

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of the Department of : A-2022-3031613
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. :

Application of Pennsylvania Department of : A-2024-3045709
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. :

Application of the Department of : A-2023-3043493
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. :

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

Application of Westmoreland County for Approval to Replace an Above Grade Crossing By the Installation of a Single-Span Girder Bridge Where West Broadway Avenue/Fourth Street Crosses Norfolk Southern 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. : A-2024-3052077

**ORDER
DENYING MOTION FOR APPROVAL OF TEMPORARY SETTLEMENT
AND DENYING MOTION TO CONSOLIDATE**

ABBREVIATED HISTORY OF THE PROCEEDING

On March 24, 2022, the Commonwealth of Pennsylvania, Department of Transportation (PennDOT) filed an Application for approval to replace the public above-grade crossing by the construction of new bridge where State Route 0011 (West King Street) crosses over the single track of Norfolk Southern Railroad (DOT No. 592 122 M) in Shippensburg Borough, Franklin County, and the allocation of cost incident thereto, which was docketed at A-2022-3031613.

On June 23, 2025, a Second Interim Order was issued: (1) consolidating the proceeding at Docket No. A-2024-3052077 with the previously consolidated proceedings at Docket Nos. A-2022-3031613, A-2024-3045709, A-2023-3043493, and A-2024-3051983.

On July 16, 2025, PennDOT submitted a Letter requesting permission for PennDOT to continue its construction during the pendency of this litigation.

On July 25, 2025, Reply Briefs were filed by Norfolk Southern Railway Company (Norfolk Southern), PennDOT, and the Commission's Bureau of Investigation and Enforcement (I&E), and the record closed.

On July 30, 2025, I convened a conference call with PennDOT, Norfolk Southern, and I&E, wherein I directed PennDOT to put its letter request in the form of a motion.

On September 22, 2025, PennDOT filed the instant Motion for Approval of Temporary Settlement (Temporary Settlement Motion) and Motion to Consolidate (Consolidation Motion).

On October 10, 2025, I&E filed an Objection to PennDOT's Motion for Approval of Temporary Settlement.

On October 21, 2025, I issued my Recommended Decision.

DISCUSSION

Motion for Approval of Temporary Settlement

In its Temporary Settlement Motion, PennDOT requests that the Commission approve a temporary settlement to be effective during the pendency of this litigation. PennDOT proposes temporary settlement language that would obligate PennDOT to require its contractors to furnish and maintain railroad flaggers from a list of vendors approved by Norfolk Southern.

PennDOT avers that Norfolk Southern and Westmoreland County are in agreement with the proposed temporary settlement language.

I&E objects to the Temporary Settlement Motion. I&E argues that the Commission has exclusive jurisdiction through the issuance of a Secretarial Letter, to determine the manner in which rail-highway crossings are altered and third parties may not contract around it. *Pittsburgh & Lake Erie R. Co. v. Pa. PUC*, 445 A.2d 851, 853 (Pa. Cmwlth. 1982); *see also* 66 Pa. C.S. § 2702(b). I&E also argues that PennDOT's Temporary Settlement Motion is functionally a Petition for Reconsideration from Staff Action and therefore is untimely as it was not filed within 20 days after service of the action. 52 Pa. Code § 5.44(a). Finally, I&E argues that the Temporary Settlement Motion contradicts PennDOT's own position in the underlying litigation, which is to oppose the Petition for Relief from Staff Action that had been filed by Norfolk Southern seeking to have applicants who wish to alter rail-highway crossings furnish and maintain railroad flaggers themselves. I&E requests that the Temporary Settlement Motion be denied.

First, it should be noted that PennDOT does not cite any statute, regulation, legal authority, and/or precedent in support of its Temporary Settlement Motion. Second, I concur with the arguments set forth by I&E in its Objection. While I sympathize with PennDOT's desire to continue construction unrestrained by litigation, I cannot find any legal authority or justification for approving the proposed settlement language. Accordingly, the Temporary Settlement Motion shall be denied.

Motion for Consolidation

PennDOT also requests that Montgomery County be allowed to utilize the temporary settlement language for a project Docketed at A-2024-3050051. However, since the Motion for Approval of Temporary Settlement is denied, this request is moot. Moreover, the record in this matter closed on July 25, 2025, and my Recommended Decision was issued on October 21, 2025. Therefore, this consolidation request is untimely.

A-2022-3031613 - Application of the Department of Transportation of the Commonwealth of Pennsylvania for approval to replace the public above-grade crossing by the construction of new bridge where State Route 0011 (West King Street) crosses over the single track of Norfolk Southern Railroad (DOT No. 592 122 M) in Shippensburg Borough, Franklin County, and the allocation of cost incident thereto.
Revised 7/18/2025

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