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December 11, 2024

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

**Re: Application of the Department of Transportation of the Commonwealth of Pennsylvania to replace the existing bridge where West Lackawanna Avenue crosses, above grade, two (2) tracks owned by Norfolk Southern Railway Company and operated thereon by Delaware-Lackawanna Railroad Company, Inc. (DOT 265 971 V) in the City of Scranton, Lackawanna County, and the allocation of costs incident thereto  
Docket No. A-2023-3043493**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter, please find the Petition for Reconsideration of Staff Action of Norfolk Southern Railway Company. Copies have been served upon all interested parties as indicated on the Certificate of Service.

Sincerely yours,



Benjamin C. Dunlap, Jr.

BCD:klg  
Enclosures  
cc: All Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of Transportation of the Commonwealth of Pennsylvania to replace the existing bridge where West Lackawanna Avenue crosses, above grade, two (2) tracks owned by Norfolk Southern Railway Company and operated thereon by Delaware-Lackawanna Railroad Company, Inc. (DOT 265 971 V) in the City of Scranton, Lackawanna County, and the allocation of costs incident thereto.** :  
: **Docket No. A-2023-3043493**  
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: **Electronically Filed**  
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**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 November 22, 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 13 of the Secretarial Letter would require Norfolk Southern, at the sole cost and expense of the Department of Transportation of the Commonwealth of Pennsylvania (“PennDOT”), to provide and maintain flagmen and watchmen at the subject crossing.
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. To effect the change in this matter, Norfolk Southern requests that ordering paragraph 13 of the Secretarial Letter be deleted and amended as two ordering paragraphs as follows:

13. Pennsylvania Department of Transportation, at its sole cost and expense, shall require its contractor to furnish and maintain flaggers, selected from a list of vendors qualified to provide protective services on Norfolk Southern Railway Company, to protect the Pennsylvania Department of Transportation or its contractor when construction activities are taking place on or adjacent to railroad property or have the potential to foul the railroad's tracks or operations. Norfolk Southern Railway Company shall ensure compliance with its rules for safe railroad operations by briefing, monitoring and inspecting the flagging vendor. Should the Pennsylvania Department of Transportation or its contractor be unable to schedule the flaggers when needed from the listing of qualified vendors, Norfolk Southern Railway Company shall work diligently and in good faith to assist the Pennsylvania Department of Transportation in finding qualified flagging services, including coordinating a conversation with the flagging vendors to discuss providing the flagging services, so as not to unreasonably delay the project .

13a. Norfolk Southern Railway Company, at Department of Transportation of the Commonwealth of Pennsylvania's sole cost and expense, shall 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.

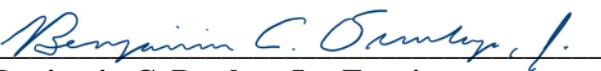
6. The requested change will serve the public interest by helping to ensure an adequate supply of flaggers who meet rigorous safety qualifications for public projects.

7. 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 assigned to the Office of Administrative Law Judge for hearing on any factual issues, as have the proceedings at A-2022-3031613 and A-2024-3045709 on the same issue.

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: December 11, 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.



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Shawn Starling, P.E.

Date: 12-11-2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of the Department of Transportation :  
of the Commonwealth of Pennsylvania to replace : Docket No. A-2023-3043493  
the existing bridge where West Lackawanna :  
Avenue crosses, above grade, two (2) tracks owned : Electronically Filed  
by Norfolk Southern Railway Company and :  
operated thereon by Delaware-Lackawanna :  
Railroad Company, Inc. (DOT 265 971 V) in the :  
City of Scranton, Lackawanna County, and the :  
allocation of costs incident thereto. :**

**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 addressed to the following:

Susan Hazelton, P.E.  
Assistant District Executive  
Engineering District 4-0  
Department of Transportation  
55 Keystone Industrial Park  
Dunmore, PA 18512  
[shazelton@pa.gov](mailto:shazelton@pa.gov)

Karen L. Cummings, Esquire  
Office of Chief of Counsel  
Pennsylvania Department of Transportation  
PO Box 8212  
Harrisburg, PA 17105-8212  
[kcummings@pa.gov](mailto:kcummings@pa.gov)

William Sinick, P.E.  
PA Public Utility Commission  
Rail Safety Engineering Section PUC  
400 Morth Street, 3rd Floor  
Harrisburg, PA 17103  
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Jerry Notarianni, Chairperson  
Lackawanna County Commissioners  
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570-963-6800  
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Verizon Pennsylvania Inc. (VER1)  
Attn: John Bayzick  
105 Monahan Avenue  
Dunmore, Pa. 18512  
570-342-6586  
[john.j.bayzick@verizon.com](mailto:john.j.bayzick@verizon.com)

The Honorable Paige Cognetti, Mayor  
City of Scranton  
340 N. Washington Street  
Scranton, Pa. 18503  
570-348-4100  
[scranton311@scrantonpa.gov](mailto:scranton311@scrantonpa.gov)

PA. American Water  
Scranton Sewer Division  
Attn. Jeremy Hull  
2500 Sanitary Drive  
Scranton, Pa. 18505  
570-614-3333  
[jeremy.hull@amwater.com](mailto:jeremy.hull@amwater.com)

Pennsylvania American Water (PAWC03) Attn.  
Jeremy Nelson  
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Frontier Communications Corporation  
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Wilkes Barre, PA 18702  
[Albert.zuba@ftr.com](mailto:Albert.zuba@ftr.com)

AT&T Corp. (ATT1)  
Attn. Mike Huddleston  
C/O Michael Baker Corp.  
100 Airside Drive  
Airside Business Park  
Moon Township, Pa. 15009  
[mhuddleston@mbakerintl.com](mailto:mhuddleston@mbakerintl.com)

Comcast Cable Communications Management,  
LLC.  
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1 Comcast Way  
Duryea, PA 18642-1114  
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/s/ Karen L. Gagne

Date: December 11, 2024

Karen L. Gagne, Administrative Assistant to  
Benjamin C. Dunlap, Jr., Esquire

# 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](mailto:tpp@ncrr.com)

John Gass | Senior Safety & Compliance Manager

[JGass@ncrr.com](mailto: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](mailto:NS.Info@railpros.com)

Adam Brown

334-530-2861

[adam.brown@railpros.com](mailto: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](mailto:dcraft@rrconsultingteam.com)**

**[www.rrconsultingteam.com](http://www.rrconsultingteam.com)**

Thanks,

Shawn Starling, P.E.  
Senior Engineer Public Improvements  
Norfolk Southern Railway Company  
Engineering - Design & Construction  
650 West Peachtree Street NW - Box 45  
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 Standards<sup>1</sup> 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.

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<sup>1</sup> 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.