



- Q. Can a utility relocate to accommodate a highway project prior to completion of environmental review of the highway project?**
- A. Yes, but only if it is a non-reimbursable relocation. A reimbursable relocation, which requires a utility agreement between TxDOT and the utility, cannot occur until after environmental review of the highway project.¹
- Q. What if the district is concerned about take of endangered species or some other environmental issue within TxDOT right-of-way associated with the utility relocation?**
- A. The utility is responsible for ensuring that the design of the utility installation complies with applicable environmental regulations, including those related to storm water pollution prevention, endangered species, and wetlands.² However, if the district has concerns about a possible endangered species issue for example, then the district could instruct the utility to wait to relocate until completion of the environmental review of the highway project. Environmental issues associated with utility relocation within the TxDOT right-of-way will be evaluated as part of the environmental review of the highway project.
- Q. If utility relocation has not occurred prior to completion of the environmental review, are the impacts associated with the utility relocation included as part of the project for purposes of the environmental review?**
- A. Only if the relocation will occur within TxDOT right-of-way. Relocation of utilities to a location outside of the right-of-way, like re-establishment of other displaced infrastructure or structures, is not part of the highway project.³
- Q. What about a “joint bid” situation, where TxDOT’s construction contractor moves the line for the utility as part of the highway project?**
- A. The answer is the same – if the relocation will be within TxDOT right-of-way, then it is part of the project for purposes of environmental review. If the relocation will be to a location outside of TxDOT right-of-way, then it is still not part of the highway project, even if TxDOT’s construction contractor will be doing the relocation. This is because the utility, not TxDOT, is still responsible for ensuring that the design and construction meet all regulatory and environmental compliance

¹ For an FHWA project, see 23 CFR 645.113(g): “... a authorization by the FHWA to the STD [state transportation department] to proceed with the physical relocation of a utility’s facilities may be given after ... (2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR part 771, Environmental Impact and Related Procedures, have been satisfied.” The definition of “a authorization” states, “[t]he date of a authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.” 23 CFR 645.105.

For a non-FHWA project, see Transportation Code 203.092(a): “A utility shall make a relocation of a utility facility at the expense of this state if relocation of the utility facility is required by improvement of: (1) a highway...” Whether the relocation is “required” cannot be determined until environmental clearance.

² See 43 TAC 21.37(a)(9) and (g)(1).

³ See 43 TAC 2.3(c)(2).



requirements.⁴ The utility is also responsible for acquiring any easements outside the TxDOT right-of-way needed for the utility installation.

Q. Is consultation with the United States Fish and Wildlife Service under Section 7 of the Endangered Species Act⁵ or with the Texas State Historic Preservation Officer under Section 106 of the National Historic Preservation Act⁶ required for utility relocations?

A. Not typically, although we may discuss the relocation in the consultation for the project if the relocation specifics are known at the time of project consultation. TxDOT's Section 106 Programmatic Agreement requires consultation regarding utility relocations only when TxDOT designates the relocation, which TxDOT almost never does.

⁴ See 43 TAC 21.37(g)(4) and 21.38(e)(2).

⁵ 16 USC 1536.

⁶ 54 USC 306108.