SECTION 256 Utilities

256.1 Background

Frequently, the facilities of utility companies affected by the construction or improvement of a highway or street occupy portions of the right of way by sufferance, subject to the superior right of the public as represented by the highway agency. These utility companies are obligated, at their expense, to move, relocate, and protect their facilities that are in the way of or that may interfere with construction of the project.

The utility facilities affected by a highway improvement may exist by agreement with the former landowner on newly acquired highway right of way. Where the cost of necessary alterations of a utility facility and release of the utility's prior rights is an obligation of the agency acquiring the new right of way, a release of the utility land interest is negotiated between the agency and the utility company, and a contract is made to alter or relocate the utility facility.

Utility companies are given advance notice of highway improvements. Plans of proposed improvements are also sent to utility companies so they may make necessary preparations for relocation of their facilities, and to establish relocation schedules for vacating the construction area before the start of construction of the highway project whenever practicable. Utility facilities that cannot be relocated or adjusted before construction are to be scheduled for alteration and coordinated with the contractor's schedule of operations at the preconstruction conference. For state trunk highway improvement projects, exclusive of connecting highways, Administrative Rule TRANS 220 formalizes the utility relocation process.

256.2 Trans 220

Refer to FDM Chapter 18 for further discussion on utility agreements. For TRANS 220 projects note FDM 18-1-15, TRANS 220.05(9), (10), (11), (13), and (14), and TRANS 220.06. These references are of importance to construction managers.

For TRANS 220 projects the term "work plan" is defined as "a plan of the utility facility owner to carry out utility facility alteration or relocation work to accommodate an improvement project of the department."

TRANS 220.05(9) requires the department to notify the utility owner 30 days in advance of when the utility is to begin work.

TRANS 220.05(10) requires the contractor for the department to alert a utility owner 14 to 16 calendar days in advance of when utility work is to begin at locations where the contractor must first do work. The contractor must send a follow-up confirming notice not less than three working days in advance of when the contractor's work will be ready for the utility owner to begin work.

TRANS 220.05(11) requires the utility owner to notify the department within 15 calendar days of starting its work, to complete the work in accordance with a work plan approved by the department, and to notify the department within 15 calendar days of completing its work.

TRANS 220.05(13) requires the department to notify the utility owner if, after the letting date, additional utility relocation or adjustment work is found necessary. The department and utility owner are to agree on a revised work plan to achieve the additional utility alteration or relocation.

TRANS 220.06 discusses responsibilities of the department, the utility owner, and the contractor. It should be referred to by the construction engineer if additional utility work is required, utility facilities are damaged, or the utility alteration or relocation is not completed in accordance with the approved work plan.

Change orders are not to be issued without full consideration of possible utility impacts and involvement of the impacted utility facility owner.

256.3 Identification of Utilities

Section 182.0175 of the Wisconsin Statutes requires owners of transmission facilities to mark in a reasonable manner the location of such facilities in the field, within three (3) working days after receipt of the notice by the contractor of intention to excavate.

The statute further provides that if the approximate location of a transmission facility is marked with paint, flags, stakes, or other physical means the following color-coding must be used:

1. Electric power: Red
2. Gas, oil, steam, petroleum or gaseous materials: Yellow
3. Communications, cable television, or alarm of signal systems: Orange
4. Water, irrigation, or slurry systems: Blue
5. Sewer or drain systems: Green
6. Temporary survey markings: Pink

7. Proposed excavation: White

These color-codings are also applicable to survey marks of WisDOT.

Department survey crews should use a paint color for survey markers different from the colors used for identifying utilities.

WisDOT project staff should not contact Diggers Hotline due to implied liability that can accrue.

256.4 Progress of Work

If work under a utility contract is performed in the absence of a highway improvement contract or before starting of operations under a related highway improvement contract, the region will assign an engineer to supervise the work under the utility contract. The starting date for work under a utility contract will be arranged between the region and the utility company. The engineer will notify the region office of the date work operations actually start and the date work is completed.

Where utility companies occupy portions of the right of way by sufferance, the region will notify the utility companies of the anticipated start of construction operations so necessary relocation or adjustment of their facilities may be made without delay to the contractor's operations. This might be done at the preconstruction conference if utilities attend. For TRANS 220 projects the relocation must be done in accordance with an approved work plan.

Utility companies should be invited to attend the preconstruction conference. On projects with complex or extensive utility improvement, it is advisable to schedule a meeting of affected utilities before the preconstruction conference to discuss schedules and coordinate efforts. This meeting would be arranged by the region utility coordinator and attended by the engineer.

The region survey crew should stake the right of way and other lines need by the utilities in their work, as soon as possible in the progress of the project.

In the interest of expediting the work, the engineer will make early contact with local officials of utility companies who have not started required adjustments of their facilities and advise them of the date the contractor intends to start construction operations, stressing the need for early completion of necessary alterations. Regardless of any advance notice given a utility by the region or the engineer, standard spec 107.22 requires the contractor give a written notice to the proper authority of a utility at least three working days before starting construction operations that may affect the utility.

During the progress of the project, the engineer should hold field meetings on a regular basis with the contractor's superintendent and the utility crew supervisor. The engineer should also be passing along to the contractor all notifications of utility work changes.

Where adjustments of utility facilities are accomplished during stages of construction operations and problems are created between the contractor's operations and the utility operations, the engineer will be the coordinator for any details not covered by the approved work plan. The project manager will keep a record of the progress of the utility adjustments and will report problems to the region office in the weekly report. Problems affecting contract work progress should be reported at once to the region supervisor.

256.4.1 Utility Relocation Claim (URC)

Section 84.063 of the Wisconsin Statutes defines a utility relocation delay as:

- A change in operations of a contractor or the rescheduling of work by a contractor that is caused by the uncompleted relocation or adjustment of a utility facility located in the right-of-way, regardless of whether the relocation or adjustment of the utility facility is identified in the approved work plan.
- The definition of a utility relocation delay allows the contractor to pursue compensation under the following parts of the standard specification:
  - Standard spec 104.2 - revisions to the contract.
  - Standard spec 108.10.3 - excusable compensable delays.

TRANS 220.06 (7c) requires the department to compensate the contractor for any costs caused by or attributed to a utility relocation delay and may not impose liquidated damages to the contractor. The utility owner will be liable, subject to the right to appeal the decision, for compensation paid by the department to the contractor for a utility relocation delay that was caused by the utility owner’s failure to complete a relocation in accordance with the approved work plan OR the utility owner’s failure to identify all necessary relocations within their approved workplan. This also includes facilities that were not identified in an approved work plan by the utility owner.

Steps of a utility relocation claim:

1. Contractor identification of a utility relocation delay.
   - If the contractor has identified a utility relocation delay, the contractor will notify the engineer as specified in standard spec 104.3 and the contractor must submit evidence that a revision to the contract is necessary per standard spec 104.2.1(2). Examples:

    - Construction work is delayed or altered by the utility facility owners' non-performance of utility relocations required in the contract.
    - Construction work is delayed or altered by a utility conflict that was relocated or left to remain and still conflicts with contract work.
    - Construction work is delayed or altered by a utility conflict that was not known to exist before construction.
- Temporary work (not specified in the contract) and contractor means and methods that conflict with a utility are not considered a utility relocation delay.
- Contractor notification per standard spec 104.3 constitutes a filing of a utility relocation delay damages claim as required in state statute 84.063(4m).
- The project engineer and contractor will track all cost associated with the utility relocation delay.
- The project engineer will notify the region project manager and the BPD construction oversight engineer.
- The project engineer will document specifics related to the utility relocation delay. A utility relocation claim documentation checklist is in the WisDOT pantry: https://awpkb.dot.wi.gov/Content/constr/Pantry/Pantry.htm.

2. Send notice of receipt of claim.

- The project manager or region utility coordinator will send the utility facility owner notice of receipt of claim (template located in WisDOT pantry, (https://awpkb.dot.wi.gov/Content/constr/Pantry/Pantry.htm).
    - The notice will be sent via electronic communication within 24-hours of receiving contractor notification.
    - **IMPORTANT** The notice will also be sent via certified mail within 5 business days of receiving contractor notification. The project engineer will document the utility facility owners' receipt of the certified mail.
- WisDOT region utility coordinator will provide the project engineer the utility facility owner contact information.
- Utility facility owner may provide WisDOT additional information related to utility relocation delay.

3. Determine if a utility relocation delay occurred.

- The project engineer and region utility coordinator will investigate, gather information, and present that information to the project manager for a final determination.
- The project manager will consider information provided by the contractor, and if applicable the utility facility owner.
    - A utility facility owner will not be liable when the failure to complete a relocation is caused by circumstances outside of the utility facility owner's reasonable control including a delay caused by another owner identified in the work plan or reliance on a 3rd party to identify and verify the location of a utility facility requiring relocation.
- If the project manager determines a utility relocation delay occurred continue to step 4 and provide the contractor and utility facility owner notification of the decision.
- If the project manager determines a utility relocation delay did not occur, provide notification to the contractor as required in standard spec 104.3.6 (1).
    - If the contractor contests the decision, the contractor will follow the steps outlined in standard spec 104.3.6 (2).
    - As necessary, the contractor will continue to the claims process as outlined in standard spec 105.13.
    - The project engineer and contractor will continue to track all cost associated with the utility relocation delay.

4. Resolve the utility relocation delay.

- The project engineer, project manager, region utility coordinator, contractor, and utility facility owner will resolve the utility relocation delay. There are many factors to consider when attempting to resolve the conflict. Factors to consider are safety, impacts to the traveling public, environmental impacts, schedule, cost, etc. Examples may include:
    - Alternate means and methods.
    - Design around the facility in conflict.
    - Protect utility facility.
    - Relocate utility facility. If this option is chosen, WisDOT project engineer will work with region utility coordinator to determine if Second Move applies and if additional utility work plans are required.
    - Discontinue use of utility facility.
- The department will make the final determination on how to resolve the utility conflict. The project engineer will document the decision with an appropriate level of justification.

5. Revise the contract and execute the revisions.

- Make necessary changes to the contract to address the utility relocation delay. Follow the process for revisions to the contract in standard spec 104.2.1 (3). Examples may include:
  - Revised plans and/or special provisions to update how the work will be completed.
  - Change orders for significant changes in the character of the work.
  - Change orders for equipment and labor standby costs.
  - Change orders to extend contract time.
- Revise contract price as specified in standard spec 109.4
- Extend contract time for the excusable delay as specified in standard spec 108.10.1.
  - The department will only extend contract time if an excusable delay affects the controlling item of work. The contractor must provide documentation and current schedule at the time the utility relocation delay was determined to support requested time extensions.
  - If contract time cannot be extended, revise the contract such that the work can be completed within the original contract time. The cost for the contract revisions must be incorporated into the utility relocation claim.
- Execute contract change order.
  - Include all relevant documentation and justification for the contract revision.
  - Use reason code UC, utility conflict.
- Contractor completes the work per the revised contract.
- Project engineer will compensate the contractor for the revised contract work.

6. Send assessment notice.

- WisDOT region utility coordinator will provide the project engineer the utility facility owner contact information.
- WisDOT region utility coordinator will complete DT1668 (WisDOT staff - https://wigov.sharepoint.com/sites/dot/forms-docs/Pages/AuthorizedForms.aspx) and obtain an invoice from fiscal services.
- The project manager or region utility coordinator will send the utility relocation claim assessment notice (template located in WisDOT pantry (https://awpkb.dot.wi.gov/Content/constr/Pantry/Pantry.htm) and the invoice received from fiscal services. These documents will only be sent once the contract has been revised and the contractor has received payment.
  - The notice will be sent via electronic communication.
  - **IMPORTANT** The notice will also be sent via certified mail. The region utility coordinator will document the utility facility owners' receipt of the certified mail.

7. Contested decision by utility facility owner.

- A utility facility owner may request a contested hearing case to review the decision of the department within 90-days of receiving the assessment notice. WisDOT project staff and region utility coordinator will defer such requests to Bureau of Technical Service (BTS) utility staff. BTS utility staff will coordinate with the Office of General Counsel (OGC).

8. Receive payment from utility facility owner.

- The utility facility owner has 90-days to reimburse WisDOT from the date the assessment notice was received.
  - If a contested hearing case has been requested, the amount owed will stay pending.
- WisDOT Bureau of Technical Services (BTS) utility staff will track reimbursements from the utility facility owners. BTS staff will provide notice to the project team if payment was received.

9. Utility facility owner fails to make payment.

- If a utility facility owner fails to make payment to the department, the department may seek remedy by filling a civil suit.
- BTS utility staff will coordinate with the Office of General Counsel (OGC) if payment is not received within 90-days from the date the notification letter was received.

10. Record retention and utility relocation claim tracking.

- The project engineer will document specifics related to a utility relocation claim.
- A utility relocation claim documentation checklist is in the WisDOT pantry (https://awpkb.dot.wi.gov/Content/constr/Pantry/Pantry.htm).
- The project engineer will complete a utility conflict report for each utility relocation claim. The utility conflict report will be used to track utility relocation claims.

256.5 Inspecting Work

The engineer or other region representative will inspect utility alterations to ensure alterations are made to the necessary extent and in a manner, which avoids any interference with, or detrimental effects to, the planned highway improvements.

Overhead installations such as power and communication lines should be checked in respect to location and elevation for proper clearance with the roadway, highway structures and appurtenances, and railway facilities. Poles, towers, and similar above-ground installations should be located in accordance with designated requirements governing proximity to right of way lines, construction operations, control-of-access lines, and planned improvements. Alteration of utility facilities for which permits are required and issued should conform to the requirements designated in the permit.

The engineer should determine that utility forces and the project personnel are using the same reference datum when setting grade stakes.

Underground installations are to be checked with respect to grade and location to provide acceptable clearance with existing foundations or facilities and planned construction items, such as structures, sewer lines, water lines, etc. Constructed utility manholes and other similar installations should be checked for compliance with required grade. Lines installed under the highway should be at the required depth and encased as required.

When utility facilities are installed in trenches within the highway limits, it should be determined that the foundation will provide the required support and backfill is properly placed and compacted with acceptable material so there will be no detrimental settlement which might affect the pavement, embankments, structures, or other facilities.

256.6 Contract Records

Regardless of the type of utility contract, the engineer should keep records and maintain diary entries to document inclement weather, lost time, verbal authorization for minor changes, progress records, coordination of highway and utility operations, and factual evidence that may be or is pertinent to the recommendation or verification of pay estimates. For TRANS 220 projects this information might become important in the event of contractor delay due to untimely utility relocations and to any claim that the department might make against a utility.

256.6.1 General

The engineer is to provide sufficient inspection activity to ensure the proposed utility work is accomplished in accordance with requirements of the contract and to furnish evidence necessary for recommending payment to the utility company. For audit-type contracts, inspections and record keeping are necessary to verify labor, material, and equipment charges. For lump sum type contracts, it is only necessary to verify that the materials used and the work completed conforms to what was agreed to in the contract.

256.6.2 Service and Supply (Force Account) Agreements

For this type of contract, the engineer should keep a daily record of the number and classification of workers employed, types and quantities of materials used, major items or equipment used, and any other pertinent information that may be of assistance to verifying billing charges. A record should be made of all materials removed from a job site and whether they are returned to stock or scrapped.

If the utility subcontracts the work on a service and supply basis, the daily record should show the subcontractor's operations, including workers and equipment, in the same manner as prescribed above for work performed by the utility on a service and supply basis.

256.6.3 Lump Sum Agreements

When a utility alteration is performed by a utility company under a lump sum contract, or when all or any part of the work under such a contract is performed by a subcontractor to the utility on a lump sum basis, daily records are not required of hours worked, material items, or equipment time, but the engineer must ensure the work is accomplished in accordance with requirements of the contract, including materials used. Records should be kept of work performed to document that the work has been accomplished in the manner prescribed in the agreement.

A daily record should be made of the work operations by station and the number of units or work completed.

256.6.4 Changes in Approved Work

Utility companies may be authorized by the engineer to do work involving changes in quantities or minor items not included in the approved estimate but found to be necessary to accomplish the intent of the

approved utility agreement. This action may be taken without necessity of formal approval with the understanding final billing by the utility will provide adequate documentation of such changes.

Substantial changes to the scope of work covered by the approved utility agreement and substantial change in location must be submitted either verbally or in writing to the department for approval and will, if necessary, be reviewed in the field. If the proposed changes are found to be acceptable, verbal authorization for the changes will be given and confirmed by letter. Refer to CMM 242 for information regarding change orders. Before or at the time of final billing, as-built plans will be required so the department's files will reflect the true location of the relocated facility. All changes, additions, or deletions to the original design of the adjusted facility should be reflected in the as-built plans.

Minor or major changes in work may necessitate revision of betterment or expended service life percentages established at the preliminary stage and agreed upon as being applicable to the final billing. Careful consideration should be given to those adjustments containing betterment and expended service life credit. Good judgment should be exercised in deciding the necessity for the revision of such percentages where either minor or major changes are involved. In case of question, consult the region utility coordinator.

256.6.5 Inspection of Recovered Materials

The purpose of inspecting recovered materials is to prevent the junking or scrapping of recovered materials with the resultant allowance of little or no credit to the department.

The engineer will obtain a copy of a letter from the utility company to the department stating the time and place where recovered materials sold or scrapped will be available for inspection. The engineer or WisDOT representative should make an inspection, prepare a memo verifying inspection of such materials, and place a copy in the project files. This will prevent any possibility the utility company may be cited for the salvage value of the materials when the audit is performed. It is emphasized the engineer or representative need not be concerned with placing a dollar value on the materials, but rather should ensure that proper classification and disposition is made.

Where a credit is received for salvaged material, the utility must submit a statement that all material from the original facility was covered in the credit or that the items scrapped were available for inspection and proper notice given. This statement should accompany final billing for the project.

256.6.6 Certification

The final paragraph of the region office memorandum transmitting the utility billing to the central office should real as follows:

"Based upon our inspection of the project and our review of the final billing, we certify the materials incorporated in the project and the construction operations performed substantially conform to the contract plans and estimates."

If the invoice or billing contains items to which the engineer is taking exception or which the engineer feels necessary to explain, the paragraph should have added as a final phrase "except for items commented upon above." This latter phrase, however, is not to be considered a substitute for a change order when required.