

JEFFREY D. COHEN
DIRECT DIAL: 215-609-1104
JCOHEN@FREIGHTLAW.NET

COHEN & FREY P.C.

A TRANSPORTATION LAW PRACTICE

THE TIMES BUILDING
32 PARKING PLAZA
SUITE 402
ARDMORE, PA 19003

(215) 609-1110
FAX (215) 609-1117

July 30, 2025

Via Electronic Filing

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

**Re: Borough of Royersford's Petition for Emergency Order
Docket No. P-2025-3056530
Our File No. 4613.437**

Dear Secretary Homsher:

Our firm is outside counsel for Norfolk Southern Corporation (“NSC”) and specifically regarding the Petition of the Borough of Royersford for Emergency Order Regarding Dangerous Railroad Crossings (the “Petition”) filed by the Borough of Royersford (the “Borough”) on July 28, 2025. In submitting this letter, NSC reserves and does not waive any defenses or arguments, including the lack of jurisdiction over NSC. NSC further submits this letter for itself and no other entities or subsidiaries. Any representations NSC makes regarding other entities are made only to facilitate a practical resolution and does not waive the need for valid service of process on the proper entities. And while the provisions of 52 Pa. Code § 3.2 *et seq.* do not provide a method for responding to an emergency petition, NSC submits this letter to addressing the legal and practical problems and drastic impact that would be caused by granted the extraordinary relief sought from the PUC through an *ex parte* proceeding. NSC reserves the right to amend, supplement, and file a more formal response to the claims asserted by the Borough.

Lack of Jurisdiction and Federal Preemption

The Petition seeks draconian relief and would have the Pennsylvania Public Utility Commission (the “PUC”) essentially cease railroad operations through Royersford in violation of federal law because PECO Energy Company’s (“PECO”) transmission lines are causing rail crossing gates to close at crossings in Royersford when trains are not present. Federal law preempts such interference with rail operations and the regulation of the signal and gates used at the crossings.

Furthermore, the Petition fails to identify the railroad that owns and operates the railway that traverses through Royersford. The entity that owns and operates the railway is Norfolk

Southern Railway Company (“Norfolk Southern”) not its holding company Norfolk Southern Corporation (“NSC”). Norfolk Southern is a federally regulated interstate railroad. NSC is not a public utility subject to PUC’s jurisdiction. 66 Pa. C.S. § 102; *Springdale Twp. v. Allegheny Cnty. Bd. of Prop. Assessment, Appeals & Rev.*, 467 A.2d 74, 78 (Pa. Commw. Ct. 1983) (PUC’s power extends only to utilities as defined by the Public Utility Code). Naming NSC and failing to serve Norfolk Southern are critical flaws to any order that would arise from the Petition.

As such, entering the emergency order requested by the Petition would be legally and practically unenforceable.

PECO’s Breach of Contract and Efforts to Compel PECO to Address Induction Interference

The issue highlighted by the Petition is a matter that Norfolk Southern has taken very seriously. As the Petition recognizes, Norfolk Southern engaged an outside consultant to evaluate the cause of the signals activating at the crossings in Royersford. The cause was determined to be electrical interference caused by induction from PECO’s transmission lines. Norfolk Southern provided PECO with its analysis. And PECO’s own consultants did not dispute that the gates activated at the crossings in Royersford because of PECO’s electrical interference. Instead of correcting the issue, however, PECO claimed more studies are required but has taken no affirmative steps to conduct those studies or remedy its interference with the rail equipment despite being expressly required to remedy inductive interference caused by the transmission lines in the underlying easement allowing for the transmission lines on the railroad’s property.

Norfolk Southern recently retained our firm as counsel to engage with PECO to incite action from PECO to address this issue and if necessary to pursue legal action against PECO. The Borough, however, filed this action before Norfolk Southern could engage with PECO to enforce the terms of the easement. Norfolk Southern is committed to pursuing PECO to remediate the effects its transmission lines are having on Norfolk Southern’s rail system—as the induction is not isolated to or potentially even occurring within the crossings themselves. However, this is a dispute between Norfolk Southern and PECO pursuant to the established terms of contract between those parties which is not proper for adjudication by the PUC.

The Petition Fails to Establish Grounds for Emergency Relief

Setting aside the overbroad and preempted nature of the relief sought by the Petition, the Borough also has not met its burden of proof for the emergency relief it seeks under 52 Pa. Code § 3.2. The issue presented is simply not an emergency as defined by 52 Pa. Code § 3.1.

- The Borough has not established that gates are failing to close when a train approaches – which is their design and purpose under federal law. There is simply no evidence that the public is at risk due to improperly open gates. The issue here is one of inconvenience to the public when the gates close when they do not have to. While Norfolk Southern takes this complaint seriously and surely will work to

force PECO to stop its interference causing these gate closures, this is not an issue that is appropriate injunctive relief.

- The Borough has not established the immediacy of the need for the relief it seeks. Instead the Borough hyperbolically references accidents at different crossings (two of which were at a crossing that had no signals or gates and the other at a crossing that the report cited to by the Borough acknowledges that “gates to the railroad were operational at the time of the incident”) and suggests that “some” drivers are driving around the gates (in violation of the law) creating a risk of injury or death. Norfolk Southern would expect that the law regarding not evading a closed crossing gate should be enforced by local law enforcement.
- The Borough has not established that irreparable harm will occur. While Norfolk Southern agrees that motorists or pedestrians illegally entering a crossing after the warning signal and gates have engaged is inherently dangerous, the Borough has not established that the relief it seeks is necessary to avoid that danger.
- And, finally, the Borough has not accounted for the negative impact that its proposed relief would have on the public interests. The benefit, if any, to the relief requested by the Borough is questionable while the negative effects of its requested relief affect rail services along an entire rail corridor. *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 692 (Pa. Commw. Ct. 2018) (the purpose of the PUC is to ensure the statewide rendering of service and “transcends the legitimate objectives of any one of the political subdivisions of the Commonwealth.”).

Norfolk Southern agrees that PECO must mitigate the effect its transmission lines are having on Norfolk Southern’s property and equipment and stands ready to cooperate with PECO facilitate resolution. But, short of ordering PECO to stop transmitting electricity through the transmission lines, there is no quick fix for the inconvenience caused by the signals and gates activating at the crossings in Royersford. Norfolk Southern’s consultant explained that the remediation will, at a minimum, require mapping the electromagnetic field, designing the remediation (i.e a counterpoise), and constructing/implementing the remedy. Even if PECO promptly accepts its responsibility and prolonged litigation is avoided, it could take months before the issue is resolved. Shutting down an interstate railroad (which would violate federal law) or turning off power to hundreds or thousands of PECO’s customers are not viable options. And emergency relief is not the proper method of addressing the legitimate concerns that Norfolk Southern shares with the Borough.

Conclusion

The relief sought by the Petition is overly broad, burdensome, and directed at the wrong entity. Norfolk Southern will promptly work to ensure that PECO fixes its electrical induction causing the additional gate closures. However, if it does not agree to do so then the claims, rights, and obligations regarding the interference caused by PECO’s transmission lines should be left for

Mr. Matthew L. Homsher

July 30, 2025

Page 4

adjudication by a court of original jurisdiction. Ultimately, if contested, determination of the cause and remedy for the activation of the signals and gates at the crossings in Royersford is highly technical and scientific and will require comprehensive factual and expert discovery and testimony. As such, an emergency petition is not the proper method for seeking redress. Therefore, NSC requests that the PUC deny the petition or, alternatively, refer this matter to an Administrative Law Judge for adjudication as a full complaint with no prejudice to any rights or remedies NSC and/or Norfolk Southern may have against PECO.

Respectfully Submitted,

COHEN & FREY P.C.

By: /s/ Jeffrey D. Cohen
Jeffrey D. Cohen
Timothy L. Frey

cc (via U.S. Mail and/or email):

Carl Shultz, Esq.
Renardo Hicks, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
cshultz@eckertseamans.com
rhicks@eckertseamans.com

Stephen Pemberton, Esq.
Eckert Seamans Cherin & Mellott, LLC
Two Liberty Place, 22nd Floor
50 South 16th Street
Philadelphia, PA 19102
spemberton@eckertseamans.com

PECO
2301 Market St
P.O. Box 8699
Philadelphia, PA 19101
Attn: Engineering Department
PECO.EDEV@exeloncorp.com

Allison Kaster, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
akaster@pa.gov

Office of Small Business Advocate
Forum Place, 1st Floor
555 Walnut Street
Harrisburg, PA 17101
ra-sba@pa.gov

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
ra-oca@paoca.org