Petition for Reconsideration from Staff Action. On July 24, 2024, Norfolk Southern filed a Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition.

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

On September 26, 2024, Vice Chair Barrow filed a Motion moving to 1) grant Norfolk Southern's Petition for Reconsideration from Staff Action in part; 2) Grant the Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition; 3) refer the Application to the

Administrative Law Judge to resolve the assignment of responsibility regarding flagging; and 4) the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

On November 1, 2024, a Telephonic Prehearing Conference Notice was issued, scheduled for December 13, 2024. 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.

Norfolk Southern's Petition for Reconsideration from Staff Action seeks to delete paragraph 10, replace paragraph 10 with the below language, and add a new paragraph 11 with the below language:

- (to be deleted) 10. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work, and furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.

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

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

option of Norfolk Southern Railway Company may be through railroad forces or qualified contractors.

A-2024-3045709

On January 24, 2024, the Department filed its application for docket A-2024-3045709. On April 2, 2024, a field conference was held and on May 28, 2024, a Secretarial Letter was issued.

Norfolk Southern filed a Petition for Reconsideration from Staff Action on June 17, 2024. On June 28, 2024, I&E filed an Answer in Opposition to the Petition for Reconsideration from Staff Action. On July 8, 2024, the Department filed its Answer to the Petition for Reconsideration from Staff Action. On July 10, 2024, the Department filed its Amended Answer to the Petition for Reconsideration from Staff Action.

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

On November 1, 2024, a Telephonic Prehearing Conference Notice was issued, scheduled for December 13, 2024.

On November 7, 2024, an Opinion and Order was issued, ordering 1) the Petition for Reconsideration from Staff Action be granted in part; 2) the granting of the Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition; and 3) the referral of the Application to the Administrative Law Judge to resolve the assignment of responsibility regarding flagging. Norfolk Southern's Petition for Reconsideration from Staff Action seeks to delete paragraph 8, replace paragraph 8 with the below language, and add a new paragraph 9 with the below language:

- (to be deleted) 8. Norfolk Southern Railway Company and CSX Transportation, Inc., at Pennsylvania Department of Transportation's sole cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

- (replacement) 8. CSX Transportation, Inc., at Pennsylvania Department of Transportation's sole cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

- (new ordered paragraph) 9. Norfolk Southern Railway Company, at Pennsylvania Department of Transportation's sole cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered. Pennsylvania Department of Transportation, at its sole cost and expense, furnish any watchmen and flagmen as required for work around the operations of Norfolk Southern Railway Company, as applicable, to protect Pennsylvania Department of Transportation or its contractor during the time work is being performed across, above and adjacent to the railroads' tracks, which at the sole

option of Norfolk Southern Railway Company, as applicable, may be through railroad forces or qualified contractors.

A-2023-3043493

On October 12, 2023, the Department filed its application for docket A-2023-3043493. On December 13, 2023, a field conference was held. On November 22, 2024, a Secretarial Letter was issued.

Norfolk Southern filed a Petition for Reconsideration from Staff Action on December 12, 2024. On December 31, 2024, the Department filed its Answer Objecting to the Petition for Reconsideration from Staff Action. On February 7, 2025, the Commission entered an Order referring this matter to the Office of Administrative Law Judge.

Norfolk Southern's Petition for Reconsideration from Staff Action seeks to delete paragraph 13, replace paragraph 13 with the below language, and add a new paragraph 13a with the below language:

- (to be deleted) 13. Norfolk Southern Railway Company, at the sole cost and expense of the Department of Transportation of the Commonwealth of Pennsylvania, furnish construction, engineering and inspection service as required as a result of the proposed work, and furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.

- (replacement) 13. Pennsylvania Department of Transportation, at its sole cost and expense, shall require its contractor to furnish and maintain flaggers, selected from a list of vendors qualified to provide protective services on Norfolk Southern Railway Company, to protect the Pennsylvania Department of Transportation or its contractor

when construction activities are taking place on or adjacent to railroad property or have the potential to foul the railroad's tracks or operations. Norfolk Southern Railway Company shall ensure compliance with its rules for safe railroad operations by briefing, monitoring and inspecting the flagging vendor. Should the Pennsylvania Department of Transportation or its contractor be unable to schedule the flaggers when needed from the listing of qualified vendors, Norfolk Southern Railway Company shall work diligently and in good faith to assist the Pennsylvania Department of Transportation in finding qualified flagging services, including coordinating a conversation with the flagging vendors to discuss providing the flagging services, so as not to unreasonably delay the project .

- (new ordered paragraph) 13a. Norfolk Southern Railway Company, at Department of Transportation of the Commonwealth of Pennsylvania's sole cost and expense, 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 and furnish any inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

A-2024-3051983

On November 5, 2024, the Department filed its application for docket A-2024-3051983. On February 26, 2025, a field conference was held. On March 7, 2025, a Secretarial Letter was issued.

Norfolk Southern filed a Petition for Reconsideration from Staff Action on March 25, 2025. On March 31, 2025, the Department filed its Final Structure plan. On April 2, 2025, the Department filed its Final Right-of-Way Plans. On April 4, 2025, the Department filed its

Answer Objecting to the Petition for Reconsideration from Staff Action. On April 24, 2025, the Commission entered an Order referring this matter to the Office of Administrative Law Judge.

Norfolk Southern's Petition for Reconsideration from Staff Action seeks to delete paragraph 14, replace paragraph 14 with the below language, and add new paragraphs 14a and 14b with the below language:

- (to be deleted) 14. Norfolk Southern Railway Company, at the sole cost and expense of Pennsylvania Department of Transportation, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work; furnish construction engineering and inspection service, if required, as a result of the proposed work; and furnish and maintain flagmen and watchmen, as required, to protect its operations during the time the work is being performed across, above and adjacent to its tracks.

- (replacement) 14. Pennsylvania Department of Transportation, at its sole 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 Norfolk Southern Railway Company, to protect the Pennsylvania Department of Transportation or its contractors when activities required to alter the subject public crossing has 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 vendor. Should the Pennsylvania Department of Transportation or its contractor be unable to schedule the flaggers when needed from the listing of qualified vendors, Norfolk Southern Railway Company shall work diligently and in good faith to assist the

Pennsylvania Department of Transportation in finding qualified flagging services, including coordinating a conversation with the flagging vendors to discuss providing the flagging services, so as not to unreasonably delay the project.

- (new ordered paragraph) 14a. Norfolk Southern Railway Company, at its sole 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 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.

- (new ordered paragraph) 14b. Norfolk Southern Railway Company, at the sole cost and expense of 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.

A-2024-3052077

On November 13, 2024, Westmoreland County filed its application for docket A-2024-3052077. On December 2, 2024, a field conference was held. On March 24, 2025, a Secretarial Letter was issued.

Norfolk Southern filed a Petition for Reconsideration from Staff Action on April 14, 2025. On April 25, 2025, Westmoreland County filed its Answer to Petition for Reconsideration from Staff Action. On May 22, 2025, the Commission entered an Order referring this matter to the Office of Administrative Law Judge.

Norfolk Southern's Petition for Reconsideration from Staff Action seeks to delete paragraph 1, replace paragraph 1 with the below language, and add new paragraphs 1a with the below language:

- (to be deleted) 1. Norfolk Southern Railway Company, at the sole cost and expense of Westmoreland County, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being installed.

- (replacement) 1. Westmoreland County, at its sole cost and expense, shall require its contractor to furnish and maintain flaggers, selected from a list of vendors qualified to provide protective services on Norfolk Southern Railway Company, to protect Westmoreland County or its contractor when construction activities are taking place on or adjacent to railroad property or have the potential to foul the railroad's tracks or operations. Norfolk Southern Railway Company shall ensure compliance with its rules for safe railroad operations by briefing, monitoring and inspecting the flagging vendor. Should Westmoreland County or its contractor be unable to schedule the flaggers when needed from the listing of qualified vendors, Norfolk Southern Railway Company shall work diligently and in good faith to assist Westmoreland County in finding qualified flagging services, including coordinating a conversation with the flagging vendors to discuss providing the flagging services, so as not to unreasonably delay the project.

• (new ordered paragraph) 1a. Norfolk Southern Railway Company, at Westmoreland County's sole cost and expense, 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 and furnish any inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

Consolidated Dockets

By Interim Order dated May 15, 2025, ALJ Brady consolidated Dockets A-2022-3031613, A-2024-3045709, A-2023-30433493, and A-2024-3051983 without objection from the parties. On June 23, 2025, by way of a Second Interim Order, Docket A-2024-3052077 was consolidated with the proceedings of Dockets A-2022-3031613, A-2024-3045709, A-2023-30433493, and A-2024-3051983. A prehearing conference was held on December 13, 2024. Counsel for the Department, Norfolk Southern, and I&E attended. Various prehearing orders followed.

Written direct and rebuttal testimony was submitted by the Department and Norfolk Southern. I&E submitted written direct testimony. An evidentiary hearing was held on May 7, 2025. The Department, Norfolk Southern, and I&E all provided testimony.

Statement and Summary of the Case

For each of the dockets, Norfolk Southern objects to the requirement that it "furnish flaggers" and asserts that the requested change will ensure an adequate supply of flaggers. The Department disagrees because the proposed change does nothing to increase the number of flaggers available yet shifts the responsibility of obtaining flaggers to the Department even though Norfolk Southern still maintains oversight and control of the flaggers and flagging

vendors qualified to work on or around its tracks. This does not serve the public interest because it does not place Norfolk Southern as the primary party responsible for the oversight of flagging. Additionally, it does not provide the Department with any options when no flaggers are available from the qualified flagging vendor list or from Norfolk Southern railroad forces. I&E supports the Department's position and further asserts that Norfolk Southern should remain responsible for providing flaggers so that the Commission maintains its jurisdiction to enforce rail safety regulations.

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

Argument

A. Legal Standard

The Public Utility Commission has exclusive jurisdiction to regulate the construction, relocation, suspension, abolition, or alteration of railroad facilities that cross any other public utility or a public highway either at grade or above or below grade as well as the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 502, 2702; 66 Pa.C.S. § 2704(a). This includes the authority to order necessary improvements or maintenance to ensure the safety of the traveling public. *SEPTA v. Pa.P.U.C.*, 592 A.2d. 797 (Pa. Cmwlth. 1991).

While not limited to any fixed rule, the Commission has consistently relied upon a variety of relevant factors for the allocation of costs, repair and replacement, and maintenance responsibilities, including: 1) the party that originally built the crossing; 2) prior ownership and maintenance responsibilities; 3) the relative benefit conferred on each party with the construction

of the crossing; 4) whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal; and 5) the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).

Despite often using these factors, the Commission is not required to set forth an analysis of these five factors as courts have held such a practice would ultimately infringe upon the discretionary aspect of the Commission's decisions. *Millcreek Twp. v. Pa. P.U.C.*, 753 A.2d 324 (Pa. Cmwlth. 2000) (quoting *AT&T v. Pa. P. U. C.*, 737 A.2d 201 (Pa. 1999)). These five factors are "neither mandatory nor exclusive of other considerations." *Norfolk & Southern Ry. v. Pa. P.U.C.*, 971 A.2d 545, 551 (Pa. Cmwlth. 2009) (citing *AT&T*, 737 A.2d at 209). In addition to these above-listed factors, the Commission can also consider ownership of the tracks and the general equities of a case in reaching its decision. *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981). Though many of the factors are not at issue in the instant cases, the fundamental requirement is that the Commission's order be just and reasonable. *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 642 A.2d 541, 543 (Pa. Cmwlth. 1994).

B. It is just and reasonable to require Norfolk Southern Railway Company to furnish flaggers for grade crossing projects.

Railroad flaggers are a critical component of rail safety during a grade crossing construction or alteration project. The Department agrees that flaggers are necessary to complete the projects in each of the cases at issue and agrees to assume the costs for those flaggers, however, it is not just and reasonable to require the Department to also "furnish" the flaggers in

the manner that Norfolk Southern proposes. In prescribing responsibility for providing railroad flaggers for a public grade crossing project under the circumstances of these cases, the relevant factors for the Commission's consideration are prior responsibilities for furnishing flaggers and the general equities given that Norfolk Southern is the only party with expertise in railroad flagging and that it controls whether a flagger is qualified to work on its property. These factors weigh in favor of continuing to require Norfolk Southern to furnish flaggers for public highway grade crossing projects.

1. The Commission historically has assigned responsibility for furnishing flaggers to the railroads and should continue to do so to ensure public safety.

It is just and reasonable to require Norfolk Southern to furnish flaggers for public grade crossing projects because the Commission has, with good reason, historically assigned this responsibility to the railroads. Every other railroad is subject to the requirement to furnish flaggers, even Genesee & Wyoming, which also uses third-party flagging vendors.¹ See Secretarial letters for dockets A-2020-3022688, A-2024-3049938, A-2024-3051881, A-2024-3050077, A-2024-3049330, A-2024-3047937, A-2023-3045019, A-2023-3041189, A-2023-3040722, A-2023-3037699, A-2022-3031928, A-2022-3031878, A-2022-3031362, and A-2022-3030281; PennDOT Statement 4, pg. 6, lines 2-7. As is the case in the dockets at issue here, all of the Secretarial Letters or Commission Orders in the dockets cited above include substantially similar language requiring the railroad to “furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad’s operations or

¹ For PennDOT projects involving the Genesee and Wyoming Railroads since 2018, their railroads utilize third-party flagging vendor services similar to how Norfolk Southern uses them. However, the Genesee and Wyoming Railroads still perform the coordination between PennDOT’s contractors and the third-party flagging vendors. PennDOT Statement 4, pg. 6, lines 2-7.

facilities.”

The issue is only being raised here because Norfolk Southern unilaterally made the decision to implement a new process for retaining flaggers on projects under the Commission’s jurisdiction in contravention of existing Secretarial Letters and without seeking prior Commission approval or considering the impact on Department projects and the potential safety implications. *See* NS Statement 1, pg. 5, lines 16, 18. Norfolk Southern first required PennDOT to arrange for its own flagging services through third-party vendors in late 2022 and early 2023. NS Statement 5, pg. 5, lines 5-6, 7, 9. Prior to that, Norfolk Southern used in-house flaggers on Department projects. PennDOT Statement 4, pg. 4, line 20 – pg. 5, line 19; NS Statement 4, pg.4, lines 15-16. When Norfolk Southern switched to third-party flagging they did not consult the Department nor provide any communication regarding potential delays that may stem from the transition. N.T. at 209-11, lines 4-22, lines 24-25, lines 1-6. Additionally, there are no Commission Orders allowing the use of third-party flaggers. N.T. at 211, lines 8-10.

The parties disagree with regard to the success of Norfolk Southern’s decision to eliminate in-house flaggers in favor of third-party flaggers for Department projects. Norfolk Southern presented testimony alleging that the new process allows sponsors and prime contractors to have better control and planning of their flagging resources. NS Statement 1, pg. 4, lines 20-22. Norfolk Southern also claims that there is more availability since these third-party flaggers are not capable of being utilized by the railroad for other railroad work, regardless of the urgency. NS Statement 1, pg. 6, lines 6-7. However, this has not been the case in the Department’s experience. The Department gathered data and presented credible testimony showing that its options for obtaining qualified flagging vendors for its grade crossing projects are very limited and that, as a result, the Department has incurred more delay damages than it did

when Norfolk Southern was directly providing flagging services. PennDOT Statement 2, pg. 3, lines 15-23; N.T. at 209-210, lines 24-25, lines 1-5. For numerous projects, delays have exceeded 100 days, and have lasted up to 224 days in one case. As an example, on one project, flagging services were needed for November 1, 2023. PennDOT Exhibit C, ECMS 116833. Flagging was requested from the first vendor on May 11, 2023 and from a second vendor on October 1, 2023. *Id.* Flagging services were not provided for the project until April 1, 2024, which resulted in \$6,210.20 in delay damages because the project needed to be extended over 191 days. *Id.*

Norfolk Southern asserts that the relief requested in its petitions for reconsideration of staff action will ensure an adequate supply of flaggers. But in reality, the proposed change does nothing to increase the number of flaggers available yet shifts the responsibility of obtaining flaggers to the Department even though Norfolk Southern still maintains oversight and control of the flaggers and flagging vendors qualified to work on or around its tracks. This does not serve the public interest because it does not place Norfolk Southern as the primary party responsible for the oversight of flagging – a service that is only needed for highway projects that involve a railroad crossing owned by Norfolk Southern. Additionally, it does not provide the Department with any options when no flaggers are available from the qualified flagging vendor list or from Norfolk Southern railroad forces.

Norfolk Southern also claims that, in the past, where necessary, it would provide personnel if available and this would result in depriving it of skilled labor while its employee was flagging to protect the third-party's project. NS Statement 1, pg. 4, lines 13-18; N.T. at 104, lines 6-15; N.T. at 105, lines 1-21. It is important to note that the Commission's concern is not for the commercial nature of a railroad. Rather, its statutory authorization requires it to act in the best interest of public safety. The Commission's mandate is to ensure the safety of the traveling

public, and it can prescribe the manner and conditions under which crossings are constructed, maintained, operated, and protected to prevent accidents and promote public safety. *See* 66 Pa.C.S.A. § 2702. Its historical approach, requiring railroads to furnish flaggers to protect their operations, is sound and Norfolk Southern has offered no rational basis for the Commission to conclude that requiring the non-railroad party to furnish flaggers would improve public safety during grade crossing projects. As such, this factor weighs in favor of the Department.

2. Norfolk Southern should remain responsible for furnishing flaggers because it possesses expertise in the requirements for flaggers, controls whether a flagging vendor is qualified to work on or around its tracks, and provides oversight of flaggers on all projects in or around its property.

It is just and reasonable to require Norfolk Southern to furnish flaggers for public grade crossing projects because Norfolk Southern possesses expertise in the railroad business that includes a deep understanding of the work flaggers perform, the requirements needed to become a qualified flagger, the railroad's operating procedures, and the characteristic of its rail lines. Notably, the Department lacks any expertise in railroad operations and flagging. PennDOT Statement 1, pg.4, lines 3-17.

Railroad flagging involves ensuring that people stay away from the track, monitoring train movements to identify potential contractor work windows, and coordinating with the dispatcher to secure the track time. NS Statement 1, pg. 3, lines 15-19. Flaggers for NS tracks use specialty software from NS's custom mobile applications. *Id.* The flagger must communicate and coordinate with the workers and managers on-site, with the railroad supervision, and with any railroad workers who may have reason to be working in the vicinity. Interaction with yardmasters or dispatchers is often necessary. NS Statement 1, pg. 3, lines 21-23. Each employer and rail carrier impose their own training and qualification requirements which are

federally regulated but administered by the employers. NS Statement 1, pg. 4, lines 5-8. The qualification process to provide services on Norfolk Southern operation property is detailed and rigorous. NS Statement 4, pg. 3, lines 11-13. Norfolk Southern's Public Projects Manual, Appendix E.1, provides the minimum specifications for third-party protective services both at the entity level and for each individual flagger. NS Exhibit 1. Norfolk Southern also requires there to be an on-site meeting with an NS Supervisor to certify any contractor provided service workers. NS Exhibit 2.

Because the primary communication with flaggers is entirely dependent on a railroad's own operating procedures and because the railroad is exclusively responsible for the rigorous training and qualification of flaggers that will provide services on or around its tracks, it is only logical for the railroad to ultimately be responsible for furnishing flaggers for projects subject to Commission proceedings – as the Commission has always ordered. Mark Chappell, PennDOT's Chief of the Right-of-Way, Utility, and Grade Crossing Division, testified that “[t]he Department is in the business of supporting vehicular traffic throughout the Commonwealth. The Department is not in the railway business and has no knowledge, expertise, and/or experience in railway operations and innerworkings. Based on this, the Department is not qualified to provide or train railroad flaggers.” PennDOT Statement 1, pg. 4, lines 5-8. Norfolk Southern testified that it makes an initial determination based on the work scope whether a flagger is needed generally and the flagging vendor determines when and how PennDOT's contractor needs to be protected from train operations during the project and that it has “confidence that these vendors know how to properly make this determination, whereas other flagging vendors, PennDOT, and/or PennDOT's contractor may not.” NS Statement 5, pg. 8, lines 9-14. As such, Norfolk Southern should be ultimately responsible for furnishing flaggers.

Norfolk Southern argues that the Department should take responsibility for flagging and should not seek Commission orders requiring “extensive and unnecessary intervention” into the free market or federally regulated railroad operations. NS Statement 5, pg. 14, lines 13-16. In addition, it claims that putting the obligation on Norfolk Southern to provide back-up flagging when the Department cannot obtain the services disincentivizes the Department to exercise due diligence and requiring it to furnish flaggers would effectively act as a subsidy to the Department. *See* NS Statement 1, pg. 10, lines 15-21. This is unpersuasive because the Department, in these cases, and generally for State highway grade crossing projects, is solely responsible for costs and expenses of flaggers. *See* A-2022-3031613, para. 10; A-2024-3045709, para. 8; A-2023-3043493, para. 13; A-2024-3051983, para. 14; and A-2024-3052077, para. 1. The cost of any failure to exercise due diligence is borne by the Department and, therefore, it is only incentivized to expeditiously resolve matters that could result in delays.

In making these arguments, Norfolk Southern fails to acknowledge that secretarial letters have always required it to furnish flaggers. The Department has never been ordered to do so. It was only as a result of Norfolk Southern’s unilateral decision to change its business practices that the Department, in the spirit of cooperation, began to require its contractors to subcontract with the third-party flagging vendors qualified by Norfolk Southern. Norfolk Southern’s decision disrupted the Department’s operations and created a myriad of issues that the Department was not obligated to take on under existing secretarial letters and that it was not prepared to take on. Incredibly, Norfolk Southern now places the blame for those issues on the Department and retroactively seeks the Commission’s blessing of its business decisions that have a substantial impact on Department projects. *See* N.T. at 83, lines 11-13; NS Statement 5, pg. 2, lines 7-9. As demonstrated by the information the Department provided in its Exhibit C, even when it has

reached out to a second third-party flagging vendor with significant notice, there is still no guarantee a flagger will be available. *See* PennDOT Exhibit C, ECMS 63515.

The Commission is mandated to ensure public safety at railroad crossings and requiring the party with expertise in railroad flagging operations to furnish flaggers serves that mandate better than requiring a party with no railroad flagging expertise to furnish flaggers. In addition, Norfolk Southern's commercial concerns cannot justify a change that has the potential to negatively impact public safety. As such, it is just and reasonable to continue to require Norfolk Southern to furnish flaggers.

C. Continuing to require Norfolk Southern to furnish flaggers is necessary for the Commission to ensure public safety during grade crossing projects because the Commission does not have direct jurisdiction over railroad flagging vendors.

The Commission's jurisdiction to regulate the alteration of railroad facilities that cross a public highway in order to prevent accidents and promote the safety of the public necessarily gives the Commission jurisdiction over railroads and over the Department as the owner of the highway. *See* 66 Pa.C.S. §§ 502, 2702; 66 Pa.C.S. § 2704(a). As contractors and employees are not "concerned parties" within the meaning of the Public Utility Code, the Commission's direct jurisdiction does not extend to railroad flaggers, railroad employees, Department employees, or Department construction contractors. *See* 66 Pa.C.S. § 2704(a). If the Commission were to grant Norfolk Southern's petition, it would effectively leave no one responsible for the completion of grade crossing project should the Department be unable to retain qualified flaggers under the prescribed timeframe in the order or secretarial letter or as necessary to address immediate safety concerns. The Commission cannot enforce its orders on railroad flagging companies because the Commission only has authority and jurisdiction over the railroads, highway entities, and utilities. N.T. at 224, lines 5-9. If there is a public safety issue caused by lack of flaggers for a project,

neither the Commission nor the Department would have any recourse to immediately address the issue with the third-party flagging vendor under the Public Utility Code. The Department's only recourse would be through a civil action against its contractor. Such action would cause further delay and subvert the Commission's goals in providing for public safety by prescribing the terms under which grade crossing construction and alterations must occur.

While the Department has cooperated with Norfolk Southern by revising reimbursement agreements and retaining flaggers through its contractor, Norfolk Southern's change in operations regarding flaggers has been problematic. In one instance where District 11-0 was having difficulty obtaining flaggers, the Department's primary contact with Norfolk Southern, Shawn Sterling, indicated that he could not be of assistance and stated that "NS does not control 3rd party staffing for contractor protective services." PennDOT Statement 3, pg. 4, lines 14-20; PennDOT Exhibit B. Nonetheless, Norfolk Southern has always determined when a flagger is needed on a project and still makes that determination even with the use of third-party flagging vendors for non-railroad projects. *See* PennDOT Statement 4, pg. 5, lines 10-20; N.T. at 71, lines 1-9, NS Exhibit 2. The Department is in the business of supporting vehicular traffic throughout the Commonwealth. The Department is not in the railway business and has no knowledge, expertise, and/or experience in railway operations and innerworkings. The Department is not qualified to provide or train railroad flaggers. PennDOT Statement 4, pg. 13, lines 1-6.

The Department has unexpectedly had to address many problems relating to flagging that were not present prior to Norfolk Southern's change in operations and could not be addressed by invoking the Commission's enforcement authority. For instance, flagger availability has become a common. Sarah Fenton, PennDOT's Central Office Grade Crossing Manager, testified that it does not appear that there are enough flaggers employed by Norfolk Southern's third-party

flagging vendors to cover all the construction projects along Norfolk Southern's infrastructure, especially during the summer construction season, which leads to longer lead times for Department contractors to obtain a flagger. PennDOT Statement 4, pg. 7, lines 17-23, pg. 8, line 1. There are only three third-party flagging vendors qualified to provide services on Norfolk Southern property - R&R Consulting TEAM, LLC (R&R Consulting), RailPros, and North Carolina Railroad. NS Statement 1, pg. 6, lines 10-11; N.T. at 68-69. At the time of the hearing, only two of those vendors were registered to work in Pennsylvania. PennDOT Statement No. 4, pg. 6, lines 16-18. However, the third third-party flagging vendor, North Carolina Railroad, only became registered to do business in Pennsylvania on April 30, 2025. N.T. at 207, lines 11-19.

Recently, R&R Consulting had a flagging freeze that lasted approximately two to three weeks where the Department could not even inquire about scheduling a flagger because R&R Consulting did not have the available flaggers they thought they would have available. N.T. at 123, lines 7-13. RailPros typically requires an average of 90 days lead time to schedule a flagger. N.T. at 140-41, lines 18-25, lines 1-3. However, during the busy season from April to October, more than half the year, RailPros requires 160 to 180 days' notice to schedule a flagger. N.T. at 141, lines 12-19. This time frame is wholly inadequate to comply with many anticipated completion dates and especially in the event of an emergency or serious safety issue.

One of Norfolk Southern's qualified flagging vendors went out of business with little to no notice, causing projects to be behind schedule. PennDOT Statement 4, pg. 8, lines 9-17. Two instances resulted in a work stoppage order from Norfolk Southern. *See* PennDOT Statement 4, pg. 8, lines 21-23; pg. 9, lines 1-4; pg. 11, lines 10-18. While Norfolk Southern does not want to have ultimate responsibility for furnishing flaggers, it retains authority to remove, suspend, or ban the vendor from their property. PennDOT Statement 4, pg. 11, lines 5-

7. Those actions may, at times, be necessary to maintain safety, but Norfolk Southern should not have the benefit of having ultimate control over flaggers while denying any responsibility to provide flaggers, and thus delaying a Department project when such incidents require a work stoppage.

In addition, when a flagging vendor is unavailable for a project it may cause monetary delay claims, additional costs to the project itself due to the added time, time extension(s) to the project, and potential safety issues to both rail and the public. Substantial monetary delay claims and added costs to a project may impact the Department's upcoming let schedule. Due to impacts on funding, projects may be pushed ahead, work scaled back, projects cancelled, etc. It may also impact current projects which might require work to be scaled back. This has the potential to impact safety. PennDOT Statement 4, pg. 10, lines 14-23. Construction activities, when suspended, can lead to very unsafe conditions, not only for the public, but also for rail.

The Bureau of Technical Utility Services (TUS), Rail Safety Division agrees with the Department's position that the railroad should continue to be responsible for furnishing flaggers and aptly states that it is "imperative that the operating railroad – in this case Norfolk Southern Railway Company – is not alleviated from its responsibility and adheres to the Commission's oversight for that communication and railroad flagger training" and further, it is essential that it's available when requested so that the commission applicant, serves the public interest, accommodation and convenience of all involved. I&E Statement 1, pg. 3, lines 19-22; pg. 4, lines 2-8. While not at issue under the current consolidated dockets, PennDOT agrees with TUS's concerns that the growing railroad-induced flagging issues not only affect construction or alterations of crossings, but also affect federally mandated bridge inspections which are under time constraints, emergency repairs of our highway bridges, bridge maintenance such as bridge

cleaning, and other necessary activities. I&E Statement 1, pg. 4, line 21; pg. 5, lines 1-4.

Conclusion

For the above reasons and based on the general equities given the nature of the parties and the public benefit generally resulting from the grade crossing projects, the Commission should require Norfolk Southern to continue to have primary and ultimate responsibility for furnishing flaggers for public highway grade crossing projects. The Department respectfully requests that the Commission determine that it is just and reasonable to continue to use the language already present in each Secretarial Letter that is the subject of these proceedings and deny Norfolk Southern's respective petitions for reconsideration of staff action.

Respectfully submitted,

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DEPARTMENT OF TRANSPORTATION



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Dated: June 25, 2025

Proposed Findings of Fact

A-2022-3031613

1. On March 24, 2022, the Department filed its application.
2. On May 26, 2022, a field conference was held.
3. On March 21, 2023, the Department filed its Final Right-of-Way Plan.
4. On July 11, 2023, Norfolk Southern filed its Objection to the signed Drawing Authorizing the Acquisition of Right-of-Way Plans.
5. On May 28, 2024, a Secretarial Letter was issued.
6. On June 17, 2024, Norfolk Southern filed a Petition for Reconsideration from Staff Action.
7. On June 28, 2024, I&E filed an Answer in Opposition to the Petition for Reconsideration from Staff Action.
8. On July 10, 2024, the Department filed its Amended Answer to the Petition for Reconsideration from Staff Action.
9. On July 24, 2024, Norfolk Southern filed a Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition.
10. On July 30, 2024, the Department filed its Final Revised Erosion and Sediment Pollution Plan.
11. On August 21, 2024, a Secretarial Letter was filed approving the plan.
12. On September 26, 2024, Vice Chair Barrow filed a Motion moving to 1) grant Norfolk Southern's Petition for Reconsideration from Staff Action in part; 2) Grant the Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition; 3) refer the Application to the Administrative Law Judge to resolve the assignment of responsibility

regarding flagging; and 4) the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

A-2024-3045709

13. On January 24, 2024, the Department filed its application.
14. On April 2, 2024, a field conference was held.
15. On May 28, 2024, a Secretarial Letter was issued.
16. On June 17, 2024, Norfolk Southern filed a Petition for Reconsideration from Staff Action.
17. On June 28, 2024, the Bureau of Investigation and Enforcement (I&E) filed an Answer in Opposition to the Petition for Reconsideration from Staff Action.
18. On July 8, 2024, the Department filed its Answer to the Petition for Reconsideration from Staff Action.
19. On July 10, 2024, the Department filed its Amended Answer to the Petition for Reconsideration from Staff Action.
20. On July 24, 2024, Norfolk Southern filed a Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition.
21. On November 7, 2024, an Opinion and Order was issued, ordering 1) the Petition for Reconsideration from Staff Action be granted in part; 2) the granting of the Motion to Assign Proceeding to Office of Administrative Law Judge for Disposition; and 3) the referral of the Application to the Administrative Law Judge to resolve the assignment of responsibility regarding flagging.

A-2023-3043493

22. On October 12, 2023, the Department filed its application.
23. On December 13, 2023, a field conference was held.
24. On November 22, 2024, a Secretarial Letter was issued.
25. On December 12, 2024, Norfolk Southern filed a Petition for Reconsideration from Staff Action.
26. On December 31, 2024, the Department filed its Answer Objecting to the Petition for Reconsideration from Staff Action.
27. On February 7, 2025, the Commission entered an Order referring this matter to the Office of Administrative Law Judge.

A-2024-3051983

28. On November 5, 2024, the Department filed its application.
29. On February 26, 2025, a field conference was held.
30. On March 7, 2025, a Secretarial Letter was issued.
31. On March 25, 2025, Norfolk Southern filed a Petition for Reconsideration from Staff Action.
32. On March 31, 2025, the Department filed its Final Structure plan.
33. On April 2, 2025, the Department filed its Final Right-of-Way Plans.
34. On April 4, 2025, the Department filed its Answer Objecting to the Petition for Reconsideration from Staff Action.
35. On April 24, 2025, the Commission entered an Order referring this matter to the Office of Administrative Law Judge.

A-2024-3052077

36. On November 13, 2024, Westmoreland County filed its application.
37. On December 2, 2024, a field conference was held.
38. On March 24, 2025, a Secretarial Letter was issued.
39. On April 14, 2025, Norfolk Southern filed a Petition for Reconsideration from Staff Action.
40. On April 25, 2025, Westmoreland County filed its Answer to Petition for Reconsideration from Staff Action.
41. On May 22, 2025, the Commission entered an Order referring this matter to the Office of Administrative Law Judge.
42. On June 23, 2025, by way of a Second Interim Order, Docket A-2024-3052077 was consolidated with the proceedings of Dockets A-2022-3031613, A-2024-3045709, A-2023-30433493, and A-2024-3051983.

Post-Consolidation

1. On November 15, 2024, a consolidated Prehearing Conference Order was filed for both dockets, A-2022-3031613 and A-2024-3045709, confirming the December 13, 2024 Prehearing Conference and requiring a Memorandum on or before December 11, 2024.
2. On December 13, 2024, counsel for the Department, Norfolk Southern, and I&E attended the prehearing conference.
3. I&E submitted written direct testimony.
4. The Department and Norfolk Southern submitted written direct testimony and rebuttal testimony.

5. On May 7, 2025, Administrative Law Judge Brady held an evidentiary hearing for consolidated dockets A-2022-3031613 and A-2024-3045709.
6. The Department, Norfolk Southern, and I&E participated in the evidentiary hearing.
7. The Department presented the testimony of Mark Chappell, Heidi Mertz, Michele Acitelli, and Sarah Fenton.
8. Mark Chappell is the Department's Highway Administration Program Manager 2- Chief of the Right-of-Way, Utility, and Grade Crossing Division. PennDOT Statement 1, pg. 1, lines 7-8.
9. Heidi Mertz is the Department's Design Services Engineer for District 8-0. PennDOT Statement 2, pg. 1, lines 5-6.
10. Michele Acitelli is the Department's Utility and Grade Crossing Manager for District 11-0. PennDOT Statement 3, pg. 1, lines 5-6.
11. Sarah Fenton is the Department's Central Office Grade Crossing Engineer. PennDOT Statement 4, pg. 1, line 11.
12. Norfolk Southern presented the testimony of Dustin Lange, Donald Arant, David Craft, and DJ Ezell.
13. Dustin Lange is the Senior Director of Engineering for Norfolk Southern. NS Statement 1, pg. 2, line 8.
14. Donald Arant is the Vice President of Engineering for North Caroline Railroad. NS Statement 2, pg. 2, lines 4, 8.
15. David Craft is the co-owner and President of R&R Consulting TEAM, LLC. NS Statement 3, pg. 2, lines 4, 8.

16. DJ Ezell is the Vice President of RWIC (flagging) Operations for RailPros. NS Statement 4, pg. 2, lines 4, 8.
17. I&E presented the testimony of William Sinick.
18. William Sinick is a Senior Civil Engineer Manager in the Rail Safety Division of the Public Utility Commission's Bureau of Technical Utility Services. I&E Statement 1, pg. 2, lines 6-8.
19. Every other railroad is subject to the requirement to furnish flaggers, even Genesee & Wyoming, which also uses third-party flagging vendors. *See* Secretarial letters for dockets A-2020-3022688, A-2024-3049938, A-2024-3051881, A-2024-3050077, A-2024-3049330, A-2024-3047937, A-2023-3045019, A-2023-3041189, A-2023-3040722, A-2023-3037699, A-2022-3031928, A-2022-3031878, A-2022-3031362, and A-2022-3030281; PennDOT Statement 4, pg. 6, lines 2-7.
20. Norfolk Southern first required PennDOT to arrange for its own flagging services through third-party vendors in late 2022 and early 2023. NS Statement 5, pg. 5, lines 5-6, 7, 9.
21. Norfolk Southern previously used in-house flaggers on Department projects. PennDOT Statement 4, pg. 4, line 20 – pg. 5, line 19; NS Statement 4, pg.4, lines 15-16.
22. When Norfolk Southern switched to third-party flagging they did not consult the Department nor provide any communication regarding potential delays that may stem from the transition. N.T. at 209-11, lines 4-22, lines 24-25, lines 1-6.
23. There are no Commission Orders allowing the use of third-party flaggers. N.T. at 211, lines 8-10.

24. Department has incurred more delay damages than it did when Norfolk Southern was directly providing flagging services. PennDOT Statement 2, pg. 3, lines 15-23; N.T. at 209-210, lines 24-25, lines 1-5.
25. For ECMS 116833, flagging services were needed for November 1, 2023. Flagging was requested from the first vendor on May 11, 2023 and from a second vendor on October 1, 2023. Flagging services were not provided until April 1, 2024, resulting in \$6,210.20 in delay damages because the project needed to be extended over 191 days. PennDOT Exhibit C, ECMS 116833.
26. The Department lacks any expertise in railroad operations and flagging. PennDOT Statement 1, pg.4, lines 3-17.
27. Railroad flagging involves ensuring that people stay away from the track, monitoring train movements to identify potential contractor work windows, and coordinating with the dispatcher to secure the track time. NS Statement 1, pg. 3, lines 15-19.
28. Each employer and rail carrier impose their own training and qualification requirements which are federally regulated but administered by the employers. NS Statement 1, pg. 4, lines 5-8.
29. The qualification process to provide services on Norfolk Southern operation property is detailed and rigorous. NS Statement 4, pg. 3, lines 11-13.
30. Norfolk Southern's Public Projects Manual, Appendix E.1, provides the minimum specifications for third-party protective services both at the entity level and for each individual flagger. NS Exhibit 1.
31. Norfolk Southern requires there to be an on-site meeting with an NS Supervisor to certify any contractor provided service workers. NS Exhibit 2.

32. “The Department is in the business of supporting vehicular traffic throughout the Commonwealth. The Department is not in the railway business and has no knowledge, expertise, and/or experience in railway operations and innerworkings. Based on this, the Department is not qualified to provide or train railroad flaggers.” PennDOT Statement 1, pg. 4, lines 5-8.
33. The Department is not qualified to provide or train railroad flaggers. PennDOT Statement 4, pg. 13, lines 1-6.
34. Norfolk Southern makes an initial determination based on the work scope whether a flagger is needed generally and the flagging vendor determines when and how PennDOT’s contractor needs to be protected from train operations during the project and that it has “confidence that these vendors know how to properly make this determination, whereas other flagging vendors, PennDOT, and/or PennDOT’s contractor may not.” NS Statement 5, pg. 8, lines 9-14.
35. The Department, in these cases, and generally for State highway grade crossing projects, is solely responsible for costs and expenses of flaggers. *See* A-2022-3031613, para. 10; A-2024-3045709, para. 8; A-2023-3043493, para. 13; A-2024-3051983, para. 14; and A-2024-3052077, para. 1.
36. There is nothing in Norfolk Southern’s manual about Norfolk Southern assisting anybody with anything. N.T. at 70; NS Exhibit 1.
37. The Commission cannot enforce its orders on railroad flagging companies because the Commission has authority and jurisdiction over the railroads, highway entities, and utilities. N.T. at 224, lines 5-9.
38. There are only three third-party flagging vendors qualified to provide services on Norfolk

- Southern property - R&R Consulting TEAM, LLC (R&R Consulting), RailPros, and North Carolina Railroad. NS Statement 1, pg. 6, lines 10-11; N.T. at 68-69; NS Exhibit 2.
39. North Carolina Railroad only became registered to do business in Pennsylvania on April 30, 2025. N.T. at 207, lines 11-19.
40. RailPros typically requires an average of 90 days lead time to schedule a flagger. N.T. at 140-41, lines 18-25, lines 1-3.
41. During the busy season from April to October, more than half the year, RailPros requires 160 to 180 days' notice to schedule a flagger. N.T. at 141, lines 12-19.

Proposed Conclusions of Law

1. The Commission has jurisdiction over rail-highway crossings. 66 Pa.C.S. §§ 501, 2702.
2. The Commission has exclusive jurisdiction to regulate the construction, relocation, suspension, abolition, or alteration of railroad facilities that cross any other public utility or a public highway either at grade or above or below grade as well as the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. § 2702.
3. The Commission has exclusive authority to allocate maintenance responsibilities, repair and replacement, and costs. 66 Pa.C.S. § 2704(a).
4. The Commission has the authority to order necessary improvements or maintenance to ensure the safety of the traveling public. *SEPTA v. Pa.P.U.C.*, 592 A.2d. 797 (Pa. Cmwlth. 1991).
5. While not limited to any fixed rule, the Commission has consistently relied upon a variety of relevant factors for the allocation of costs, repair and replacement, and

maintenance responsibilities, including: 1) the party that originally built the crossing; 2) prior ownership and maintenance responsibilities; 3) the relative benefit conferred on each party with the construction of the crossing; 4) whether each party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement, or removal; and 5) the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. *N. Lebanon Twp. v. Pa. P.U.C.*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).

6. The fundamental requirement is that the Commission's order be just and reasonable. *Greene Twp. Bd. of Supervisors v. Pa. P.U.C.*, 642 A.2d 541, 543 (Pa. Cmwlth. 1994).
7. The Commission is not required to set forth an analysis of these five *Greene* factors as courts have held such a practice would ultimately infringe upon the discretionary aspect of the Commission's decisions. *Millcreek Twp. v. Pa. P.U.C.*, 753 A.2d 324 (Pa. Cmwlth. 2000) (quoting *AT&T v. Pa. P. U. C.*, 737 A.2d 201 (Pa. 1999)).
8. The Commission can also consider ownership of the tracks and the general equities of a case in reaching its decision. *SEPTA v. Pa. P.U.C.*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Order entered April 9, 1981).
9. As contractors and employees are not "concerned parties" within the meaning of the Public Utility Code, the Commission's direct jurisdiction does not extend to railroad flaggers, railroad employees, Department employees, or Department construction contractors. *See* 66 Pa.C.S. § 2704(a).

Proposed Ordering Paragraphs

1. That Norfolk Southern's petitions for reconsideration in each of the dockets subject to these proceedings are DENIED.

2. For docket A-2022-3031613, paragraph 10 of the Secretarial Letter dated May 28, 2024 shall remain as follows:

10. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service as required as a result of the proposed work, and furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.

3. For docket A-2024-3045709, paragraph 8 of the Secretarial Letter dated May 28, 2024 shall remain as follows:

8. Norfolk Southern Railway Company and CSX Transportation, Inc., at Pennsylvania Department of Transportation's sole cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

4. For docket A-2023-3043493, paragraph 13 of the Secretarial Letter November 22, 2024 shall remain as follows:

13. Norfolk Southern Railway Company, at the sole cost and expense of the Department of Transportation of the Commonwealth of Pennsylvania, furnish construction, engineering and inspection service as required as a result of the proposed

work, and furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.

5. For docket A-2024-3051983, paragraph 14 of the Secretarial Letter dated March 7, 2025 shall remain as follows:

14. Norfolk Southern Railway Company, at the sole cost and expense of Pennsylvania Department of Transportation, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work; furnish construction engineering and inspection service, if required, as a result of the proposed work; and furnish and maintain flagmen and watchmen, as required, to protect its operations during the time the work is being performed across, above and adjacent to its tracks.

6. For docket A-2024-3052077, paragraph 1 of the Secretarial Letter dated March 24, 2024 shall remain as follows:

1. Norfolk Southern Railway Company, at the sole cost and expense of Westmoreland County, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being installed.

Application of Westmoreland County for approval : A-2024-3052077
to replace an above grade crossing by the :
Installation of a single-span girder bridge where :
West Broadway Avenue/Fourth Street crosses :
Norfolk Sothern 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. :

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa. Code §1.54, by electronic mail and first-class mail to the addresses stated below:

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Respectfully submitted,

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Dated: June 25, 2025