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April 14, 2025

VIA ELECTRONIC FILING

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

**Re: Application of Westmoreland County for approval to replace an above grade public crossing (DOT 507 913 W) by the installation of a single-span steel girder bridge where West Broadway Avenue/Fourth Street crosses the tracks of Norfolk Southern Railway Company located in North Irwin Borough, Westmoreland County
Docket No. A-2024-3052077**

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. Thank you.

Sincerely yours,

Benjamin C. Dunlap, Jr.

BCDjr:ino
Enclosures

cc: All Parties on Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Westmoreland County for approval :
to replace an above grade public crossing (DOT : Docket No. A-2024-3052077
507 913 W) by the installation of a single-span steel :
girder bridge where West Broadway :
Avenue/Fourth Street crosses the tracks of Norfolk :
Southern Railway Company located in North Irwin : Electronically Filed
Borough, Westmoreland County :**

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 March 24, 2025, in the above-referenced matter, pursuant to the provisions of 52 Pa. Code §§ 1.56(b) and 5.44, based upon the following:

1. A field investigation and conference was held on December 2, 2024. Representatives from the Pennsylvania Utility Commission (“Commission), Westmoreland County (“Applicant”), AECOM, on behalf of Norfolk Southern, Pennsylvania Department of Transportation ("PennDOT") and others were in attendance.
2. At the meeting, the issue of railroad flagging was discussed, and it was decided that the Commission would hold the Application in abeyance, and delay issuing a Secretarial Letter until pending issues regarding the language used when assigning flagging responsibilities in non-Norfolk Southern projects was resolved.
3. By email dated March 18, 2025, Applicant expressed concerns regarding the delay in the issuance of the Secretarial Letter.
4. The Commission proposed using the provisional language set forth in numbered paragraphs 1, 2, and 3 of the March 24, 2025, Secretarial Letter.

5. Norfolk Southern objects to the language proposed by the Commission in numbered paragraph 1, which would assign flagging responsibilities to Norfolk Southern, as it has a system-wide procedure requiring that the sponsors of non-Norfolk Southern projects arrange for their own flagging.

6. Project sponsors must choose from a list of approved vendors, currently numbering three, pursuant to the notification email attached hereto as Exhibit A.

7. 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 the commission instead use the following in place of numbered paragraph 1:

1. Westmoreland County, 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 Westmoreland County 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 Westmoreland County 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 Westmoreland County 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.

1a. Norfolk Southern Railway Company, at Westmoreland County'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.

WHEREFORE, Norfolk Southern Railway Company respectfully requests that its Petition for Reconsideration be granted and a Secretarial Letter approving the project be issued as set forth herein. Alternatively, Norfolk Southern requests that this matter be stayed by the Office of Administrative Law Judge, pending a decision in the proceedings docketed to A-2022-3031613 and A-2024-3045709 on the same issue presently being litigated before the Commission.¹

¹ At the Prehearing Conference for these consolidated cases on December 13, 2024, Administrative Law Judge Joseph F. Brady stated as follows: "Let me talk to the staff to see what is the most efficient manner to catch these cases if they start coming through. And then most likely I'll include some type of stay language in my order. Same for the litigation schedule." N.T. pg. 36, lines 12-16.

Respectfully submitted,

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

By: *Benjamin C. Dunlap, Jr.*

Benjamin C. Dunlap, Jr., Esquire

Supreme Court I.D. #66283

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Counsel for Norfolk Southern Railway Company

Date: April 14, 2025

ATTORNEY VERIFICATION

I, Benjamin C. Dunlap, Jr., a member of the firm of Cohen Seglias Pallas Greenhall & Furman PC attorneys for Norfolk Southern Railway Company in the foregoing proceeding, make this verification on behalf of Norfolk Southern Railway Company, and do state that as an attorney for Norfolk Southern Railway Company, I am authorized to make this Verification on behalf of Norfolk Southern Railway Company, and further state that, based on information provided to me by Norfolk Southern Railway Company, the facts set forth in the foregoing PETITION FOR RECONSIDERATION OF STAFF ACTION are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. §4904 providing for criminal penalties for unsworn falsification to authorities.

Date: April 14, 2025


Benjamin C. Dunlap, Jr., Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Westmoreland County for approval :
to replace an above grade public crossing (DOT : Docket No. A-2024-3052077
507 913 W) by the installation of a single-span steel :
girder bridge where West Broadway :
Avenue/Fourth Street crosses the tracks of Norfolk :
Southern Railway Company located in North Irwin : Electronically Filed
Borough, Westmoreland County :**

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:

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Date: April 14, 2025

/s/ Ijeoma Okereke
Ijeoma Okereke, Paralegal 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

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,

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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 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.