



TxDOT ROW Utility Week: Breakout Session

Challenges from a Rural Water Perspective





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- Generally, utilities bear the cost of relocating from a public right-of-way for highway construction
 - Unless the state specifically assumes part of the expense
- The State will reimburse 100% of costs for relocation from a private right-of-way
- What about when the relocation covers both private and public rights-of-way?
 - Cost-sharing between utility and State



- What are relocation costs?
(Tex. Transp. Code § 203.092(d))
 - Includes the entire amount paid by the utility less:
 - Any increase in value in the new facility
 - Salvage value of old facility
 - Any other deduction established by regulation for federal cost participation



- State will pay 100% of relocation costs for relocation when:
 - Relocation is required by improvement of highway in the National System of Interstate and Defense Highways
 - Relocation required by any segment of state highway and utility has compensable property interest
 - Relocation required by improvement of state highway designated as turnpike or toll road prior to Sept. 1, 2005

Tex. Transp. Code § 203.092(a)



- State will share equally the costs of relocation:
 - Relocation required by improvement of nontolled state highway to add one or more tolled lanes
 - Relocation required by improvement of nontolled state highway that has been converted to toll project
 - Relocation required by construction of new location of toll project or expansion of toll project

Tex. Transp. Code § 203.092(a-1 – a-3)



Must Have Agreement

- Where a utility has an existing installation on private right of way and proposes to request reimbursement for all, or part, of the right of way costs incurred in making the required adjustment, the agreement must be supported by affidavits

Must Use TxDOT Forms or Deed

- Must use TxDOT forms with proper conveyance instruments or Quitclaim Deed.

Utilities Within Public Utility Easement (PUE)

- All utilities within a Public Utility Easement (PUE) have the right to request TxDOT cost participation in relocation or adjustment of its facilities within the area of the PUE that is incorporated into a TxDOT ROW transportation project.

Early discussion, cost estimates and documentation is essential.



Must Have Agreement

- Must have an agreement with the State as to payment of relocation costs

What if no agreement? TxDOT can relocate utility right-of-way and force utility to pay all costs, even in private right-of-way. [43 TAC § 21.22(d)].

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TxDOT Online Manual on Utility Relocation



Documentation and Communication



- System of cooperative planning, design and construction coordination associated with the accommodation of highway-utility joint occupancy
- Objective is to minimize conflicts and construction delays, eliminating or reducing contractor claims



Utility should submit billings as soon as its adjustments are complete, and records of costs and expenses are processed



Failure to submit billings promptly could result in loss of records and forfeiture of reimbursement



Utility owner will provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, ***within one year*** following completion of the utility relocation work, otherwise previous payments to the utility may be considered final.



If a utility owner has not submitted an invoice within 24 months after the end of the fiscal year in which the date the performance of the service under the contract is completed, the reimbursement must go through the Miscellaneous Claims Process, which may require reauthorization of funds by the State Legislature.



- Provide “as-built” plans, if there is a significant difference from approved plans
- Execute district-prepared quitclaims, if applicable
- Maintain complete and accurate records of utility involvement in adjustment
- Provide definitions of procedures, descriptions of practices, and explanations of materials used to document the type and nature of adjustments
- Submit a single comprehensive billing upon compilation/summation of all record costs
- Submit billings in a manner that will allow correlation to the original estimate
- Respond promptly to requests from TxDOT or LPA



- Utility may request partial payments at monthly intervals.
- TxDOT may make partial payments provided:
 - A ROW project release is obtained from the ROW Program Office before costs are incurred
 - An approved Utility Adjustment Agreement has been executed
 - Costs were incurred during the period covered by the billing
 - Submissions are received no more frequently than monthly
- When agreements are on a lump sum basis, TxDOT will not make partial payments. Payment in the agreed amount will be made upon completion of the work and receipt of a properly prepared final billing



- Final billing must follow closely the order of items in the estimate portion of the agreement. Show the following in a manner that permits comparison with the approved estimate:
 - Labor
 - Overhead
 - Construction costs
 - Travel expense
 - Transportation
 - Equipment
 - Materials and supplies
 - Handling costs
 - Construction units (if applicable)
 - Other services
- Whenever the billing indicates a substantial change in work from what was previously approved, an explanation should be provided
- Reimbursement Guidelines and Billing Procedures for Utility Adjustments



After Completion of Adjustment

- After completion of the adjustment, the utility must submit one original and one copy of the final billing for all costs associated with the reimbursement request

Reimbursement

- Utility will be reimbursed 90% of actual costs as billed before audit of their records and accounts.
- Total reimbursement will depend on final audit.

Lump Sum Agreement

- Eligibility is established upon execution of the agreement, and no final audit is required.
- After completion of adjustment and receipt of invoice, and after any amendment(s) of agreement, TxDOT will pay the utility the approved lump sum amount.





- When utilities are not being relocated or adjusted, limited funds are available for any necessary removal processes.
- Federal funds are available if existing facility poses safety hazard to traveling public (requires proof of accident history or safety study)
- Utilities requiring only removal of existing facilities should be treated as a right of way acquisition item.
- Utilities are responsible for removal of all abandoned hazardous material pipelines.
- If the abandoned pipelines were placed by permit, it is non-reimbursable; otherwise, It is reimbursable.



- Often makes traditional fee simple acquisition/relocation not feasible
- Utility should be allowed to retain its current property interest, with TxDOT acquiring an easement, lease, or license, and executing a Joint Use Agreement
- When a water control facility has been constructed PRIOR TO construction of transportation project, and the project will cross the facility, TxDOT is responsible for the cost of construction and maintenance, at no expense to the owner, of the necessary structure, culvert, or siphon needed to serve the facility.
- When an irrigation or flood control district desires to cross an existing highway with an irrigation canal or flood control facility, the irrigation or flood district must provide for the cost of construction and maintenance of the structure
 - Final approval of the structure's design lies with TxDOT



- Document, Document, Document. Keep clear records of property interests, easements, facilities, and costs.
- Watch timing of costs incurred to ensure eligibility and appropriate approvals by TxDOT.
- Be proactive and early in the project. Don't wait for TxDOT to approach you.
- Obtain an agreement in writing with TxDOT regarding the agreement to reimburse costs and the timing of the reimbursement.
- Carefully consider agreeing to keep a line in the new TxDOT Right of Way as you may be subject to additional costs in the future if the road is further widened.
- If you have a line in a privately regulated easement that will be impacted by a TxDOT project, ensure TxDOT agrees to pay 100% of the cost of the new easement and construction cost to move the line.
- Contact TxDOT and request that they notify you of any potential projects in the coming year.



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