

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held October 9, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Kathryn L. Zerfuss  
John F. Coleman, Jr.  
Ralph V. Yanora

Application of the Department of Transportation  
of the Commonwealth of Pennsylvania for Approval  
to Replace the Existing Public Above Grade Crossing  
by the Construction of a New Bridge Where  
State Route 0083 Crosses over the Tracks of National  
Railroad Passenger Corporation (AMTRAK),  
DOT Number 518 047 F in the City of Harrisburg,  
Dauphin County and the Allocation of Costs Incident  
Thereeto

A-2021-3028010

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration from Staff Action (Petition), filed by Norfolk Southern Railway Company (Norfolk Southern or Petitioner) on August 6, 2025, requesting reconsideration of the Commission's Secretarial Letter issued on July 17, 2025 (*July 2025 Secretarial Letter*) in the above-captioned proceeding. Specifically, Norfolk Southern requested that the Commission rescind the *July 2025*

*Secretarial Letter* and order the Pennsylvania Department of Transportation (PennDOT) to develop alternate plans that would not interfere with Norfolk Southern's future operations. An Answer to the Petition was filed by PennDOT on August 22, 2025 (Answer). For the reasons stated below, we shall grant the Petition, in part, consistent with this Opinion and Order. In addition, we will refer this matter to the Commission's Office of Administrative Law Judge (OALJ) for such further proceedings as necessary and appropriate, and the issuance of an Initial Decision, if necessary.

### **I. Background and History of Proceeding**

PennDOT filed an application on August 17, 2021, and an amended application on August 24, 2021, seeking Commission approval for the modification of the public at grade crossing where State Route 0083 crosses over the tracks of National Railroad Passenger Corporation (AMTRAK) at DOT Number 518 047 F, in the City of Harrisburg, Dauphin County (Crossing), pursuant to Section 2702 of the Public Utility Code (Code), 66 Pa.C.S. § 2702, and the Section 5.13 of the Commission's Regulations, 52 Pa. Code § 5.13 (Application).<sup>1</sup> In its Application, PennDOT seeks to alter the Crossing by making roadway improvements that would replace the existing bridge and ramps and add collector/distribution roadways in both the northbound and southbound directions to improve the flow of traffic and safety along the corridor. PennDOT further avers that the proposed new structure would raise the roadway profile and increase span lengths allowing increased vertical and horizontal clearances associated with the railroad tracks. Application at 2.

By Secretarial Letter issued August 19, 2021, the Commission acknowledged receipt of the Application. Subsequently, the Commission arranged and

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<sup>1</sup> PennDOT filed two applications to separate each public crossing involved with this bridge replacement. The other public crossing involved with this bridge replacement is docketed at A-2021-3028250.

held a field investigation and conference near the site of the Crossing on October 19, 2021. Representatives and consultants of PennDOT and Norfolk Southern attended the field conference. Although notified by Secretarial Letter issued October 7, 2021, there were no representatives of AMTRAK, the local municipalities, or utility companies in attendance. *See* Secretarial Letter, dated March 29, 2022 (*March 2022 Secretarial Letter*) at 2.

Based in substantial part on the field conference, the Commission thereafter issued the *March 2022 Secretarial Letter*. The *March 2022 Secretarial Letter* included a description of the Crossing and its current condition, and it summarized PennDOT's description of the details of the proposed project. *March 2022 Secretarial Letter* at 2-4. By the *March 2022 Secretarial Letter*, the Commission approved the Application without a formal hearing, assigning specific requirements to various parties, including PennDOT and Norfolk Southern. *Id.* at 4-8. In pertinent part, Paragraph No. 4 of the *March 2022 Secretarial Letter* directed, as follows:

4. Pennsylvania Department of Transportation, at its sole cost and expense, and prior to the start of construction, prepare and submit complete detailed structure plans for the subject crossing to all parties for review and the Commission for approval and upon completion of construction, submit detailed "as-built" construction plans to the Commission.

*Id.* at 5.<sup>2</sup>

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<sup>2</sup> Following the receipt of comments from Norfolk Southern, the Commission issued a Secretarial Letter, dated April 7, 2022, amending Paragraph No. 9 of the *March 2022 Secretarial Letter*, specifically regarding Norfolk Southern's construction engineering services, the allocation of costs incident thereto, and the type of inspectors needed during the time the work at the Crossing is being performed. In all other respects, the *March 2022 Secretarial Letter* remained in full force and effect. *See* Secretarial Letter, dated April 7, 2022, at 2.

On July 10, 2025, in accordance with Paragraph No. 4 of the *March 2022 Secretarial Letter*, PennDOT submitted the final, signed and sealed electric traction/catenary structure plans for the project (final structure plans). Subsequently, the Commission issued the *July 2025 Secretarial Letter*, noting receipt of the detailed structure plans and providing, as follows:

Not all parties to this proceeding have had adequate time to review the plans, however, **we determine that the Department's request for approval is warranted and will be granted provided that the remainder of the parties to this proceeding do not state any objections** to this Secretarial Letter within the period of time prescribed herein.

*July 2025 Secretarial Letter* at 1 (emphasis added). In addition, the *July 2025 Secretarial Letter* stated that if any Party is dissatisfied with the Commission's resolution of this matter, then it could file a Petition for Reconsideration from Staff Action with the Commission's Secretary within twenty (20) days of the issuance of the *July 2025 Secretarial Letter*. Further, the *July 2025 Secretarial Letter* outlined instructions regarding the form and content of such a Petition for Reconsideration from Staff Action, including references to the inclusion of relevant documentation and a signed verification statement, as set forth in 52 Pa. Code §§ 1.31, 1.36, and 5.44. *July 2025 Secretarial Letter* at 2.

As discussed, *supra*, on August 6, 2025, Norfolk Southern filed the instant Petition seeking reconsideration and rescindment of the *July 2025 Secretarial Letter*. PennDOT filed its Answer on August 22, 2025.

## II. Discussion

### A. Legal Standards

Before us is a Petition for Reconsideration from Staff Action, pursuant to 52 Pa. Code § 5.44(a). Petitions for Reconsideration from Staff Action are governed by Section 5.44(a) of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.44(a), which provides the following:

Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless reconsideration is sought from the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

52 Pa. Code § 5.44(a).

In considering the appeal from Staff Action, the Application and compliance with Commission Regulations, Section 332(a) of the Code, 66 Pa.C.S. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. In the matter before us, Norfolk Southern, as the Petitioner, is the party seeking affirmative relief from the Commission. Therefore, Norfolk Southern is the party with the burden of proof. *See Application of 610 Hauling, LLC, t/a College Hunks Hauling Junk, for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, from points in the counties of Chester, Delaware, Montgomery, Philadelphia, and Bucks, to points in Pennsylvania*, Docket Nos. A-2012-2334103 and A-8915269 (Order entered November 5, 2015) (*Application of 610 Hauling*), citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950) (*Se-Ling Hosiery*).

In *Se-Ling Hosiery, supra*, the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Additionally, the Commission must ensure that the decision is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined substantial evidence to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Application of 610 Hauling* (citing *Norfolk & Western Railway Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984)).

## **B. Norfolk Southern’s Petition and PennDOT’s Answer**

In its Petition, Norfolk Southern requests that the Commission’s approval of PennDOT’s final structure plans in the *July 2025 Secretarial Letter* be rescinded. Norfolk Southern objects to the final structure plans because it believes that the proposed location of the catenary towers will interfere with Norfolk Southern’s future operations. Specifically, Norfolk Southern avers that the proposed catenary towers, P-1662 1/2 and P-1661 1/2, provide less horizontal clearance and would not permit Norfolk Southern to install a future second track, even though the existing structures being replaced allow for the construction of a second track. Petition at 1, 3.

In addition, Norfolk Southern contends that the Commission’s approval of the final structure plans is preempted by the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.* (ICCTA) because the proposed location of the catenary towers would impede and unduly burden Norfolk Southern’s future rail operations. Norfolk Southern submits that its property at issue here is

encompassed by the definitions in the ICCTA, providing the federal Surface Transportation Board with exclusive jurisdiction over the matters raised in the Petition. Furthermore, Norfolk Southern insists that “PennDOT’s proposed taking is preempted as ‘extreme’ regulation because it would deprive Norfolk Southern the full use of its railroad property for future rail operations.” Petition at 2. Norfolk Southern argues that PennDOT should be ordered to develop alternate plans that would not interfere with Norfolk Southern’s future rail operations. *Id.* at 2-3.

In its Answer, PennDOT admits, in part, and denies, in part, various material allegations of the Petition. Specifically, PennDOT denies that the location of the catenary towers will interfere with Norfolk Southern’s future operations because PennDOT lacks sufficient information regarding the future operations of Norfolk Southern. To the contrary, although PennDOT admits that the proposed catenary towers will provide less horizontal clearance, PennDOT denies that the proposed horizontal clearances will prohibit Norfolk Southern from installing a future second track. Furthermore, PennDOT denies that the proposed taking is extreme and states that it lacks sufficient information regarding the future operations of Norfolk Southern; therefore, PennDOT denies that the proposed regulations would deprive Norfolk Southern of the full future use of its railroad property. For these reasons, PennDOT requests that the Petition be denied. Answer at 1-2.

### **C. Disposition**

At the outset, we note that any argument or issue that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlt. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

Norfolk Southern filed its Petition and raised objections in accordance with the provisions of the *July 2025 Secretarial Letter*. Upon our review of the instant Petition and PennDOT's Answer thereto, we are of the opinion that the objections and concerns advanced by Norfolk Southern raise factual issues that must be resolved prior to determining whether the *July 2025 Secretarial Letter* should be rescinded or modified, or if any further appropriate action should be ordered regarding the proposed project and the manner in which PennDOT and Norfolk Southern must proceed. Specifically, Norfolk Southern's argument, that the proposed location of the catenary towers, as depicted in PennDOT's final structure plans, will interfere with Norfolk Southern's future operations because it will prohibit Norfolk Southern from installing a future second track, appears to address a critical aspect of the proposed project.

Accordingly, we shall grant Norfolk Southern's Petition, in part.<sup>3</sup> We find that reconsideration is warranted in this instance and that this matter should be referred to the OALJ. We believe that it is appropriate to refer this application proceeding to the OALJ for assignment to a presiding officer who shall conduct, as expeditiously as possible, such proceedings as deemed necessary and appropriate, including consideration of Norfolk Southern's request that the *July 2025 Secretarial Letter* be rescinded and PennDOT be ordered to develop alternate plans that would not interfere with Norfolk Southern's future operations, consistent with this Opinion and Order, culminating with the issuance of an Initial Decision, if necessary. The scope of this referral shall expressly include the conducting of hearings, as may be deemed necessary, to resolve the issue surrounding any impact of the proposed location of the catenary towers in PennDOT's final structure plans on Norfolk Southern's future operations and ability to install a future second track.

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<sup>3</sup> At this time, we will refrain from addressing or disposing of Norfolk Southern's request that the Commission's approval of PennDOT's final structure plans in the *July 2025 Secretarial Letter* be rescinded.

Furthermore, we note that a preliminary determination of Commission jurisdiction was made in the proceeding. *See March 2022 Secretarial Letter* at 4. We further note that no Party timely challenged this determination at that time. However, as summarized, *supra*, Norfolk Southern included legal arguments in its Petition that the Commission's approval of PennDOT's final structure plans in the *July 2025 Secretarial Letter* is preempted by the ICCTA and that the federal Surface Transportation Board has exclusive jurisdiction over the matters raised in the Petition. Therefore, in addition to the scope of this referral, including the conduct of hearings as may be deemed necessary to resolve any disputed issues of fact, we further direct that the scope of referral include addressing the Commission's jurisdiction and any resultant conclusions of law concerning the application for the proposed project.

### **III. Conclusion**

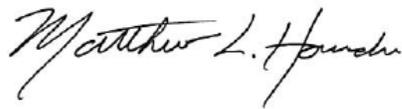
On consideration of Norfolk Southern's Petition, and related pleadings, we shall, consistent with the discussion in this Opinion and Order: (1) grant, in part, the Petition for Reconsideration from Staff Action filed by Norfolk Southern Railway Company on August 6, 2025; and (2) refer this matter to the Commission's Office of Administrative Law Judge for assignment to a presiding officer to conduct such proceedings and issuance of an Initial Decision, as necessary; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Petition for Reconsideration from Staff Action, filed by Norfolk Southern Railway Company, on August 6, 2025, at Docket No. A-2021-3028010, is granted, in part, consistent with this Opinion and Order.

2. That the Application at Docket No. A-2021-3028010, is hereby referred to the Office of Administrative Law Judge for assignment to a presiding officer to conduct such proceedings and issuance of an Initial Decision, as necessary. The scope of this referral shall expressly include whatever is deemed necessary to resolve any factual issue surrounding any impact of the proposed location of the catenary towers in PennDOT's final structure plans on Norfolk Southern's future operations and ability to install a future second track, as well as any question regarding the jurisdiction of the Pennsylvania Public Utility Commission to render a determination on the project as proposed under the Application.

**BY THE COMMISSION,**



Matthew L. Homsher  
Secretary

(SEAL)

ORDER ADOPTED: October 9, 2025

ORDER ENTERED: October 9, 2025