

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

Public Meeting held March 26, 2026

Commissioners Present:

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

Application of Halifax Township for approval to make safety improvements and establish the existing private crossing (DOT 518 116 L) as a public crossing where the existing private drive to Fort Halifax Park crosses, at grade, a single track of Norfolk Southern Railway Company located in Halifax Township, Dauphin County

A-2025-3054710

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

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

A-2024-3045709

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 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

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

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 September 29, 2025, requesting reconsideration of the Commission’s Secretarial Letter issued on September 9, 2025 (*September 2025 Secretarial Letter*) in the above-captioned proceeding at Docket No. A-2025-3054710. Because, as discussed, *infra*, the issues raised in Norfolk Southern’s Petition are identical to those raised in five prior consolidated proceedings, we shall consolidate this proceeding with the five previously consolidated proceedings addressing the identical issue presented at Docket Nos. A-2022-3031613; A-2024-3045709; A-2023-3043493; A-2024-3051983; A-2024-3052077.¹

Also before the Commission are the Exceptions of Norfolk Southern, filed on October 31, 2025, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) F. Joseph Brady issued on October 21, 2025, at the consolidated Docket Nos. A-

¹ Section 5.81(a) of the Commission’s Regulations provides that “[t]he Commission or presiding officer, **with or without motion, may order proceedings involving a common question of law or fact to be consolidated.** The Commission or the presiding officer may make orders concerning the conduct of the proceeding as **may avoid unnecessary costs or delay.**” 52 Pa. Code § 5.81(a) (emphasis added).

In the present case, because Norfolk Southern’s Petition turns on the identical factual and legal issues raised regarding the question of whether Norfolk Southern should remain responsible for furnishing and maintaining flagmen and watchmen as required to protect its operations during the time work is being performed at public rail crossings owned and operated by Norfolk Southern, we shall consolidate the Petition at Docket No. A-2025-3054710 with the five previously consolidated dockets addressing the same issue at Docket Nos. A-2022-3031613; A-2024-3045709; A-2023-3043493; A-2024-3051983; A-2024-3052077. Accordingly, to the extent that Norfolk Southern, through its Petition, seeks to have the question decided on the same basis as the consolidated proceedings, the Petition is granted. As discussed, *infra*, to the extent the Petitioner seeks any additional relief, the Petition is denied.

2022-3031613; A-2024-3045709; A-2023-3043493; A-2024-3051983; and A-2024-3052077. Replies to the Exceptions were filed by the Commission’s Bureau of Investigation and Enforcement (I&E), and the Pennsylvania Department of Transportation (PennDOT) on November 10, 2025.²

Upon review of the Exceptions of Norfolk Southern and the Replies thereto, we shall deny the Exceptions. By this Opinion and Order, as a matter of public safety within our jurisdiction to regulate public rail crossings, we shall direct that Norfolk Southern remain responsible for furnishing and maintaining flagmen and watchmen as required to protect its operations during the time work is being performed across, above, and adjacent to its tracks, as originally ordered by this Commission in the above-captioned consolidated proceedings.

I. Background

These consolidated proceedings involve a question of which party should be responsible for furnishing and maintaining flagmen and watchmen, as necessary, for safety during construction projects at public rail crossings in the Commonwealth. The question of the necessity of flagging for such construction projects is undisputed. As the ALJ recognized in the present case:

Here, all Parties are in agreement that in “order to prevent accidents and promote the safety of the public,” flaggers are necessary when work is being performed on rail crossings.

² As a procedural matter, the Secretarial Letter issued on October 21, 2025 inadvertently specified that Replies to Exceptions were due on November 7, 2025. However, the Commission’s Regulations provide that “a reply shall be filed within 10 days of the date that an exception is due.” 52 Pa. Code ¶ 5.535. Accordingly, we shall accept the Replies of both I&E and PennDOT as timely filed. The Motions of I&E and PennDOT filed on November 10, 2025 and November 24, 2025, respectively, to Accept I&E’s and PennDOT’s Reply Exceptions Nunc Pro Tunc and to Expedite Final Decision are deemed moot.

Flagging is the process of protecting workers or equipment near a railroad track from injury or property damage resulting from passing trains by either ensuring that persons and equipment stay off the track during the operation of the railroad or obtaining permission from the railroad dispatcher for such persons and equipment to enter the track to perform needed work during a specified period of time. Flaggers are needed whenever there is active construction work at a rail-highway crossing that will involve workers or equipment coming within the railroad right-of-way.

R.D. at 17.

These consolidated proceedings all pertain to proposed construction projects at rail crossings involving work being performed in the railroad right-of-way, across, above, and adjacent to tracks owned by Norfolk Southern. In each case, an Application was filed to alter rail crossings involving Norfolk Southern's railroad tracks.³ In each case, the Commission issued a Secretarial Letter approving the proposed rail crossing alterations and directing Norfolk Southern to furnish and maintain flagging and watchmen services on its railway. In summary, the Secretarial Letters each directed, *inter alia*, that:

Norfolk Southern Railway Company, at the sole cost and expense of the [Applicant], 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.

See Secretarial Letters at Docket Nos. A-2022-3031613, A-2024-3045709, A-2023-3043493, and A-2024-3051983.

³ With the exception of the Applications at Docket Nos. A-2025-3054710 and A-2024-3052077, which were filed by Halifax Township and Westmoreland County, respectively, the Application in each case was filed by PennDOT.

In each case, Norfolk Southern filed a Petition for Reconsideration from Staff Action, requesting that this ordering paragraph be amended in each case to require the Applicant to be responsible for furnishing and maintaining the necessary flagging. Generally, Norfolk Southern proposed changes to the language of the Secretarial Letters to require that:

[Applicant], at its sole cost and expense, furnish and maintain qualified flagmen and watchmen as required for work around the operations of Norfolk Southern Railway Company to protect [Applicant] or its contractor during the time work is being performed across, above and adjacent to the railroad's tracks, which at the sole option of Norfolk Southern Railway Company may be through railroad forces or qualified contractors.

See, generally, Petitions at Docket Nos. A-2022-3031613, A-2024-3045709, A-2023-3043493, and A-2024-3051983.⁴

Therefore, the issue to be decided is whether Norfolk Southern should remain responsible for furnishing and maintaining flagmen and watchmen, as required, to protect its operations during the time work is being performed across, above, and adjacent to its tracks, as originally order by this Commission in the above-captioned consolidated proceedings.

⁴ At Docket Nos. A-2024-3052077 (Westmoreland County) and A-2025-3054710 (Halifax Township), Norfolk Southern, in its Petitions, requested the same relief sought in the cases involving PennDOT, *i.e.*, making the Applicant, rather than Norfolk Southern, responsible to furnish and maintain qualified flagmen and watchmen, as required, for the construction project. Petition (Westmoreland County) at 1; Petition (Halifax) at 1.

II. Procedural History of the Proceeding

A detailed procedural history of each Application at Docket Nos. A-2022-3031613; A-2024-3045709; A-2023-3043493; A-2024-3051983; and A-2024-3052077 is set forth in the ALJ's Recommended Decision at pages 3-9 and incorporated, herein, by reference. R.D. at 3-9.

The ALJ consolidated the proceedings to address the central question of whether to grant Norfolk Southern's Petitions for Reconsideration from Staff Action of the Secretarial Letters in each case to require that the Applicant, rather than Norfolk Southern, be responsible for furnishing and maintaining flagmen and watchmen, as required, to protect Norfolk Southern's operations during the time work is being performed across, above, and adjacent to Norfolk Southern's tracks, as originally ordered by this Commission in the above-captioned consolidated proceedings. R.D. at 9 (citing June 23, 2025, Second Interim Order).

Also relevant to the present proceeding, the now-consolidated Application at Docket No. A-2025-3054710 was filed by HRG, Inc. on behalf of Halifax Township on April 22, 2025. As previously noted, on September 9, 2025, the *September 2025 Secretarial Letter* was issued by the Commission, approving the Application imposing, *inter alia*, the same duty imposed by the Secretarial Letters issued in the five prior consolidated proceedings, *i.e.* that Norfolk Southern furnish and maintain flagmen and watchmen, as required, to protect Norfolk Southern's operations during the time work is being performed across, above, and adjacent to Norfolk Southern's tracks. *September 2025 Secretarial Letter* at 4, O.P. No. 9.

On September 29, 2025, Norfolk Southern filed its Petition seeking reconsideration of the *September 2025 Secretarial Letter*'s requirement at Ordering Paragraph No. 9, that Norfolk Southern retain the duty to furnish and maintain flagmen

and watchmen required to protect its operations during the time work is to be performed on Norfolk Southern's tracks.⁵ Petition at 1.

III. Discussion

A. Legal Standards

1. Burden of Proof

As the party seeking affirmative relief from the Commission, Norfolk Southern bears the burden of proving by substantial evidence that it is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

⁵ As previously noted, Norfolk Southern also seeks relief from the obligation set forth in Ordering Paragraph No. 16 of the *September 2025 Secretarial Letter*, that Norfolk Southern be responsible for compensation for damages, if any, that is due to the owners of property taken, injured, or destroyed by reason of work completed by Norfolk Southern. Petition at 2. This issue is addressed, *infra*.

2. Petitions for Reconsideration from Staff Action

Petitions for Reconsideration from Staff Action are governed by the Commission's Rules of Administrative Practice and Procedure at 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).

3. Alteration of Utility or Public Rail Crossings

The Public Utility Code (Code) establishes the Commission's exclusive and broad jurisdiction to regulate the construction, relocation, suspension, abolition, or alteration of railroad facilities that cross any other public utility or a public highway, either at grade or above or below grade, as well as the authority to determine and order which concerned parties should perform such work, in order to prevent accidents and promote the safety of the public. 66 Pa.C.S. §§ 502, 2702, 2704(a). This includes the authority to order necessary improvements or maintenance to ensure the safety of the traveling public. *SEPTA v. Pa. PUC*, 592 A.2d. 797 (Pa. Cmwlth. 1991).

While not limited to any fixed rule, the Commission has consistently relied upon a variety of relevant factors for the allocation of costs, repair and replacement, and maintenance responsibilities, including: (1) the party that originally built the crossing; (2) prior ownership and maintenance responsibilities; (3) the relative benefit conferred on each party with the construction of the crossing; (4) whether each party is responsible for

the deterioration of the crossing that has led to the need for its repair, replacement, or removal; and (5) the relative benefit that each party will receive from the repair, replacement, or removal of the crossing. *N. Lebanon Twp. v. Pa. PUC*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. PUC*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).

Despite often using these factors, the Commission is not required to set forth an analysis of these five factors, as courts have held such a practice would ultimately infringe upon the discretionary aspect of the Commission's decisions. *Millcreek Twp. v. Pa. PUC*, 753 A.2d 324 (Pa. Cmwlth. 2000) (quoting *AT&T v. Pa. PUC*, 737 A.2d 201 (Pa. 1999)). These five factors are "neither mandatory nor exclusive of other considerations." *Norfolk & S. Ry. v. Pa. PUC*, 971 A.2d 545, 551 (Pa. Cmwlth. 2009) (citing *AT&T*, 737 A.2d at 209). In addition to these above-listed factors, the Commission can also consider ownership of the tracks and the general equities of a case in reaching its decision. *SEPTA v. Pa. PUC*, 802 F. Supp. 1273, 1273 (E.D. Pa. 1992); *Application of the City of Wilkes-Barre*, Docket No. A-00101606, 1981 Pa. PUC LEXIS 102, *5-*6 (Opinion and Order entered April 9, 1981). Although many of the factors are not at issue in the instant cases, the fundamental requirement is that the Commission's order be just and reasonable. *Greene Twp. Bd. of Supervisors v. Pa. PUC*, 642 A.2d 541, 543 (Pa. Cmwlth. 1994).

In addition, a "public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities." 66 Pa.C.S. § 1501. The Commission is empowered to "determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed..." 66 Pa.C.S. § 1505. Such service or facilities must be "reasonable, safe, adequate and sufficient" for the accommodation and convenience of the public, which includes not only the utility's customers but members of the general public who may come into contact with the utility's facilities. *Union Twp. Bd. of Supervisors v. Pa. PUC*,

Docket No. C-80112248 (Order entered June 5, 1981); *Law v. Reading Co.*, 312 F.2d 841, 843 (3d Cir. 1963) (“The public for whose convenience, accommodation, safety, and protection the Public Utility Law is concerned does not consist solely of persons served by the utility, but also includes persons generally who may come into contact with the utility's facilities.”)(quoting *Lower Chichester Twp. v. Pa. PUC*, 119 A.2d 674, 678 (Pa. Super. 1956)).

B. Norfolk Southern’s Petition at Docket No. A-2025-3054710 and Disposition

1. Norfolk Southern’s Petition

In its Petition, Norfolk Southern seeks reconsideration of the *September 2025 Secretarial Letter*, specifically the provisions at Ordering Paragraph No. 9, directing that Norfolk Southern has the duty to furnish and maintain flagmen and watchmen as necessary for construction to be performed in the railroad’s right-of-way, and at Ordering Paragraph No. 16, directing that Norfolk Southern has financial responsibility for any damages caused by work performed by Norfolk Southern in connection with the construction. Petition at 1-2.

Norfolk Southern objects to the provision of Ordering Paragraph No. 16 on the basis that it assigns joint responsibility to Halifax Township and Norfolk Southern for any damages which result from any of the work performed for the construction project. Norfolk Southern also asserts that “in accordance with past practice,” the Applicant, in this case, Halifax Township, should be responsible for any damage caused due to any work performed for the construction project. Finally, Norfolk Southern asserts “it is Norfolk Southern’s understanding” that Halifax Township would have no objection to Norfolk Southern being relieved of any financial responsibility under Ordering Paragraph No. 16. Petition at 2.

2. Disposition

In addition to directing that, as to the issue of flagging, Norfolk Southern's Petition at this docket be consolidated with the five previously consolidated cases, see n.1, *supra*, we will also address Norfolk Southern's Petition, to the extent that the Petitioner seeks additional relief from the requirements set forth in Ordering Paragraph No. 16 of the *September 2025 Secretarial Letter*, regarding Norfolk Southern's responsibility for compensation for damages, if any, that is due to the owners of property taken, injured, or destroyed by reason of work completed at the rail crossing. Petition at 2 (citing *September 2025 Secretarial Letter*, Ordering Paragraph No. 16).

Ordering Paragraph No. 16 of the *September 2025 Secretarial Letter* states:

Halifax Township and Norfolk Southern Railway Company, at each respective party's sole cost and expense, pay all compensation for damages, if any, [that is] due to the owners of property taken, injured, or destroyed by reason of work completed by each respective party at the crossing in accordance with this Secretarial Letter.

Id.

In its Petition, Norfolk Southern objects to the above Ordering Paragraph, asserting that it "orders Norfolk Southern to be jointly responsible to pay all compensation for damages, if any, [that is] due to the owners of property taken, injured, or destroyed by reason of work completed as part of this project." Norfolk Southern asserts that this is an improper assignment of financial responsibility to the Petitioner, because as the initiator of the Application, Halifax Township should be liable for any such damages "in accordance with past practice." Norfolk Southern further asserts that "it is Norfolk Southern's understanding that the Township does not object to Norfolk

Southern being deleted as a responsible party from this ordering paragraph.” Petition at 2.

Upon review, we shall deny Norfolk Southern’s request for reconsideration of the directive in Ordering Paragraph No. 16 of the *September 2025 Secretarial Letter*.

First, we disagree with Norfolk Southern’s characterization that the Ordering Paragraph established *joint* liability for Norfolk Southern and Halifax Township for any damage which may result from work at the crossing. The plain language of the Ordering Paragraph clearly establishes that Halifax Township and Norfolk Southern are each responsible for any damage which results from the work they *respectively* perform at the crossing. The paragraph intends that, if the work performed by Halifax Township results in any damages, Halifax Township is financially responsible for such damage; and if work performed by Norfolk Southern results in any damage, Norfolk Southern is financially responsible. Therefore, Norfolk Southern’s characterization of the paragraph as establishing joint financial responsibility for *any* damages due to *any* work performed at the crossing is incorrect. Accordingly, any relief predicated upon Norfolk Southern’s misreading of the language is denied.

Next, to the extent Norfolk Southern argues that the Commission should assign all financial responsibility for any damages due to any work performed to Halifax Township as the Applicant, “in accordance with past practice”, we note that Norfolk Southern fails to provide any citation to existing precedent on the issue. *See* Petition at 2. The Company’s position also ignores the Commission’s broad discretion to allocate costs for work performed at rail highway crossings. *See* 66 Pa.C.S. §§ 502, 2702, 2704(a); *N. Lebanon Twp. v. Pa. PUC*, 962 A.2d 1237, 1247 (Pa. Cmwlth. 2008) (citing *Greene Twp. Bd. of Supervisors v. Pa. PUC*, 668 A.2d 615, 619 (Pa. Cmwlth. 1995)).

Finally, we note that Norfolk Southern's assertion of its "understanding" as to whether Halifax Township would agree to removing Norfolk Southern from any financial responsibility under Ordering Paragraph No. 16 provides neither substantive, nor persuasive, support for its position.

Accordingly, finding no basis for granting reconsideration of the directives of Ordering Paragraph No. 16 of the *September 2025 Secretarial Letter*, we shall deny that portion of the Company's Petition.

The remaining question of Norfolk Southern's request for reconsideration concerns that of Ordering Paragraph No. 9. Specifically, the language of that ordering paragraph, and the parties' responsibilities regarding flagging at rail highway crossing projects initiated by state and municipal entities, is the subject of current litigation at Docket No. A-2022-3031613, et al. As such, Norfolk Southern requests that the Secretarial Letter be held in abeyance until the parallel litigation regarding flagging language and responsibilities is resolved. As stated earlier the assignment of responsibility regarding flagging shall be addressed, as consolidated, with the disposition of Norfolk Southern's Exceptions to the Recommended Decision in the above-captioned five previously consolidated cases.

Therefore, to the extent Norfolk Southern requests, through this portion of its Petition, to have the Secretarial Letter be held in abeyance until the parallel litigation regarding the flagging language and responsibilities in the five consolidated cases is resolved, such request is denied as we have consolidated the flagging question so it can be decided in concert with the outcome of the above-captioned five previously consolidated cases in this Opinion and Order. Therefore, we shall deny that portion of the Company's Petition.

C. Norfolk Southern's Exceptions

1. The ALJ's Recommended Decision

The ALJ reached 12 Findings of Fact and drew 16 Conclusions of Law. R.D. at 9-12; 19-22. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In framing the issue before the Commission, the ALJ summarized the positions of the Parties, as follows:

In support of its Petitions, Norfolk Southern makes three main arguments. First, Norfolk Southern argues that its proposed third-party flagging system is safe and consistent with industry practice. Second, Norfolk Southern argues that PennDOT is best positioned to coordinate flagging services and Norfolk Southern backup is unwarranted. Third, Norfolk Southern argues that the Commission's jurisdiction remains intact with third-party flagging.

R.D. at 13 (citing Norfolk Southern M.B. at 7-18).

The position of PennDOT is that this proposed change does nothing to increase the number of flaggers available yet shifts the responsibility of obtaining flaggers to PennDOT even though Norfolk Southern still maintains oversight and control of the flaggers and flagging vendors qualified to work on or around its tracks. PennDOT also argues that this does not serve the public interest because it does not place Norfolk Southern as the primary party responsible for the oversight of flagging. Additionally, PennDOT argues that it does not provide any options when no flaggers are available from the

qualified flagging vendor list or from Norfolk Southern railroad forces.

R.D. at 13 (citing PennDOT M.B. at 10-11.)

I&E supports PennDOT's position and further asserts that Norfolk Southern should remain responsible for providing flaggers so that the Commission maintains its jurisdiction to enforce rail safety regulations. Thus, PennDOT and I&E assert that the language regarding flagging in the Secretarial Letters granting the Applications should remain unchanged.

R.D. at 13-14 (citing I&E M.B. at 5-6, 8).

After summarizing the positions of the Parties, the ALJ framed the issue as fundamentally impacting the Commission's jurisdiction to oversee alterations at rail crossings, and concluded that relieving Norfolk Southern of the responsibility for furnishing and maintaining flagmen and watchmen, as required, to protect its operations during the time work is being performed across, above, and adjacent to its tracks would be detrimental to the Commission's jurisdiction, stating that:

[t]he key issue is whether alleviating Norfolk Southern from the responsibility of furnishing flaggers would be critically detrimental to the Commission's jurisdictional authority over alterations to public rail crossings. I find that it would.

R.D. at 16.

The ALJ recommended the rejection of Norfolk Southern's arguments that concerns Commission jurisdiction over third-party flaggers are unfounded because Norfolk Southern remains fully accountable for all railroad safety on its property. The ALJ reasoned that the qualification and operation of the flaggers at the rail crossing is not the issue. Rather, the ALJ concluded that the issue is one of jurisdiction, *i.e.*, whether

there is an *enforceable* mechanism to *ensure flaggers are present at the rail crossings*. R.D. at 16-17 (citing Norfolk Southern M.B. at 18)(emphasis added).

The ALJ described the important distinction between the Parties involved as a matter of jurisdiction, stating that:

[t]he Commission’s jurisdiction to regulate the alteration of railroad facilities that cross a public highway in order to prevent accidents and promote the safety of the public necessarily gives the Commission jurisdiction over railroads and over PennDOT as the owner of the highway. *See* 66 Pa.C.S. §§ 502, 2702, 2704(a). Contractors and employees are not “concerned parties” within the meaning of the Public Utility Code; therefore, the Commission’s direct jurisdiction does not extend to railroad flaggers, railroad employees, PennDOT employees, or PennDOT construction contractors. *See* 66 Pa.C.S. § 2704(a).

If the Commission were to grant Norfolk Southern’s petitions, it would effectively leave no one responsible for the completion of rail crossing projects should PennDOT be unable to retain qualified flaggers or the flagging companies refuse to do business with PennDOT. The Commission cannot enforce its orders on railroad flagging companies because the Commission only has authority and jurisdiction over the railroads, highway entities, and utilities. If there is a public safety issue caused by lack of flaggers for a project, neither the Commission nor PennDOT would have any recourse to immediately address the issue with the third-party flagging vendor under the Public Utility Code. In fact, even if PennDOT decided to pursue an action against Norfolk Southern with the Commission, Norfolk Southern would be able to point to their proposed language that now alleviates them of all responsibility for furnishing and maintaining flaggers. This is an untenable result. Consequently, Norfolk Southern must ultimately remain responsible for the furnishing and maintaining of flaggers as they are subject to the Commission’s authority and jurisdiction. *See* 66 Pa.C.S.

§§ 502, 2702, 2704(a). The current language in the Secretarial Letters maintains this result.

R.D. at 17-18.

The ALJ concluded that Norfolk Southern's proposed change, to have the Applicants be responsible to furnish and to maintain flaggers from third-party vendors, is fundamentally flawed since it would interfere with the Commission's enforcement power over the primary concern of ensuring that flaggers are present at rail crossing construction sites. Because the current language in the Secretarial Letters ensures Commission jurisdiction over the responsible utility, *i.e.*, the railroad, the ALJ concluded that the language of the Secretarial Letters should not be changed. R.D. at 18.

Based on this analysis, the ALJ recommended that Norfolk Southern remain responsible for furnishing and maintaining flagmen and watchmen as required to protect its operations during the time work is being performed across, above, and adjacent to its tracks, as originally ordered by the Commission in the above-captioned proceedings. R.D. at 19.

2. Norfolk Southern's Exceptions and Replies thereto

In its Exceptions, Norfolk Southern objects to the ALJ's conclusion 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 finds fault with both the ALJ's conclusion, and the resulting recommendation that the Company's Petitions for Reconsideration from Staff Action in the consolidated cases be denied. Exc. at 1 (citing R.D. at 22 (citing 66 Pa.C.S. §§ 502, 2702 and 2704(a)); COL No. 16).

It is Norfolk Southern's position that the entity in charge of the project should be responsible for obtaining all of the contractors needed for its project. Norfolk Southern asserts that, for example, when Norfolk Southern is constructing a railroad bridge over a highway or doing work at an at-grade crossing, it is responsible to contract PennDOT-approved third-party roadway flaggers for the protection and maintenance of vehicular traffic during lane closures. Norfolk Southern argues that the Applicants seeking approval for construction projects involving the railroad's right-of-way, should likewise be responsible for their own flagging, just as Norfolk Southern is when its construction projects involve PennDOT's right-of-way. Exc. at 5 (citing Tr. at 186).

Norfolk Southern argues that the ALJ's recommendation results in an impractical and unreasonable result which would require Norfolk Southern to divert highly skilled employees to perform flagging duties for construction projects in the event that Applicants, such as PennDOT and the townships, which are the responsible parties for the construction, fail to adequately arrange for flagging in advance of the projects. Exc. at 7-9.

Norfolk Southern concludes that the Commission's authority to direct PennDOT, and any Applicant for a rail crossing construction project, to retain and use appropriately qualified personnel for the execution of its crossing projects involving railroad property, including flagging vendors, is sufficient to ensure the safety of such projects. Norfolk Southern maintains that the responsibility for securing all necessary construction contractors, including flagging vendors, properly lies with the party that initiates the project. Exc. at 9.

In its Replies, I&E notes that Norfolk Southern, in its Exceptions, asserts a new theory that the language of the Secretarial Letters already allows Norfolk Southern to utilize third-party flaggers, to satisfy the requirement to "furnish" and "maintain" flaggers. Specifically, I&E describes Norfolk Southern's current practice of requiring

PennDOT, and parties conducting construction projects in the railroad's right-of-way at rail crossings, to hire third-party flagging contractors from a list of vendors vetted and approved by Norfolk Southern. I&E notes Norfolk Southern's assertion that by this practice, it is already compliant with the directive of the Secretarial Letters. However, I&E asserts that, if this practice was already in conformity with the Secretarial Letters, Norfolk Southern would have had no need to file a Petition for Reconsideration from Staff Action to change the directives in the Secretarial Letters. In fact, I&E maintains that Norfolk Southern's position is 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. I&E R. Exc. at 2-3 (citing Norfolk Southern M.B. at 7-8).

I&E further argues that, while Norfolk Southern's use of an approved list of flagging vendors is permissible, the establishment of the list does not itself fulfill the Company's duty to "furnish" and "maintain" flagmen and watchmen, any more than a list of approved engineers would satisfy the duty to provide "construction, engineering and inspection services." According to I&E, to satisfy its duties, Norfolk Southern must exercise some control and oversight of flaggers to properly "furnish" and "maintain" them. I&E concludes that the Secretarial Letters require Norfolk Southern to furnish and maintain, *i.e.*, to supply, provide, and keep in appropriate condition or operation, the flaggers on its tracks during the alteration of the rail-highway crossing. I&E R. Exc. at 4.

In its Replies, PennDOT states that the ALJ's "well-reasoned recommendation" should be adopted by the Commission. PennDOT rejects Norfolk Southern's assertion that PennDOT is better positioned to furnish and maintain flaggers since PennDOT sponsors and provides funding for the construction project. PennDOT maintains that which party provides payment is of no consequence when one party, in this case, Norfolk Southern, has exclusive control over what flagging vendors are permitted to work on its property. It is for this reason, PennDOT asserts, that Norfolk

Southern is in the best position to furnish and maintain flaggers. PennDOT R. Exc. at 2-3 (citing Norfolk Southern St. 1 at 5-6; Norfolk Southern Exh. 1).

PennDOT further argues that the Commission should reject Norfolk Southern's attempt to conflate flaggers with all vendors necessary for construction, to conclude that because PennDOT hires other construction vendors, it should similarly be required to furnish and maintain flagging vendors, because this argument "wholly ignores the process necessary to become a flagging vendor, the uniqueness of the railroad's assets, and the fact that there are an extremely limited number of Norfolk Southern qualified flagging vendors available for use of PennDOT projects." PennDOT R. Exc. at 4 (citing Norfolk Southern Exh. 1; Tr. at 67 lines 23-25-68 lines 1-6).

Finally, PennDOT rejects any assertion that by creating a list of qualified flagging vendors, Norfolk Southern has satisfied its duty to maintain and furnish flagging vendors. PennDOT notes that making direct calls to schedule flagging, and paying the costs of flagging, is not "furnishing" and "maintaining" flagging, because it does not provide sufficient control over flaggers. PennDOT notes that such administrative tasks require no expert knowledge of a specific railroad's requirements and procedures. PennDOT concludes that the ALJ properly found that Norfolk Southern, as the railroad involved in this case, is in the best position to retain the duty to furnish and maintain flagging vendors necessary for the construction projects at public rail crossings since it is a utility subject to the Commission's jurisdiction and it possesses the unique expertise, knowledge, and responsibility for rail operations in its own right-of-way. PennDOT R. Exc. at 4-5.

3. Disposition

In considering the Petition, we note that any issue not specifically addressed shall be deemed duly considered and denied without further discussion. It is

well settled that we are 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. Cmwlth. 1993); *see also University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Based on our review of Norfolk Southern's Exceptions, the Replies thereto, and the record in this proceeding, we will deny the Exceptions.

The question of which party retains responsibility for the furnishing and maintaining of flaggers necessary for construction projects conducted at railroad crossings has broad implications in the Commonwealth. This issue has serious ramifications in matters directly related to public safety at rail crossings, public convenience and accommodation, public expenditures, and ultimately, the Commission's enforcement power over public safety at rail crossings. Where construction is necessary at a rail crossing, whether the scope of the project is small or large, the work involved requires a major investment of technical and financial resources and brings with it inherent danger to the workers involved, as well as the traveling public and public residences and businesses near the construction. Flaggers play a pivotal role in such projects, not only for the timely commencement and completion of major infrastructure construction projects involving, at times, millions, and possibly billions, in state and federal funding, but also, and more importantly, as a matter of public safety, for the employees of the entities working at those construction sights, the traveling public at the crossing, as well as the public residences and businesses near the sight.

At issue before us is whether the jurisdictional railroad, and the owner of the railway passing through the crossings involved, may unilaterally, by invoking a new "company policy" to not furnish and maintain flaggers, relieve the Railroad of the responsibility for furnishing and maintaining flaggers, when required, as directed by the Commission for rail crossing infrastructure construction projects. We conclude it does

not. Rather, we find that, as a matter squarely within our authority to oversee public safety at rail crossings, the Commission retains the authority to direct that jurisdictional railroads retain the duty to maintain flaggers, where necessary, for construction projects conducted at the Company's railway crossings.

The ALJ found that Norfolk Southern must remain ultimately responsible for the furnishing and maintaining of flaggers because Norfolk Southern is subject to the Commission's authority and jurisdiction. R.D. at 18. The ALJ explained that if the Commission were to grant Norfolk Southern's Petitions, then no one would be left directly responsible for the completion of rail crossing projects should PennDOT be unable to retain qualified flaggers or the flagging companies refuse to do business with PennDOT. The ALJ concluded that it was essential that the jurisdictional railroad retain the responsibility for the provision of flagging services, because the Commission's safety enforcement powers directly govern the railroad's conduct. The ALJ continued:

The Commission cannot enforce its orders on railroad flagging companies because the Commission only has authority and jurisdiction over the railroads, highway entities, and utilities. If there is a public safety issue caused by lack of flaggers for a project, neither the Commission nor PennDOT would have any recourse to immediately address the issue with the third-party flagging vendor under the Public Utility Code. In fact, even if PennDOT decided to pursue an action against Norfolk Southern with the Commission, Norfolk Southern would be able to point to their proposed language that now alleviates them of all responsibility for furnishing and maintaining flaggers. This is an untenable result.

R.D. at 18.

We agree with the ALJ's rationale, to the extent it finds that the issue of the Commission's jurisdiction over the conduct of the flaggers is essential and would be absent unless under the direct control of a jurisdictional entity, in this case Norfolk

Southern, which would alone make Norfolk Southern's proposed change untenable. However, we further find that the danger to public safety, which would otherwise occur, is the paramount reason for requiring that Norfolk Southern retain the duty to furnish and maintain flaggers for work performed at its rail crossings.

As I&E argues, Norfolk Southern must be responsible for providing flaggers and watchers. According to I&E, Norfolk Southern is in the best position to provide oversight of flaggers and watchers for its own facilities and/or utilities, via railroad forces or their qualified contractors. I&E Answer in Opposition at 5. In this regard, I&E's expert witness, Mr. William M. Sinick, testified, as follows:

Public safety – the safety issues revolve around railroad communications and railroad operations. The operating railroad is the sole entity responsible for railroad operations, train movements, speed, the size of the loads, what it's hauling, the length of the train, etc. Once a train is on the move[,] no outside entity can stop a train. If third-party flaggers are utilized to warn and alert the contractors and/or municipal, state[,] or utility personnel, they will only be as good as the direct communication between the operating railroad and the third-party flagger. If that line of communication is broken[,] then the public, the community, the workers, and everything going on at the crossing under this Commission's jurisdiction and order would be in jeopardy of a serious accident at the very least[,] and a catastrophe at the very most. In our view, it's imperative that the operating railroad – in this case Norfolk Southern Railroad Company – is not alleviated from its responsibility and adheres to the Commission's oversight for that communication and railroad flagger training.

I&E St. 1 at 3.

I&E's opposition to the proposed policy was based not only upon the paramount public safety concerns, but also upon the practical impact to matters of public convenience, public expenditures. I&E's expert witness, Mr. Sinick, further testified:

Public convenience and accommodation –When railroad flagging is ordered through a Commission Secretarial Letter or Order[,] it's essential that it's available when requested so that the Commission applicant — whether it be another utility, highway entity, or a political subdivision or municipality[,] is afforded that service when requested. They must have the ability to plan their work with their company and/or contractors, notify the public and emergency services, and perform the work, improvement, or maintenance activity. That serves the public interest, accommodation and convenience of all involved.

Public expenditures – Almost all Commission rail applications and/or proceedings that authorize work or maintenance that require railroad flagging at a public crossing involve public funding and expenditures, with the exception of the projects that the railroad is performing for maintenance activities. And even some of those projects involve funds from a public grant. When this work is delayed, rescheduled, or cancelled as a result of railroad flagging, it's a very significant cost and impact on the schedule of that particular project or activity which results in significant additional public funding costs and delay claims. These two cases and all the others impacted by railroad flagging delays are no exception to that.

Enforcement – Rail safety believes [that] through its experiences dealing with these matters that the Commission [...] should have more enforcement authority to levy fines, sanctions, and whatever is necessary to alleviate these growing railroad-induced flagging issues, that are under Commission purview for all the reasons mentioned in the testimony above. The issue of railroad flagging not only affects construction or alterations, but it affects federally mandated bridge inspections which are under time constraints, emergency repairs of our highway bridges, bridge

maintenance such as bridge cleaning[,] and other necessary activities.

I&E St. 1 at 4-5.

We agree with I&E that because the work to be performed involves the rail crossing and operations of Norfolk Southern, it is essential that Norfolk Southern remain responsible for furnishing and maintaining flagmen and watchmen, as required, to protect its operations during the time work is being performed across, above, and adjacent to its tracks at public crossings, as originally ordered by this Commission in the above-captioned consolidated proceedings. As a practical matter, it is Norfolk Southern, and no other entity, which maintains authority over the rail operations at the rail crossings in question. The Commission's oversight duty for the safety at such crossings includes ensuring that the responsibility for flagmen and watchmen is unambiguous regarding the ultimate responsibility for furnishing and maintaining flagmen and watchmen, as required, during the time construction is being performed across, above, and adjacent to a railroad's right of way at public crossings.

Accordingly, we shall deny Norfolk Southern's Exceptions.

IV. Conclusion

For the reasons discussed herein, we will: (1) consolidate this proceeding with the above-captioned previously consolidated cases at Docket Nos. A-2022-3031613; A-2024-3045709; A-2023-3043493; A-2024-3051983; A-2024-3052077; (2) deny Norfolk Southern's Petition for Reconsideration from Staff Action; and, (3) deny the Exceptions of Norfolk Southern, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Application of Halifax Township for approval to make safety improvements and establish the existing private crossing (DOT 518 116 L) as a public crossing where the existing private drive to Fort Halifax Park crosses, at grade, a single track of Norfolk Southern Railway Company located in Halifax Township, Dauphin County at Docket No. A-2025-3054710, is hereby consolidated with the above-captioned Application proceedings at Docket Nos. A-2022-3031613; A-2024-3045709; A-2023-3043493; A-2024-3051983; and A-2024-3052077.

2. That the Petition for Reconsideration from Staff Action, filed by Norfolk Southern Railway Company, on September 29, 2025, at Docket No. A-2025-3054710, is denied, consistent with this Opinion and Order.

3. That the Petitions for Reconsideration from Staff Action filed by Norfolk Southern Railway Company at the above-captioned Docket Nos. A-2022-3031613, A-2024-3045709, A-2023-3043493, A-2024-3051983, A-2024-3052077, and A-2025-3054710 are denied.

4. That the Exceptions filed by Norfolk Southern Railway Company on October 31, 2025, to the Recommended Decision of Administrative Law Judge F. Joseph Brady, issued on October 21, 2025, at Docket Nos. A-2025-3054710, A-2022-3031613, A-2024-3045709, A-2023-3043493, A-2024-3051983, A-2024-3052077, and A-2025-3054710, are denied, consistent with this Opinion and Order.

5. That the Recommended Decision of Administrative Law Judge F. Joseph Brady on October 21, 2025, at Docket Nos. A-2025-3054710, A-2022-3031613, A-2024-3045709, A-2023-3043493, A-2024-3051983, A-2024-3052077, and A-2025-3054710, is adopted, consistent with this Opinion and Order.

6. That, at Docket No. A-2025-3054710, Ordering Paragraph 9 of the Secretarial Letter dated September 9, 2025, shall remain, as follows:

Norfolk Southern Railway Company, at Halifax Township's sole cost and expense, furnish all material and perform all work necessary to furnish any watchmen, flagmen, inspectors, and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

7. That, at Docket No. A-2025-3054710, Ordering Paragraph 16 of the Secretarial Letter dated September 9, 2025, shall remain, as follows:

Halifax Township and Norfolk Southern Railway Company, at each respective party's sole cost and expense, pay all compensation for damages, if any, due to the owners of property taken, injured, or destroyed by reason of work completed by each respective party at the crossing in accordance with this Secretarial Letter.

8. That, at Docket No. A-2022-3031613, Ordering Paragraph 10 of the Secretarial Letter dated May 28, 2024, shall remain, as follows:

Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish construction engineering and inspection service 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.

9. That, at Docket No. A-2024-3045709, Ordering Paragraph 8 of the Secretarial Letter dated May 28, 2024 shall remain as follows:

Norfolk Southern Railway Company and CSX Transportation, Inc., at Pennsylvania Department of Transportation's sole cost and expense, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being altered.

10. That, at Docket No. A-2023-3043493, Ordering Paragraph 13 of the Secretarial Letter November 22, 2024, shall remain as follows:

Norfolk Southern Railway Company, at the sole cost and expense of the Department of Transportation of the Commonwealth of Pennsylvania, furnish construction, engineering and inspection service 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.

11. That, at Docket No. A-2024-3051983, Ordering Paragraph 14 of the Secretarial Letter dated March 7, 2025, shall remain as follows:

Norfolk Southern Railway Company, at the sole cost and expense of Pennsylvania Department of Transportation, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work; furnish construction engineering and inspection service, if required, as a result of the proposed work; and furnish and maintain flagmen and watchmen, as required, to protect its operations during the time the

work is being performed across, above and adjacent to its tracks.

12. That, at Docket No. A-2024-3052077, Ordering Paragraph 1 of the Secretarial Letter dated March 24, 2025, shall remain as follows:

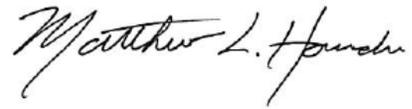
Norfolk Southern Railway Company, at the sole cost and expense of Westmoreland County, furnish all material and perform all work relating to its facilities which may be required as incidental to the performance of the proposed work and furnish any watchmen, flagmen, inspectors and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being installed.

13. That the Petitions for Reconsideration from Staff Action filed by Norfolk Southern Railway Company at Docket Nos. A-2022-3031613, A-2024-3045709, A-2023-3043493, A-2024-3051983, A-2024-3052077, and A-2025-3054710 shall be marked closed.

14. That the Motion to Accept Reply Exceptions Nunc Pro Tunc of the Bureau of Investigation and Enforcement, filed on November 10, 2025, is deemed moot.

15. That the Motion to Expedite a Final Decision of the Pennsylvania Department of Transportation, filed on November 24, 2025, is deemed moot.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Matthew L. Homsher". The signature is written in a cursive style with a large initial "M".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: March 26, 2026

ORDER ENTERED: March 26, 2026