

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Application of Norfolk Southern Railway Company for approval to reconstruct the Crossing of the North Avenue/Brighton Road Bridge crossing above its tracks in The City of Pittsburgh, Allegheny County (DOT No. 507450B), and for an exemption From the Commission's overhead clearances regulations

Docket No. A-2018-3006432

**PETITION FOR REVIEW, RELIEF OR OTHER RECONSIDERATION  
Rail Pollution Protection Pittsburgh (RP3)**

Rail Pollution Protection Pittsburgh (RP3) by and through its In-House Counsel Glenn Olcerst, submits this Petition for Review, Relief or Other Reconsideration in the above-captioned matter, pursuant to 52 Pa.C.S. §5.572 and respectfully requests that the Public Utility Commission ("PUC") grant the within Petition, and in support thereof, avers as follows:

1. Rail Pollution Protection Pittsburgh ("RP3") is an organized group that addresses rail proliferation across Allegheny County where it conflicts with urban health, sustainability, safety and personal well-being. RP3 is currently comprised of the Breathe Project, Glenn Olcerst and Barbara Talerico. The offices of RP3 are located at 1200 Resaca Place, Pittsburgh, Pennsylvania 15212, only two city blocks away from the North Avenue / Brighton Road Bridge crossing at issue in the Norfolk Southern Railway Company ("NSRC") Application that initiated this docket.
2. On December 7, 2018, NSRC initiated the within matter with the filing of an Application ("Application") seeking to, among other things, modify and/or reconstruct the existing North Avenue Bridge Structure ("North Avenue Bridge"). See Paragraph 4 of Norfolk

Southern's Application which is part of the record in this matter and incorporated herein by reference thereto.

3. The North Avenue Bridge is located at what is now a public intersection of W. North Avenue and Brighton Road, within the Northside of the City of Pittsburgh.
4. On December 7, 2018, NSRC initiated the within matter with the filing of an Application ("Application") seeking to, among other things, modify and/or reconstruct the existing North Avenue Bridge Structure ("North Avenue Bridge"). See Paragraph 4 of Norfolk Southern's Application which is part of the record in this matter and incorporated herein by reference thereto.
5. The North Avenue Bridge is located at what is now a public intersection of W. North Avenue and Brighton Road, within the Northside of the City of Pittsburgh.
6. The North Avenue Bridge was originally constructed in 1901 by Pennsylvania Railroad Company ("PRC"), predecessor owner to Norfolk Southern. See Norfolk Southern's Application which is part of the record in this matter and incorporated herein.
7. As provided for in Norfolk Southern's Application, Pittsburgh has failed to timely make the repairs as provided for in the aforesaid Order and/or subsequent Orders.
8. In addition, Norfolk Southern by its own admission has in its Application acknowledged that the regulated clearance of 22 feet is not practically feasible due to the presence of buildings and other constraints in or around the crossing that cannot be adjusted.  
**See Application at Paragraphs 17 and 18.**
9. Norfolk Southern further "agrees" to reconstruct the North Avenue Bridge, based on its purported plans, designs or drawings, "initially at its cost and expense, subject to funding

neighborhood organizations the benefit of a hearing, the Order reasoned that “RP3’s interest as a group consisting of two local residents and a City-wide group might be directly affected, but RP3 did not show that its interest will not be adequately represented by the City’s participation...[and] RP3 failed to aver that it has another interest of such nature that the public interest necessitates its participation in this proceeding.”

16. The Pennsylvania Commonwealth Court has held that an “association may have standing as a representative of its members.” *Tripps Park v. Pennsylvania Public Utility Commission*, 415 A.2d 967, 970 (Pa.Cmwlth. 1980).
17. The Court has further held that, “as long as an organization has at least one member who has or will suffer a direct, immediate and substantial injury to an interest as a result of the challenged action (i.e., is aggrieved) the organization has standing. *Parents United for Better Schools v. School District of Philadelphia*, 646 A2d 689, 692 (Pa.Cmwlth. 1994);
18. RP3’s basis for intervention under §5.72(a)(2) is the close proximity that they and their neighbors reside in relation to the crossing, and whether their frequent daily use of that crossing by walking, running, biking and driving is being properly safeguarded .
19. PennDOT District 11 Representative Cheryl Moon-Sirianni admitted at the June 26, 2018 placard viewing at the Children’s Museum that the current height and the site lines of the W. North Ave. Bridge are unsafe, and would not have been approved if constructed today.
20. Raising the W. North Ave. Bridge even further endangers pedestrian and vehicle safety given that it is a high volume route for first responders.
21. Since Olcerst, Talerico, their neighbors, and RP3 members walk, run, bike and drive across the Brighton Road/W. North Ave. Bridge multiple times daily, they are “directly

affected” by any action that the Commission can take in this application proceeding since it “binds them directly.”

22. RP3 avers that their interests are not adequately represented by the city in these proceedings because the city has a clear conflict of, and a vested interest in, receiving funds to replace this and other bridges without any impact on the city’s own budget. (Stated and published publicly by RP3.)
  23. The city owes money to Norfolk Southern and is in the midst of litigation filed by Norfolk Southern to collect on rail repairs to remediate a landslide from the upper landlord —which is the city. See *Norfolk Southern Railway Co. v City of Pittsburgh*, Civil Division #GD18-006431. Compromise of that litigation in the city’s favor could result in tradeoffs of RP3’s interests before the PUC.
  24. *After submission of its Petition for Intervention*, on February 7, 2019, the PUC held a field investigation and conference with regard to both of Norfolk Southern’s pending Applications where, by virtue of its Intervention and participation, RP3 learned of additional reasons why the city was not adequately representing RP3, or the other intervening neighborhood groups.
  25. During the course of the field investigation, PUC Senior Civil Engineer Manager Ron Hull (“Hull”) asked the Pittsburgh Representative -- who had not signed in to either back-to-back field investigation, what the city’s position was on the Merchant Street Bridge.
  26. Hull was told by the Pittsburgh Representative that he had no position because he was sent there in connection with the W. North Ave. Application.
  27. Hull asked if the city was sending someone to the field audit to cover the Merchant Street crossing, and the Pittsburgh Representative said he did not know.
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28. Hull asked the Pittsburgh Representative if he had any knowledge about the Merchant Street application, and he said he did not.
  29. Hull gave the Pittsburgh Representative the Merchant Street folder and asked him to review it, and to explain the City's position.
  30. Although the Pittsburgh Representative took the file, he declined to state a position.
  31. NSRC Counsel Dunlap stated that this was a perfect example of how the city was to blame for the condition of the bridges.
  32. NSRC Vice President Rudy Husband ("Husband") said that he has not been able to communicate with the city about Merchant Street on at least three or more separate occasions in the past year, and could not obtain any understanding about the city's position with respect to either bridge, saying they won't respond to his requests, or communicate with him, and he does not know what they want.
  33. Norfolk Southern's Chief Engineer Kevin Hauschildt showed a picture of what he described as a recently discovered "sinkhole" on the Merchant Street Bridge, and said that this was serious, and that the condition of the bridge was serious.
  34. RP3 Representative Olcerst openly asked for a copy of Mr. Hauschildt's picture, and Mr. Hauschildt publicly held his phone while the undersigned typed in his email address to transfer the image.
  35. Hull asked if the Railroad was asking him to stop train traffic. Husband said it was not that serious.
  36. Husband said that the city is to blame for the delay and they have been trying to move forward for the past year. He said initially the city was OK with a replacement of the
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Merchant Street Bridge at the same height, and then they decided they wanted more clearance.

37. RP3 Representative Olcerst said that City Chief of Staff Dan Gillman had shared in an e-mail that he had ordered that there be no communication between any city administrators and the Railroad - including on PUC matters – that only lawyer-to-lawyer communication was allowed.
  38. In response to these statements, Attorney Dunlap and/or Husband stated that Pittsburgh intentionally and repeatedly sent individuals to meetings and/or investigations who did not know anything about the proceedings and therefore could not address or speak to any of the issues or concerns raised in any meeting and/or investigation.
  39. Upon hearing these representations by Norfolk Southern and Pittsburgh's lack of an informed response, Hull became visibly aggravated with Pittsburgh.
  40. Hull informed the parties that the city has taken the position that the adjacent Merchant Street Bridge should be raised.
  41. The undersigned representative for RP3 stated that RP3 and other neighborhood residents and organizations want both bridges, and the tracks in the trough through Historic Allegheny Commons, to be lowered instead.
  42. Hull agreed publicly with RP3 at the field investigation that raising the Merchant Street Bridge would result in a further raising of the W. North Ave. Bridge. It would also make less feasible a lowering of the tracks through the historic Allegheny Commons Park.
  43. Hull openly cautioned all of those present to take care if asking to raise the Merchant Street Bridge more than its current height because that would result in a further raising of
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the height of the W. North Ave. Bridge. The assembled group was alerted to “Be careful what you ask for.”

44. In addition, Hull stated to both NSRC Representatives and Pittsburgh that the PUC would enter an appropriate Order given Pittsburgh’s failure to timely respond.
  45. Notwithstanding the representations made by Hull, no Order has been forthcoming and the PUC failed to conduct an evidentiary hearing on whether Pittsburgh had failed to adequately, fully and timely represent the residents and members of RP3.
  46. By correspondence dated February 19, 2019, Pittsburgh refuted the statements made by Attorney Dunlap and/or Norfolk Southern’s Representatives at the field investigation and instead argued that the railroad was in fact, non-responsive. A true and correct copy of the correspondence dated February 19, 2019 was attached to, and made a part of the record, in the NSLC Petition for Reconsideration.
  47. The record contains a detailed history of the prolonged failure on the part of the city to address prior Commission orders with respect to this, and other adjacent bridges, resulting in closures, and unsafe traffic, pedestrian and vehicular safety issues.
  48. In fulfillment of its longstanding function and activity as a highway/rail safety crossing watchdog RP3, issued an email alert to its list of members, elected officials, and city and state administrative agencies – including PennDOT, sharing the existence of a sinkhole and calling for an investigation into whether NSRC was inspecting properly, or perhaps disregarding the results of its inspections—especially given the large size and location of the sinkhole, its duty to inspect and promptly repair its own rail bridges, and the August 5, 2018 South Side double-stacked train car derailment occurring immediately after a rail inspection. (Attached as Exhibit 1)
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49. In response, by letter dated February 11, 2019 State Senator Wayne Fontana sent a letter to PUC Chairwoman Brown asking for her agency to “share any knowledge of the sinkhole situation and if there is any insight into whether or not Norfolk Southern is properly inspecting their tracks at that location.”(Exhibit 2)
50. In its continuing role to alert the public and relevant officials to potential rail/highway crossing safety issues, on February 25, 2019, by letter addressed to PUC Secretary Chiavetta, RP3 shared Norfolk Southern counsel’s factual admissions in its federal lawsuit against Boatright Rail Products, Inc. More specifically, that over a five year period, NSRC had installed into its rail system nearly five million defective rail ties that did not meet proper federal standard or contractual specifications, were not waterproofed, where more quickly prone to rot, were “inherently hazardous and therefore must be removed,” and which could not be easily identified or located because the supplier had purposefully failed to include identifying plates or Kerf marks in an effort to cover up its fraud. RP3 also included a list of requested PUC actions. Copies of RP3’s letter were also sent to Governor Wolf, Lieutenant Governor Fetterman, State Senate and Congressional representatives, Allegheny County representatives, the Mayors of Philadelphia and Pittsburgh, and many others. (Attached as Exhibit 3)
51. As a result of RP3’s actions outlined above , on February 25, 2019, the Commission’s Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance at Docket No A- 2018-3001039.
52. Based upon the foregoing, RP3 submits it has demonstrated an interest of such nature that its intervention is appropriate to the administration of the statute within the meaning of both Section 5.72 (a)(2) and (a)(3).
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53. Petitions for Review/Reconsideration must make new or novel arguments not previously considered, or raise considerations which appear to have been overlooked or not addressed by the Commission, or raise matters which are designed to convince the PUC to exercise its discretion to rescind or amend an Order under consideration. *Duick v. PG & W*, 56 Pa PUC 553, 51 PUR4th 284 (1982) citing, *Pa. Railroad Co. v. Pa. PSC*, 179 A. 850 (Pa.Super.1935).)
54. RP3's broader interests described in the Petition to Intervene were overlooked and were misconstrued because they were never intended to be taken as an attempt to incorporate issues outside the Commission's jurisdiction, but instead as qualification under the 5.5/2(a)(3) criteria.
55. RP3 possesses separate and independent additional qualifications to Intervene under Subsection (a)(3), because it has another interest of such a nature related directly to the education and engagement of impacted residents so that participation of the Petitioner MAY be in the public interest. RP3 submits the following:
56. Norfolk Southern and the City held a Pittsburgh Vertical Clearance Project ("PVCP") public gathering on June 26, 2018 at the Children's Museum on the North Side.
57. RP3, the NSLC and Manchester Citizens Corporation, as well as Manchester organizers, reverends and educators, were all instrumental in getting many hundreds of residents impacted by the proposed PVCP to attend the June 26, 2018 placard display.
58. Instead of a town hall format, those attending were presented with a series of placards placed around the room consisting of GPS photographs and diagrams of the rail and vehicular bridge crossings involved in the Project, simulated elevated approach roads and
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heights, drawings of bifurcated sidewalks, and impact zones according to Michael Baker, Norfolk Southern's engineers.

59. Although an individual was stationed at each placard, they could not be identified since none of representatives for the city, PennDOT, Norfolk Southern or Michael Baker wore identification tags.
  60. If a question was asked, often only the individual asking would get an answer, and the individual stationed at the placard refused to repeat the question or the answer for the crowd surrounding and engulfing the placard.
  61. According to polls taken by RP3, the consensus of those in attendance was that the "placard display" left them more confused and frustrated than informed.
  62. City representatives took responsibility for using the format described above.
  63. RP3 obtained over 500 signatures on a hardcopy and online Petition demanding multiple town hall format meetings on the Northside and at other project sites along the route, with responses to information requests to be provided in advance. (Sample verbiage of one petition page is included as Exhibit 4.)
  64. RP3 also reached out to State Representative Wheatley and State Senator Fontana about the need for multiple town hall format meetings in each of the 24 impacted communities so that residents could help RP3 take its collective stand at the W. North Ave. and Merchant Street Bridges.
  65. Representative Wheatley reported direct conversations and assurances of public engagement with PennDOT Secretary Richards on the subject. (Exhibit 5)
  66. By letter dated August 16, 2018, Senator Fontana notified PennDOT Secretary Leslie Richards that he was "requesting the Rail Road's initial application for funding be
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reevaluated and that no state funds are provided for this project until a true community process takes place.” (Exhibit 6)

67. By letter dated September 6, 2018 PennDOT Deputy Secretary, Multimodal Transportation Granger committed to ensuring that “all parties are heard during the project development process... In addition we have been working with Norfolk Southern to develop a robust public involvement plan to ensure that all stakeholders have an opportunity to be heard, be informed, and provide input into the process.” (Exhibit 7)

68. Notwithstanding the above, and the assurances of the imminent scheduling of the requested format meetings, neither Norfolk Southern, Michael Baker, PennDOT, or the city have held any town hall format, or any other type of meeting to date.

69. As a result, RP3 has been conducting its own community town hall format education meetings in each of the 24 impacted neighborhoods.

70. To date RP3 has held 11 such meetings, which include the following:

- a. a review of the PVCP Application and Project, along with images of the crossings taken either from Norfolk Southern’s application/website or a photographed placard from the June 26, 2018 meeting;
- b. a review of a draft complaint related to Norfolk Southern’s possible misstatements on its Project Application to the PUC;
- c. a review of the project’s public and private funding;
- d. a discussion of an apparent or possible conflict of interest on the part of the city to protect citizen’s health and safety because of its short term need to obtain new bridges without any impact on its budget;
- e. maps of the entire PVCP route taken from Norfolk Southern’s website;

- f. a presentation explaining details from Norfolk Southern's Statement Of Need and Frequently Asked Questions and Answers;
- g. a review of what occurred at the June 26, 2018 meeting described above;
- h. an explanation that all of the 24 communities "need to take our collective stand at the W. North Ave./Brighton Road bridge, because it is adjacent to the historic park and is in a historic neighborhood. That fact gives us substantive and legal procedural protections in court;"
- i. images of the trough through Allegheny Commons and alternatives to raising the bridge;
- j. a review of the issues - including safety issues, related to Merchant Street Bridge, and how its height impacts other bridges in the project and the future ability to lower the tracks in Allegheny Commons;
- k. the current status of the PVCP;
- l. pedestrian and vehicle safety issues at the W. North Ave. Bridge crossing as a result of reduced sight lines, and the fact that it is a high traffic first responder route and its being raised further constitutes a threat to public safety;
- m. access issues resulting from raised road approaches and bifurcated sidewalks leading to an elevated W. North Ave. Bridge, especially for the aged and disabled residing in the senior housing facility called West Park Court which is located at the intersection of W. North Ave. and Brighton Road;
- n. population statistics of the Environmental Justice Areas surrounding the crossings at issue before the PUC, along with the public policy and requirement of

including them in the process in order to receive extra consideration in policy decisions to ensure that they do not disproportionately shoulder extra safety risks;

o. a detailed explanation of the status of all that has been filed, and is occurring before the PUC, particularly because the public is very interested.

p. contact information for elected representatives;

71. On December 28, 2018, by telephone with the undersigned, Husband committed to holding “at least three town hall format public meetings — on the Northside, in downtown Pittsburgh, and in the East End, to be scheduled independent of the city within the first half of 2019.”

72. After publicizing the Merchant St Bridge “sinkhole” at the February 25, 2019 Edgewood Community meeting in the presence of numerous radio, television and print media representatives, instead of following the avowed NSRC policy of being “open and transparent,” it was reported in the Post-Gazette the next day that Husband had announced that no town hall meetings were planned and that the only stakeholders NSRC would recognize and deal with are PennDOT and the city (even though the city isn’t communicating with them). Link to Post-Gazette article here:<https://bit.ly/2EcvOMh>

73. The rail/highway crossing safety activities of RP3 outlined above are protected under the free speech rights of the Pennsylvania Constitution, and were the basis of Husband instructing counsel to object to the Intervention of RP3, and Manchester Citizens Corporation, and not the NSLC.

74. NSRC’s actions outlined above are both against public policy, and contrary to the public’s interest.

75. Based on the foregoing, and the record as a whole, RP3 has amply demonstrated that it, along with Manchester and NSLC community groups, possess another interest that MAY be in the public interest by continuing to participate in all PUC Application proceedings.
76. In terms of new or novel arguments which may raise matters which are designed to convince the PUC to exercise its discretion to rescind or amend an Order under consideration under the Duick criteria outlined above, RP3 submits the following:.
77. The two crossings at issue are within and surrounded by Environmental Justice Areas.
78. As a matter of public interest and policy, the Commonwealth of Pennsylvania has established the Environmental Justice Program to ensure that all Pennsylvanians “are equipped with the proper resources and opportunities to meaningfully participate in decision-making processes.” The stated objective is to minimize adverse environmental “impacts in vulnerable communities, ensuring opportunities for public participation and dialogue, and fostering responsible economic development that benefits both residents and the regulated sector”. Safety at rail highway crossings is part of one’s environment. Environmental Justice Area residents are required to receive extra consideration in policy decisions to ensure that they do not disproportionately shoulder additional burdens to their safety.
79. RP3’s founders, members and neighbors—along with those in Manchester, live in Environmental Justice Areas.
80. Finally, the Interim Order denying Intervention did not address (or overlooked) the following argument which relates directly to the current dispute between the city and NSRC related to the ownership and ongoing maintenance of the W. North Ave Bridge:
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81. A review of the 1901 Ordinance establishes that Norfolk Southern possesses only a right of way under the W. North Ave. Bridge, does not own the land through Allegheny Commons, and in return for Pittsburgh's agreement to raise the street grade elevations and approaches at the City's cost to a number of bridges, including the W. North Ave. Bridge, the railroad agreed to assume and pay the full cost of building the bridges at Ridge, W. Ohio, W. North Ave, Irwin, Pennsylvania, Washington and Sedgwick. In return, the City agreed only to maintain the paving of the roads and footways. Since the City paid the cost of raising the streets for these bridges, language throughout the Ordinance demonstrates an intent that, thereafter, street grades and elevations remain fixed. See Paragraph 13 and Exhibit 1 of RP3's Petition to Intervene.

82. The 1946 Contract agreed to allow the further raising of the bridges and approaches to the Ridge, W. Ohio, and Pennsylvania Ave. bridges only, *at no cost or expense to the City or taxpayers*, including any alterations to public utilities. The railroad was required to thereafter maintain those bridges and supports. The 1946 Contract also expressly provides that it is not intended to abrogate any of the prior existing contracts, ordinances, or deeds. Norfolk Southern is now taking the position that all of the terms of these documents were abrogated. If that is the case, NSRC's right of way through Allegheny Commons is similarly extinguished. The Agreement is part of the record at Docket A-20911-1929 and incorporated by reference thereto.

WHEREFORE, RP3 respectfully requests that the Commission grant the within Petition for Reconsideration, permit the parties to engage in limited discovery on the issues addressed in the

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within Petition, and schedule this matter for an evidentiary hearing to address the following issues:

1. whether Pittsburgh is adequately representing the interests of its residents;
2. whether Pittsburgh has a financial conflict of interest adverse to the residents and business owners of the North Side;
3. whether as a result of the same, RP3 has interests in, and perspectives on, issues in the within proceedings (e.g. rail/highway crossing safety) that are not adequately represented by other parties of record;
4. whether RP3 has another interest of such nature that its participation may be in the public interest, and;
5. such other relief as this Commission deems just and appropriate.

RESPECTFULLY SUBMITTED,

BY:



GLENN M. OLCERST, ESQUIRE  
In-House Counsel for Petitioner,  
Rail Pollution Protection Pittsburgh (RP3)  
PA ID# 25241  
412-999-2539



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EMMA M. HEMPSTEAD, Esq.  
Counsel for Petitioner RP3  
PA ID# 324816  
Fair Shake Environmental Legal Services  
3495 Butler St, Suite 102,  
Pittsburgh, PA 15201



BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

Application of Norfolk Southern Railway  
Company for approval to reconstruct the  
Crossing of the North Avenue/Brighton  
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The City of Pittsburgh, Allegheny County  
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From the Commission's overhead clearances  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of March, 2019, one (1) copy of the foregoing  
Petition For Review, Relief or Other Reconsideration on behalf of Rail Pollution Protection  
Pittsburgh was delivered by US First Class Mail, Postage Pre-Paid, addressed as follows:

The Honorable Katrina  
Dunderdale  
Pennsylvania P.U.C.  
Office of Administrative Law  
Judge  
301 5<sup>th</sup> Avenue, Suite 220,  
Pittsburgh PA 15222

Allegheny County Solicitor  
Dept. Of Law  
445 Fort Pitt Blvd.  
Pittsburgh, PA 15219

Engineering District 11-0  
Pennsylvania Dept. of  
Transportation  
Attn: Cheryl Moon-Sirianni,  
P.E. and/or Lou Ramano  
45 Thoms Run Road  
Bridgeville, PA 15017

DQE Communications  
ATTN: Shawn Blanner  
424 S. 27th Street, St. 220  
Pittsburgh, PA 15203

Community College of  
Allegheny County  
Facilities Management Division  
Attn: Rich Schlegel  
800 Allegheny Ave.  
Pittsburgh, PA 15233

Windstream  
c/o Damage Group Personnel  
929 Martha's Way  
Hiawatha, IA 52233

NRG Energy Center Pittsburgh  
Attn: Bryan Sarti  
111 S. Commons Ave.  
Pittsburgh, PA 15212

Comcast Cablevision  
Attn: Joseph Bechtold  
1530 Chartiers Ave.  
Pittsburgh, PA 15204

Bradley R. Gorter, Esquire  
PA PUC  
Bureau of Trans. & Safety  
PO Box 3265  
Harrisburg, PA 17105

Century Link f/k/a Embarq  
Attn: George McElvain  
Grid No. UTOO-D27.34  
700 W. Mineral Ave.  
Littleton, CO 80120

Gina M. D'Alfonso, Esquire  
Jason D. Sharp, Esquire  
Office of Chief Counsel -  
PennDOT  
P. O. Box 8212  
Harrisburg, PA 17105-8212

Anthony M. Bilan, Esq.  
City of Pgh - Dept. Of Law  
313 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219  
(City of Pittsburgh)

Crown Castle  
Attn: Rebecca Caldwell  
2000 Corporate Drive  
Canonsburg, PA 15317

Pittsburgh Water & Sewer  
Authority  
Attn: Rick Obermeier  
1200 Penn Avenue  
Pittsburgh, PA 15222

Verizon Pennsylvania, LLC  
ATTN: Deborah Barum  
3151 Pioneer Avenue  
Pittsburgh, PA 15226

Benjamin C. Dunlap, Jr., Esq.  
Nauman Smith  
Attorneys At Law  
PO Box 840  
Harrisburg, PA 17108-0840  
(Norfolk Southern Railway Co.)

Emma Hempstead, Esquire  
Ryan Hamilton, Esquire  
Fair Shake Environmental Legal  
Services  
3495 Butler Street, Ste. 102  
Pittsburgh, PA 15201  
(Rail Pollution Protection Pgh)

Karina Ricks  
City of Pittsburgh Dept. of  
Mobility &  
Infrastructure, RM. 215-B  
City-County Bldg.  
414 Grant Street  
Pittsburgh, PA 15219

Peoples Gas Company LLC  
Attn: Don Zombek  
261 Center Street  
McKeesport, PA 15132

Peoples Gas Company LLC  
Attn: Debbie Ross  
375 North Shore Drive  
Pittsburgh, PA 15212

AT&T Local Services  
ATTN: Nancy Spence  
360 Gees Mill  
Business Parkway NE  
Conyers, GA 30013

Neon Transcom  
ATTN: Mike Brodar  
196 Van Buren Street  
Herndon, VA 20170

Level 3 Communications LLC  
Attn: Level 3 Operator  
1025 Eldorado Blvd  
Broomfield, CO 80021

Duquesne Light Company  
Attn: Shane Thieret PA-TD  
2645 New Beaver Ave  
Pittsburgh, PA 15233

David A. Wolf, Esq.  
Deborah R. Erbstein, Esq.  
Goldberg, Kamin & Garvin,  
LLP  
1806 Frick Building  
437 Grant Street  
Pittsburgh PA 15219

John J. Richardson, Esquire  
Bernstein Burkley  
707 Grant Street, Ste. 2200  
Pittsburgh, PA 15219  
(Manchester Citizens Corp.)

Mark Chappell, P.E.  
Chief Right-of-Way & Utilities  
Division Bureau of Design  
Penn DOT  
P.O. Box 3362  
Harrisburg, PA 17105-3362

Jonathan Hocker  
Shawn Starling  
Norfolk Southern Railway Co.  
1200 Peachtree Street NE  
Atlanta, GA 30309

BY:



GLENN M. OLCERST, ESQUIRE  
In-House Counsel for Petitioner,  
Rail Pollution Protection Pittsburgh (RP3)  
PA ID# 25241  
412-999-2539

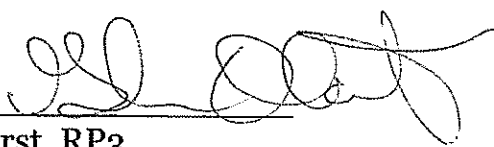
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**VERIFICATION**

I, Glenn Olcerst, hereby state that the facts set forth are true and correct, or are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Signature:   
Glenn Olcerst, RP3

Date: 3/22/2019

**Barbara Talerico**

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**From:** Glenn Olcerst <glennolcerst@gmail.com>  
**Sent:** Friday, February 8, 2019 12:05 PM  
**To:** bjtalerico12@gmail.com  
**Subject:** Sinkhole Discovered on Norfolk Southern Tracks



This sinkhole in the Northside's Merchant Street bridge railroad tracks was discovered yesterday during a field inspection by the Public Utility Commission and Norfolk Southern Railroad.

Norfolk Southern's Chief Engineer Kevin Hauschildt provided the photo and characterized the hole through the bridge as a "sinkhole".

Norfolk Southern inspected its tracks just prior to the derailment of double-stacked trains on the Southside last August, I'm calling for an investigation into whether Norfolk Southern is inspecting improperly, or is ignoring the results of their inspections.

This self-described "sinkhole" should have been remedied long before getting to this advanced stage.

The Public Utility Commission has the authority to stop all train traffic. Please contact your elected officials (you can find them here: <https://live.cicerodata.com/>) Ask them to address this problem immediately, and to demand regular inspections, public reports, and emergency response plans funded by Norfolk Southern.

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You are receiving this email because you asked to be updated on the Norfolk Southern railroad project.

Our mailing address is:

Rail Pollution Protection Pittsburgh (RP3)  
1200 Resaca PI  
Pittsburgh, PA 15212-4519

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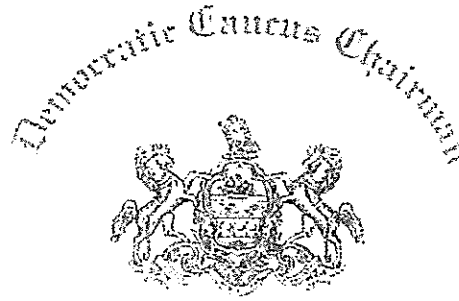
Exlc

42ND DISTRICT  
WAYNE D. FONTANA  
SENATE BOX 202042  
HARRISBURG, PA 17120-2042  
717-787-3500  
FAX: 717-773-5881

1538 BROOKLINE BOULEVARD SUITE 2  
PITTSBURGH, PA 15226-2105  
412-258-2551

KENNYWAY PLACE  
524 PINE HOLLOW ROAD  
KENNEDY TOWNSHIP, PA 15106-1021  
412-331-1208

6940 5TH AVENUE SUITE 201  
PITTSBURGH, PA 15206-1001  
412-258-2551



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## Senate of Pennsylvania

February 11, 2019

The Honorable Gladys M. Brown  
Chairwoman, Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Third Floor, Room N-304

Dear Chairwoman Brown:

It has been brought to my attention that during a recent field inspection by the Commission and Norfolk Southern Railroad of the Merchant Street bridge railroad tracks in Allegheny County that a sinkhole was discovered on the bridge.

I write today to request that the Commission share any knowledge of the sinkhole situation and if there is any insight into whether or not Norfolk Southern is properly inspecting their tracks at that location.

From my understanding, federal regulations leave responsibility for rail bridge inspections to the operating railroad. However, I have been told that the Commission may have the authority to stop all train traffic in the event of safety concerns or violations. Because the Commission is an unbiased, respectable oversight entity, I am asking for your invaluable understanding into this particular situation.

Thank you for your attention to this important public safety issue. I look forward to hearing from you.

Sincerely,

Senator Wayne D. Fontana  
42<sup>nd</sup> Senatorial District

Ex 2



Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North St., 2nd Fl.  
Harrisburg, PA 17105-3265

February 25, 2019

Re: PUC Dockets A-2018-3006432; A-2018-3001039; A-00119378; A-00119379; Norfolk Southern Railway, Pittsburgh Vertical Clearance Project (PVCP)

Dear Secretary Chiavetta,

As covered in the Motion to Consolidate filed herewith, I am writing on behalf of Rail Pollution Protection Pittsburgh (RP3) to alert your agency to certain facts reported by Norfolk Southern in a recent lawsuit filed in Federal Court against Boatright Rail Products, Inc. The facts pled in that case raise potentially serious safety concerns related to the proposed modified 20-mile route through densely populated neighborhoods in Pittsburgh, Allegheny County, and potentially the Commonwealth of Pennsylvania. Here is a link to that lawsuit: <https://www.leagle.com/decision/infcco20180522527>

As part of the presentation of its case, Norfolk Southern's counsel disclosed the following:

- That it required railroad ties to consist of "methods and specifications for the proper application of preservatives, including treatment... with specified amount of creosote."
- In order to increase its profit margin, Boatright ordered their employees to simply "make [the railroad ties] black."
- Boatright employees used a variety of substances, including motor oil, anti-freeze, and paint, that uniformly lacked preservative characteristics, but darkened the appearance of the railroad ties to resemble properly treated wood.
- This scheme lasted for nearly five years, from 2009 until 2014.
- In total, Norfolk Southern ordered and installed nearly 5,000,000 railroad ties manufactured by Boatright that failed to meet contractual standards.
- Lastly, Boatright failed to include identifying plates or Kerf marks on its railroad ties, making it more difficult for Norfolk Southern to identify, locate and remove the noncompliant ties.
- Norfolk Southern pled that the "inherently hazardous nature of the products necessitates their removal."

Stated plainly, Norfolk Southern has admitted to installing 5 million rail ties under its tracks that, in their own words are "inherently hazardous" because they were not waterproofed, are prone to more quickly rot, and which cannot be easily identified or removed.

EX 3a

All of the above facts pre-date Norfolk Southern's current application for its PVCP—which will quickly result in an increase in rail traffic to the line's current capacity of 70 to 80 trains per day.

Accordingly, RP3 requests the following:

- that the \$20 million in taxpayer funding for this project be frozen;
- that a comprehensive investigation be conducted, including whether defective rail ties were a factor in the August 2018 derailment on the South Side (since those tracks had been inspected immediately prior);
- and that every rail tie along the proposed modified 20-mile route, the remainder of Allegheny County, and the Commonwealth of Pennsylvania, be inspected and certified as free of defective Boatright manufactured ties, and fully compliant with federal standards and regulations.

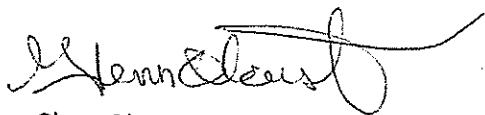
In addition, and in keeping with Norfolk Southern's public email pledge to WTAE TV Action News on February 21, 2019 that it is "committed to an open and transparent process," it is further requested that Norfolk Southern also provide to those copied below all documents related to rail ties purchased and installed from Boatright between 2009 and 2014, along with all engineering reports and defective rail product test results.

Under these circumstances, running what university studies have determined are higher center of gravity, less-stable double-stack trains, in increased volumes, next to volatile oil trains through the densely-packed city, on a route with 14 sharp curves (3 of which are within 1 ½ mile of each other), is an extreme safety risk within the purview and jurisdiction of the PUC.

Finally, as also encompassed in RP3's Motion to Consolidate, and based upon an analysis of the 1850, 1856, 1901, and 1946 deeds, ordinances, and contracts, Norfolk Southern must be required to use its own funds for the PVCP, and not taxpayer monies. In addition, because Norfolk Southern removed a historic highway crossing in Allegheny Commons without the express approval of the PUC, Norfolk Southern must replace the bridge at its own expense.

Thank you for your attention to these important matters.

Sincerely,



Glenn Olcerst, Esq.  
In-House Counsel  
Rail Pollution Protection Pittsburgh

CC:

Tom Wolf, Governor of Pennsylvania  
John Fetterman, Lieutenant Governor of Pennsylvania  
Wayne Fontana, Pennsylvania State Senator  
Jake Wheatley Jr., Pennsylvania State Representative  
Rich Fitzgerald, Allegheny County Executive  
Andrew F. Szefi, Esq., Allegheny County Solicitor

Ex-3b



William Peduto, Mayor, City of Pittsburgh  
Jim Kenney, Mayor of Philadelphia  
Benjamin Dunlap, Jr., Esquire, Nauman Smith  
Bryan Sarti, NRG Energy Center, Pittsburgh  
Cheryl Moon-Sirianni, P. E., District Executive, PennDOT District 11-0  
David Wolf, Esquire, Goldberg, Kamin & Garvin, LLP  
Debbie Ross, Peoples Natural Gas  
Deborah Barum, Verizon Pennsylvania LLC  
George McElvain, Century Link f/k/a Embark  
Gina D'Alfonso, Esquire, Office of Chief Counsel, PennDOT  
John J. Richardson, Esquire, Bernstein & Burkley  
Joseph Bechtold, Comcast Cablevision  
Leslie Richards, Secretary of Transportation, PennDOT  
Level Three Communications, LLC  
Mark Chappell, P. E., Chief Right-of-Way and Utilities Division, PennDOT  
Rebecca Caldwell, Crown Castle  
Rich Schlegel, Community College of Allegheny County  
Rick Obermeyer, Pittsburgh Water and Sewer Authority  
Rudy Husband, Resident Vice President, Norfolk Southern Railway  
Ryan Hamilton and Emma Hempstead, Esquires, Fair Shake Environmental Legal Services  
Shane Thieret, Duquesne Light Company  
William Cressler, Esquire, Office of Chief Counsel – PennDOT  
Windstream

Ex 3c

# Petition Demanding a True Town Hall Meeting from Norfolk Southern

Petition to Norfolk Southern Railroad, PennDOT, and Mayor Bill Peduto regarding the Pittsburgh Vertical Clearance Project ('PVCP')

We, the undersigned demand the following:

1. Norfolk Southern to schedule multiple meetings relating to the PVCP on the Northside and other project sites at multiple locations throughout the project route.
2. All public meetings about the PVCP be conducted in a public Town Hall format, with full audience participation, and with officials present with the authority to respond.
3. All requests for information and documentation to be fulfilled on a timely basis.

Name (Signature)	Name PLEASE PRINT	Address
<i>Barbara Simpson</i>	BARBARA SIMPSON	
<i>Brenda Simpson</i>	Brenda Simpson	1211 Sheffield St
<i>Bonnie Kenney</i>	Bonnie Kenney	1218 Hamlin St
<i>Yvonne Jones</i>	Yvonne Jones	1527 Bidwell St.
<i>George Clark</i>	George CLARK	1127 Island Ave
<i>Jeff Platter</i>	JEFF PLATTER	1811 BARRON E
<i>Robert Cinsshaw</i>	Robert Cinsshaw	1427 HANCOCK ST.
<i>Virginia Barber</i>	VIRGINIA BARBER	1416 COMBBS AVE
<i>Leah Baldwin</i>	Leah Baldwin	1439 Nixon St Pgh PA 15233
<i>Joycelyn Thomas</i>	Joycelyn THOMAS	1215 PENNSA AVE 15233
<i>Jacqueline Allie</i>	JACQUELINE THOMAS ALLIE	1909 Shelly Dr. 15216
<i>Maryn Formley</i>	MARYN FORMLEY	5402 <del>ST</del> KENTON ST Pittsburgh PA 15201
<i>Audrey Murrell</i>	Audrey Murrell	1311 Liverpool St Pgh, PA 15233

**Ex 4**

# Norfolk Southern Railroad Project Update

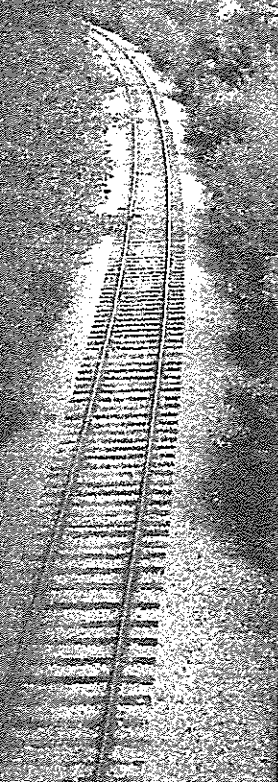
As many of you know, Norfolk Southern recently was awarded a state Railroad Grant to make improvements to the line running through several neighborhoods and parks in Pittsburgh. As with any project that affects our community, many of you had questions and concerns. Norfolk Southern was required to hold a public meeting to show the community their plans and discuss the project and any concerns brought forward.

Unfortunately, I and those who attended the June 26 meeting were left feeling disappointed and unfulfilled. The meeting felt like the minimum was being done to meet an obligation, rather than an effort to partner with the community and explain the work to be done. The next day, I reached out to the Department of Transportation, hoping to get some answers. Shortly thereafter, I had a direct conversation with PennDOT Secretary Leslie S. Richards to discuss the matter. I encourage you to visit my website at [www.pahouse.com/Wheatley](http://www.pahouse.com/Wheatley) to view the letter I wrote ("Norfolk Southern's railroad plans for our community"), which details my conversation with Secretary Richards.

Moreover, I'm pleased to tell you that Johnson, Mirmiran and Thompson have been hired to conduct an impact study on the North Side designs on behalf of PennDOT and Pittsburgh. Not only is the study important, it's encouraging that they're a third party not hired by the railroad to produce a favorable study. PennDOT also has told me they currently are in the process of getting answers to your questions and plan to post online many of the questions and concerns submitted at the community meeting.

I want to assure you that my office will remain your advocate throughout this process. As always, feel free to contact me if you have any questions. To PennDOT's credit, they have been diligent in keeping a line of communication open with my office, and I plan to personally see to it that they receive your questions. Please check back on my social media and website, as I will do my best to keep you updated as frequently as possible.

Twitter: @RepWheatley • Facebook: @RepWheatley • Website: [www.pahouse.com/Wheatley](http://www.pahouse.com/Wheatley)



## Driver's License Amnesty Bill: H.B. 1777

In late October 2017, the House Transportation Committee held a public hearing in Pittsburgh to discuss my Driver's License Amnesty Program legislation. Based on a similarly successful amnesty program in California, my proposal would provide individuals with suspended licenses an immediate pathway back to legal, insured driving.

Did you know, according to the Pennsylvania Department of Transportation, there are over a million state residents with a suspended license? In California, their Amnesty Program was able to successfully reduce 205,686 accounts and restore 192,452 licenses. The vast majority of Pennsylvania suspensions come from an inability to pay the costs of the violation. Plenty of those individuals did not even receive an initial suspension but lost their operating privileges after failure to pay. A large number of suspensions also are due to outdated laws that suspend licenses for simple drug possession charges that had nothing to do with the operation of a vehicle.

Regardless of why a license is suspended, it often results in significant late fees and penalties that make it impossible to get out from under such debt. With no end in sight, these individuals are forced to make decisions like driving to work or taking their child to a doctor's appointment without a valid driver's license. Moreover, those folks often are uninsured, which only makes the situation worse. My legislation seeks to

put a stop to this vicious cycle that affects many Pennsylvanians.

Under my legislation, those who have caused harm or injury to another individual, or have repeat DUI offenses, would not qualify for amnesty. All other violations that are not listed as ineligible violations would allow an individual to qualify for the program. The amnesty program would run for a specific 12-month period where those eligible would only be responsible for paying the cost of their original fine and half or one-quarter of all additional fines, fees or penalties, depending on their economic situation. Payment plans also would be available to those eligible for amnesty.

Based on the success of the hearing, coupled with another bill I co-sponsored that would repeal the law that automatically suspends licenses for simple drug possession, I am confident the House Transportation Committee will consider my amnesty bill. We have been working closely with the committee and anticipate that the bill will be brought up for a vote when the House returns to session in September. I will keep you updated as we try to move this legislation to the state Senate before time runs out this session!



EX5

42ND DISTRICT  
WAYNE D. FONTANA  
SENATE BOX 203042  
HARRISBURG, PA 17120-3042  
717-767-5300  
FAX: 717-772-5484

932 BROOKLINE BOULEVARD  
PITTSBURGH, PA 15226-2106  
412-344-2551  
KENMAWR PLAZA  
524 PINE HOLLOW ROAD  
KENNEDY TOWNSHIP, PA 15136-1661  
412-331-1208

EMAIL: fontana@pasenata.com  
WEB: www.senatorfontana.com  
TWITTER: @WayneDFontana



Senate of Pennsylvania  
August 16, 2018

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DEMOCRATIC CHAIR  
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& RECREATIONAL DEVELOPMENT  
CONSUMER PROTECTION  
& PROFESSIONAL LICENSURE  
LAW & JUSTICE  
RULES & EXECUTIVE NOMINATIONS  
POLICY

The Honorable Leslie Richards, Secretary  
Pennsylvania Department of Transportation  
400 North Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17120-0095

Dear Secretary Richards:

I am writing today to express concerns with aspects of Norfolk Southern's plan to alter bridges through Pittsburgh's Northside neighborhoods. As you know, the railroad was awarded a \$20 million grant through PennDOT's Rail Transportation Assistance Program last year, to be used to alter 14 bridges, some of which run through the Northside, which is part of the 42<sup>nd</sup> Senatorial District, that will accommodate doublestack train cars.

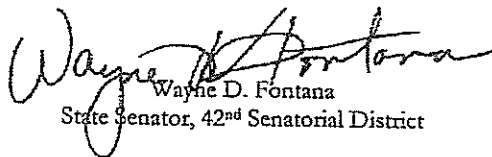
Since being awarded these funds, Norfolk Southern has been less than forthcoming with the community in discussing in detail their plans and how these plans will affect residents of the Northside. A June 26 "Public Meeting" hosted by Norfolk Southern officials was insulting to many residents I have spoken with as it was not a meeting of any kind, created more questions instead of providing answers, and reeked of the railroad simply checking off a to-do list item of having "met with the community."

An increase in the number of trains; the potential of roads, bridges, and sidewalks being redesigned and rebuilt; how Allegheny Commons, which enjoys protected status under the National Historic Preservation Act may be affected; are only a few of the questions residents and stakeholders have a right to ask and have answered before a project of this magnitude begins.

Based on these outstanding questions and the railroad's lack of transparency to this point, I am requesting the railroad's initial application for funding be re-evaluated and that no state funds are provided for this project until a true community process takes place.

If I may answer any questions or provide you with any additional information, please contact me at 412-344-2551.

Sincerely,

  
Wayne D. Fontana  
State Senator, 42<sup>nd</sup> Senatorial District

CC: The Honorable Tom Wolf, Governor  
The Honorable Jake Wheatley, Representative, 19<sup>th</sup> Legislative District  
The Honorable Adam Ravensthal, Representative, 20<sup>th</sup> Legislative District  
Ms. Cheryl Moon-Sirianni, District 11 Executive, PennDOT  
The Honorable William Peduto, Mayor, City of Pittsburgh  
The Honorable Daniel Gilman, Chief of Staff to Mayor, City of Pittsburgh  
The Honorable Darlene Harris, Councilperson, City of Pittsburgh  
The Honorable R. Daniel Lavelle, Councilperson, City of Pittsburgh  
Mr. Mark Fata, Esq., Executive Director, Northside Leadership Conference  
Mr. Rudy Husband, Resident Vice President, Norfolk Southern Corporation

EX6



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
HARRISBURG, PENNSYLVANIA 17120

OFFICE OF  
SECRETARY OF TRANSPORTATION

September 6, 2018

Honorable Wayne D. Fontana  
Senate of Pennsylvania  
42<sup>nd</sup> Senatorial District  
Senate Box 203042  
Harrisburg, Pennsylvania 17120-3042

Dear Senator Fontana:

This is in response to your August 16, 2018, letter to Secretary Richards expressing your concerns regarding Norfolk Southern's (NS) overhead bridge clearance project.

I would like to take this opportunity to reinforce that the Department will be taking on a more active role in the project, rather than just administering the grant. I, along with Cheryl Moon-Sirianni (PennDOT District 11-0 Executive), made the commitment to you, and other state and locally elected officials that were present on August 21, 2018 at the NS Project Briefing, to take an active partnership position with NS to ensure that all parties are heard during the project development process. In addition to ensuring sound engineering design, we will also be providing oversight on the environmental process and public involvement/outreach activities. Resources within the corridor, such as the Allegheny Commons, will be given full consideration in the avoidance, minimization and mitigation of any potential impacts. In addition, we have been working with NS to develop a robust Public Involvement Plan to ensure that all stakeholders have an opportunity to be heard, be informed, and provide input in to the process.

Thank you for your input and we look forward to working with you and all stakeholders to reach a solution that benefits all parties.

Sincerely,

Jennie A. Granger, AICP  
Deputy Secretary  
Multimodal Transportation

Ex 7