

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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 Norfolk Southern Railway Company (DOT 503 768 L) located in New Brighton Borough and two (2) tracks of CSX Transportation, Inc. (DOT 584 878 T) located in the City of Beaver Falls, all in Beaver County, and the allocation of costs incident thereto. : Docket No. A-2024-3045709
: Electronically Filed**

PETITION FOR RECONSIDERATION FROM STAFF ACTION

Norfolk Southern Railway Company (“Norfolk Southern”), by and through its counsel, Cohen Seglias Pallas Greenhall and Furman, P.C., hereby files this petition for reconsideration of the Secretarial Letter dated May 28, 2024, in the above-referenced matter, pursuant to the provisions of 52 Pa. Code §§ 1.56(b) and 5.44, based upon the following:

1. Ordering paragraph 8 of the Secretarial Letter *inter alia* would require Norfolk Southern to provide flagging at its subject (DOT 503 768 L) with State Route 0018 (Seventh Avenue), at the sole cost and expense of the Pennsylvania Department of Transportation (“PennDOT”).
2. Norfolk Southern has a system-wide procedure requiring that the sponsors of non-Norfolk Southern projects arrange for their own flagging.
3. Project sponsors must choose from a list of approved vendors, currently numbering three, pursuant to the notification email attached hereto as Exhibit A.

4. In order to be approved, a vendor must meet rigorous regulatory qualification and compliance, training and experience standards, which are delineated in the attached excerpt from Norfolk Southern's Public Improvement Projects Manual, which is attached hereto as Exhibit B and publicly posted on Norfolk Southern's website.

5.

6. To effect the change in this matter, Norfolk Southern requests that ordering paragraph 8 of the Secretarial Letter be deleted and replaced and a new paragraph 9 be added as follows:

8. 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.

9. Norfolk Southern Railway Company, 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 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. Pennsylvania Department of Transportation, at its sole cost and expense, furnish any watchmen and flagmen as required for work around the operations of Norfolk Southern Railway Company, as applicable, to protect Pennsylvania Department of Transportation or its

contractor during the time work is being performed across, above and adjacent to the railroads' tracks, which at the sole option of Norfolk Southern Railway Company, as applicable, may be through railroad forces or qualified contractors.

7. The requested change will serve the public interest by helping to ensure an adequate supply of flaggers who meet rigorous safety qualifications for public projects.

8. It is believed that either the subject of flagging was not specifically raised at the field meeting or Norfolk Southern's representative at the field meeting was unaware of the new process.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that its Petition for Reconsideration be granted and the Secretarial Letter be amended as set forth herein. Alternatively, Norfolk Southern requests that this matter be transferred back to the Bureau of Technical Utility Services, Rail Safety Section, for further evaluation.

Respectfully submitted,

**COHEN, SEGLIAS, PALLAS,
GREENHALL & FURMAN, PC**

By: 
Benjamin C. Dunlap, Jr., Esquire
Supreme Court I.D. #66283

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Counsel for Norfolk Southern Railway Company

Date: June 17, 2024

VERIFICATION

I, Shawn Starling, P.E., Senior Engineer Public Improvements, Norfolk Southern Corporation, do state that I am authorized to make this statement on behalf of Norfolk Southern Railway Company and verify that I have read the attached Petition for Reconsideration from Staff Action and that the within information is true and correct to the best of my knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, Verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Digitally signed by Shawn
Starling
Date: 2024.06.17 09:43:53
-04'00'

Shawn Starling
Shawn Starling, P.E.

Date: 06-17-2024

EXHIBIT A

All,

Norfolk Southern has determined that this project will utilize **contractor provided protective services** for any activities on or adjacent to Railroad Property and/or have the potential to foul the Railroad's track or operations.

Project Sponsor's Contractor shall be responsible for hiring a protective services provider to staff this project. Please see below for contact information for an NS approved protective services company. An agreement for protective services will need to be executed with this company prior to any work being completed on or near NS ROW. An on-site meeting must be held with NS Supervisor to certify any contractor provided protective service workers on the line and to determine which activities will require protection.

Please use the below when issuing the approved list to Contractors.

North Carolina Railroad Company (Raleigh, NC)

General Inquires: tpp@ncrr.com

John Gass | Senior Safety & Compliance Manager

JGass@ncrr.com; 864-504-0455

<https://www.ncrr.com/>

RailPros (Irving, TX)

Field Support Team

877-315-0513 (option 1)

NS.Info@railpros.com

Adam Brown

334-530-2861

adam.brown@railpros.com

R&R Consulting TEAM (Harrisburg, PA)

David N. Craft

Co-Owner & President

R&R Consulting TEAM, LLC.

717-497-4373 (Cell)

775-521-2495 (E-Fax)

dcraft@rrconsultingteam.com

www.rrconsultingteam.com

Thanks,

Shawn Starling, P.E.
Senior Engineer Public Improvements
Norfolk Southern Railway Company
Engineering - Design & Construction
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Atlanta, GA 30308

States Covered: PA, NY, NJ, TN
Phone (470) 463-6721

EXHIBIT B

Public Improvement Projects Manual

Appendix E.1

Minimum Specifications for Third Party Protective Services

This Appendix E.1 provides the minimum specifications for third party contractors and their personnel to qualify as Flagmen for purposes of providing protective services on behalf of a Project Sponsor that performs construction work affecting NS tracks, right of way, or operations. For purposes of this Appendix, references to Project Sponsor includes any contractors of Project Sponsor who are retaining services on behalf of the Project Sponsor. To be eligible for a Project Sponsor to retain an Organization, the Organization, the Management Team, and the contracted Flagman (all as defined herein or elsewhere in this Manual) must meet the minimum requirements set forth in this Appendix E.1 and the Project Sponsor must choose from a list of NS-approved Organizations prior to hiring that Organization to conduct protective services on NS property on behalf of the Project Sponsor.

Once the Organization complies with the requirements set forth for the Organization, its Management Team, and Flagmen in accordance with the minimum qualifications set forth in this Appendix E.1, the Organization may request to be included on NS's list of approved third party contract protective service companies that may be directly hired by Project Sponsors. Organizations must submit along with the request to Norfolk Southern: (1) a document from a third-party contractor/supplier risk assessor, such as ISN Software Corporation, affirming that they have met the qualifications in accordance with this Appendix E.1, (2) certificate(s) of insurance demonstrating coverage as required by NS, and (3) documentation demonstrating that the Organization currently employs at least 25 individuals meeting the eligibility requirements for Flagmen.

1. Definitions

In addition to the definitions set forth in section 3 of the Manual, for purposes of this Appendix E.1, the following definitions apply. Nothing in this Appendix pertains to or changes any requirements regarding flagging conducted by NS employees.

Management Team: The leadership team in the Organization who oversees the workers that are qualified to perform protective services and who are responsible to ensure that all necessary qualifications are met and maintained for Flagmen in their Organization.

Organization: A third party contractor retained by a Project Sponsor who hires workers that are qualified to be Flagmen on NS property on behalf of the Project Sponsor performing work affecting NS tracks, right of way, or operations.

2. Minimum Regulatory Qualifications and Compliance Standards¹ for Organizations

In order to be considered eligible to conduct protective services on NS property, an Organization shall obtain FRA approval (or similar review and acceptance) of and be compliant with its plans covering the following:

- 49 CFR Part 219: Drug and Alcohol Testing for maintenance of way employees
- 49 CFR Part 243: Training, Qualification, and Oversight for Safety-Related Railroad Employees
- Any other regulatory obligations relating to the provision of protective services as may be promulgated by FRA.

The Organization shall qualify its field personnel working as Flagmen under the following, as applicable to the safety of the protective services to be provided:

- 49 CFR Part 213 Subparts B through E: Track & Structures Compliance
- 49 CFR Part 214 Subpart C: Roadway Worker Protection
- Any other regulatory obligations relating to the safety of the provision of protective services as may be promulgated by FRA.

3. Minimum Standards for Organization's Management Team

In order to be considered eligible to conduct protective services on NS property, an Organization's Management Team must have the following, at a minimum:

- an existing relationship in good standing with NS, and
- 15 years of continuous experience with a Class I freight railroad as a railroad officer or a supervisor of a MW&S field contractor, or 10 years of continuous experience with NS as an NS officer or a supervisor of a MW&S field contractor, and
- 5 years of continuous experience providing railroad protective services on Norfolk Southern or serving as a roadway worker in charge (RWIC) on NS OR 10 years of similar continuous experience on other Class 1 freight railroad(s), and
- No large gaps (more than 6-12 months) of experience.

¹ Certain of these federal regulations by their terms may apply only to contractors working on behalf of railroads, but in order for others to provide protective services on NS lines, NS requires the same level of compliance for contractors working on behalf of Project Sponsors, in addition to appropriate coordination and communication with NS personnel in accordance with the Special Provisions.

4. Minimum Standards Organization Must Maintain for Individuals to be Flagmen

In order to be considered eligible to conduct protective services on NS property, Organizations must ensure that each Flagman have the following, at a minimum:

a. Former NS RWIC-Qualified Employees

- Either (1) 20 years' experience with last position held as a supervisor track inspection (STI)/ assistant track supervisor (ATS), Foreman, or higher, OR (2) 20 years' experience as a RWIC, and
- Completed a 24-hour refresher course, and
- Demonstrated to the Organization's Management Team the competency of the individual to safely perform track protection, with minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.

b. Other than Former NS RWIC-Qualified Employees

- (i) A person possessing 20 years of service as RWIC while employed by a Class I or Class II freight railroad must have:
 - Completed of 40 hours of instructor led interactive training, and
 - Completed 80 hours of field training under direct supervision of the Organization's qualified Flagman while on NS lines, and
 - Demonstrated to Organization's Management Team the competency of the individual to safely perform Protective Services, with a minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.
- (ii) A person possessing either an associate's degree in a construction-related discipline, military service (honorable discharge), 10 years as a construction supervisor or foreman, or 5 years of service as RWIC while employed by a Class I or Class II freight railroad, must have:
 - Completed 80 hours of instructor-led interactive training, and
 - Completed either (i) 3 months of field training under direct supervision of Organization's qualified Flagman while on NS lines, OR (ii) 6 months' combined experience serving as the Organization's flagman on another Class I or Class II freight railroad or serving under the direct supervision of the Organization's qualified Flagman while on NS lines, and
 - Demonstrated to Organization's Management Team the competency of the individual to safely perform Protective Services, with a minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.

- (iii) A person not meeting any of the above experience and/or educational requirements, but possessing 12 months' combined experience serving as the Organization's flagman on another Class I or Class II freight railroad or under the direct supervision of the Organization's qualified Flagman while on NS lines must have:
- a. Completed 160 hours of instructor led interactive training, and
 - b. Completed an additional 80 hours of field training under direct supervision of Organization's qualified Flagman while on NS lines, and
 - c. Demonstrated to Organization's Management Team the competency of the individual to safely perform Protective Services, with a minimum of 40 hours spent on NS network under the direct supervision of the Organization's qualified Flagman.
- (iv) All other persons are not to be considered as adequately experienced for the purpose of providing protective services on NS lines.

5. NS Requirements for Project Sponsors Directly Hiring Organizations to Provide Protective Services

The Project Sponsor retaining the Organization will need an agreement with NS permitting it to use a third-party contractor to conduct track protection services for the Project Sponsor's project on NS property. The Project Sponsor may only retain an Organization that is on NS's list of approved protective services Organizations, and the Project Sponsor will ensure, by including in its agreement with the Organization, that the Organization meets the following requirements of NS, which list may be modified by NS from time to time:

- Appropriate insurance coverage
- Participation in the NS vendor safety program (ISN Software Corporation, or other similar entity as determined by NS)
- Participation in software licensing and mobile device management, including:
 - Comply 365
 - Remote Field Operations
 - Delivr
- Compliance with data security requirements
- Appropriate indemnifications inuring to the benefit of NS

Project Sponsors must require that the Organization follow Norfolk Southern's notification and job briefing requirements as set forth in the Manual and applicable NS rules. Organizations are responsible to supply their own radios, derails, cell phones, and any other equipment that may be required for the protective services, and such equipment must be in good working order and compatible with NS systems, and Organizations must obtain all appropriate licenses or make other arrangements as appropriate to ensure access to data systems required by NS. Organizations are responsible for ensuring all employees on NS property have and wear the appropriate personal protective equipment (PPE). Organizations are responsible to ensure all

their employees' PPE is kept in good order, properly fitted, available for their use when needed, and used as needed.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participants listed below, in accordance with the requirements of 52 Pa. Code § 1.54, via electronic mail and/or First-Class mail:

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/s/ Alison A Zortman
Alison A. Zortman, Secretary to
Benjamin C. Dunlap, Jr., Esquire

Date: June 17, 2024