



the crossings, directing that matters addressed include interim operational responsibility and interim allocation for any remediation costs; and (2) that the Borough's Petition be referred to the Office of Administrative Law Judge for adjudication as a Formal Complaint, on an expedited basis.

By Initial Telephonic Prehearing Conference Notice dated August 4, 2025, a call-in telephonic prehearing conference was scheduled for August 11, 2025, and the matter was assigned to us.

At the request of the parties, the August 11, 2025, prehearing conference was cancelled and rescheduled for August 19, 2025.

On August 18, 2025, PECO filed an Answer to the Borough's Petition.

On August 19, 2025, a prehearing conference was held as scheduled. Counsel for the Borough, PECO, the Bureau of Investigation and Enforcement (I&E), and Norfolk Southern participated. As a result of discussions held during the prehearing conference, we informed the parties that any party wishing to file a responsive pleading to the Borough's Petition had until September 2, 2025, to do so. Also, to afford PECO time to complete a study into the root cause of the problem at these railroad crossings, and for the parties to review the results of that study, we advised the parties that we would schedule a status conference for Monday, November 3, 2025. We further advised the parties that, if still necessary, we would establish a litigation schedule during the November 3, 2025, status conference.

On August 22, 2025, PECO filed a Motion for Protective Order pursuant to the provisions of 52 Pa. Code §§ 5.362(a)(7) and 5.365(a).

By Interim Order dated September 2, 2025, we granted PECO's Motion for Protective Order.

On September 2, 2025, Norfolk Southern filed an Answer to the Borough's Petition.

Also on September 2, 2025, Norfolk Southern filed Preliminary Objections to the Borough's Petition. Norfolk Southern's Preliminary Objections were endorsed with a Notice to Plead advising that answers were due within ten (10) days of the date of service.

On September 12, 2025, the Borough filed its Answer to Preliminary Objections of Norfolk Southern.

For the reasons set forth below, Norfolk Southern's Preliminary Objections are sustained.

#### DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

#### **§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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.

52 Pa.Code § 5.101.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlt. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlt. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, the Borough alleged in its Petition that there are two defective railroad crossings within the Borough that are part of the "Harrisburg Line" owned and operated by Norfolk Southern. Petition at ¶ 2. The Borough explained that, starting around 2017, the

railroad crossing warning devices at these locations, including crossing gates and automatic crossing signals, would occasionally malfunction and activate without any train being present in the area. *Id.* at ¶ 10. The Borough further alleged that when a malfunction occurs and the crossing warning devices activate erroneously, the activation can last multiple hours, causing great inconvenience for local residents and first responders. *Id.* at ¶ 16. The Borough requested that the Commission find that these railroad crossings are inadequate and dangerous to the safety and welfare of the public and to further require that Norfolk Southern, PECO, and any other responsible party alter and/or improve these crossings as soon as possible. *Id.* at ¶ 22. More specifically, the Borough requested that the Commission close the affected crossings to rail traffic pending resolution. Additionally, the Borough requested that, to the extent that the affected crossings remain open to rail traffic, the Commission should: (1) issue a stop and protect order where all trains are stopped and a safety check is performed at each stop before each crossing; (2) direct that an emergency response team to be available within a certain time frame in the event of malfunctions; and (3) implement a traffic control plan, at the expense of Norfolk Southern. Lastly, the Borough requested that the Commission compel Norfolk Southern to adhere to Federal Railroad Administration standards in connection with the repair and operation of these crossings, and to allocate all costs to Norfolk Southern and PECO.

In its Answer, Norfolk Southern admitted that it owns and operates the two crossings identified in the Petition but denied that the crossings are defective.

In its Preliminary Objections, Norfolk Southern sought dismissal of the Borough'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 at issue. Norfolk Southern averred that such relief is preempted by the Interstate Commerce Commission Termination Act (ICCTA), a federal law that grants a federal agency, the Surface Transportation Board, with the exclusive authority to regulate rail transportation. Norfolk Southern further averred that, although the Commission has authority to regulate the crossings pursuant to 66 Pa.C.S. § 2702, that authority is limited to the crossing itself, such as the construction, reconstruction, alteration, repair, protection, suspension, abolition, or maintenance of the crossing. Norfolk Southern argued that Pennsylvania law does not grant the Commission authority to alter, modify, or regulate how a

railroad schedules and operates its trains, and further argued that, even if it did, ICCTA preemption would apply, since any regulation dictating when and how Norfolk Southern operates its trains would directly interfere with rail transportation and the carrier's economic decision-making, which are matters that fall within the exclusive jurisdiction of the Surface Transportation Board. If the Commission were to issue an order requiring Norfolk Southern to stop its trains and conduct a safety check before each crossing, Norfolk Southern argued that it would directly interfere with core aspects of railroad operations, including train speed, scheduling, and routing. Again, Norfolk Southern averred that such operational decisions fall squarely within the exclusive jurisdiction of the Surface Transportation Board and ICCTA would preempt. Norfolk Southern requested that, since the Commission cannot order the requested relief, either because it lacks authority or is preempted, the Commission should dismiss this request as a matter of law. Preliminary Objection at ¶¶ 8 and 9.

Norfolk Southern also argued that the Federal Railroad Safety Act (FRSA) preempts the Borough's requested relief. Norfolk Southern argues that, pursuant to the FRSA, the U.S. Secretary of Transportation promulgated extensive safety regulations concerning highway-rail grade crossing and signal malfunctions. Norfolk Southern noted that if the railroad receives a credible report of a false activation, federal regulation at 49 C.F.R. § 234.107(c)(1), (2) and (d) requires it to undertake specific action, such as equipping a flagger to warn of approaching train, stationing a law enforcement officer at the crossing, or to "proceed with caution . . . at a speed not exceeding 15 miles per hour" through the crossing and activate its "audible warning device." Norfolk Southern asserted that these federal regulations already govern the subject of "activation failures," explicitly prescribe the duties Norfolk Southern must undertake when it becomes aware of false activation, and effectively preempts the relief the Borough seeks from the Commission. Preliminary Objection at ¶¶ 11-14.

In its Answer to Norfolk Southern's Preliminary Objection, the Borough noted that the Commission already unanimously determined that an emergency exists and ordered TUS to determine "options for immediate remediation of the dangerous conditions at the crossings." The Borough further answered that the Commission also determined that the need for interim relief had been adequately plead by the Borough and found that the situation constituted an

emergency under the Commission’s rules. Answer at ¶ 22. However, the Borough noted that the Commission, in its 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.” Answer at ¶ 28.

The Borough noted that the Commission has exclusive jurisdiction over the construction, relocation, suspension and abolition of public highway-railway crossings, and may order immediate alteration, improvement,<sup>2</sup> or suspension of public crossings to provide for public safety.<sup>3</sup> The Borough further noted that the appropriation of property for any crossing improvement is exclusively within the Commission’s authority, and that the costs associated with the construction, relocation,<sup>4</sup> alteration or abolition of a crossing may be allocated among the parties as determined by the Commission.<sup>5</sup> Answer at ¶ 31.

Additionally, the Borough averred that, pursuant to 49 U.S.C. § 20106(a)(2)(A)-(C), 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 is necessary to eliminate an essentially local safety hazard, is not incompatible with federal laws, regulations, or orders, and does not unreasonably burden interstate commerce. Noting *Nat’l Assoc. of Regulatory Comm’rs v. Coleman*, 542 F.2d 11 (3d Cir. 1976), 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. Accordingly, the Borough argued that 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. The Borough further argued that the requested relief is compatible with 49 C.F.R. § 234.101 et seq. and would not burden interstate commerce. Answer at ¶¶ 33, 34.

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<sup>2</sup> 66 Pa.C.S. §§ 2702 – 04.

<sup>3</sup> *Id.* at § 2702(f).

<sup>4</sup> *Id.* at § 2702(b) – (d).

<sup>5</sup> *Id.* at § 2702(f).

Lastly, the Borough noted that Commission rail safety work is performed by Commission Rail Safety inspectors, who are each certified by the Federal Railroad Administration (FRA) with a specialization in a specific railroad discipline, and that this work is performed in conjunction with FRA inspectors. As such, the Borough maintained that the Commission has the expertise and authority to order the necessary interim relief in this matter, and that such authority is not preempted by federal law. Answer at ¶¶ 35, 36.

As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the “Code”), 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 1191 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967). *Behrend v. Bell of PA*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. P.U.C.*, 182 A.2d 267 (Pa. Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

Regarding general jurisdiction over transportation by rail carriers, federal regulations provide, in pertinent part, the following:

The jurisdiction of the Board<sup>6</sup> over –

- (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classification, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
- (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

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<sup>6</sup> “Board” means the Surface Transportation Board. 49 U.S.C. § 10102.

49 U.S.C. § 10501(b).

Additionally, regarding preemption, federal regulations provide that “[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.” 49 U.S.C. § 20106(a).

The regulation further provides, in pertinent part:

A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

*Id.* at § 20106((a)(2)(A)-(C).

Federal regulations also address timely responses to reports of malfunctions. In particular, federal regulations provide in pertinent part that “[u]pon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate the report and determine the nature of the malfunction.” 49 U.S.C. § 234.103(a). The regulation further provides that “[u]ntil repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with §§ 234.105, 234.106 or 234.107 of this part.”

*Id.* at 234.103(b).

Regarding activation failures, federal regulations impose the following required responsibilities on railroads having maintenance responsibilities over a rail line:

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking the following actions:

- (a) Prior to any train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;
- (b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and
- (c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning):
  - (1)(i) If an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.
  - (ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.
  - (2) If an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.
  - (3) If there is not an appropriately equipped flagger or uniformed law enforcement officer providing warning to highway traffic at the crossing, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, and the flagging

crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

49 U.S.C. § 234.105.

As it pertains to false activations, federal regulations impose the following responsibilities on railroads having maintenance responsibilities for a highway-rail grade crossing:

Upon receipt of a credible report of a false activation, a railroad having maintenance responsibility for the highway-rail grade crossing warning system shall promptly initiate efforts to warn highway users and railroad employees at the crossing by taking the following actions:

- (a) Prior to a train's arrival at the crossing, notify the train crew of the report of false activation and notify any other railroads operating over the crossing;
- (b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and
- (c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning).
  - (1)(i) If an appropriately equipped flagger is providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.
  - (ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.
  - (2) If there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is

not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move, a crewmember shall be on the ground to flag the train through the crossing.

(3) In lieu of complying with paragraphs (c)(1) or (2) of this section, a railroad may temporarily take the warning system out of service if the railroad complies with all requirements of § 234.105, “Activation failure.”

(d) A locomotive’s audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

49 U.S.C. § 234.106.

Regarding the construction, relocation, suspension and abolition of crossings, the Pennsylvania Public Utility Code provides that:

Upon its own motion or upon complaint, the commission shall have exclusive power after hearing, upon notice to all parties in interest, including the owners of adjacent property, to order any such crossing heretofore or hereafter constructed to be relocated or altered, or to be suspended or abolished upon such reasonable terms and conditions as shall be prescribed by the commission. In determining the plans and specifications for any such crossing, the commission may lay out, establish, and open such new highways as, in its opinion, may be necessary to connect such crossing with any existing highway, or make such crossing more available to public use; and may abandon or vacate such highways or portions of highways as, in the opinion of the commission, may be rendered unnecessary for public use by the construction, relocation, or abandonment of any such crossings. The Commission may order the work of construction, relocation, alteration, protection, suspension or abolition of any crossing aforesaid to be performed in whole or in part by any public utility or municipal corporation concerned or by the Commonwealth or an established nonprofit organization with a recreational or conservation purpose.

66 Pa.C.S. § 2702(c).

Regarding danger to public safety, the Public Utility Code provides that “[u]pon the Commission’s finding of an immediate danger to the safety and welfare of the public at any such crossing, the commission shall order the crossing to be immediately altered, improved, or suspended.” 66 Pa.C.S. § 2702(f).

Regarding the construction, alteration or relocation of crossings, Commission regulations provide that:

Each carrier shall comply with 66 Pa.C.S. § 2702 (relating to construction, relocation, suspension and abolition of crossings) and obtain Commission approval of the construction, alteration or relocation of every public highway and railroad crossing at grade, above grade or below grade, unless the Commission has given its prior unconditional consent to an abandonment of service or facilities of the line of railroad upon which such crossing or crossings are located.

52 Pa.Code § 33.31.

Federal regulations are clear that the Surface Transportation Board has exclusive jurisdiction over transportation by rail carriers. 49 U.S.C. § 10501(b). Pursuant to Chapter 27 of the Pennsylvania Public Utility Code, the Commission has authority over the construction, relocation, suspension, and abolition of rail crossings. In particular, the Code specifically provides that the Commission has the power, “upon its own motion or upon complaint . . . to order any such crossing . . . to be relocated or altered, or to be suspended or abolished upon such reasonable terms and conditions as shall be prescribed by the commission.” 66 Pa.C.S. § 2702(c). While a plain reading of the statute clearly demonstrates that Commission has authority over railroad crossings, nothing within the statute can be interpreted as extending that authority to the rail line. Accordingly, we agree with Norfolk Southern that authority over rail lines rests with the Surface Transportation Board. As such, we find that the Commission does not have the authority to issue a stop and protect order requiring that trains be stopped before each crossing and a safety check be performed.

Additionally, as it pertains to the Borough's request that the Commission direct an emergency response team to be available within a certain time frame in the event of a malfunction, as well as direct the implementation of a traffic control plan, the requested relief also does not fall within the Commission's authority. As noted, Commission authority extends only to the construction, relocation, suspension and abolition of railroad crossings. Nothing in the Code authorizes the Commission to direct a rail carrier to dispatch an emergency response team within a certain time frame in the event of a malfunction, or to direct the rail line to implement a traffic control plan. We do note, however, that pursuant to the federal regulations set out above, Norfolk Southern is already obligated to take prompt action upon receipt of a credible report of a false activation. We expect that, in the event of another false activation at these subject crossings, Norfolk Southern will take the appropriate required action to ensure the safety of the public at or near these rail crossings.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by Norfolk Southern in the matter captioned as Petition of the Borough of Royersford, Pennsylvania for an Emergency Order at Docket No. P-2025-3056530 are sustained.

2. That the portion of the Petition requesting that the Commission issue a stop and protect order where all trains are stopped and a safety check is performed at each stop before each crossing is dismissed for lack of jurisdiction.

3. That the portion of the Petition requesting that the Commission direct Norfolk Southern to have an emergency response team available within a certain time frame in the event of malfunction is dismissed for lack of jurisdiction.

4. That the portion of the Petition requesting that the Commission direct Norfolk Southern to implement a traffic control plan, at the expense of Norfolk Southern Railway Company is dismissed for lack of jurisdiction.

5. That the November 3, 2025, Prehearing Conference proceed as scheduled to ascertain the parties' progress in remedying the false activation issues at the subject railroad crossings.

6. That if the parties do not have a plan of action to correct the issues at the railroad crossings, the parties be prepared to adopt a litigation schedule in this matter.

Date: October 10, 2025

\_\_\_\_\_  
/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

\_\_\_\_\_  
/s/  
F. Joseph Brady  
Administrative Law Judge

**P-2025-3056530 – PETITION OF THE BOROUGH OF ROYERSFORD  
PENNSYLVANIA FOR EMERGENCY ORDER**

*Revised: August 27, 2025*

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