



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 10, 2025

Via Electronic Filing

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

Re: Application of Department of Transportation of the Commonwealth of Pennsylvania 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.
Docket No. A-2024-3045709

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 all the allocation of costs incident thereto.
Docket No. A-2022-3031613

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.
Docket No. A-2023-3043493

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.
Docket No. A-2024-3051983

Matthew L. Homsher, Secretary

November 10, 2025

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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.

Docket No. A-2024-3052077

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

I&E Reply to Exceptions

Dear Secretary Homsher:

Enclosed for electronic filing are the **Reply to Exceptions** of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,



Grant Rosul

Prosecutor

Bureau of Investigation and Enforcement

PA Attorney ID No. 318204

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GR/nb

Enclosures

cc: Per Certificate of Service

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Allison C. Kaster, Director, I&E (via email – akaster@pa.gov)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Department of Transportation :
of the Commonwealth of Pennsylvania 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. :

Docket No. A-2024-3045709

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 all the :
allocation of costs incident thereto. :

Docket No. A-2022-3031613

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. :

Docket No. A-2023-3043493

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. :

Docket No. 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- : Docket No. A-2024-3052077
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 to reconstruct overhead crossing for :
Norfolk Southern Dale Secondary line at : Docket No. A-2024-3050051
Ridge Pike, Section MG4 (Montgomery :
County Bridge No. 0), Plymouth Township, :
Montgomery County :

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S
REPLY TO EXCEPTIONS OF
NORFOLK SOUTHERN RAILROAD COMPANY**

Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: November 10, 2025

I. INTRODUCTION

On October 21, 2025, Administrative Law Judge F. Joseph Brady (“ALJ Brady” or “the ALJ”) issued the Recommended Decision in the instant proceeding denying Norfolk Southern Railroad Company’s (“Norfolk Southern”).

On October 31, 2025, Norfolk filed Exceptions pursuant to 52 Pa. Code § 5.533. Specifically, Norfolk Southern raises Exceptions to the Recommended Decision’s Conclusion of Law 16 on page 22, which states that “[t]he current language in the Secretarial Letters making Norfolk Southern responsible for the furnishing and maintaining of flaggers is necessary to maintain the Commission’s authority and jurisdiction over rail crossings.”

Norfolk Southern also raises Exceptions to Proposed Ordering Paragraph 1 on page 22.

Norfolk Southern’s Exception to Conclusion of Law 16 revolves around the assertion that the language of the Secretarial Letter already allows Norfolk Southern to utilize third-party flaggers in the manner that it has been using them in the recent past — specifically, requiring PennDOT and other similarly situated parties to hire third-party flagging contractors from a list of vendors vetted by Norfolk Southern. However, if that were the case, then there would have been no need for Norfolk Southern to file a Petition for Reconsideration from Staff Action in the first place. Norfolk Southern effectively brings a new argument, after the ALJ has already considered testimony, briefs, and reply briefs, controverting what “furnish” and “maintain” mean in the context of the Secretarial Letters issued in the above-captioned dockets. It does not directly confront the question of whether having Norfolk Southern “furnish” and “maintain” persons who do a specific job on its railroad tracks is necessary for the Commission to retain jurisdiction over that aspect of the alteration of the rail-highway crossing.

Pursuant to 52 Pa. Code § 5.535, I&E now files its Reply to Norfolk Southern's Exceptions. For the reasons set forth herein, I&E respectfully requests that the Pennsylvania Public Utility Commission ("Commission") deny Norfolk Southern's Exceptions and adopt the ALJ's Recommended Decision without modification.

Pursuant to 52 Pa. Code § 1.33 and to avoid repeating arguments, I&E hereby incorporates by reference I&E's Main Brief, including the Appendices, that it filed in the instant proceeding on June 25, 2025 ("June 25, 2025 Brief"). I&E also hereby incorporates by reference its Reply Brief, filed in the instant proceeding on July 25, 2025 ("July 25, 2025 Reply Brief").

III. I&E REPLY TO EXCEPTIONS

Norfolk Southern raises Exceptions to the Recommended Decision's Conclusion of Law 16 on page 22, which states that "[t]he current language in the Secretarial Letters making Norfolk Southern responsible for the furnishing and maintaining of flaggers is necessary to maintain the Commission's authority and jurisdiction over rail crossings."

Norfolk Southern's Exception revolves around the assertion that the language of the Secretarial Letter already allows Norfolk Southern to utilize third-party flaggers in the manner that it has been using them in the recent past — specifically, Norfolk Southern's current business practice of requiring PennDOT and other similarly situated parties to hire third-party flagging contractors from a list of vendors vetted by Norfolk Southern is already compliant with the directive of the Secretarial Letters.

However, if this practice was already in conformity with the Secretarial Letters, then there would have been no need for Norfolk Southern to file a Petition for Reconsideration from Staff Action in the first place. Instead, Norfolk Southern had previously argued that it should not be required to "furnish" or "maintain" flaggers because PennDOT is in a better position to

furnish and maintain such personnel and because industry practice in other states has adopted such a framework. Main Brief of Norfolk Southern, pages 7 and 8.

Norfolk Southern is effectively bringing a new argument for the Commission to consider, after the ALJ has already considered testimony, briefs, and reply briefs, controverting what “furnish” and “maintain” mean in the context of the Secretarial Letters issued in the above-captioned dockets.

Specifically, Norfolk Southern argues that it “fulfills its obligation to “furnish” flaggers under the present Secretarial Letter language by providing a pool (currently three) of approved vendors who are qualified to perform flagging services for PennDOT and for sponsors of other non-railroad construction projects on Norfolk Southern property.” Exceptions of Norfolk Southern to the Recommended Decision at p. 3.

The language regarding flaggers in the Secretarial Letters, which is identical in all the above-captioned cases, states as follows:

[Norfolk Southern], at the sole cost and expense of [PennDOT], furnish construction, engineering and inspection services as required as a result of the proposed work, and furnish and maintain flagmen and watchmen as required to protect its operations during the time work is being performed across, above and adjacent to its tracks.

The plain meaning of “furnish” is “to supply” or “to provide.”¹ The plain meaning of “maintain” is “to keep in existence or continuance,” “to keep in an appropriate condition, operation, or force,” and “to keep in a specified state, position, etc.”²

¹ Dictionary.com, definition of “furnish,” <https://www.dictionary.com/browse/furnish>.

² Dictionary.com, definition of “maintain,” <https://www.dictionary.com/browse/maintain>.

From a plain reading, it is clear that “furnish” and “maintain” mean that Norfolk Southern will be in control of the process of selecting, providing, overseeing, and supervising the services specified in this paragraph of the Secretarial Letter. That is as true of the “flagmen and watchmen” at issue in this litigation as it is of the “construction, engineering and inspection services” which are stated in the preceding clause of the same paragraph.

ALJ Brady and Norfolk Southern are correct that this does not prevent Norfolk Southern from using third party contractors. However, it must exercise some control and oversight of them to properly “furnish” and “maintain” them. Providing a list of vendors for PennDOT to hire for flagging services does not meet that threshold, just as providing a list of engineers and inspectors would not be furnishing or maintaining.

Norfolk Southern further asserts that Conclusion of Law 16 of the Recommended Decision is flawed because “the Commission may direct either of these regulated entities to retain the necessary personnel, including contractors, to ensure the safe execution of PennDOT’s crossing projects.” Exceptions of Norfolk Southern to the Recommended Decision at pp. 1-2.

However, the Secretarial Letter is the mechanism by which the Commission directs the parties to the rail-highway crossing alteration to act or refrain from acting. Here, the Commission has done just that with the Secretarial Letter requiring Norfolk Southern to furnish and maintain— in other words, to supply, provide, and keep in appropriate condition or operation — the flaggers on its tracks during the alteration of the rail-highway crossing.

IV. CONCLUSION

For the reasons set forth above, I&E respectfully requests that the Commission deny the Exceptions of the Norfolk Southern Railway Company and adopt the Recommended Decision without modification.

Respectfully submitted,



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Ridge Pike, Section MG4 (Montgomery :
County Bridge No. 0), Plymouth Township, :
Montgomery County :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Reply to Exceptions** dated November 10, 2025, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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