



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 24, 2025

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

The Honorable F. Joseph Brady
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

**RE: A-2022-3031613 and A-2024-3045709, A-2023-3043493, A-2024-3051983, and
A-2024-3052077 (consolidated)
A-2024-3050051 (seeking consolidation)**

Dear Secretary Homsher and Judge Brady,

Enclosed for electronic filing please find the Department's *Motion for Approval of Temporary Settlement and Motion to Consolidate* 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.

Sincerely,

A handwritten signature in black ink, appearing to read "LJB", with a long horizontal flourish extending to the right.

Leah Jo Bobula
Assistant Counsel

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to alter the public above grade crossing by the replacement of the existing bridge carrying State Route 0011 (West King Street) over track of Norfolk Southern Railway Company (DOT 592 122 M) in Shippensburg Borough and Southampton Township, Franklin County, and the allocation of costs incident thereto. : **A-2022-3031613**
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Application of Pennsylvania Department of Transportation for approval to alter two (2) Public crossings by the rehabilitation of the existing bridge where State Route 0018 (Seventh Avenue) crosses, above grade, one (1) track of Norfolk Southern Railway Company (DOT 503 768 L) located in New Brighton Borough and two (2) tracks of CSX Transportation, Inc. (DOT 584 878 T) located in the City of Beaver Falls, all in Beaver County, and the allocation of costs incident thereto. : **A-2024-3045709**
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Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the existing bridge where West Lackawanna Avenue crosses above the track(s) of Norfolk Southern Railway corporation, DOT Number 265 971 V in the City of Scranton, Lackawanna County and the allocation of costs incident thereto. : **A-2023-3043493**
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Application of the Pennsylvania Department of Transportation for approval to alter the public crossing (DOT# 592 188 M) by the removal and replacement of the existing bridge where Seventeenth Street crosses, above grade, the tracks of Norfolk Southern Railway Company in the City of Harrisburg, Dauphin County, and the allocation of costs incident thereto. : **A-2024-3051983**
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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. :

Application of Montgomery County for approval : **A-2024-3050051**
to reconstruct overhead crossing for Norfolk :
Southern Dale Secondary line at Ridge Pike, :
Section MG4 (Montgomery County Bridge No. 0), :
Plymouth Township, Montgomery County :

MOTION FOR APPROVAL OF TEMPORARY SETTLEMENT

1. On July 16, 2025, the Pennsylvania Department of Transportation (Department or PennDOT) filed a Letter requesting to continue construction during pending litigation.
2. On July 30, 2025, the Department, Bureau of Investigation and Enforcement (I&E), Westmoreland County, and Norfolk Southern Railway Company (Norfolk Southern) attended a conference to discuss the Letter.
3. After the conference, the parties discussed options for temporary language that would afford the Department the ability to continue with construction while the litigation in the above-captioned cases moves forward.
4. The Department proposes the following language to be utilized as a temporary settlement so the Department may move forward with construction in dockets A-2022-3031613 (replacing Secretarial Letter paragraph 10), A-2024-3045709 (replacing Secretarial Letter paragraph 8), A-2023-2043493 (replacing Secretarial Letter paragraph 13), and A-2024-3051983 (replacing Secretarial Letter paragraph 14), while litigation continues:

- a. 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 when activities required to alter the subject public crossing(s) have 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 vendors in accordance with standard railroad practice for such flagging. If, after making reasonable efforts, the Pennsylvania Department of Transportation is unable to schedule flaggers from the list of qualified vendors, upon request designated Norfolk Southern Railway Company personnel shall communicate with vendors to assist the Pennsylvania Department of Transportation in scheduling flagging services to avoid unreasonable project delays.
- b. 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(s) 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.
- c. Norfolk Southern Railway Company, at the sole cost and expense of the the 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.

5. Norfolk Southern and Westmoreland County are in agreement with this proposed temporary settlement language.
6. I&E is in support of continuing construction while litigation is pending but is not in agreement with this proposed temporary settlement language. I&E requests to continue to use the original language from the Secretarial Letters as construction moves forward while litigation is pending.
7. Westmoreland County proposes the following language to be utilized as a temporary settlement so the County may move forward with construction in docket A-2024-3052077 (replacing Secretarial Letter paragraph 1), while litigation continues:
 - a. 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 the rail system of Norfolk Southern Railway Company, to protect the Westmoreland County contractor when activities required to alter the subject public crossing(s) have 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 vendors in accordance with standard railroad practice for such flagging. If, after making reasonable efforts, Westmoreland County is unable to schedule flaggers from the list of qualified vendors, upon request designated Norfolk Southern Railway Company personnel

shall communicate with vendors to assist Westmoreland County in scheduling flagging services to avoid unreasonable project delays.

- b. 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(s) 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.
 - c. Norfolk Southern Railway Company, at the sole cost and expense of Westmoreland County, 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.
8. Norfolk Southern and the Department are in agreement with this proposed temporary settlement language.
 9. I&E is in support of continuing construction while litigation is pending but is not in agreement with this proposed temporary settlement language. I&E requests to continue to use the original language from the Secretarial Letters as construction moves forward while litigation is pending.
 10. This temporary settlement language is solely for the purpose of allowing these docketed projects to proceed with construction while litigation continues.
 11. This temporary settlement language does not reflect a change in any party's position regarding the litigation.

MOTION TO CONSOLIDATE

12. A local project under docket A-2024-3050051 is facing similar flagging language hurdles that may cause additional delays to their project.
13. Docket A-2024-3050051 is in Montgomery County, Pennsylvania.
14. A Secretarial Letter ordering specific flagging language has not been issued yet because the parties have not agreed on flagging language.
15. As such, Montgomery County wishes to consolidate their docket A-2024-3050051 with these A-2022-3031613 et al. dockets in order to utilize the temporary settlement language.
16. The Department, I&E, Norfolk Southern, and Westmoreland County are not opposed to this consolidation.
17. Montgomery County requests to utilize the temporary settlement language below for docket A-2024-3050051:
 - a. Montgomery 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 the rail system of Norfolk Southern Railway Company, to protect the Montgomery County contractor when activities required to alter the subject public crossing(s) have 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 vendors in accordance with standard railroad practice for such flagging. If, after making reasonable efforts, Montgomery County is unable to schedule flaggers from the list of qualified vendors, upon request designated Norfolk Southern Railway Company personnel shall communicate with

vendors to assist Montgomery County in scheduling flagging services to avoid unreasonable project delays.

- b. 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(s) 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.
- c. Norfolk Southern Railway Company, at the sole cost and expense of Montgomery County, 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.

18. The Department, Norfolk Southern, and Westmoreland County are in agreement with this proposed temporary settlement language.

19. I&E is in support of continuing construction while litigation is pending but is not in agreement with this proposed temporary settlement language. I&E requests to continue to use the original language from the Secretarial Letters as construction moves forward while litigation is pending.

Wherefore, the Department respectfully requests that the Public Utility Commission and the Honorable Francis J. Brady grant this Motion for Approval of Temporary Settlement and Motion to Consolidate.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

A handwritten signature in black ink, appearing to read 'LJB', with a long horizontal flourish extending to the right.

Leah Jo Bobula
Assistant Counsel
Supreme Court I.D. 332184

Dated: September 24, 2025

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to reconstruct overhead crossing for Norfolk :
Southern Dale Secondary line at Ridge Pike, :
Section MG4 (Montgomery County Bridge No. 0), :
Plymouth Township, Montgomery County :

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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<p>Adam Cubbedge 250 Lincoln Way East Chambersburg, PA 17201 Adam.cubbedge@centurylink.com</p>	<p>William Dempster UGI Utilities Inc. 1301 AIP Drive Middletown, PA 17057</p>
<p>Shawn Starling, P.E. Norfolk Southern Railway Corporation 650 West Peachtree Street NW- Box 45 Atlanta, GA 30308 Douglas.starling@nscorp.com PAPUC@AECOM.COM</p>	<p>Erika Martino Pennsylvania Turnpike Commission 700 South Eisenhower Blvd. Middletown, PA 17057</p>
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<p>Pennsylvania Department of Transportation Right-of-Way & Utility Division Bureau of Design-Project Delivery P.O. Box 3362 Harrisburg, PA 17105-3362 marchappel@pa.gov</p>	<p>Michael Gabriel PECO Energy Company (Gas) 1050 West Swedesford Road Berwyn, PA 19312</p>
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Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



Leah J. Bobula
Assistant Counsel
Supreme Court I.D. 332184

Dated: September 24, 2025