



PO Box 4262  
Lindenwold, NJ 08021-0218

(856) 772-6900  
(215) 922-4600  
(856) 772-6957 Fax  
www.ridepatco.org

Department Name

December 15, 2023

National Transportation Safety Board (NTSB)  
Attention: Matthew Thompson  
Investigator in Charge

**Re: NTSB Investigation: RRD23FR001 – Conclusions on Factual Report**

Dear Mr. Thompson:

NTSB has asked for potential conclusions regarding the event investigation and recommendations.

DRPA and PATCO find the following connections between evidence in the investigation report and the cause of the accident:

### **FINDING 1**

The proximate cause of the event was the contractor's failure to properly supervise its employees and allowing its employees to enter the right-of-way prior to PATCO giving the contractor permission to enter the right-of-way.

On October 14, 2022, the two JPC employees, entered the right-of-way, prior to PATCO establishing its track outage and giving Skanska permission to enter the right-of-way and begin work. The JPC supervisor admitted to directing the two JPC workers to, "head on up to the bridge" prior to being notified that PATCO rail power was off and that PATCO had given permission for workers to enter the right-of-way. Indeed, the JPC supervisor directed his employees to park on the bridge before even temporary highway traffic control was established.

The JPC supervisor's direction to his employees occurred before all the PATCO employees who were going to begin the shutdown of Track 2 were in position and had begun the process of taking the track outage.

National Transportation Safety Board (NTSB)  
Attention: Matthew Thompson  
Investigator in Charge  
December 15, 2023  
Page 2

The PATCO flag man, the normal communicator to the Skanska supervisor regarding permission to enter the right-of-way, had not even arrived at the Skanska yard when the fatal accident occurred.

The JPC Group foreman's account of the events of October 14, 2022 indicated an expectation that the JPC workers who he instructed to "head on up" would work outside of the right-of-way until he gave express permission to enter. When notified of the accident and questioned by the Skanska assistant superintendent about the workers being on the tracks, the JPC foreman replied: "They better not be. They know better." During the NTSB investigation, neither the JPC foreman or the Skanska supervisor reported telling the deceased JPC workers during their safety briefing, that the tracks were still active and to stay clear until instructed otherwise. The Skanska assistant superintendent also testified that workers were not permitted to occupy the adjacent highway lanes until attenuator crash trucks or vehicles and other safety precautions were in place. The JPC foreman failed to verify that highway safety arrangements were completed and that PATCO had given permission for workers to enter right-of-way before sending the two JPC workers onto the bridge to "set up."

In the contract with Skanska, DRPA and PATCO tried to minimize the hazard of contractor employees entering the right-of-way without permission. First, it was an expressed contractual term between Skanska and DRPA that no contractor employees would enter the right-of-way prior to receiving permission from PATCO. Second, all contractor employees were required to undergo PATCO training, which dealt with right-of-way safety, including the FTA's *Knock at Your Door* video, warning about the dangers of entering tracks prior to receiving permission and confirming that the tracks having been taken out of service. Third, Skanska was required to have a daily site-specific safety meeting and a full-time safety representative on site to address specific hazards that were going to confront employees during the shift. Fourth, Skanska knew it was bidding on a large bridge restoration project which partly involved work in the PATCO right-of-way. Skanska represented that it had significant experience in working in these situations and environments as part of its bid proposal and award of the contract. Fifth, JPC, a significant subcontractor on the Ben Franklin Bridge

National Transportation Safety Board (NTSB)  
Attention: Matthew Thompson  
Investigator in Charge  
December 15, 2023  
Page 3

Restoration Project, was also required to have its own site-specific safety consultant for the project. All of the site-specific safety personnel also received the mandatory PATCO right-of-way safety training.

**RECOMMENDATION 1**  
**TO SKANSKA AND JPC GROUP**

Conduct and document thorough job safety briefings at the beginning of each shift, and whenever substantive changes occur to work, the work area or the personnel conducting the work. These safety briefings should cover the hazards associated with the work and work site, including right-of-way hazards when work would foul the PATCO tracks. The safety briefings also need to include the precautions and procedures needed to avoid injury; the personal protective equipment required and address the hazards of being struck by highway vehicles, trains and work equipment, and electrocution hazards associated with entering the PATCO right-of-way prior to an outage being secured and expressed permission granted by PATCO.

**FINDING 2**

PATCO will no longer principally rely upon the experienced and sophisticated contractors, Skanska and JPC, to fulfill their contractual responsibility to prevent their employees from entering the right-of-way without express permission from PATCO.

Prior to the tragic accident of October 14, 2022, DRPA hired sophisticated, experienced and large general contractors to perform work on the Ben Franklin Bridge Restoration Project. These contractors were pre-screened for experience where work would, among other things, potentially foul the PATCO tracks and require right-of-way access.

Prior to the tragic accident of October 14, 2022, DRPA required contractors on capital projects to provide pre-job safety briefings for the hazards the workers could encounter. This would include right-of-way safety. The Ben Franklin Bridge Restoration Project contract expressly required that the contractor would not allow employees to enter the right-of-way prior to receiving permission from PATCO. The tragic October 14,

2022 accident, occurred when two contractor employees entered the right-of-way prior to PATCO giving permission to Skanska for contractor employees to do so. In fact, the employees who were tragically killed entered the right-of-way prior to the PATCO flag person even being on site in the Skanska yard.

While PATCO, at the time of the accident, conducted and documented pre-job safety briefings with respect to the right-of-way for its own employees, it did not provide those daily briefings to contractor employees on capital improvement construction projects. For capital improvement projects, DRPA and PATCO relied upon the experienced and sophisticated contractors who would be aware of the employees who would be fouling the track to provide complete safety briefings, including right-of-way when appropriate. After the accident, at the direction of the New Jersey State Safety Oversight Agency, PATCO began directly briefing contractor employees with respect to fouling the tracks and the right-of-way in the same manner in which it had been briefing its own employees. This subsequent remedial measure was put in place at the restart of work on the Ben Franklin Bridge Restoration Project and remains in practice today.

## **RECOMMENDATION 2**

### **TO THE PORT AUTHORITY TRANSIT CORPORATION**

Continue the practice of PATCO directly providing an in-person, pre-job safety briefing to all contractor employees assigned to work on or near the trackway as per PATCO's right-of-way plan.

### **TO JPC AND SKANSKA**

Establish procedures to verify that PATCO has completed taking its track outages; on-track safety has been established; and express permission to enter the right-of-way has been granted before the contractor and all subcontractors dispatch employees to work that potentially could foul a rail transit track. [NOTE: This is already required of contractors with employees working on railroad property, 49 CFR Part 214.315].

Require that all contractor employees assigned to work in the rail transit right-of-way attend the PATCO pre-job briefing and acknowledge understanding the contents of the briefing before being dispatched to the

work area. [NOTE: Contractors already required to provide a pre-job briefing to their employees assigned to work on railroad right-of-ways, 49 CFR Part 214.315].

### **FINDING 3**

Contractor complacency may have contributed to the tragic and fatal accident involving the two JPC employees. DRPA and PATCO placed considerable contractual obligations on Skanska to protect its employees and subcontractor employees from right of way hazards on the Ben Franklin Bridge Restoration Project. This includes a site specific safety plan; onsite safety consultants; daily safety briefing and mandatory right-of-way safety training by PATCO. Despite these safety precautions, the two contractor employees were dispatched to the bridge to “set-up” and entered the right-of-way prior to the PATCO flagmen even arriving at Skanska’s yard to communicate the completion of the PATCO outage and communicate permission to enter the right- of-way to Skanska. During PATCO track outages, the PATCO flag person should have been the first worker to enter the right-of-way and the last person to leave the right-of-way when the outage is completed and the tracks turned back to PATCO for use. This well-established simple rule should be reiterated to all contractor employees on a regular basis.

### **RECOMMENDATION 3**

#### **TO PATCO; SKANSKA AND JPC GROUP**

All contractor employees should sign written acknowledgement that they are not to be in the right-of-way without a PATCO flag person present.

If you should have any questions, please do not hesitate to call.

David Fullerton  


David Fullerton  
Safety Director for PATCO and the DRPA