

Prepared Testimony of
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Thank you, Chairmen Rafferty and Wozniak, other members of the Committee and all others gathered here this morning.

It is my pleasure to join you today, as Chairman of the Pennsylvania Public Utility Commission (PUC) – on behalf of my fellow Commissioners and the dedicated staff at the PUC – to discuss our role in addressing transportation projects across Pennsylvania. With me this morning is Rodney Bender, the Manager of the Transportation Division of the PUC, which includes our Rail Safety Section, along with Ronald Hull, Supervisor of the Rail Safety Engineering group.

You have requested that the PUC address the impact or causes of project delays related to railroad coordination, along with potential solutions to those issues. Before endeavoring to address those often complicated issues, I want to briefly define the Commission’s jurisdiction and role in these matters.

PUC Overview

The Public Utility Code provides for Commission oversight of railroads and public highway crossings. The statute addresses protections at railroad crossings, as well as the construction, alteration and relocation of crossings. To carry out those responsibilities, the PUC conducts specialized rail safety engineering work, focusing on the intersection of railroads and public roadway systems.

The PUC’s Rail Safety Engineering group oversees highway-railroad crossings throughout Pennsylvania – including at-grade crossings, where public roads cross railroad tracks; bridges

carrying public roads over railroads; bridges carrying railroads over public roads; and bridges carrying railroads over other railroads. There are approximately 5,600 public at-grade rail crossings in the state, along with 3,200 bridge crossings.

In all of these situations, the guiding concern for the Commission is to promote safety. The Commission must allocate project costs to various parties and address other related matters, such as the responsibility for repair, construction and future maintenance of the facilities.

Scope of PUC Activities

The Rail Safety Engineering group handles applications, complaints, investigations and other proceedings related to crossing projects. These projects can be initiated in several different ways, including: applications from railroads, PennDOT, municipalities or other utility companies; investigations initiated by the Commission based on safety concerns identified by PUC engineers; or complaints from concerned parties.

Projects involving bridges can include repairs, improvements, replacement or the elimination of a structure. Enhancements to at-grade crossings can range from upgraded warning devices, such as lights and gates; the replacement of at-grade crossings with bridges; or the elimination of public at-grade crossings.

Over the past fiscal year, the PUC approved 36 bridge projects totaling more than \$438 million dollars, along with 125 at-grade crossing projects totaling more than \$55 million. Additionally, the engineering group was involved in 185 formal proceedings involving bridge or crossing projects, along with 215 on-site meetings, inspections or project conferences.

As part of the PUC review of these projects, staff from the Rail Safety Engineering group schedules and conducts on-site meetings at public railroad crossings (both at-grade and bridge crossings) to gather information related to the crossing project. These meetings bring together representatives from the railroads, other fixed utility companies, local municipalities, other state agencies – such as PennDOT – and other concerned parties. Our engineers also conduct follow-up conferences and calls, intended to help resolve potential disputes and move applications forward, and they may also be called to testify before the PUC’s Office of Administrative Law Judge (OALJ) when cases cannot be resolved amicably.

Projects approved by the Commission are monitored throughout the process, and final inspections are performed to verify a project’s completion, in accordance with Commission Orders or Secretarial Letters.

PUC Staffing

The PUC’s Rail Safety Engineering group includes one (1) supervisor who manages a staff of six (6) professional engineers who review and make recommendations related to the Commission’s actions involving rail/highway crossings.

Additionally, we also have a Rail Safety Inspections group, that conducts specialized reviews of railroad track, equipment, hazardous materials, signals, operating practices and other facets of safe train operations. That group currently has a staff of one (1) supervisor and six (6) rail safety inspectors, and we are working with the Civil Service Commission to identify qualified candidates for one (1) current inspector vacancy.

In light of heightened concerns about enhanced inspection of heavily traveled “oil train” routes across Pennsylvania, the Commission’s proposed budget for the upcoming fiscal year calls for the hiring of two (2) additional rail safety inspectors.

Challenges

The size, scope and complexity of rail crossing projects can vary dramatically – from signal lights at a small at-grade crossing to bridge replacement projects which amount to millions of dollars. Over the past four years bridge projects approved by the Commission have averaged approximately \$10 million apiece, while crossing projects have averaged approximately \$195,000 apiece. In each of these situations, there can be disagreements between the parties concerning the magnitude of the problem, the best resolution, the total cost of the work and the allocation of those costs. There may also be other complicating factors, such as environmental, historic or archeological impact, or disputes about the acquisition of property.

As I noted earlier, the Commission is focused on the safe and appropriate resolution of these issues. We spend a great deal of time and effort to bring all of the concerned parties toward an amicable resolution, but there are times when disputes cannot be resolved. In those situations, the case is referred to the PUC’s OALJ for hearings and other related proceedings, which ultimately may result in a Recommended Decision for Commission consideration and action.

Once a case moves to this stage, the timetable for action by the Commission is extended. We continue to focus on mediation and resolution whenever possible, but all parties involved in a case have a right to due process. The process of conducting hearings, filing briefs, issuing a Recommended Decision, filing exceptions to the Decision and issuing a Final Commission Order increase the amount of time needed for the Commission to resolve the dispute. The amount of

time needed for the Commission to resolve the dispute is driven by the positions of the parties involved in the case and by the deadlines for various pleadings and other filings found in the Commission's general rules of practice and procedure.

I should emphasize that the vast majority of our rail engineering cases are resolved amicably, and the PUC has taken steps to address undisputed matters as quickly as possible. For those cases, the Commission is often able to issue a Secretarial Letter authorizing a project within 60 days of the date of the application, if the application is properly filed. If property must be appropriated for a project, that action must be approved by the Commission at a Public Meeting.

Notwithstanding any property acquisitions, if those proceedings are not disputed, approval can come within 90 days of the initial application. On the other hand, disputed proceedings must proceed to hearing and can take months or years before a resolution is reached, as outlined above.

Of the 18 bridge applications filed during the 2015 calendar year, we were able to reach an amicable resolution among all of the parties in 15 instances. Only three (3) of those cases, or about 16 percent of the total bridge applications, appear to be headed toward hearings. The primary factors in those disputed cases are the cost of the required enhancements, the availability (or unavailability) of necessary funds, and/or the party or parties responsible for current and/or future maintenance.

Projects involving at-grade crossings – which are substantially less expensive than bridge projects – are generally less likely to be disputed, with the exception of proposals that recommend the closing of a crossing.

Project Extensions & Other Delays

Even after the Commission approves a project, either by Secretarial Letter or a formal Order, there are factors that can prevent a project from being completed within the established time period. Typically, the main issue driving delays is the lack of necessary federal, state or municipal funding for a project. As I noted earlier, secondary issues that may trigger delays include: disagreements about the size and scope of the project; diverging opinions about the types of improvements required; responsibility for future maintenance; and the acquisition of property. Environmental, historic or archeological issues may also arise before or during a project.

While the PUC has jurisdiction over these crossing projects, we do not have the ability to generate necessary funds or to circumvent the rather complex process for placing projects on state and municipal construction funding plans.

Special Response for Immediate Hazards

In situations where immediate hazards are identified, the Commission can and does take action to dictate speedy safety-related responses – even as long-term solutions are still being explored. These steps can include weight limits or traffic restrictions on bridges, the ordering of inspections or immediate repairs or the closing of bridges. Additionally, the Commission has the ability to direct a party to take immediate action to address a problem at its initial cost – with the allocation of financial responsibility to be determined in the future. While these actions do not resolve all of the underlying issues related to a project or a complaint, they can address immediate hazards and underscore the Commission’s commitment to safety.

Utility Cooperation & Costs Recovery

Secretarial Letters and Commission Orders related to bridge and crossing projects include a directive that all utility companies should cooperate with parties involved so that the alteration and/or relocation of their facilities will not interfere with the completion of the project.

Additionally, during the Final Inspection stage of every project, the Commission notifies all involved parties of their right to discuss any outstanding/unresolved matters and to seek reimbursement for any costs incurred by the project, prior to the record being closed by the Commission. An example of such notice is provided below:

This is to advise that a final inspection will be held (Date, Time) at (location) to discuss any outstanding matters, If you are not present and are seeking reimbursement for any costs incurred by the project, you must notify the Commission in writing within twenty (20) days.

If no outstanding matters are brought to the Commission's attention, the record will be closed following the inspection.

Potential Solutions

As I noted earlier, the Commission is able to quickly approve, within 60 to 90 days, undisputed projects – and the majority of the rail crossing applications we receive are handled in that manner.

As for disputed cases – which are typically more lengthy and more challenging – access to necessary funding is the ultimate solution. Lack of money remains the driving factor for

disputes, project extensions and delays – and until that is fully addressed I fear that we will continue to experience some of these problems.

Politics can also be a factor in some of these situations, especially when funding sources are elusive. The PUC works to encourage compromise and resolution, but there are situations where we have seen parties unwilling to step forward and accept responsibility for all or part of a project because of the short-term or long-term financial impact. Instead, it is left to the PUC to order the necessary action and allocate costs.

We continue to evaluate our procedures in order to address cases in a timely manner, but most of the delays we see in rail crossing cases relate to finances, not PUC process. Also, as a quasi-judicial organization, the Commission must remain sensitive to the right of all parties to be heard in these cases.

Closing

I thank you again for the opportunity to testify this morning, and I would be happy to address any of your questions. The PUC stands ready to assist, to the best of our ability, efforts to continue improving rail safety in Pennsylvania.