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September 12, 2025

**Via Electronic Filing**

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

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

Dear Secretary Homsher:

Enclosed for electronic filing, please find the Borough of Royersford's Answers to Preliminary Objections of Norfolk Southern, in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Carl R. Shultz*

Carl R. Shultz

CRS/jls  
Enclosure

cc: Hon. Christopher P. Pell w/enc. ([cpell@pa.gov](mailto:cpell@pa.gov))  
Hon. F. Joseph Brady w/enc. ([fbrady@pa.gov](mailto:fbrady@pa.gov))  
Certificate of Service (w/enc)  
Rodney Bender, PA PUC (w/enc) ([rodbender@pa.gov](mailto:rodbender@pa.gov))

## CERTIFICATE OF SERVICE

I hereby certify that on this day, I served a copy of the Borough of Royersford, Pennsylvania's Response to Norfolk Southern's Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: September 12, 2025

/s/ *Carl R. Shultz*

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Carl R. Shultz, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of the Borough of  
Royersford, Pennsylvania for  
Emergency Order

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Docket No. P-2025-3056530

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**THE BOROUGH OF ROYERSFORD, PENNSYLVANIA’S RESPONSE  
TO NORFOLK SOUTHERN’S PRELIMINARY OBJECTIONS**

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Date: September 12, 2025

*Counsel for the Borough of Royersford*

NOW COMES the Borough of Royersford, Pennsylvania (“Borough”), Petitioner in the above-docketed matter, by and through its attorneys, and files this Answer to the Preliminary Objections (“Preliminary Objections”) of Norfolk Southern Railway Company (“NS”), pursuant to 52 Pa. Code § 5.101(f). In support thereof, the Borough avers as follows:

## **I. INTRODUCTION AND BACKGROUND**

The Borough is a community of approximately 5,000 residents with limited resources, *not a national railroad with billions of dollars of annual revenue or Pennsylvania’s largest electric and natural gas utility*. This is significant, given that the dangerous circumstances serving as the basis for this matter have existed for years, seemingly without any sense of urgency to rectify those circumstances on the part of NS or PECO Energy Company (“PECO”). To date, the Borough has expended a significant sum for shouldering the burden of protecting citizens from the dangerous railroad crossings at issue, including its own first responders—sometimes for hours at a time—and at a cost of thousands of dollars. Now, because of the reluctance of NS and PECO to rectify the problem in a timely manner, the Borough is currently incurring legal fees for motion practice, caused by the frivolous Preliminary Objections of NS, even though this is a safety matter that should result in a coordinated effort towards mitigation.

The existence of an emergency is not in dispute. The Pennsylvania Public Utility Commission (“Commission”) unanimously agreed with the Borough that an emergency exists and ordered the Commission’s Bureau of Technical Utility Services (“TUS”) to determine “options for immediate remediation of the dangerous conditions at the crossings.”<sup>1</sup> Therefore, the need for interim relief has been pleaded by the Borough and determined by the Commission

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<sup>1</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Order entered Aug. 1, 2025), at 5.

to be necessary in this emergent situation, even though NS continues to deny that an emergency exists.<sup>2</sup>

The Borough does not object to NS or PECO carefully investigating the cause of the malfunctions and undertaking comprehensive, permanent mitigation—so long as NS and PECO continue to participate in the coordination and swift implementation of interim relief facilitated by TUS. If after NS’ and PECO’s studies regarding the causes of the unintended activations of these crossings are completed, a remedy for this problem is adopted, and the “cost causer” is clearly determined, then NS and PECO should be able to reconcile any expenditures required to immediately remediate these dangerous conditions, as determined by the Commission.<sup>3</sup>

Despite this reality, and the obvious need for interim relief, NS’ filing of Preliminary Objections challenges the Commission’s authority to determine what constitutes a dangerous condition and ability to impose reasonable and meaningful corrective remedies. The Borough views the Preliminary Objections of NS as a desperate attempt to avoid its legal responsibility for its own equipment and operations by engaging in unnecessary and costly litigation. This tactic should be seen for what it is—another attempt at delay and obfuscation to avoid mitigating the core issues associated with this dangerous problem, as presented in the Borough’s Petition.

The thrust of NS’ Preliminary Objections is their claim that the Commission is preempted by federal law from awarding certain relief *requested* by the Borough in its Petition. However, as discussed by Commission Chairman Gladys Brown Dutrieuille in her testimony provided to the Pennsylvania Senate Transportation Committee, and discussed in detail below, NS is

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<sup>2</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (NS’s Answer to Petition filed Sept. 2, 2025), at ¶ 36 (“It is denied that the circumstances described by the Borough constitute an emergency.”).

<sup>3</sup> *See Norfolk Southern Ry. Co. v. Pub. Util. Comm’n*, 77 A.3d 619, 622 (Pa. 2013) (citing *Greene Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n*, 668 A.2d 615 (Pa. Commw. Ct. 1995)) (reviewing the Commission’s standard for grade crossing cost apportionment that factors whether a “party is responsible for the deterioration of the crossing that has led to the need for its repair, replacement or removal”).

incorrect as to the scope of the Commission’s powers to regulate railroad crossings and order relief in the instance of malfunctioning crossing equipment, including in this matter. In fact, the Commission is an integral part of a “tri-layer safety inspection system” that consists of the Commission, the Federal Railroad Administration (“FRA”), and railroad companies.<sup>4</sup>

Here, NS alleges that the Commission should dismiss the Borough’s requested relief that seeks to close the affected crossing to rail traffic, issue a “stop and protect order,” “make available an emergency response team,” and/or implement a traffic control plan at the crossings. As discussed below, the Commission should quickly overrule NS’ Preliminary Objections and continue to require that interim emergency relief **and** permanent relief be implemented as soon as possible to avoid potential loss of life or property at the subject railroad crossings.

## **II. RESPONSE TO PRELIMINARY OBJECTIONS**

1. This averment asserts a legal conclusion regarding the jurisdiction of the Surface Transportation Board (“STB”) over NS and applicability of the Interstate Commerce Act. If an answer is required, the Borough denies the averment.

2. Admitted in part, denied in part. It is admitted that NS partially describes the relief requested by the Borough in its Petition. It is denied that NS accurately describes the relief requested by the Borough, or the basis for the relief requested, as presented in the Petition.

3. This averment is a request for relief and asserts a legal conclusion that “federal law would preempt such state law regulation.” If an answer is required, the Borough denies the averment.

4. This averment asserts a legal conclusion regarding the Commission’s standard for resolving preliminary objections. If an answer is required, the Borough denies the averment.

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<sup>4</sup> See Exhibit A, the Prepared Testimony of Gladys M. Brown, Chairman of the Pennsylvania Public Utility Commission, before the Pennsylvania Senate Transportation Committee and Senate Environmental Resources and Energy Committee (June 9, 2015), at 12.

5. This averment asserts a legal conclusion regarding the Commission’s standard for resolving preliminary objections. If an answer is required, the Borough denies the averment.

6. This averment is a request for relief and asserts a legal conclusion that “the Petition seeks certain relief that is legally insufficient.” If an answer is required, the Borough denies the averment.

7. This averment asserts a legal conclusion regarding the Commission’s authority, including its regulatory authority over railroad crossings. If an answer is required, the Borough denies the averment.

8. This averment asserts a legal conclusion regarding the Interstate Commerce Commission Termination Act (“ICCTA”) and the effect on state law. If an answer is required, the Borough denies the averment.

9. This averment is a request for relief and asserts legal conclusions, including that the Borough’s request that the Commission enter a stop and protect order “is ICCTA preempted” and that the Commission lacks authority to order specific relief. If an answer is required, the Borough denies the averment.

10. This averment asserts a legal conclusion regarding the Federal Railroad Safety Act (“FRSA”). If an answer is required, the Borough denies the averment.

11. This averment asserts a legal conclusion regarding the United States Secretary of Transportation’s authority to promulgate regulations pursuant to the FRSA and the substance of those regulations. If an answer is required, the Borough denies the averment.

12. This averment asserts a legal conclusion regarding the substance of federal regulations governing false activations of railroad crossings. If an answer is required, the Borough denies the averment.

13. This averment asserts a legal conclusion regarding the substance and scope of federal regulations governing “activation failures” and NS’ obligations thereunder. If an answer is required, the Borough denies the averment

14. This averment is a request for relief and asserts a legal conclusion that a federal regulation preempts the relief that the Borough seeks from the Commission. If an answer is required, the Borough denies the averment.

15. This averment is a request for relief. If an answer is required, the Borough denies the averment.

### **III. STANDARD OF REVIEW**

16. The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a), as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.<sup>5</sup>

17. Here, NS’ Preliminary Objections assert lack of Commission jurisdiction to provide remedies requested by the Borough, pursuant to 52 Pa. Code § 5.101(a)(1). Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary

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<sup>5</sup> 52 Pa. Code § 5.101(a)(1)–(7).

objections.<sup>6</sup> A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure.

18. Preliminary objections in civil practice requesting dismissal of a pleading, or a portion of a pleading, should only be granted where the right to relief is clearly warranted and free from doubt.<sup>7</sup> The Commission follows this standard.<sup>8</sup>

19. The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well-pleaded, material facts of the nonmoving party, as well as every inference from those facts.<sup>9</sup> The Commission must view the factual assertions in the Petition in this case in the light most favorable to the Borough and should dismiss the Petition/Complaint only if it appears that the Borough would not be entitled to relief under any circumstances as a matter of law.<sup>10</sup>

20. The Commission regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. That regulation authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

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<sup>6</sup> *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>7</sup> *Interstate Traveller Servs., Inc. v. Pa. Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

<sup>8</sup> *Montague v. Phila. Elec. Co.*, 66 Pa. PUC 24 (1988).

<sup>9</sup> *Cty. of Allegheny v. Commonwealth of Pa.*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Commw. Ct. 1988).

<sup>10</sup> *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69.

21. The provision at 52 Pa. Code § 5.101(a)(1) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary.<sup>11</sup>

#### IV. ARGUMENT

22. Viewing the factual assertions in the Petition in this case in the light most favorable to the Borough for purposes of disposing of the Preliminary Objections, the Commission has already unanimously determined that an emergency exists and ordered TUS to determine “options for immediate remediation of the dangerous conditions at the crossings.”<sup>12</sup> Further, the Commission has also determined that the need for interim relief has been adequately plead by the Borough and found that this situation constitutes an emergency under the Commission’s rules.<sup>13</sup>

23. Accepting the facts alleged in the Petition as true for purposes of disposing of its Preliminary Objections, NS alleges that the Petition/Complaint relief requests raise issues that are outside the subject matter jurisdiction of the Commission. The Borough disagrees.

24. The Borough alleged in its Petition that “[t]he crossing gates and warning lights at these railroad crossings have increasingly malfunctioned over a period of years and with enough frequency to pose a serious risk of harm to the public.”<sup>14</sup> The Borough further averred that both

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<sup>11</sup> 66 Pa. C.S. § 703(a); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 557 (Pa. Commw. Ct. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 548 (Pa. Commw. Ct. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm’n*, 540 A.2d 1006 (Pa. Commw. Ct. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm’n*, 103 A.2d 502 (Pa. Super. 1954).

<sup>12</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Order entered Aug. 1, 2025), at 5.

<sup>13</sup> *Id.* at 4–5.

<sup>14</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Petition filed July 28, 2025), at 1.

NS and PECO “have identified the PECO transmission line is a factor in the malfunctions, due to induced voltage.”<sup>15</sup>

25. The Borough further alleged that since August 2024, malfunctions have been occurring at a greater frequency than before.<sup>16</sup> The Borough reported that “when a malfunction occurs and the crossing warning devices activate erroneously, the activation can last multiple hours, which causes great inconvenience for local residents and first responders.”<sup>17</sup> When malfunctions occur, the Borough averred that “some drivers have resorted to driving around the crossing gates and through the defective crossing—despite activation of the warning equipment and despite the potential (or actual) presence of an approaching train.”<sup>18</sup>

26. The Borough alleged that NS’ failure to ensure proper function of the crossing equipment is dangerous to the safety and welfare of the public and the malfunctioning crossings violate Section 33.21(b) of the Commission’s regulations, which prohibits NS from “remov[ing] the protection afforded by . . . crossing gates, . . . automatic crossing signals, or any other protection against accidents” or “substitut[ing] or alter[ing] any existing form of protection at crossings, at grade, of the tracks of a carrier across a public highway.”<sup>19</sup> The Borough further alleged that the malfunctioning equipment at the crossings exemplifies conditions that are “danger[ous] to the safety and welfare of the public at any . . . crossing” pursuant to Section 2702(f) of the Public Utility Code.<sup>20</sup>

27. Upon review, the Commission found that the Borough demonstrated the existence of an emergency as defined by the Commission’s regulations. Because the averments set forth in

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 5–6.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> 52 Pa. Code § 33.21(b).

<sup>20</sup> 66 Pa. C.S. § 2702(f).

the Petition identify a long-standing and ongoing series of malfunctions at two crossings within the Borough, the Commission found that these circumstances pose a risk of harm to the public and these allegations rise to the level of a “clear and present danger to life or property” sufficient to justify *ex parte* emergency relief.<sup>21</sup> Consequently, the Commission determined that the Petition satisfies the standards for emergency relief set forth in 52 Pa. Code § 3.2(b).<sup>22</sup>

28. The August 1, 2025 Order of Commission Chairman Stephen M. DeFrank,<sup>23</sup> ratified by the full Commission on August 14, 2025,<sup>24</sup> granted the Borough’s request for an *ex parte* Emergency Order (“Order”) granting the Petition in part and denying it in part. The Order denied the Borough’s request for specific relief, reasoning that “this matter should be more appropriately considered in a formal proceeding before the Office of Administrative Law Judge” and referring the matter for adjudication as a formal complaint, on an expedited basis.<sup>25</sup>

29. The Commission determined that the Borough raised substantial legal questions and thereby demonstrated a clear right to relief.<sup>26</sup>

30. With regard to requested relief, the Borough averred that the public interest would be duly served and protected by the Commission’s issuance of an emergency order:

- i. Requiring the immediate repair of the Main and Arch Street railroad crossings—which are currently a daily danger to the safety and welfare of the public—for the purpose of preventing accidents and promoting public safety;

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<sup>21</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Order entered Aug. 1, 2025), at 3; *see also* *Petition of National Fuel Gas for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-961022 and P-961021 (Order entered Mar. 19, 1996).

<sup>22</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Order entered Aug. 1, 2025), at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Order entered Aug. 14, 2025).

<sup>25</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Order entered Aug. 1, 2025), at 4–5.

<sup>26</sup> *Id.* at 4; *see also* *T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776 (Pa. Cmwlth. 1985)

- ii. Closing the affected crossings to rail traffic pending resolution;
- iii. To the extent that the affected crossing remain open to rail traffic: (1) issuing a stop and protect order, where all trains are stopped and a safety check is performed at each stop before each crossing; (2) directing that an emergency response team to be available within a certain time frame in the event of malfunctions, as the current response time is unacceptable; and (3) implementation of a traffic control plan, at the expense of NS;
- iv. Compelling NS to adhere to FRA standards in connection with the repair and operation of these crossings;
- v. Allocating all cost for all of the above activities to NS and PECO; and,
- vi. Granting any other relief in the public interest and as the Commission deems just and proper.<sup>27</sup>

31. The Commission’s regulations governing railroads are found in Title 52 of the Pennsylvania Code, within Chapter 33 (entitled “Railroad Transportation”).<sup>28</sup> The Commission has exclusive jurisdiction over the construction, relocation, suspension and abolition of public highway-railroad crossings.<sup>29</sup> The Commission may order immediate alteration, improvement, or suspension of public crossings to provide for public safety.<sup>30</sup> Further, the appropriation of property for any crossing improvement is exclusively within the Commission’s authority.<sup>31</sup> Costs associated with the construction, relocation, alteration or abolition of a crossing may be allocated among the parties as determined by the Commission.<sup>32</sup>

32. While NS argues that federal law preempts the Commission from granting certain forms of relief sought by the Borough,<sup>33</sup> pursuant to an agreement under the FRSA, the

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<sup>27</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (Petition filed July 28, 2025), at 11–12.

<sup>28</sup> 52 Pa. Code §§ 33.1 *et seq.*

<sup>29</sup> 66 Pa. C.S. §§ 2702–04.

<sup>30</sup> *Id.* § 2702(f).

<sup>31</sup> *Id.* § 2702(b)–(d).

<sup>32</sup> *Id.* § 2702(f).

<sup>33</sup> *Petition of the Borough of Royersford, Pennsylvania for Emergency Order*, Docket No. P-2025-3056530 (NS Preliminary Objections filed Sept. 2, 2025), at 4–7.

Commission’s Rail Safety Division also enforces regulations promulgated by the FRA in 49 C.F.R, including:

- Track Safety Standards (Part 213);
- Bridge Worker Safety Standards (Part 214);
- Roadway Worker Protection Standards (Part 214);
- Freight Car Safety Standards (Part 215);
- Camp Car Inspections (Part 228);
- Locomotive Safety Provisions (Part 229);
- Safety Appliance Standards (Part 231);
- Power Brakes and Drawbars (Part 232);
- Operating Rules (Part 217);
- Blue Signal Rules (Part 218);
- Protection for Utility Engineers (Part 218);
- Alcohol and Drug (Part 219);
- Radio Communications (Part 220);
- Rear End Marking Device (Part 221);
- Safety Glazing (Part 223); and,
- Hours of Service (Part 228).

33. Pursuant to 49 U.S.C. § 20106, even if a federal regulation or order covers the subject matter of a state law, regulation, or order relating to railroad safety, preemption of that state law may still be avoided if the state law, regulation, or order: (1) is necessary to eliminate an essentially local safety hazard; (2) is not incompatible with federal laws, regulations, or orders; and (3) does not unreasonably burden interstate commerce.<sup>34</sup> An essentially local safety hazard only applies to local situations that are not statewide in character and not capable of being encompassed in uniform national standards.<sup>35</sup>

34. The crossings at issue in this matter constitute “an essentially local safety hazard” because the malfunction issues are not statewide in character and are likely the result of the specific interplay between PECO’s transmission line and the crossing equipment—meaning that the issue cannot be encompassed in, or addressed by, uniform national standards. Further, the

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<sup>34</sup> 49 U.S.C. § 20106(a)(2)(A)–(C).

<sup>35</sup> *Nat’l Assoc. of Regulatory Comm’rs v. Coleman*, 542 F. 2d 11 (3d Cir. 1976).

requested relief is compatible with 49 C.F.R. §§ 234.101 *et seq.* and would not burden interstate commerce.<sup>36</sup>

35. As set forth by former Commission Chairman Gladys Brown Dutrieuille in a report to the Pennsylvania Senate Transportation Committee, transmitted on February 22, 2023, the Commission’s rail safety work is done in conjunction with the FRA and its rail safety inspection work is performed in conjunction, and in close coordination with the FRA. For the past 45 years, federal law has addressed rail safety with a set of nationally established standards, enforced by the FRA. The work performed by Commission Rail Safety inspectors is done in conjunction with FRA inspectors, with interactions almost daily. The Commission Rail Safety Inspections group includes one (1) supervisor who manages the FRA program with a staff of seven (7) inspectors. The Commission’s Rail Safety inspectors are certified by the FRA, and each inspector specializes in a specific railroad discipline.

36. The areas of expertise for the Commission’s Rail Safety inspectors include:

- Signal & Train Control – the systems which are used to control the safe passage of trains;
- Track – the physical infrastructure of the railroads;
- Motive Power & Equipment – the locomotives and rail cars that cross our state;
- Operating Practices – the “human element” of railroad activity, including qualifications of rail crew members and the way they operate, including their adherence to best safety practices.; and,
- Hazardous Materials – the equipment used to transport hazard materials, along with safe handling practices, labeling/placards and other related requirement.<sup>37</sup>

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<sup>36</sup> See 49 C.F.R. § 234.105(c)(3) (providing that “each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop” in the event of a warning system malfunction involving an activation failure); *see also id.* § 235.107(b) (requiring railroad to “[n]otify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic”).

<sup>37</sup> Exh. A at 3.

37. The Commission therefore has the expertise and authority to order the necessary interim relief in this matter and such authority is not preempted by federal law.

## V. CONCLUSION

Based upon the clear unanimous findings and directives of the Commission in this proceeding, the well-pleaded facts presented by the Borough in its Petition, and the required legal standard for review of preliminary objections, NS' request that the Commission dismiss the Borough's request for relief seeking to either close the affected crossing to rail traffic, issue a "stop and protect order," "make available an emergency response team," and/or implement a traffic control plan at the crossings should be dismissed.

WHEREFORE, for the reasons set forth herein, the Borough hereby respectfully requests that the Commission: (a) dismiss the Preliminary Objections of NS; and (b) grant any other relief that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Carl R. Shultz

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*Counsel for the Borough of Royersford*

Date: September 12, 2025

# **EXHIBIT A**



PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA

THE CHAIRMAN

February 22, 2023

Senator Wayne Langerholc, Chair  
Senate Transportation Committee  
Main Capitol 351  
Harrisburg, PA 17120-3013

Dear Chairman Langerholc,

Thank you for the invitation to testify before the Senate Transportation Committee on Monday March 27, 2023, regarding the *Transportation of Hazardous Materials by Rail*.

I plan to attend and will be accompanied by Rodney Bender, P.E., the PUC's Railroad Safety Manager. Attached, you will find a copy of the Commission's Rail Safety testimony which was previously prepared for the Committee in 2015. Although this testimony was drafted in 2015, the description of the Commission's role and specific jurisdiction as it pertains to rail safety within the Commonwealth remains unchanged.

[https://www.puc.pa.gov/General/pdf/Testimony/Brown-Rail\\_Safety\\_060915.pdf](https://www.puc.pa.gov/General/pdf/Testimony/Brown-Rail_Safety_060915.pdf)

If there is additional information that the Committee will need from the Commission in advance of Monday's hearing, please contact the Commission's Director of Legislative Affairs, JJ Livingston at 717-787-3256, [jerlivings@pa.gov](mailto:jerlivings@pa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Gladys Brown Dutrieuille".

Gladys Brown Dutrieuille  
Chairman

cc: Senator Marty Flynn, Minority Chair

Prepared Testimony of  
*Gladys M. Brown*  
Chairman  
Pennsylvania Public Utility Commission

*before the*

Pennsylvania Senate Transportation Committee and  
Senate Environmental Resources and Energy Committee

June 9, 2015



Pennsylvania Public Utility Commission  
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Thank you, Chairmen Rafferty, Wozniak, Yaw and Yudichak, other members of the Committees, and all others gathered here this morning.

It is my pleasure to join you today, as Chairman of the Pennsylvania Public Utility Commission (PUC) – on behalf of my fellow Commissioners and the dedicated staff at the PUC – to discuss our role in a multi-layered system that works to ensure the safe transportation of goods and passengers by rail across our state. With me this morning is Rodney Bender, the Manager of the Transportation Division of the PUC, which includes our Rail Safety Section.

You have asked us to address the federal perspective related to the safe transportation of energy products across Pennsylvania by rail – with an emphasis on Bakken crude oil. While my testimony focuses on your desire to explore those unique issues, I will note that the PUC is attentive to the safe transport of all cargoes, including crude oil, chemicals, hazardous materials and even passengers.

While I cannot speak on direct behalf of the Federal Railroad Administration (FRA), or other agencies, I am happy to give you an overview of the PUC's rail safety inspection work – which is performed in conjunction, and in close coordination with, our colleagues at the FRA. In addition, the PUC also conducts specialized rail safety engineering work, under state statutory authority, and I believe it is important for all gathered here today to understand that mission, as well.

## **PUC Overview**

For the past 45 years, federal law has addressed rail safety with a set of nationally established standards, enforced by the FRA. The work performed by PUC's Rail Safety Inspectors is done in conjunction with FRA Inspectors, with interactions almost daily.

The PUC Rail Safety Inspections group includes one (1) supervisor who manages the FRA program with a staff of seven (7) inspectors. Our Rail Safety Inspectors are certified by the FRA, and each inspector specializes in a specific railroad discipline. Additionally, PUC Rail Safety staff who are involved in the inspection of passenger trains are also certified by Amtrak.

The areas of expertise for our Rail Safety inspectors include:

- Track – the physical infrastructure of the railroads. We currently have one (1) inspector in this area and are in the process of hiring a second inspector.
- Motive Power & Equipment – the locomotives and rail cars that cross our state. We currently have two (2) inspectors in this area.
- Operating Practices – the “human element” of railroad activity, including qualifications of rail crew members and the way they operate, including their adherence to best safety practices. We currently have one (1) inspector in this area and are in the process of hiring a second.
- Hazardous Materials – the equipment used to transport hazard materials, along with safe handling practices, labeling/placards and other related requirement. We currently have one (1) inspector in this area.
- Signal & Train Control – the systems which are used to control the safe passage of trains. We currently have one (1) inspector in this area.

Additionally, the PUC Rail Safety Section also includes a Rail Safety Engineering group, which includes one (1) supervisor who manages a staff of six (6) professional engineers.

Both the Rail Safety Inspection and Rail Safety Engineering groups fall within the PUC Transportation Division – overseen, as I mentioned a few moments ago, by Rodney Bender – as part of the Bureau of Technical Utility Services.

### **PUC Inspection Activities**

I think it is noteworthy to underscore the volume of work performed by the PUC Rail Safety Inspectors. In 2014, we filed 941 Inspection Reports filed with the FRA, including:

- 351 Motive Power & Equipment inspections;
- 241 Track inspections;
- 175 Operations inspections;
- 113 Hazmat inspections; and
- 61 Signal inspections.

Additionally, in the course of conducting those inspections, our staff examined a total of 82,106 individual items – ranging from pieces of rail and components on a locomotive or rail car, to safety practices, crew certifications or clear radio communications.

So far in 2015, PUC inspectors have filed 297 Inspection Reports with the FRA:

- 117 Motive Power & Equipment inspections;
- 97 Track inspections;
- 28 Operations inspections;

- 34 Hazmat inspections; and
- 21 Signal inspections.

Those inspections have examined a total of 28,270 individual items.

Any concerns identified during PUC inspections were submitted to the FRA for review and enforcement under federal rail safety standards.

It is also important to note that the PUC's inspectors are part of a tri-layer system of rail safety inspections in Pennsylvania, which also includes regional inspectors from the FRA and specialized personnel from the railroads.

### **Highway-Railroad Crossing**

In addition the Rail Safety Inspectors, we also have a group of Rail Safety Engineers, who oversee highway-railroad crossings throughout Pennsylvania – including at-grade crossings, where public roads cross railroads track; bridges carrying public roads over railroads; bridges carrying railroads over public roads; and bridges carrying railroads over other railroads.

Under Pennsylvania statute, the PUC has exclusive jurisdiction over the construction, relocation, suspension and abolition of public highway-railroad crossings. There are approximately 5,600 public at-grade rail crossings in Pennsylvania and 3,200 bridge crossings. Our engineering staff includes one (1) supervisor who manages a staff of six (6) professional engineers.

Rail Safety Engineers handle applications, complaints and miscellaneous proceedings; and, on occasion, they request the initiation of an investigation docket in the matter of public safety.

Staff schedules and conducts on-site meetings at the public railroad crossings (both at-grade and

bridge crossings) to gather information related to the rail crossing project so that they can prepare Commission Secretarial Letters and Orders for issuance. Projects are monitored to completion. Final inspections are performed upon project completion and at times the engineers must testify before the PUC's Office of Administrative Law Judges (OALJ) when cases cannot be resolved amicably.

Identifying ways to address our aging transportation infrastructure, and the safety concerns related to both crossings and bridges, is the focus of a great deal of work for the PUC's engineering group. In fact, while the PUC, FRA and the railroads have all been working to increase inspections of track, equipment and operations – especially along oil train routes – our PUC engineers deal exclusively with the safety of the railroad at-grade crossings and bridges along these routes and other rail lines. Here, we work to address the disposition of highway-railroad crossings involving many nearly century-old, structurally deficient bridges within the state – while also promoting enhanced safety for at-grade crossings.

Regarding crossings (including bridges and at-grade crossings), PUC engineers are involved in an average of 180 formal proceedings per year – from field meetings and site inspections to formal conferences regarding repair, replacement, safety upgrades and other enhancements – which bring together representatives from the railroads, property owners, local municipalities, other state agencies – such as PennDOT – and other concerned parties. Safety-enhancements to crossings can range from projects to upgrade active warning devices, such as lights and gates, to the replacement of at-grade crossings with bridges, such as the recent elimination of the last three public at-grade crossings on Amtrak's Keystone Line, between Harrisburg and Philadelphia.

On average, the Commission receives five to 10 accident reports per month involving railroad related incidents either at a crossing or along railroad lines. In all of these situations, our engineers carefully weigh the factors that could be the difference between a non-incident and a crash between a train and a motor vehicle, which could result in a catastrophic incident.

In the last fiscal year, the work of our engineering group resulted in 200 PUC Orders and Secretarial Letters concerning highway-railroad crossing projects, involving more than \$600 million in infrastructure improvements.

The PUC Rail Safety Engineering staff works out of the Keystone Building in Harrisburg, but they travel throughout the entire state to handle Commission proceedings, field conferences, hearings and field inspections.

The PUC Rail Safety Inspectors have specific territories within the state for which they are responsible (typically center-east and center-west) and spend 80 percent of their time performing railroad inspections. The remaining time is spent filing inspection reports, writing violations and scheduling.

### **PUC Responsibilities**

The Commission railroad regulations can be found in the Pennsylvania Code, Title 52 Chapter 33, Railroad Transportation.

Additionally, pursuant to an agreement under the provision of the Federal Railroad Safety Act of 1970, the PUC Rail Safety Inspectors enforce regulations promulgated by the FRA. While the

FRA had originally provided funding for that service, FRA funding has decreased over time. Currently, there is no FRA funding provided for rail safety inspections at the state level.

The 1970 federal law had effectively preempted rail safety regulation by individual states because Congress concluded that rail safety would be best served by a set of nationally established standards, instead of subjecting railroads to a variety of standards in 50 states. Congress then delegated railroad safety to the FRA, and specifically provided that the FRA regulations preempt all conflicting state laws and regulations. 49 U.S.C. Section 20106.

The Rail Safety Manager and supervisors regularly receive incident reports from both the Pennsylvania Emergency Management Agency (PEMA) and the railroads that are related to collisions, spills and derailments. These reports are reviewed to determine if further action is warranted.

The PUC has no enforcement authority regarding potential rail safety violations. That enforcement authority resides with the FRA, and any defects or violations observed by PUC Inspectors are reported to the FRA for further review and potential enforcement actions.

### **Interface with FRA and Railroads**

PUC Inspectors interface almost daily with FRA Inspectors in each of their disciplines. The working locations of each inspector are determined to ensure that areas of the state are not neglected. It also allows our inspectors to undertake focused inspections with the FRA in problem areas. PUC Inspectors also attend yearly training conferences hosted by the FRA, and the two agencies have territories that overlap to ensure maximum inspection coverage. The

inspection of railroad track by either a PUC Rail Safety Inspector or an FRA Inspector requires the physical presence of appropriate railroad company personnel to accompany them.

The PUC offers assistance to the FRA in investigations of derailments, track inspection record checks, drug and alcohol record checks and hours-of-service records. When visiting the railroads for inspections, our inspectors discuss their findings with railroad employees and railroad officials. Inspectors do not always notify the railroads that they are on their property; often they will wait to contact the railroad officials only after their inspection has been completed. At that time they discuss their findings and review any recommended corrections that may be needed.

It is important to note that under federal law, the railroads are required to perform regular self-inspections of their track and equipment. When PUC Rail Safety staff conducts an inspection, they are not only examining equipment or facilities, but they are also reviewing the railroad's inspection activities to ensure that they are giving proper time and attention to these details. The same applies to FRA oversight of both the railroad-conducted inspections and PUC-conducted inspections.

Combined, this results in a tri-layered system that constantly monitors rail facilities and activities across the state.

## **Staffing**

At any point in time, the PUC carries a number of vacancies that are in the process of being filled. So, like the rest of the agency, the Rail Safety Section continuously conducts interviews to fill vacancies as they occur.

Two (2) new engineers, working within the Engineering group, recently began work at the Commission. That group is now at full complement. In addition, we are in the process of hiring two (2) Rail Safety Inspectors to fill vacancies in that group.

I would note that we face continued challenges filling vacancies, especially in the Rail Safety Inspections group. We have found it difficult to attract qualified candidates who have the required railroad experience to work for the PUC in this capacity. One obstacle is the Civil Service-established pay level associated with these positions. Like most state government positions, the private sector (in this case the railroads, as well as the FRA) pays substantially higher salaries than state government – and in this instance – the PUC. When we do hire staff to fill the positions, they are trained and become certified by the FRA to perform their duties. Once they reach this certification, they are able to bid on FRA job openings where they can nearly double their salary. Over the past 12 years, we have had three (3) inspectors leave the Commission to work for the FRA and one inspector who returned to the railroad, all based on salary considerations.

Upon the closing of postings for two (2) inspector positions about a month ago, we were provided one candidate by Civil Service for our consideration. This individual was interviewed and found not to be qualified for the position. The candidate lacked much experience in the track discipline, which is required. Civil Service will be opening the list again for new candidates to

apply and, when a pool of candidates is available, we will again be notified and will repost the positions. We encountered similar problems in 2013 when we attempted to fill three (3) positions. We were able to fill all three (3), but we selected a second equipment inspector, instead of a track inspector, for the eastern part of the state because there were an insufficient number of qualified candidates. The previous two (2) PUC track inspectors moved to positions with the FRA.

In 2012, the FRA conducted a survey of states that showed Pennsylvania to be the next-to-lowest paying state for these positions; only West Virginia paid less. At that time, the average salary in Pennsylvania was \$41,100, versus the national average of \$56,600.

At full complement, the PUC has eight (8) Rail Safety Inspectors for nearly 5,600 miles of track. By comparison to neighboring states, New York has 13 inspectors covering 4,860 miles of track; West Virginia has 10 inspectors covering 2,226 miles of track; and Maryland has three (3) inspectors covering 758 miles of track.

In addition, Pennsylvania has the most operating railroad companies of any state, with a total of 57 operating across the state – ranging from the largest Class I railroads, moving long trains of goods along busy main line tracks to small “short line” railroads that may serve a short list of industries in a small area, moving a few cars at a time. Also due to our geographic location, there are a very mixed variety of commodities being transported into, out of, and across our state each day.

The primary factor affecting our ability to make a change in compensation for these inspectors is that these are Civil Service, bargaining-unit positions. As such, they are Commonwealth classifications and a change in pay levels for these positions will have an anticipated “ripple”

effect to other positions in the Rail Safety Section, and in the rest of the PUC – e.g. motor carrier enforcement officers and gas safety inspectors. There would need to be discussions and agreements with the Civil Service Commission and the Union if we attempt to make changes to the current classifications and compensation levels.

### **Additional Thoughts Regarding Staffing**

At current salary, benefit, vehicle and travel costs, each new inspector would require an additional \$120,000 a year – based upon a mid-range annual salary of \$50,000. There are currently no additional state monies available for new Rail Safety Inspectors. Any additional complement and costs associated with the PUC budget would need to be added to our current request.

Rather than the current PUC practice of dividing the state into two parts as it relates to rail safety inspections, it may be better to establish three territories, so that our inspectors could spend more time inspecting railroad facilities rather than traveling to sites.

### **Closing**

As I close today, I want to underscore the PUC's role as part of a tri-layer safety inspection system – including railroad companies, the PUC and the FRA. We work closely with the FRA to monitor ALL of the factors that can impact the safe movement of trains across Pennsylvania, including track, motive power and equipment, operating practices, hazardous materials and grade crossings.

When incidents do occur, such as the Amtrak derailment in Philadelphia last month, we offer assistance to the FRA and the National Transportation Safety Board, who are the lead responders for major accidents. In the Philadelphia incident, one of our equipment inspectors – who is also certified on Amtrak equipment – was dispatched to the scene to support the investigation.

We have worked to enhance our oversight of oil train routes – which make up about 700 miles of the nearly 5,600 miles of total rail lines in Pennsylvania – including our ongoing efforts to bring additional inspectors and engineers into our Rail Safety Section. However, we are also sensitive to issues involving passenger rail – especially the heavily traveled and higher-speed runs from Harrisburg to Philadelphia, and the Northeast Corridor, from Philadelphia to New York City and Washington D.C.

I thank you again for the opportunity to testify this morning, and I would be happy to address any of your questions. The PUC stands ready to assist, to the best of our ability, efforts to continue improving rail safety in Pennsylvania.