2018 AASHTO Committee on Right of Way, Utilities, and Outdoor Advertising Control

AND THE

National Alliance of Highway Beautification Agencies Conference

Sunday, April 22–Thursday, April 26
Sheraton Inner Harbor Hotel
Baltimore, Maryland
Session 4.02
Obstruction Removal Notices and Delay Charges on Projects
Utah’s Process

Alana Spendlove
Utah DOT
Utility Reimbursement

Utah Administrative Code 72-6-116

- UDOT obligated to reimburse utility relocations due to highway projects
  - 100% for political subdivisions, fee title, or easement
  - 50% for utility facilities in ROW by permit
Utility Relocations

Utah Administrative Rule R930-8

• Coordination and Cooperation
• Timeliness
• Relocation
• Replacement of Property Rights
• Reimbursements
• Betterments
• Administrative Orders
Administrative Orders

Utah Administrative Rule R930-8-10

• Contractor notification to Resident Engineer
• Resident Engineer request documentation
• Notification to utility owner
• Project meeting
• Escalation to statewide level
• Administrative Order(s) issued
Required Documentation

- Required Coordination - by Milestone
  - Preconstruction/Utility Coordination Meetings
    - RE notifies Utility Company and Contractor of the required preconstruction meeting 2 weeks in advance. Notice must provide the Utility Company a reasonable opportunity to meet and time to schedule an alternate time and location. Provide the notice verbally with written follow-up.
    - Contractor notifies Utility Company and RE 1 week in advance of any subsequent utility coordination meetings. Notice must provide the Utility Company a reasonable opportunity to meet and time to schedule an alternate time and location. Provide the notice verbally with written follow-up.
    - Contractor and RE meet with the Utility Company to coordinate any required relocation work.
    - Contractor documents who attends each meeting, what commitments were made, and what materials were distributed or received by the Utility Company in the meeting minutes.
    - Contractor documents utility company commitments made during meetings, verbal or written. Distribute an electronic copy of the commitments, distributed materials, meeting minutes, and attendance sheet to the Utility Company and the RE.
    - Contractor records attempts and methods to seek Utility Company cooperation and participation (including alternate meeting dates, Utility Company point of contact, and contact method, e.g., telephone, voicemail, text, email).

  - Baseline Schedule & Utility Work Plan
    - Contractor requests baseline schedule and Utility Work Plan during the Preconstruction or subsequent coordination meeting. Utility Work Plan shall include a written deadline (per the terms of each Supplemental or Statewide agreement) but no less than 2 weeks from the written request.
    - Contractor obtains written acknowledgement from Utility Company of agreed upon Contractor baseline schedule and Utility Work plan for Utility Work performed by Contractor. A copy of this acknowledgement shall be delivered to the Utility Company and the RE.
    - Contractor documents verbal/write correspondence to/from Utility Companies.

  - Revised/Updated Schedule & Utility Work Plan
    - Contractor requests revised/updated schedule and Utility Work plans during subsequent coordination meetings for Utility Work performed by the Utility Company. Provide a verbal and written deadline (per the terms of each Supplemental or Statewide agreement) but no less than 2 weeks from the written request.
    - Contractor obtains written acknowledgement from Utility Company of agreed upon Contractor revised/updated schedule and Utility Work plan for Utility Work performed by Contractor. A copy of this acknowledgement shall be delivered to the Utility Company and the RE.
    - Contractor documents verbal/write correspondence to/from Utility Companies.

- Required Documentation – ALL Milestones
  - Verbal correspondence log
  - Written notifications (email/mail)
  - Verbal/written response from Utility Companies
  - Meeting minutes
  - Utility Company commitments
  - Attendance sheets
  - Record of attempts and methods to contact non-responsive Utility Companies

- Additional Required Documentation – by Milestone
  - Complete Required Documentation – ALL Milestones
  - Complete Required Documentation – ALL Milestones, and;
    - Utility Company baseline schedule and Utility Work plan
    - Utility Company acknowledgement of Contractor baseline schedule and Utility Work plan
  - Complete Required Documentation – ALL Milestones, and;
    - Utility Company updated/revised schedule and Utility Work plan
    - Utility Company acknowledgement of Contractor updated/revised schedule and Utility Work plan
  - Complete Required Documentation – ALL Milestones, and;
    - Evidence of unchanged site conditions and no work factors outside of the utility's control which limits the utility work.
    - Copy of notification requirements from the utility agreement.
Property Rights

Utah Administrative Rule R930-8-7

• Replacement property/easement on behalf of a utility owner
  • Property owner approached one time
Utility Conflict Management

AGREEMENTS DASHBOARD

FIND A PROJECT

FILTER AGREEMENTS BY:
- PIN
- Project Name
- Entity Name
- Status

<table>
<thead>
<tr>
<th>PIN</th>
<th>PROJECT NAME</th>
<th>AGREEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>12181</td>
<td>SR-85 Mountain View Corridor, SR-73 to 2100 North</td>
<td>Requested</td>
</tr>
<tr>
<td>14130</td>
<td>US-40 Victory Hwy. &amp; Airport Biv (MP 12.5), Heber</td>
<td>Requested</td>
</tr>
<tr>
<td>14411</td>
<td>SR-172/5600 W. Rail Road Crossing</td>
<td>UPPR</td>
</tr>
<tr>
<td>10181</td>
<td>US-60 &amp; 5700 East (MP 22.00), Fort Duchesne</td>
<td>MLA</td>
</tr>
</tbody>
</table>

PROJECT AGREEMENT INFORMATION

SEARCH FOR A PROJECT BY PIN NUMBER:

Please enter a PIN number:  SEARCH

EPM INFORMATION

Modify Project Info

- PIN: 16187
- Project Name: SR-172 East Rail Road Crossing
- Project Status: Active
- Project Manager: Thomas Reynolds
- Design Lead: P.J. Knutzen

DESCRIPTION:
This project will repair a damaged structure that was due to wear and tear. Repair could include damaged steel girders, columns or bridge deck deterioration.

PROJECT CONCEPT:
Emergency Repair - Structure

PROJECT DELIVERY METHOD:
Design, Bid, Build

SHOULDER Estimate:
- Not Needed

Project Area:
- PIN: 16187, County: VARIOUS

2018 CRUO Conference, Baltimore
Questions?

Alana Spendlove
Statewide Railroad & Utilities Director
aspendlove@utah.gov
Session 4.02
Obstruction Removal
Notices and Delay Charges
on Projects
Oregon’s Process

Heather Howe
Oregon DOT
Utility Delay Claims

Established Law

Internal Tools & Resources

Mechanism for Cost Recovery

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Utility Delay Claims

Oregon Administrative Rule 734-055-0045

(6) If the section of highway in which applicant is required by the Engineer to remove, relocate or repair a facility is or will be under construction or reconstruction or improvement under a contract entered into between the Department and an independent contractor and applicant’s failure to remove, relocate or repair said pole line, buried cable, pipe line, sign or miscellaneous facility within the time specified in section (4) of this rule, or such other time as may be specified by the Engineer, results in payment by Department to its contractor of any claim for extra compensation for any work under said contract, applicant shall be liable to the Department for payment of the amount paid to Department’s contractor as a direct result of applicants failure to comply with the time requirements of the Engineer.
....applicant’s failure to remove, relocate or repair said facility within the time specified..., results in payment by Department to its contractor of any claim for extra compensation for any work under said contract, applicant shall be liable to the Department for payment of the amount paid to Department’s contractor as a direct result of applicants failure to comply with the time requirements of the Engineer.
# Delay Claim Process

## Notification of Intent to File Delay Claim

**Completed by the Contractor**

Form serves as formal notice to ODOT staff that we have an issue.

Receipt kicks off the delay claim process.

<table>
<thead>
<tr>
<th>Project Name (Section)</th>
<th>Contract No.</th>
<th>Notice No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3/18/2018 &amp; 3/30/2018</td>
<td></td>
</tr>
</tbody>
</table>

**Check the box for which section this notice applies:**

- **Differing Site Conditions** (Section 00140.40)
- **Notice of Delay** (Section 00180.60) in the field below provide all of the information required by 00180.60.
- **Notice of Protest** (Section 00199.20) in the field below provide all of the information required by 00199.20.

**Reason/Cause for Delay**

While excavating the 12” RCP on Union Mills (approx. STA 11+50) on 3/28/18 crews discovered an unlocated comm. line approx. 1’ below sub-grade. Crews were previously told by this utility they did not need a “spitter” because all lines were located at least 1’ below grade. The project superintendent called and informed them of this exposed and unlocated line. In order to keep the project moving, crews moved over to the SE corner of Union Mills and CR213 the next day and began excavating the 18”. Crews then hit a pair of comm. lines at that location which were running through 18’ planned location. There was a locate in the vicinity but again, crews were previously told by this utility they did not need a “spitter” because all lines were located at least 1’ below grade. was notified immediately is currently still working on their lines at the 2 locations described above.

On 4/2/18 (today), while relocating their lines, they discovered an additional 2 fiber optic lines (on SE Union Mills and CR213) that were also running through the 18” RCP plan location. Those lines were also being relocated all day. This was almost an entire day of delay.

Please note the attached Locate Ticket No. and Notice to Utilities Letter per Special Provisions.

**Nature of Damages**

The extent of this delay and its damages is still unknown. Once the issue is resolved, all information required and not provided in this Notice will be promptly forwarded to the Agency for review. Possible damages include delaying crews. This is a loss of productivity, which means a loss of time and money.

**Specifications**

00150.50 and 00180.80

**Estimated Duration of Delay**

Duration of the delay is still unknown and hard to estimate. We are attempting to minimize any by working where we can but there was at least a few hours delay at each location while crews were identifying and communicating with the utility owner and reorganizing/recouping crew activities. There was also an additional day today.

**Contractor Signature**

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Delay Claim Process

Issue Notice of Delay Claim

Completed by either the PM or the Utility Liaison

Letter serves as the official notice to the utility that a claim has been submitted.

SUBJECT: NOTICE OF DELAY CLAIM
PROJECT: Contract #

The purpose of this letter is to provide with formal notification that the Oregon Department of Transportation (ODOT) has been notified of a Notice of Delay due to unlocated lines and information from that all lines are located at least 12' below grade, as per the attached Form # 734-2887.

Background: Attached is the documentation that was provided to ODOT from ODOT seeks recovery pursuant to Oregon Administrative Rule 734-055-045(6).

If you wish to meet with me regarding this matter please schedule an appointment as soon as possible to bring this issue to closure. All claim materials will be open for your inspection. Please contact me at 503-986-3658 or the project manager, Jamie Miller at 503-731-8502.

Cordially,

Heather Howe
State Utility Liaison
4040 Fairview Industrial Drive SE MS#2
Salem, Or. 97302-1142
Delay Claim Process

Follow the Money and Track the Cost

✓ Tracking by the Contractor
  ✓ Costs they incur, with documentation for the record.

✓ Tracking by the Project Manager
  ✓ Track Contractor’s delays
    ✓ Equipment costs
    ✓ Production
    ✓ Is it critical path?
Delay Claim Process

Completed by either the PM or the Utility Liaison

Reports the final outcome to the utility.

Cites law and provides notice of pending invoice.

Subject: DELAY CLAIM REVIEW COMPLETION
Project: (PROJECT NAME)
Key #: (PROJECT KEY NUMBER)

Attention: (UTILITY CONTACT NAME)

The Oregon Department of Transportation has concluded its review and assessment of claim documentation related to the identified project.

Review findings indicate that (PARTY A) was responsible, causing delay to the project contractor. The amount of damage to ODOT due to delays caused by your company has been assessed in the amount of (DOLLAR AMOUNT).

ODOT seeks recovery pursuant to Oregon Administrative Rule 734-055-045(6). ODOT’s Financial Services Section is preparing a bill for the amount shown above, and remittance must be submitted within 30 days of invoice date.

If you wish to meet with me regarding this matter, please schedule an appointment as soon as possible to bring this issue to closure. All claim materials will be open for your inspection. Please contact me at 503-986-3658, or the project manager, (PROJECT MANAGER NAME) at (PM PHONE NUMBER).
Delay Claim Process

Cost Recovery

✓ ODOT’s Financial Services Section
  ✓ Processes a payment, if everything goes well

✓ Dept. of Justice
  ✓ Engages in litigation, if it does not
Questions?

Heather Howe
State Utility & Railroad Liaison
Heather.C.Howe@odot.state.or.us
Session 4.02
Obstruction Removal Notices
and
Delay Charges
on Projects
The Tennessee Perspective

Joe Shaw
Tennessee DOT
State Statutes (TCA Title 54 Chapter 5 Part 8)

- **Department authorized to reimburse relocation cost for facilities on public ROW.** (Chapter 86)  
  (TCA 54-5-804(a))

- **Fails to complete relocation within the approved schedule of calendar days Department has authority to fine $500 per day.**  
  (TCA 54-5-854 (h))

- **Contractor, with consent of Department, may undertake construction without liability and shall be liable to contractor for damages.**  
  (TCA 54-5-854 (f) & (g))

https://www.tn.gov/tdot/right-of-way-division.html
TDOT Policy (340-07)

• QUALIFIED projects – Grade and drainage projects with ROW acquisition.

• ELIGIBILE utilities
  ✓ Submit relocation plans per statute 120 Days
  ✓ Enter into relocation agreement
    - Move IN STATE within construction contract
    - Move PRIOR to letting date
  ✓ Existing facility installed by permit
80% of CH86 utility agreements

MOVE IN STATE Utility Relocations

✓ Utility Plans in highway contract.
✓ Utility Specifications in highway contract.
✓ Contractor contract same subcontractors as utility’s historically use for contract work.
✓ Utility can contract to provided material.
✓ Exception AT&T with negotiated labor.
State Highway contractor responsible for utility relocation.

Utility responsible for plans and specifications.

State Contractors reduce delays.

Utilities have been responsible for “premium cost” as a result of error and omissions.
$500 / day Fine

Based on “approved” schedule of calendar days.
We are our own worst enemy approving schedules without review/analysis

1. Convene meeting of ALL utilities on project.
   Resolves finger pointing blame.
   All stakeholders represented

2. Meeting establish “drop dead” date if warranted.
   Justified delay, chance for redemption

3. Letter sent with minute of meeting to management.
   Notify management. Utility field staff may cover up delays

4. Drop Dead deadline, submit documents to HQ Utility.
   Purpose to get utility to move / Not to collect fine

5. HQ Utility office opens discussion with Legal Office.
   Petition Administrative judge hearing
Memphis Light Gas Water
Entered into an agreement with the Department to hold quarterly meeting to discuss project progress and issues.

AT&T
Expecting them to enter into a similar agreement.

One municipality
Paid $80,000 for error and omission.

Several utilities
have paid lesser amount for error and omissions.

No Utilities have been “fined” to date.
Contractor Consent

- Contractor shall be liable for damages negligently inflicted to utility during time of the schedule of calendar days.
- Utility fails to comply, the contractor, with the consent of the department, may then undertake construction without liability for damages.
- AND the utility shall be liable to the contractor for damages resulting from the failure.

REALITY

Power, water, communications have impacts to services for handicap citizens, emergency services, etc.

Power, gas, sewer are inherently dangerous to construction personnel.

Contractors DO NOT want to assume responsibility
QUESTIONS?

Joe Shaw
ROW Division Assistant Director
joe.shaw@tn.gov