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September 2, 2025

**Via Electronic Filing**

Matthew L. Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**RE: Petition of the Borough of Royersford, Pennsylvania for Emergency Order  
Docket No. P-2025-3056530**

Dear Secretary Homsher,

I represent respondent, Norfolk Southern Railway Company (“Norfolk Southern”), in the above referenced matter. I have attached Norfolk Southern’s Preliminary Objections to the above referenced petition; a copy of which has been served on the Petitioner, as well respondent PECO Energy Company, in accordance with the attached Certificate of Service.

Respectfully,

COHEN & FREY P.C.

/JDC

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of the Borough of Royersford,  
Pennsylvania for Emergency Order**

**Docket No. P-2025-3056530**

**Electronically Filed**

**NOTICE TO PLEAD**

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY FILE AN ANSWER TO THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Respectfully Submitted,

**COHEN & FREY P.C.**

Date: September 2, 2025

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of the Borough of Royersford,  
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**Docket No. P-2025-3056530**

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**PRELIMINARY OBJECTIONS OF NORFOLK SOUTHERN RAILWAY COMPANY’S TO  
THE PETITION OF BOROUGH OF ROYERSFORD**

Norfolk Southern Railway Company (“Norfolk Southern”) submits its preliminary objections in response to the Borough of Royersford’s (“Petitioner”) petition seeking an emergency order regarding an allegedly dangerous railroad crossings (“Petition”).<sup>1</sup> Norfolk Southern respectfully requests that the Commission dismiss certain relief sought because of federal preemption principles.

**I. BACKGROUND**

1. Norfolk Southern is an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board and governed by the Interstate Commerce Act, 49 U.S.C. § 10101 *et seq.*

2. The Petition concerns two of Norfolk Southern’s railroad crossings within the Borough of Royersford; first, an at grade highway crossing located on Main Street, crossing number 588602S; and second, an at grade highway crossing located on Arch Street, crossing number 588601K. *See generally* Petition at ¶¶ 6–8. (collectively referred to as the “Crossings”). The Petitioner complains that starting around 2017, the warning devices at these Crossings would occasionally activate without the presence of a train. *See id.* at ¶ 10. The Petitioner alleges that Norfolk Southern commissioned a study which concluded that PECO Energy Company’s (“PECO”) transmission lines, which are situated at or near the crossings, created “electrical

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<sup>1</sup> The Petition incorrectly listed Norfolk Southern Company as the owner and operator of the crossings. Norfolk Southern Company is a holding company; Norfolk Southern Railway Company owns and operates the crossings.

interferences” and recommended that Norfolk Southern and PECO “work together” to mitigate the interference. *See id.* at ¶ 12. Petitioner contends that the malfunctioning has continued, *see id.* at ¶¶ 13–16, resulting in “some drivers” illegally driving around the activated crossing gates, *id.* at ¶ 17. Petitioner avers that because some drivers ignore the activated crossing gates, that this creates a “clear and present danger to life or property.” *See generally, id.* at ¶ 30. Petitioner seeks an emergency order requesting various forms of relief, including that the Commission either “close the affected crossing to rail traffic,” or issue a “stop and protect order” that would require Norfolk Southern to stop all trains as they approach the crossings a perform a safety check before traversing, “make available an emergency response team,” and “implement” a traffic control plan. *See id.* at Wherefore, ¶ (b) and (c).

3. Norfolk Southern moves for an order dismissing the specific relief referenced above because federal law would preempt such state law regulation.<sup>2</sup>

## **II. STANDARD OF REVIEW**

4. The Commission’s procedure for resolving preliminary objections mirrors Pennsylvania civil practice, where such objections are granted only when the moving party clearly prevails as a matter of law. *See* 52 Pa. Code § 5.101(a)(4); *see also, Marie Keets*, No. C-2016-2541626, 2016 WL 8736874, at \*2 (Oct. 27, 2016). When deciding the objections, the Commission should accept all well-pleaded facts and reasonable inferences in favor of the non-moving party, and any doubt resolved against dismissal. *Dep’t of Auditor General, et al. v. State Employees’ Retirement System, et al*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003).

5. In addition, the Commission must determine whether, based on the factual

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<sup>2</sup> It is to be noted that Norfolk Southern is working with the Commission’s Bureau of Technical Utility Services and the other parties on less onerous measures that do not interfere with interstate commerce to address any further incidents of false activations until a more permanent resolution can be implemented.

pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwlth. 1987) (citation omitted). Indeed, for the Commission to sustain preliminary objections, it must appear with certainty that the law will permit no recovery. *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998) (quoting *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super 1992)).

6. Norfolk Southern moves for dismissal because the Petition seeks certain relief that is legally insufficient. 52 Pa. Code § 5.101(a)(4).

### **III. ARGUMENT**

7. The Commission has regulatory authority over a rail highway crossing. 66 Pa.C.S. §§ 2702 and 2704. This authority empowers the Commission to order the construction, reconstruction, alteration, repair, protection, suspension, or abolition of a rail-highway crossing, and to determine which parties are responsible for performing the work and maintaining the crossing in the future to prevent accidents and ensure public safety. *Southeastern Pennsylvania Trans. Auth. v. Pa. PUC*, 592 A.2d 797 (Pa. Cmwlth. 1991); *Wheeling & Lake Erie Ry. Co. v. Pennsylvania Pub. Util. Comm'n*, 778 A.2d 785, 791 (Pa. Cmwlth. 2001) (“[S]tates have the traditional police power reserved by the Constitution to regulate the public safety of the rail-highway grade crossings and allocate the costs of constructing, maintaining and improving such crossings.”). As a creature of statute, the Commission possesses only those powers that the statute grants, as well as those necessarily implied to carry out its expressly conferred authority. *Peoples Natural Gas Company v. Pennsylvania Public Utility Commission*, 664 A.2d 664 (Pa. Cmwlth.1995). This authority is not limitless because “[w]here a state statute conflicts with, or frustrates, federal law, the former must give way.” *CSX Transp. v. Easterwood*, 507 U.S. 658, 663 (1993).

**A. Preliminary Objection No. 1 - The Interstate Commerce Commission Termination Act (ICCTA) preempts certain forms of relief sought by the Petitioner.**

8. The Interstate Commerce Commission Termination Act (“ICCTA”) is a federal law that grants a federal agency, the Surface Transportation Board, with the exclusive authority to regulate rail transportation. *See Wheeling*, 778 A.2d at 792 (citing 49 U.S.C. § 10501(b)); *Richmond Waterfront Indus. Park, LLC v. Philadelphia Belt Line R.R. Co.*, 313 A.3d 259, 263 (Pa. Super. 2024) (explaining that ICCTA preemption encompasses all rail transportation). ICCTA is broad and displaces a state law or regulation “that may reasonably be said to have the effect of managing or governing rail transportation.” *New York Susquehanna and Western Railway Corp. v. Jackson*, 500 F.3d 238 (3d Cir.2007). A primary example of preemption includes regulation that impacts a railroad’s economic decisions such as those pertaining to train length, speed, or scheduling. *PCS Phosphate Co. v. Norfolk Southern Corp.*, 559 F.3d 212, 220 (4th Cir. 2009); *Franks Inv. Co. LLC v. Union Pac. R.R. Co.*, 593 F.3d 404, 411 (5th Cir. 2010) (“[A] tort suit that attempts to mandate when trains can use tracks and stop on them is attempting to manage or govern rail transportation in a direct way.”); *CSX Transportation, Inc. v. Bonsal Am., Inc.*, No. 3:21-CV-00480-RJC-SCR, 2024 WL 4597224, at \*13 (W.D.N.C. Oct. 28, 2024) (finding that an order to cease or alter rail operation is expressly preempted because it imposes regulation regarding how a railroad determines when and how to run its trains.)

9. Norfolk Southern seeks dismissal of Petitioner’s request to enter a stop and protect order, which would require all trains to stop and perform a safety check prior to traversing the Crossings, as such relief is ICCTA preempted. Although the Commission has authority to regulate the Crossings, that authority is limited to the crossing itself—*i.e.*, the construction, reconstruction, alteration, repair, protection, suspension, abolition, or maintenance of the crossing, *see* 66 Pa.C.S. § 2702. Pennsylvania law does not grant the Commission authority to alter, modify, or regulate

how a railroad schedules and operates its trains. Moreover, even assuming Pennsylvania law conferred such authority on the Commission, ICCTA preemption would apply, as any regulation dictating when and how Norfolk Southern operates its trains would directly interfere with rail transportation and the carrier's economic decision-making—matters that fall squarely within the exclusive jurisdiction of the Surface Transportation Board. *See Wheeling*, 778 A.2d at 792 (recognizing that ICCTA preempts a state's authority to economically regulate rail transportation). If the Commission were to issue an order requiring Norfolk Southern to stop its trains and conduct a "safety check" before each crossing, it would directly interfere with core aspects of railroad operations, including train speed, scheduling, and routing. Such operational decisions fall squarely within the exclusive jurisdiction of the Surface Transportation Board and ICCTA would preempt. Because the Commission cannot order such relief, either because it lacks authority or is preempted, the Commission should dismiss this request as a matter of law.

**B. Preliminary Objection No. 2 – the Federal Railroad Safety Act preempts Petitioner's relief.**

10. Congress enacted the Federal Railroad Safety Act ("FRSA") "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." *United Transp. Union v. Pennsylvania Pub. Util. Comm'n*, 68 A.3d 1026, 1035 (Pa. Cmwlth. 2013) (citing 49 U.S.C. § 20101) (emphasis in original). To maintain national uniformity in railroad safety, federal law preempts any state law that addresses the same subject matter. *Krentz v. Consol. Rail Corp.*, 910 A.2d 20, 32 (2006).

11. In furtherance of railroad safety, the FRSA authorizes the U.S. Secretary of Transportation to issue safety regulations. *Id.* at 31. Relevant here, the Secretary has promulgated extensive safety regulations concerning highway-rail grade crossing and signal malfunctions. *See* 49 C.F.R. § 234.1 *et. seq.*; *see also, Stone v. CSX Transp., Inc.*, 37 F. Supp. 2d 789, 794 (S.D.W.

Va. 1999) (explaining that these signal malfunction regulations “set the preemptive duty with which the railroad must comply when it has actual knowledge of an existing false activation.”). A “false activation” is a condition that activates a highway-rail grade crossing warning system that requires correction or repair; “[t]his failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.” *See* 49 C.F.R. § 234.5.

12. If the railroad receives a credible report of a “false activation” the regulation requires it to undertake specific action, such as equipping a flagger to warn of approaching trains or station a law enforcement officer at the crossing, which would permit the railroad to continue operating trains at normal speed through the crossing. *Id.* at § 234.107(c)(1). Otherwise, the railroad has the option to “proceed with caution [] at a speed not exceeding 15 miles per hour” through the crossing and activate its “audible warning device.” *Id.* at (c)(2) and (d).

13. The Petitioner asserts that the Crossings have a history of false activations and requests that the Commission order various relief, including an order that Norfolk Southern either close the affected crossing to rail traffic, or issue a “stop and protect order,” “make available an emergency response team,” and implement a traffic control plan at the crossing. The Petitioner also contends that Norfolk Southern is aware of these false activations. However, federal regulations already govern the subject of “activation failures” and explicitly prescribe the duties Norfolk Southern must undertake when it becomes aware of a false activation. *See* 49 C.F.R. § 234.107; *see generally, United Transp. Union v. Pa. Pub. Util. Comm'n*, 68 A.3d 1026, 1037 (Pa. Cmwlth. 2013) (explaining that federal regulations preempt state law when they “comprise, include, or embrace the issue in an effective scope of operation,” thereby “subsum[ing] the subject matter of the relevant state law”). The regulation mandates that if Norfolk Southern is aware of an activation failure, it must perform one of three specific responses: station

a flagger or law enforcement officer at the crossing, or operate its trains at no more than 15 miles per hour. Simply, the regulation already addresses Norfolk Southern's obligation in the event of an activation failure and would subsume any state law, regulation, or directives aimed at addressing the same safety concerns. *Id.* at 1038. The Petition does not allege that Norfolk Southern is failing to comply with this regulation.

14. A federal safety regulation, aimed at regulating interstate rail carriers, directly proscribes Norfolk Southern's obligation and duties when faced with a known crossing experiencing a false activation. This regulation—which the Petitioner does not even allege Norfolk Southern has violated—effectively preempts the relief Petitioner seeks from the Commission. As a matter of law, the Commission should dismiss Petitioner's requested relief that seeks to either close the affected crossing to rail traffic, or issue a "stop and protect order," "make available an emergency response team," and implement a traffic control plan at the crossings.

#### **IV. CONCLUSION**

15. For the reasons above, Norfolk Southern respectfully requests that the Commission dismiss Petitioner's relief seeking to either close the affected crossing to rail traffic, or issue a "stop and protect order," "make available an emergency response team," and implement a traffic control plan at the crossings.

Respectfully Submitted,

**COHEN & FREY P.C.**

Date: September 2, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objections upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

**Via Electronic Mail**

The Honorable Christopher P. Pell Deputy  
Chief Administrative Law Judge  
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*Counsel for PECO Energy Company*

Dated this 2<sup>nd</sup> day of September, 2025

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

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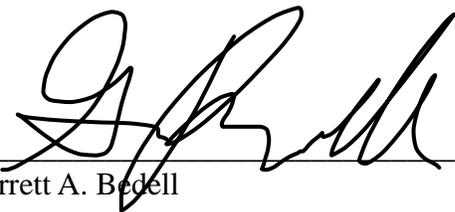
**Docket No. P-2025-3056530**

**Electronically Filed**

**VERIFICATION**

I, Garrett A. Bedell an authorized employee of Norfolk Southern Railway Company, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Norfolk Southern Railway Company 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: September 2, 2025

  
\_\_\_\_\_  
Garrett A. Bedell