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September 15, 2026
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Proposed Rulemaking

Title

Promulgated by:
State Highway Commission

Title 27. Transportation

Chapter V. Arkansas Department of Transportation, State Highway Commission

Subchapter B. Design and Construction

Part 91. Utility Accommodation ~~Policy~~Rules

Subpart 1. Overview

27 CAR § 91-101. Purpose.

This part prescribes the minimum requirements for the accommodation and relocation of public and private utilities within the right-of-way of the Arkansas state highway system.

27 CAR § 91-102. Scope.

(a) The Arkansas Department of Transportation, through the districts and the Utilities Section of the Right of Way Division, is authorized to:

(1) Issue permits and enter into agreements to provide for the installation, relocation, maintenance, or removal of utilities on highway right-of-way and property; and

(2) Issue permits for mechanical trimming and for use of chemicals for vegetation control on highway right-of-way and property.

(b) This part regulates and prescribes the location, design, and methods for installation, relocation, maintenance, or removal of utility facilities on department

highway right-of-way.

27 CAR § 91-103. Definitions.

As used in this part:

(1)(A) "Abandoned facility" means a facility that is no longer in service and is physically disconnected from a portion of the operating facility that still carries service.

(B) An "abandoned facility" has been deemed abandoned by the ~~utility owner~~utility;

(2)~~(A)~~ "ADT" or "average daily traffic" means the average ~~twenty-four-hour~~ forty-eight-hour volume~~, being the total volume during a stated period divided by the number of days in that period.~~

~~(B) Unless otherwise stated, the period is a year.~~

~~(C) The term is commonly abbreviated as ADT~~;

(3) ~~"AHTD" means the Arkansas State Highway and Transportation Department;~~

(4)(A) "As-built drawings" means the depiction of the installed utility facilities within the highway right-of-way showing the location and elevation, and referenced to highway stationing~~, and/or state grid system~~ or highway log mile as appropriate.

(B) Also known as record drawings, these plans depict the facility as constructed, incorporating all field changes;

(5)(A) "Backfill" means material used to replace or the act of replacing material removed during construction.

(B) "Backfill" also may denote material placed or the act of placing material adjacent to structures;

(6) "Backslope" means the slope leading away from flow line of ditch;

(7) "Bedding" means the organization of soil or other suitable material to support a:

(A) Pipe;

(B) Conduit; or

(C) Casing;

(8) "Betterment" means an improvement of property other than by mere repairs;

(9) "Bond" means a document that legally obligates one party to pay money to the Arkansas Department of Transportation for unsatisfactory work;

(10)(A) "Boring" means the operation by which large carriers or casings are jacked through oversize bores.

(B) The bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe;

(11) "Bridge" means a structure including supports:

(A) Erected over a depression or an obstruction such as:

(i) Water;

(ii) Highway; or

(iii) Railway;

(B) Having a track or passageway for carrying traffic or other moving loads; and

(C) Having a length of twenty feet (20') or greater;

(12) "Broadband" means:

(A) A facility that enables users to send and receive:

(i) Voice;

(ii) Video;

(iii) Data;

(iv) Graphics; or

(v) Any combindation; and

(B) Is either:

(i) Buried underground; or

(ii) An aerial facility;

~~(12)~~ (13)"Bury" means the depth of top of pipe or facility below grade of roadway or ditch;

~~(13)~~(14) "Cabinet" means above-ground telecommunication cable housing unit in excess of thirty inches (30") in width;

~~(14)(A)~~ ~~(15)~~"Carrier" means the pipe directly enclosing a transmitted:

(i) Liquid;

(ii) Gas; or

(iii) Slurry.

(B) "Carrier" also includes electric or communication cable, wire, or line;

~~(15)~~ ~~(16)~~"Casing" means large pipe enclosing a carrier;

~~(16)(A)(17)~~ "Clear zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles.

(B) This area may consist of a:

(i) Shoulder;

(ii) Recoverable slope;

(iii) Nonrecoverable slope; ~~and/or~~

(iv) Clear run-out area; or

(v) Any combination thereof.

(C) The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry;

~~(17)~~ (18) "Coating" means material applied to or wrapped around a pipe;

~~(18)~~ (19) "Concrete slab" means concrete of unified width and thickness;

~~(19)~~ (20) "Conduit" means the enclosed runway for protecting wires or cables;

~~(20)~~(21) "Control of access" means regulation of public access rights to and from properties abutting a highway facility;

~~(21)~~ (22)"Cover" means the depth to top of pipe, conduit, casing, cable, or similar line or utility tunnel below the earth or roadway surface;

~~(22)~~(23) "Direct burial" means installing a utility underground without encasement;

~~(23)~~(24) "Directional bore" means the method of installing underground pipes and conduits from the surface along a prescribed bore path;

~~(24)~~(25) "Drain" means the appurtenance to discharge liquid;

~~(25)~~(26) "Drainage structure" means the structure providing drainage for the highway other than a bridge;

~~(26)~~(27) "Driving surface" means the top layer of material intended for vehicular traffic;

~~(27)~~(28) "Dry bore", augured or drilled, means the use of water may be used as a lubricant not to exceed ten pounds per square inch (10 psi);

~~(28)~~(29) "Duct" means the enclosed casing for protecting wires, lines, or cables, often flexible or semirigid;

~~(29)~~(30) "Embankment" means a raised platform of earth to confine a waterway or support a road;

~~(30)~~(31) "Emergency" means an unforeseen occurrence or condition that may cause harm to persons, property, or the integrity of the highway, calling for immediate action;

~~(31)~~(32) "Encasement" means the liquid-tight structural element surrounding a carrier pipe, sufficient to support the superimposed load;

(33) "Extraordinary event" means:

(A) An event beyond the reasonable control of a utility; or

(B) A change of plans that causes a delay in the work of a utility required under a relocation agreement;

~~(32) "FHWA" means the Federal Highway Administration;~~

~~(33)~~ (34)"Fiber optic cable" means a communication cable that contains glass fibers;

~~(34)~~(35) "Flow line of ditch" means the low point of a ditch that runoff water will follow;

~~(35)~~(36) "Force main" means ~~construction~~ pipeline that ~~forces liquid to flow in a certain direction by pressure within a pipe~~ conveys wastewater under pressure by mechanical means;

~~(36)~~(37) "Foreslope" means the slope leading away from the pavement or shoulder of a highway;

~~(37)~~(38) "Freeway" means divided arterial highway with full control of access;

~~(38)~~(39) "Frontage road" means a separate roadway located on the side of a freeway to provide access to abutting property;

~~(39)~~(40) "Full control of access" means the regulation of public access rights to give preference to through traffic by providing access connections by means of ramps with only selected public roads and by prohibiting crossings at grade and direct private driveway connections;

~~(40)~~(41) "Grade separation" means the crossing of two (2) highways, or a highway and a railroad, at different levels;

~~(41)~~(42) "Grounded" means connected to earth or to some extended conducting body that serves instead of the earth whether the connection is intentional or accidental;

~~(42)~~(43) "High-volume roadway/highway" means a roadway or highway with an average daily traffic of over two thousand (2,000);

~~(43)~~(44) "Highway, interstate, freeway, street, or road" ~~is~~ are the general terms denoting a public way for purposes of vehicular travel and are considered public transportation facilities under Arkansas Code § 27-65-325;

~~(44)~~(45) "Interchange" means a grade separated intersection where access to the major highway is obtained by ramp connections from the minor crossing highway;

~~(45)~~(46) "Intersection" means the area where two (2) or more highways join or cross;

~~(46)~~(47) "Interstate highway" means a freeway that is a part of the National System of Interstate and Defense Highways;

~~(47)~~(48) "License" means a permit or grant of permission by the Arkansas Department of Transportation to cross, occupy, perform work on, or use highway right-of-way or property;

~~(48)~~(49) "Low-volume roadway~~/~~ or highway" means a roadway~~/~~ or highway with average daily traffic under two thousand (2,000);

~~(49)~~(50) "Manhole~~/handhold~~ or handhole" means the opening in an underground system which workmen or others may utilize for the purpose of making:

(A) Installations;

(B) Inspections;

(C) Repairs;

(D) Connections; and

(E) Tests;

~~(50)~~(51) "Median" means the portion of a divided highway separating the traveled ways for traffic in opposite directions;

(52)(A) "Municipal utility system" means a utility system owned or operated by a municipality that provides or removes at least one (1) of the following:

(i) Electricity;

(ii) Water;

(iii) Wastewater;

(iv) Gas;

(v) Cable television; or

(vi) Broadband service.

(B) "Municipal utility system" includes without limitation a:

(i) Consolidated waterworks system under the Consolidated Waterworks Authorization Act, Arkansas Code § 25-20-301 et seq.;

(ii) Utility system managed or operated by a nonprofit corporation under Arkansas Code § 14-199-701 et seq.; and

(iii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated Public Utility System Improvement District Law, Arkansas Code § 14-217-101 et seq.;

~~(51)~~(53) "MUTCD" means the Manual on Uniform Traffic Control Devices;

~~(52)(A)~~(54)(A) "National Highway System" means the interconnected system of principle arterial routes serving:

(i) Major population centers;

(ii) International border crossings;

(iii) Ports;

(iv) Airports;

(v) Public transportation facilities; and

(vi) Other intermodal transportation facilities and major travel destinations.

(B) The "National Highway System" includes:

(i) All highways on the interstate system;

(ii) A large percentage of urban and rural ~~principle~~ principal arterials;

(iii) The defense strategic highway network; and

(iv) Major strategic highway connectors;

(55) "Normal highway maintenance" means such activities as they may reasonably evolve over time in response to changes in traffic volumes, roadway configuration, and maintenance practices.

~~(53) "OSHA" means the Occupational Safety and Health Administration;~~

~~(54)(A)~~(56) "Out-of-service facility" means a facility that is no longer maintained and is not intended for future use but has not been deemed abandoned.

(B) An "out-of-service facility" may still be connected to a portion of the operating facility that is in use or still carries service.

(C) The ~~utility owner~~utility retains ownership of such a facility;

~~(55)~~(57) "Partial control of access" means the regulation of public access rights to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections;

~~(56)~~(58) "Pavement structure" means the combination of subbase, base course, and surface placed on a subgrade to support the traffic load and distribute it to the roadbed;

~~(57)~~(59) "Permit" means documents by which the Arkansas Department of Transportation regulates and approves the use and occupancy of highway right-of-way by utility facilities or private lines;

~~(58)(A)~~(60) "Pipe" means a tubular product made as a production item for sale as such.

(B) Cylinders, formed from plate in the course of the fabrication of auxiliary equipment, are not pipe as defined here;

~~(59)~~(61) "Pipeline" means the continuous carrier used primarily for the transportation of liquids, gases, ~~and/~~or solids from one point to another using either

gravity or pressure flow;

~~(60)~~(62) "Plant betterment" means an optional upgrade to a ~~utility owner~~utility's equipment or facilities when additional improvements are not mandated by regulations, preexisting policies, or required to clear highway construction;

~~(61)~~(63) "Plowing" means direct burial of utility lines by means of a "plow" type mechanism which:

(A) Breaks the ground;

(B) Places the utility line; and

(C) Closes the break in the ground in a single operation;

~~(62)~~(64) "Pressure" means relative internal pressure;

~~(63)~~(65) "Private lines" means privately owned facilities that convey or transmit commodities that are devoted exclusively for private use;

(66)(A) Public transportation facility means a transportation facility and right-of-way that serves the public.

(B) "Public transportation facility" includes without limitation a:

(i) Highway, interstate, freeway, street, or other road;

(ii) Trail;

(iii) Bicycle trail; and

(iv) Sidewalk or other pedestrian facility;

~~(64)~~(67) "Relocation" means ~~changing the location of existing facilities to avoid conflict;~~ the adjustment, removal, or relocation of a utility facility determined by the Arkansas Department of Transportation to be necessary or appropriate in connection with the construction or reconstruction of a public transportation facility.

(B) "Relocation" includes without limitation:

(i) Removing and reinstalling a utility facility, including a necessary temporary utility facility;

(ii) Moving, rearranging, or changing the type of existing utility facility;

(iii) Taking necessary safety and protective measures; and

(iv) Constructing a replacement utility facility that is functionally

equivalent to an existing utility facility and necessary for the continuous operation of the utility service, the project economy, or the sequence of public transportation facility construction;

(68) "Relocation agreement" means a written agreement between the department and a utility concerning a specific relocation;

(69) "Relocation proposal" means a formal written submission prepared by a utility in response to a request from the department concerning a specific relocation;

~~(65)(A)~~ (70) "Rest area" means a roadside area with parking facilities separated from the roadway provided for motorists to stop and rest for short periods.

(B) It may include drinking water, toilets, tables and benches, telephones, information, and other facilities for travelers;

~~(66)~~(71) "Right-of-way" means the general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes;

~~(67)~~(72) "Rigid pipe" means pipe designed for diametric deflection of less than one percent (1%);

~~(68)(A)~~(73) "Roadside" means the general term denoting the area adjoining the outer edge of the roadway.

(B) Extensive areas between the roadways of a divided highway may also be considered roadside;

~~(69)(A)~~(74)(A) "Roadway" means the portion of a highway, including shoulders, for vehicular use.

(B) A divided highway has two (2) or more roadways;

~~(70)(A)~~(75)(A) "Roadway cross section" means the area of a highway facility contained between the outside edges of backslopes/foreslopes.

(B) For divided facilities, the term applies to each set of roadways;

~~(71) "Semirigid pipe" means pipe designed to tolerate from one percent (1%) to three percent (3%) diametric deflection;~~

~~(72)~~(76) "Shared resources" means placement of utilities (fiber optics) within control of access by special agreement and consideration;

~~(73)~~(77) "Shoulder" means the portion of the roadway contiguous with the

traveled way for:

(A) Accommodation of stopped vehicles;

(B) Emergency use; and

(C) Lateral support of base and surface course;

(78) "Small utility" means a utility:

(A) Serving five thousand (5,000) customers or fewer; or

(B) Under financial hardship as determined by the department;

~~(74)~~(79) "Subbase" means layers of specified or selected material of designated thickness placed on a subgrade to support a base course;

~~(75)~~(80) "Subgrade" means the top surface of an embankment upon which the pavement structure and shoulders are constructed;

~~(76)~~(81) "Toe of slope" means the bottom of a slope of a fill or cut area usually the lowest point of the slope;

~~(77)~~(82) ~~"Trenched"~~ "Trench" means installed in a narrow open excavation;

~~(78)~~(83) "Traffic control device" means a sign, signal, marking, barrier, or other control mechanism placed or erected under public authority for the purpose of regulating, warning, or guiding traffic;

~~(79)~~(84) "Traveled way" means the portion of the roadway for the movement of through traffic;

(85)(A) "Utility" means a private, public, or cooperative utility that transmits or distributes communications, including without limitation cable service and broadband service, electricity, gas, liquids, steam, or sewerage by means of a utility facility.

(B) "Utility" does not include a railway or railroad engaged in interstate commerce;

(86) "Utility facility" means a line, facility, or system of a utility that is used, is available for use, or was formerly used to transmit or distribute communications, including without limitation cable service and broadband service, electricity, gas, liquids, steam, water, or sewerage to the public.

~~(80)~~(87) "Utility permit" or "use and occupancy agreement" means the document by which the Arkansas Department of Transportation regulates ~~and/~~or gives

approval of the use and occupancy of highway right-of-way for utility facilities or private lines;

~~(81)~~(88) "Utility tunnel" means the underground corridor for one (1) or more utility lines;

~~(82)~~(89) "Vent" means the appurtenance to discharge gaseous contaminants from casing; and

~~(83)~~(90) "Wet bore" means the hole that is sluiced through the roadway embankment by jetting with water pressure in excess of ten pounds per square inch (10 psi).

27 CAR § 91-104. Application.

(a) This part shall apply to the owners and operators of utility facilities performing work on the property of the State Highway Commission, property of the Arkansas Department of Transportation, or property required to be covered by a permit, including but not limited to:

(1) Electric power;

(2) Water;

(3) Sewer;

(4) Gas;

(5) Communications;

(6) Chemical;

(7) Oil;

(8) Petroleum products;

(9) Steam;

(10) Stormwater not connected with highway drainage;

(11) Irrigation; ~~and~~

(12) Broadband service;

(13) Municipal utility system; and

~~(12)~~(14) Similar facilities.

(b) This part shall apply to:

(1) Installation of new utility facilities;

(2) Addition to or maintenance of existing utility facilities;

(3) Relocation of utility facilities;

(4) Removal of utility facilities; and

(5) Vegetation control related to utility facilities' installations and maintenance.

(c) This part shall apply to underground, surface, or overhead facilities, either singularly or in combination, including attachments to bridges and highway structures.

27 CAR § 91-105. Prior policy.

The provisions of this part shall supersede and void all prior State Highway Commission ~~or~~ administrative orders ~~and/~~or statements of Arkansas Department of Transportation policy relating to the accommodation and/or relocation of utilities and related vegetation control on highway right-of-way.

27 CAR § 91-106. Exceptions.

(a) Exceptions to any provisions of this part may be authorized under certain situations where it is shown that extreme hardship and/or unusual conditions provide justification, and where alternate measures can be prescribed in keeping with the intent of this part.

(b) Any such exceptions must be:

(1) Requested by an authorized person representing the ~~utility owner~~utility;

(2) Recommended for approval by the District Engineer;

(3) Concurred in by the Federal Highway Administration if the exception applies to a utility facility located on the Interstate Highway System;

(4) Recommended for approval by the Right of Way Division Head; and

(5) Approved by the Assistant Chief Engineer-Design.

27 CAR § 91-107. Enforcement.

(a) This part shall be enforced as provided for in existing Arkansas statutes.

(b) ~~Such enforcement might~~Enforcement may include, but is not limited to the

following:

(1) Increased bonding levels to recoup potential restoration costs;

(2) Denial of future permits until past noncompliance is resolved; ~~and~~

(3) Litigation; and

(4) For a utility other than a municipal utility system, assessment of a civil penalty as established in this part and under Arkansas Code § 27-67-325.

(c)(1) If a municipal utility system fails to follow the process established in this part or the relocation agreement to complete a relocation in accordance with the Arkansas Department of Transportation's schedule, the department may relocate the utility facility that is the subject of the relocation agreement.

(2) If the department relocates a utility facility the department may enter into a contract to complete the engineering, relocation, or other work as required to relocate the utility facility of a municipal utility system after providing written notice to the municipal utility system.

(d) Noncompliance at one location shall not serve as the sole reason for denial of future permits for other locations or public transportation facility projects.

27 CAR § 91-108. Right to revoke.

(a) The Director of State Highways and Transportation is authorized to revoke ~~or annul~~ a permit ~~or agreement,~~for good cause ~~-~~subject to giving the ~~utility owner~~utility reasonable written notice, a reasonable opportunity to respond, and the opportunity to remedy any issue leading to the notice of the Department's intention to revoke a permit.

(b) Justifications for revocation include, but are not limited to the following:

(1) Failure to comply with the provisions of this part with respect to the permit at issue;

(2) Failure to comply with the terms and conditions of the permit ~~or agreement~~ at issue; and

(3) If the permitted utility occupancy becomes an interference to the use of the highway right-of-way for highway purposes.

(c) A relocation agreement that has been converted to a utility permit is subject to

this section.

27 CAR § 91-109. Civil penalties.

(a) If a utility other than a municipal utility system fails to follow the process established in this part or the relocation agreement to complete the relocation within the time period stated in the relocation agreement, the Arkansas Department of Transportation Department may assess and collect a civil penalty from a utility other than a municipal utility system after:

(1) The department provides notice to the utility under this part; and

(2) The expiration of a thirty-day time period for the utility to comply with the requirements stated in this part or the relocation agreement.

(b) If a municipal utility system fails to comply with this part, the department may offset and collect the amount owed by the municipal utility system from any funds administered by the department for disbursement to the municipality, including without limitation turnback and state aid street funds that may be lawfully applied to the relocation costs.

(c) This section shall comply with Arkansas Code § 27-67-325 and this part.

Subpart 2. Design and ~~Installation~~ Accomodation

27 CAR § 91-201. General.

(a) ~~The~~ If a ~~utility owner~~utility requests to move, alter, or otherwise perform work on the highway right of way, the ~~utility owner~~utility shall provide plans detailing the proposed work with the permit application.

(b) ~~This subpart provides information on design and installation requirements for the work~~If a utility is moving or altering facilities on the right-of-way as the result of a relocation, all work will be performed in accordance with the relocation agreement and this part.

27 CAR § 91-202. Design.

(a) All utility installations within the highway right-of-way shall conform~~, as a minimum,~~ to 23 C.F.R. § 645.201 et seq., and the most recent versions of the following American Association of State Highway and Transportation Officials publications:

(1) Roadside Design Guide;

(2) A Policy on Geometric Design of Highways and Streets; and

(3) ~~A Policy on the Accommodation of Utilities Within Freeway Right-of-Way; and~~

~~(4)~~ A Guide for ~~Accommodation of~~ Accommodating Utilities within ~~Highway Right-of-Way~~ Highways and Freeways.

(b) Design of utility installations on, over, or under highway right-of-way or attached to highway structures shall also~~, as a minimum,~~ conform with the respective national standard for design for each utility type, including without limitation:

(1) ~~23 C.F.R. § 645.201 et seq., Accommodation of Utilities;~~

~~(2)~~ 49 C.F.R. pt. 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards;

~~(3)~~(2) 49 C.F.R. pt. 193, Liquefied Natural Gas Facilities: Federal Safety Standards;

~~(4)~~(3) 49 C.F.R. pt. 195, Transportation of Hazardous Liquids by Pipeline;

~~(5)~~(4) The current edition of Arkansas Department of Transportation Standard Specifications for Highway Construction;

~~(6)~~(5) The current applicable National Electrical Safety Code for electric power and communications;

~~(7)~~(6) The applicable specifications of the current American Water Works Association for waterlines;

~~(8)~~(7) The applicable sections of the current Standard Code of Pressure Piping of the American National Standards Institute, and any other applicable industry codes for pressure pipelines;

~~(9)~~(8) The current applicable practices of the American Petroleum Institute for pipeline crossings under railroads and highways for liquid petroleum pipelines;

~~(10)~~(9) The current specifications established by the American Society for

Testing and Materials;

~~(11)~~(10) Rules and regulations of the United States Department of Transportation governing the transportation of such materials for any pipeline carrying hazardous materials; and

~~(12)~~(11) Applicable federal, state, and local laws and regulations pertaining to environmental issues, including but not limited to:

(A) Stormwater pollution prevention;

(B) Endangered species; and

(C) Wetland preservation.

(c) The ~~utility owner~~utility shall ensure that the location of utility facilities and appurtenances complies with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(d) The ~~utility owner~~utility shall ensure that the work complies with the requirements of the National Pollutant Discharge Elimination System program.

(e) Acquiring all necessary permits, including the accommodation of utilities on highway right-of-way and environmental controls, shall be the responsibility of the ~~utility owner~~utility.

(f)(1) The design and integrity of any utility installation shall be the responsibility of the ~~utility owner~~utility.

(2) This includes measures to preserve:

(A) The safe and free flow of traffic;

(B) The structural integrity of the roadway or highway structures;

(C) Minimal interference with highway maintenance; and

(D) The appearance of the highway.

(3) The location and manner of installation within the highway right-of-way must be reviewed and approved by the Arkansas Department of Transportation.

(g) Utility facilities shall be ~~located~~ placed in a manner that will minimize the need for later relocation to accommodate future highway improvements and allow access for servicing the facilities with ~~a minimum of~~ minimal interference to highway traffic.

(h) Existing underground utility facilities, vulnerable to damage from highway

construction or maintenance operations by reason of shallow bury or quality of the materials, may be allowed to remain in place under roadways in urban areas and low-volume highways if suitable bridging, concrete slabs, extra depth, or other appropriate measures are used for protection.

(i) The horizontal and vertical location of utility facilities within the highway right-of-way must, to the extent practicable, conform with the clear zone policy applicable to the type of highway and specific conditions of highway section involved.

(j) The integrity of the roadway cross section must be maintained, therefore, no excavation or longitudinal installations will be permitted within this area with the exception of crossings.

(k)~~(1)~~ On new installations or relocations of existing utility lines, provisions should be made for known or planned expansion of the utility facilities, particularly those located underground or attached to bridges.

~~(2) They should be planned so as to minimize hazards and interference with highway traffic when additional facilities are installed in the future.~~

(l) Above-ground utility facilities should be of a design compatible with the visual quality of the specific highway section being traversed.

(m) All utility installations within highway right-of-way or attached to highway structures should be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.

27 CAR § 91-203. Scenic enhancement.

(a)(1) The type and size of utility facilities, and the manner and extent to which they are permitted along or within highway right-of-way, can materially alter the scenic quality, appearance, and view of highway roadsides and adjacent areas.

(2) For these reasons, additional controls are applicable in certain areas that have been acquired or set aside for their scenic quality.

(3) Such areas may include:

(A) Scenic highways;

(B) Scenic byways;

(C) Scenic strips;

(D) Overlooks;

(E) Rest areas;

(F) Recreational areas; and

(G) The right-of-way of sections of highways that pass through:

(i) Forests;

(ii) Parks; and

(iii) Historic sites.

(b)(1) Aerial installations will not be approved at such locations when there is a feasible and prudent alternative.

(2) The Arkansas Department of Transportation may permit exceptions under the following conditions:

(A) New underground installations may be permitted only if extensive removal or alteration of trees or terrain features visible to the highway users is not required; or

(B) New aerial installations may be permitted only when:

(i) Other locations are:

(a) Not available;

(b) Unusually difficult or costly; or

(c) Less desirable from the standpoint of aesthetic quality; or

(ii) Placement underground is not technically feasible or is unreasonably costly.

(c) The proposed installation will be made at a location that will utilize an approved design and suitable materials that will be compatible with the aesthetic qualities of the area affected.

(d)(1) To protect trees and shrubbery on the highway right-of-way, the extent and methods of vegetation removal and trimming for overhead or underground utility installations will require the approval of the District Engineer.

(2) The District Engineer may require the ~~utility owner~~utility to replace removed trees and shrubs with plants approved by the department.

27 CAR § 91-204. Safety.

(a) The following items related to safety apply to the ~~utility ownerutility's~~ activities within the highway right-of-way.

(b) By undertaking work within the highway right-of-way, the ~~utility ownerutility~~ agrees to the following:

(1) The ~~utility ownerutility~~ shall assume full liability for any hazard to traffic created by their operation and shall maintain use of appropriate traffic control to protect traffic and shall comply with the current edition of the Manual on Uniform Traffic Control Devices;

(2) The ~~utility ownerutility~~ shall assume full responsibility for safeguarding all utilities in the work area during the time of construction and shall notify the One Call Center and have utility facilities located prior to beginning work that would disturb soil;

(3)(A) The ~~utility ownerutility~~ shall be responsible for maintaining all existing highway, street, and county road regulatory, warning, guide, and informational signs in an effective location at all times for the duration of any work while on highway right-of-way and shall reinstall them at the correct location upon the completion of the work.

(B) Any signs damaged during the work shall be replaced at the ~~utility ownerutility's~~ expense;

(4) The ~~utility ownerutility~~ shall perform all work in accordance with:

(A) State law;

(B) Federal law and regulations;

(C) Local ordinances and regulations; and

(D) Occupational Safety and Health Administration standards; and

(5) The ~~utility ownerutility~~ shall indemnify and save harmless the State of Arkansas, the State Highway Commission, the Arkansas Department of Transportation, and its officials and employees in all respects from any and all losses, damages, or injury to persons or property resulting in any manner from any negligent act or omission of the utility or its contractors or agents in connection with work operations, occupancy, or use of department highway right-of-way or property to the extent caused

by the negligence of the utility or its contractors or agents. The utility shall not be obligated to indemnify the commission or department, or their officials or employees for losses or damages caused by the negligence of the commission, department, or their officials or employees..

27 CAR § 91-205. Work conditions.

(a) The following conditions apply to the ~~utility owner~~utility's activities within the highway right-of-way.

(b) By undertaking work within the highway right-of-way, the ~~utility owner~~utility agrees to these conditions.

(c) These conditions should be considered in the design and installation of the utility facilities:

(1) The ~~utility owner~~utility shall notify the District Engineer four (4) Arkansas Department of Transportation business days prior to beginning work on highway right-of-way;

(2)(A) Any lane closure or lane width restriction required by the utility work shall comply with the current edition of the MUTCD.

(B) The ~~utility owner~~utility shall notify the District Engineer in writing a minimum of four (4) department business days prior to any planned lane closure or lane width restriction.

(C) This notification shall include:

(i) The beginning and ending dates for the closure or restriction;

(ii) The beginning and ending times for the closure or width restriction;

(iii) A description (inside/outside, traffic direction) of the lane to be closed or width restricted; and

(iv) The minimum width of the remaining lane or lanes open to traffic.

(D) The ~~utility owner~~utility shall notify the District Engineer in writing when the lane closure or width restriction is removed;

(3)(A) The ~~utility owner~~utility shall take all means necessary to protect the traveling public and to avoid any hazard or interference to the safe and free movement of traffic on the highway.

(B) In some circumstances, it may be necessary that the District Engineer establish the hours of work;

(4)(A) The ~~utility owner~~utility shall provide adequate protection on or over any pavement, roadway surfacing, shoulders, or highway structure before moving or operating any heavy or steel tracked or cleated equipment thereon.

(B) The method of protection must be acceptable to the District Engineer;

(5) The ~~utility owner~~utility shall not use heavy equipment on soft shoulders or unsurfaced right-of-way areas during wet or inclement weather in the initial construction or during normal servicing when such use could cause excessive damage to the shoulders or unprotected right-of-way areas;

(6) The ~~utility owner~~utility shall provide for restoration or repair of any portion of a bridge, highway structure, or other highway facility disturbed or damaged by utility installation, maintenance, or use;

(7) The ~~utility owner~~utility shall conduct the work in a manner to avoid tracking mud onto the roadway surface, immediately remove any mud tracked onto the roadway, and take appropriate action to avoid additional tracking;

(8) The ~~utility owner~~utility shall take steps to eliminate dust within the highway right-of-way and immediately take appropriate action to eliminate and prevent the dust;

(9)(A) The ~~utility owner~~utility shall not use permanent paint for marking within the highway right-of-way.

(B) The ~~utility owner~~utility shall not place any markings on bridges or highway structures;

(10) The ~~utility owner~~utility shall backfill excavated areas with the excavated or equivalent/suitable material and outlets shall be provided for entrapped water to avoid ponding or excess subbase saturation;

(11) The ~~utility owner~~utility shall provide proper protection for any excavated areas that are to remain open when work is not being performed;

(12) The ~~utility owner~~utility shall not use the highway right-of-way as a material storage area or for maintenance of vehicles or parking of equipment ~~and/~~or vehicles;

(13) The ~~utility owner~~utility shall not perform blasting within the highway right-of-way unless specifically approved by the District Engineer;

(14) The ~~utility owner~~utility shall utilize an approved identification wrap of detectable tape or wire on all nonmetallic buried facilities installed within the highway right-of-way either parallel to or crossing the roadway in order that the facility can be located by metal locators or other suitable devices;

(15) The ~~utility owner~~utility shall protect existing right-of-way monuments from damage, immediately notify the District Engineer if a monument is damaged, and provide for a registered professional land surveyor to reestablish any monuments or markers that are disturbed during the work to the satisfaction of the District Engineer;

(16)(A) The ~~utility owner~~utility may only remove the control of access fence when approved by the District Engineer.

(B) When removal is allowed, the fence must be reinstalled as soon as possible and to the satisfaction of the District Engineer;

(17) The ~~utility owner~~utility shall comply with the current edition of AASHTO policy set forth in "A Policy on the Accommodation of Utilities within Freeway Right-of-Way" in the installation and maintenance of utility facilities on both fully and partially controlled access facilities;

(18) The ~~utility owner~~utility shall not service utilities installed solely for operating freeway facilities directly from through traffic lanes or ramps, and the ~~utility owner~~utility shall not create a hazard or interfere with the safe and free movement of traffic on the freeway during such utility access and maintenance;

(19)(A) The ~~utility owner~~utility shall keep the area disturbed by utility construction or maintenance to a minimum.

(B) The ~~utility owner~~utility shall restore all highway right-of-way to as good or better condition than before.

(C) Restoration methods shall conform to the department's standard

specifications;

(20)(A) The ~~utility owner~~utility shall be responsible for maintaining flow in and restore the grades on any drainage ditches disturbed by their work.

(B) Maintenance and restoration work shall be completed to the satisfaction of the District Engineer;

(21)(A) The ~~utility owner~~utility shall avoid disturbing existing:

(i) Highway drainage pipes;

(ii) Inlets; and

(iii) Other structures.

(B) Any structures disturbed shall be restored to the satisfaction of the District Engineer;

(22)(A) The ~~utility owner~~utility shall be responsible for developing and implementing any stormwater pollution prevention plan (SWPPP) and obtaining a National Pollutant Discharge Elimination System permit from the Division of Environmental Quality necessitated by their work.

(B) The ~~utility owner~~utility shall indicate on the plans whether or not an SWPPP was prepared.

(C) If an SWPPP was prepared, the ~~utility owner~~utility shall indicate if the project is permitted as an automatic coverage site or is a large construction site.

(D) If a notice of termination is furnished to the division when the work is completed, the ~~utility owner~~utility shall provide a copy to the District Engineer;

(23) The ~~utility owner~~utility shall ensure that ongoing work and completed work complies with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.;

(24) The ~~utility owner~~utility shall ensure that all work is conducted in a manner to accommodate and protect pedestrians;

(25)(A) The ~~utility owner~~utility shall not begin work on any buried utility line crossing under a highway bridge until all material and equipment are available for immediate use.

(B) When the work is started, it must be completed as soon as practicable.

(C) Trenches under highway bridges shall not be left open when work is not being performed;

(26)(A) The ~~utility ownerutility~~ shall be responsible for placement of their longitudinal lines in a manner to allow placement of other parallel utility lines.

(B) If longitudinal lines are not installed parallel to right-of-way lines and other utilities, the department may require their realignment to facilitate placement of other utilities; and

(27)(A) The ~~utility ownerutility~~ shall restore any rock or concrete riprap disturbed by their operation as soon as practicable.

(B) The riprap shall be restored to equal or better condition to the satisfaction of the District Engineer.

27 CAR § 91-206. Medians and frontage roads.

(a)(1) No utility work shall be performed in the median of any highway without prior approval of the Arkansas Department of Transportation.

(2) All work must be accomplished in accordance with any special conditions required by the District Engineer.

(b) Longitudinal utility installations will not be allowed in medians.

(c)(1) Longitudinal installations of underground utilities will not normally be allowed in the area between the frontage road and main lanes.

(2) Exceptions may be considered upon recommendation of the District Engineer based on extenuating circumstances and where a frontage road is widely separated from the main lanes, provided there is sufficient clear zone width from the edges of both traveled ways.

(d)(1) Poles, guys, or other related facilities shall not be located in a highway median or between the main lanes and frontage roads.

(2) Exceptions may be considered upon the recommendation of the District Engineer for crossings of wide medians and where a frontage road is widely separated from the main lanes, provided there is sufficient clear zone width from the edges of both traveled ways.

Subpart 3. ~~Underground Installations~~ Installation

27 CAR § 91-301. Crossings.

(a) **General.**

(1) All underground facilities shall be located for the Arkansas Department of Transportation ~~survey tickets in accordance with the Arkansas Underground Facilities Damage Prevention Act, Arkansas Code § 14-271-101 et seq.~~

(2) Crossings may be encased or uncased dependent upon the needs and conditions identified by the type of highway facility, utility type, ~~utility owner~~utility, or the Arkansas Department of Transportation.

~~(2)~~(3) The department encourages, and will require when determined necessary by the District Engineer, ~~utility owner~~utilities~~s~~utilities to extend encasements from right-of-way line to right-of-way line.

~~(3)~~(4) Crossings shall be avoided at deep cuts, bridge footings, retaining walls, cross drains, or at any other location where attaining the minimum depth of cover as required by this part would be difficult.

~~(4)(A)~~(5) Crossings shall be perpendicular to the traffic lanes of the highway where practicable.

(B~~) Utility owner~~Utilities~~s~~Utilities shall submit justification satisfactory to the department for any utility crossing not perpendicular to the highway alignment.

(b) **Crossing methods.**

(1) Crossings may involve boring, tunneling, or open cut depending on the highway and conditions.

(2) Boring shall be by the directional bore method.

(3)(A) Dry bores shall be conducted in a manner consistent with industry accepted practices that minimize annular voids and over-breaks and protect the integrity of:

(i) Ground cover;

(ii) Surfaces; and

(iii) Structures.

(B) In no case shall overbore exceed five percent (5%) of the pipe diameter.

(C) The use of water under pressure greater than ten pounds per square inch (10 psi) to jet a hole ahead of the bit is not permitted.

(4) Wet boring is not allowed.

(5) Bore pits shall be placed outside the highway right-of-way when practicable, otherwise bore pits shall be placed on the edge of the highway right-of-way as far from the outer edge of the shoulder as possible.

(6)(A) Bore pits shall be located and constructed in such a manner as to not interfere with:

(i) Footings of highway structures;

(ii) Safe roadside clearance;

(iii) Pedestrian passage; or

(iv) Traffic operations.

(B) If necessary, shoring shall be utilized.

(7) Excavation for bore pits shall not intrude into the flow line of parallel ditches or the slope of embankment sections.

(8) Permanent crossings of the highway through drainage structures (box or pipe culverts) are not permitted.

(c) **Encased crossings.**

(1)(A) Encasements shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall equal the structural requirements for highway drainage facilities.

(B) Encasements shall be composed of materials of satisfactory durability under conditions to which they may be subjected.

(2) Encasements shall have a minimum cover of forty-eight inches (48”) measured vertically from the flow line of parallel ditches or sixty inches (60”) measured vertically from the highway surface, whichever provides the greater cover.

(3)(A) On noncontrolled access highways, encasements should extend from

right-of-way line to right-of-way line, as practicable, and may be required by the District Engineer in some instances.

(B) As a minimum, encasements shall extend six feet (6') beyond the toe of the slope in any embankment section, the flow line of any parallel ditches, or back of any curb as applicable for the highway section.

(4) Encasement shall be provided under medians and the area between frontage roads and the main lanes.

(5) Encased crossings of partially controlled or fully controlled access highways shall be encased the full width of the control of access.

(6) All crossings involving frontage roads shall be encased between the control of access and frontage road and the pipe shall extend a minimum of six feet (6') beyond the toe of the slope in any embankment section, the flow line of any parallel ditch, or the back of any curb as applicable on the side of the frontage road opposite the main lanes.

(d) **Uncased crossings.**

(1)(A) Uncased carrier pipe shall provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic.

(B) Additional protective measures should include:

(i) Increased wall thickness/higher strength material;

(ii) Adequate coating and wrapping;

(iii) Radiograph testing of welds;

(iv) Hydrostatic testing;

(v) Cathodic protection; and

(vi) Other measures as required by 49 C.F.R. pt. 192 or 49 C.F.R. pt. 195.

(2) The minimum cover over the uncased carrier pipe shall be forty-eight inches (48") measured vertically from the flow line of parallel ditches or sixty inches (60") measured vertically from the highway surface, whichever provides the greater cover.

(3) When existing underground facilities are permitted to remain in place, suitable bridging, concrete slabs, or other appropriate measures shall be used for protection when by reason of shallow bury the facility may be vulnerable to damage from highway construction or maintenance operations.

(e) **Open cut of paved surfaces.**

(1) Open cutting of paved highways is not permitted except under certain circumstances.

(2) Conditions where open cuts of paved highways may be considered are:

(A) Utility relocations related to a highway reconstruction project;

(B) Urban highways where longitudinal lines are located under the pavement;

(C) Crossings of gravel highways; and

(D) When the District Engineer determines that boring is not possible or feasible.

(E)(i) In any case, flowable select shall be required as backfill under the existing or proposed highway as directed by the District Engineer.

(ii) Flowable select minimum coverage and application shall be at the direction of the District Engineer and comply with the most current version of the Arkansas Department of Transportation Standard Specification for Highway Construction, 27 CAR pt. 90.

(f) **Temporary crossings.**

(1) The placement of a temporary line to cross a highway right-of-way shall be permitted through an encasement under the roadway installed in accordance with this part, or it may be placed through an existing bridge opening or through an existing drainage structure with a minimum of twenty feet (20') of clear waterway opening if approved by the District Engineer.

(2)(A) An exception may be granted to place a temporary line through an existing drainage structure with less than twenty feet (20') of clear waterway opening providing a drainage analysis is made by a qualified individual and submitted by the ~~utility owner~~utility.

(B) The decision whether to allow the use of the drainage structure for a temporary crossing will be made by the department based on the impact of the drainage analysis.

(3) Regardless of size, if the department allows the use of any existing bridge opening or highway drainage structure for the placement of a temporary line, the ~~utility owner~~utility will be required to assume all responsibility for future damages caused by the placement of the line.

27 CAR § 91-302. Longitudinal installations.

(a) Underground utilities installed parallel to the pavement should be installed at or adjacent to the right-of-way to minimize interference with highway operations.

(b)(1) Underground utilities, such as power cable, telephone cable, water, sewer, and gas shall be installed within the outer ten feet (10') of the right-of-way.

(2) Placement of utility lines more than ten feet (10') from the right-of-way line may be considered upon recommendation by the District Engineer based on extenuating conditions and approval by the Right of Way Division Head.

(3) However, longitudinal installations shall not be within the clear zone or ditch lines of the roadway.

(c) Longitudinal utilities shall be located on uniform alignment as near as practicable to the right-of-way line ~~and/~~or parallel with utility lines and outside the clear zone.

(d) Longitudinal utilities shall have a minimum depth of cover of thirty inches (30") measured vertically over the utility line.

(e)(1) Longitudinal utilities may be installed by:

(A) Trenching;

(B) Plowing; or

(C) Boring.

(2) Joint trenching or plowing of underground facilities is encouraged.

(f)(1) Trenches normally should have vertical sides where soil and depth conditions permit and should have a maximum width of the outside diameter of the line, pipe, or

conduit plus two feet (2').

(2) Adequate measures must be taken to prevent cave-ins.

(g) Backfill shall be compacted to densities equal to that of the surrounding soil.

(h)(1) Grade on all highway drainage ditches must be maintained, and erosion control provided where necessary, as specified on the plans or as required by the District Engineer.

(2) Aggregate, sod, or surfacing shall be replaced or restored to its original or equivalent condition to the satisfaction of the department.

(i) On partially controlled access highways, individual service connections will not be permitted unless no other reasonable alternatives exist.

(j) On fully controlled access highways, longitudinal installations shall not be permitted with the exception of fiber optic telecommunication lines installed under a shared resource agreement.

(k) Markers bearing the name of the ~~utility ownerutility~~ must be placed at the right-of-way line at no greater than one-thousand-foot intervals for the full length of the installation.

27 CAR § 91-303. Appurtenances.

(a) Appurtenances shall be limited to those necessary for installation and maintenance of underground lines.

(b)(1) All above-ground appurtenances, including pedestals, manholes, vents, drains, rigid markers, valve pits, and regulator pits, shall be located outside the clear zone and as close to the right-of-way line as possible.

(2) All appurtenances shall be installed to allow normal highway maintenance including without limitation:

(A) Mowing;

(B) Vegetation control;

(C) Removal of snow and ice;

(D) Road surface maintenance; and

(E) Ditch maintenance.

(c)(1) Service meters, master meters, cabinets, meter pits, pressure reducers, lift stations, pad mounted transformers, sprinkler pits, etc., shall not be located within the highway right-of-way.

(2) Meters shall be located on the same side of the highway as the customer being served.

(3) Unmetered sewer service lines located within the right-of-way will be treated as the property of the associated utility for purpose of compliance with this part.

(d) Utility accesses and valve covers for access to buried utilities shall be located outside the shoulder of the highway.

(e) Manholes, valve boxes, valve pits, etc., shall be installed so that their uppermost surfaces are flush with the adjacent undisturbed surface and shall have sufficient structural capacity to withstand vehicular traffic.

(f)(1) Manholes shall not be placed or allowed to remain in the pavement or shoulders of high-volume roadways.

(2) Exceptions may be allowed at those locations on noncontrolled access highways in urban areas where necessary for access to existing lines allowed to remain in place under existing or proposed roadways.

(3) Manholes may be placed or allowed to remain in the pavement or shoulders of low-volume roadways in urban areas provided measures are taken to minimize such installations.

(4) Placement of manhole installations should be avoided in the pavement at highway intersections.

(5) Manholes shall not be located in a wheel path.

(g)(1) Manholes/handholes vary as to size and shape depending on the type of utility they serve.

(2) To conserve space, their dimensions should be the minimum acceptable by good engineering and safety standards.

(3) In general, the only equipment to be installed in manholes/handholes located on highway right-of-way is that which is essential to the normal operation of the utility, such as cable splices, relays, etc.

(4) Other equipment, pumps, etc., should be located outside the limits of the highway right-of-way.

(5) All manhole/handhole covers shall be flush with the ground or pavement surface, whichever is applicable.

(6)(A) All manholes/handholes shall be designed with sufficient structural capacity for vehicular loading.

(B) Where soil conditions require, outside forms shall be used.

27 CAR § 91-304. Bedding and backfill.

(a) Bedding and backfill shall consist of fine granular material free of:

(1) Lumps;

(2) Clods;

(3) Stones; or

(4) Other debris.

(b) Backfill shall be compacted by mechanical tamping with controlled moisture.

(c) Bedding shall be placed to a depth of six inches (6") or half the diameter of the pipe, whichever is less.

(d) Backfill for bore pits shall be thoroughly compacted to match grade and density equal to or exceeding the surrounding undisturbed soil.

(e) Consolidation of backfill by saturation or ponding with water shall not be permitted.

(f)(1) Open cut of the highway shall require flowable select as backfill under existing and proposed highway as directed by the District Engineer.

(2) Flowable select minimum coverage and application shall be at the direction of the District Engineer and comply with the most current version of the Arkansas Department of Transportation Standard Specifications for Highway Construction.

27 CAR § 91-305. Types of underground utilities.

(a) This section provides additional design and installation requirements for the specific types of underground utilities.

(b) **Gas and liquid petroleum pipelines.**

(1) Only distribution lines providing natural gas service are permitted longitudinally within the highway right-of-way.

(2) Crossings for gas or liquid petroleum pipelines may be encased or uncased.

(3)(A) One (1) or more vents shall be provided for each encasement pipe or series of encasement pipes.

(B) For encasement pipes longer than one hundred fifty feet (150'), vents shall be provided at both ends.

(C) On shorter encasement pipe, a vent should be located at the higher end with a marker placed at the lower end.

(D) Vents shall be placed at the right-of-way line immediately above the pipeline, situated to not interfere with highway maintenance or be concealed by vegetation.

(E) Ownership of the lines shall be clearly shown on a sign attached to the vent pipe.

(4) Markers bearing the name of the ~~utility owner~~utility shall be placed at each right-of-way line where gas or petroleum lines cross except where marked by a vent.

(c) **Waterlines.**

(1) Only water service lines, including crossings, owned and maintained by the ~~utility owner~~utility shall be installed within the highway right-of-way.

(2) Crossings for waterlines, including services, must be encased.

(3) Markers bearing the name of the ~~utility owner~~utility shall be placed at each right-of-way line where a waterline two inches (2") or larger in diameter crosses.

(4) In open shoulder areas, fire hydrants or blow-off valves shall be placed as near to the right-of-way line as practicable but shall not be placed in the roadway cross section.

(5) In curbed roadway areas, fire hydrants shall be placed as near to the right-of-way line as practicable but shall not be placed closer than five feet (5') to the curb.

(d) **Sanitary sewer lines.**

(1) ~~Only sewer lines, including crossings, owned and maintained by the utility~~

~~owner shall be installed within the highway right-of-way~~ All sewer lines installed within the highway right-of-way shall be owned and maintained by the ~~utility owner~~utility.

(2) Sewer lines operated under pressure (force mains) and those composed of materials not conforming to material or depth of cover requirements of this part shall be encased.

(3) Markers bearing the name of the ~~utility owner~~utility shall be placed at each right-of-way line where a sewer line six inches (6") or larger in diameter crosses.

(4) Gravity flow sewer lines installed by open trench across proposed highway construction areas or lines bored across existing highways will not require encasement if other conditions of this part are met.

(5)(A) Manholes for sewer line crossings should be placed outside the highway right-of-way.

(B) If placement outside the highway right-of-way is not practicable, manholes may be placed in the highway right-of-way provided they are located at or near the right-of-way line and out of drainage ditches.

(e) **Underground electric lines.**

(1)(A) Underground electric line crossings shall be encased.

(B) An existing facility may be allowed to remain in place under roadways if suitable bridging, concrete slabs, extra depth, or other appropriate measures are used for protection.

(2) Markers bearing the name of the ~~utility owner~~utility shall be placed at each right-of-way line where underground electric lines cross, regardless of size.

(3)(A) Vaults for underground electric facilities should be placed outside the highway right-of-way, if practicable.

(B) If placement outside the highway right-of-way is not practicable, the following shall apply:

(i) Only straight-line vaults shall be allowed;

(ii) Vault dimensions shall be limited to that necessary for equipment and to ensure safety standards for maintenance personnel; and

(iii) The top of the vault shall be buried a minimum of four feet (4')

below the ground surface.

(f) **Underground communications lines.**

(1) Underground communications line crossings may be uncased unless the District Engineer determines encasement or other suitable protection is necessary for the protection of the highway facility under the following conditions:

(A) The minimum depth cannot be attained;

(B) The installation is near a bridge or other highway structures; or

(C) The installation is near other hazards.

(2)(A) When underground communications line crossings are installed by boring, the hole shall be approximately the same diameter as the line and encasement will not be required.

(B) If a hole approximately the same diameter as the line cannot be bored, an encasement shall be ~~provided~~ installed.

(C) The void remaining between the line or encasement and the outer limit of the bored hole shall be filled with a material suitable to prevent settlement of any part of the highway facility over the line.

(3) Markers bearing the name of the ~~utility owner~~utility shall be placed at each right-of-way line where a carrier line or fiber optic line crosses.

(g) **Fiber optic telecommunication lines within the control of access.**

(1)(A) Fiber optic telecommunication lines may be installed longitudinally within the control of access on fully controlled access highways only by execution of a shared resource agreement between the ~~utility owner~~utility and the Arkansas Department of Transportation.

(B) All conditions for longitudinal installations elsewhere in this part shall apply.

(2) The ~~utility owner~~utility shall not access the work area directly from the main lanes and ramps, except at locations specifically approved by the District Engineer.

(3) At locations where the control of access does not coincide with the right-of-way line, fiber optic telecommunication lines may be installed parallel to the control of access line with the same requirements as for placement along the right-of-way line.

(4) Fiber optic telecommunication lines shall not be installed parallel to the main lanes between the main lanes and ramps.

27 CAR § 91-306. Overhead installations.

(a) Overhead utility line supports (poles) shall be located within one foot (1') ~~wherever possible and no more than five feet (5')~~ from the right-of-way line unless otherwise approved by the District Engineer or Section Head of the Utilities Section, including consideration of available space beyond construction limits withing the Arkansas Department of Transportation's right-of-way.

(b)(1) Longitudinal utilities shall be located on uniform alignment as near as practicable to the right-of-way line and~~/or~~ parallel to utility lines and outside the clear zone.

(2) The joint use of pole lines is encouraged and may be required in the Department right of way at some locations.

(c)(1) The minimum vertical clearance for overhead communication and power lines above all driving surfaces within the highway right-of-way shall not be less than eighteen feet (18').

(2) Greater height may be required by the National Electrical Safety Code or any other regulatory agencies having jurisdiction.

(d) Supports for longitudinal installations shall be limited to single pole construction within the right-of-way and shall not exceed three feet (3') in diameter.

(e) On partially controlled access highways, individual service connections will not be permitted unless no other reasonable alternatives exist.

(f) The angle of crossing for overhead utility crossings shall be as perpendicular to the highway alignment as practicable.

(g) For overhead utility crossings on highways where access is not controlled, all supporting structures and above ground appurtenances shall be located outside the clear zone.

(h)(1) For overhead utility crossings on highways with partial and fully controlled access, all supporting structures and above-ground appurtenances shall be located

outside the highway right-of-way.

(2) Installation and maintenance shall be from frontage roads, crossroads, or streets, whenever practicable, or otherwise from outside the control of access line and preferably outside the highway right-of-way.

(i)(1) Overhead power and communication line crossings above or below the decks of bridges or grade separation structures should be avoided.

(2) A crossing may be permitted if alternatives to the crossing are not feasible and adequate minimum horizontal and~~/or~~ vertical clearances, as determined acceptable by the District Engineer, are provided to ensure adequate safety for construction and maintenance operations.

(j)(1) Guy wires installed within the highway right-of-way shall be held to a minimum and should normally be in alignment with the support pole line.

(2)(A) Push braces and guy wires shall not be installed from the pole toward the roadway unless specifically approved by the District Engineer.

(B) All push braces and guy wires shall be marked with in accordance with applicable requirements of the National Electrical Safety Code.

(3) These facilities shall be installed to allow normal highway maintenance.

(k) Joint use attachments shall be relocated by their respective owners.

27 CAR § 91-307. Small wireless facilities.

(a) Small wireless facilities, as defined in the Small Wireless Facility Deployment Act, Arkansas Code § 23-17-501 et seq., shall be accommodated on Arkansas Department of Transportation rights-of-way on the following conditions:

(1) No structures will be allowed on scenic highways;

(2) No structures will be allowed to displace or interfere with other utilities;

(3) All work, structures, and facilities must be placed and completed within the outer five feet (5') of the right-of-way;

(4) Placement of structures are subject to the discretion of the District Engineer;

(5) The small wireless facility owner will accommodate attachments by the

department if practical;

(6) A small wireless facility owner is responsible for any joint use attachments located on the structure;

(7) Joint users will be required to obtain a separate permit from the department;

(9) No structures will be allowed in the control of access;

(10) No facilities will be installed in the clear zone as designated by the District Engineer;

(11) Drawings and specifications submitted shall be stamped and sealed by a registered professional engineer licensed in the State of Arkansas;

(12) The county judge, city official, or other authority having jurisdiction shall be notified by the small wireless facility owner of the intent to locate a small wireless facility on right of way before a permit is submitted; and

(13) Structures shall be aesthetically pleasing and shall match the surrounding environment as determined by the District Engineer.

(b) The process for removal of a small wireless facility will be at the direction of the District Engineer.

Subpart 4. Bridges and Highway Structures

27 CAR § 91-401. ~~General~~ Bridges and highway structures general.

(a)(1) The attachment of utility lines to bridge or highway structures is discouraged, as they could materially affect:

(A) Structural characteristics;

(B) The safe operation of traffic;

(C) The efficiency of maintenance; and

(D) The appearance of the structure.

(2) Therefore, when it is feasible and reasonable to locate elsewhere, attachment to a bridge or highway structure will not be allowed.

(b) When it is not feasible or reasonable to locate utility lines elsewhere other than

attached to a bridge or highway structure, the ~~utility ownerutility~~ may request permission from the Arkansas Department of Transportation to allow the attachment of the utility.

(c) If the department determines the bridge or highway structure is not of adequate strength to carry the increased weight or forces resulting from the utility attachment with safety, permission will not be granted.

(d) When the added load of a utility attachment to an existing or proposed bridge or highway structure is sufficient to require an increase in the strength of the structure or the use of more costly materials or type of construction, the additional cost shall be paid by the ~~utility ownerutility~~.

(e) Utility facilities shall be attached to bridges in accordance with the current guidelines established by the department's Bridge Division available on the department website, ~~http://www.arkansashighways.com~~ www.ardot.gov.

(f)(1) The department assumes no responsibility to or for the ~~utility ownerutility~~ in any respect in connection with a bridge or highway structure attachment.

(2) The department may cancel any permit for bridge or highway structure attachment for cause, allowing the ~~utility ownerutility~~ a reasonable time to make arrangements to continue utility service.

(3) The ~~utility ownerutility~~ shall assume all costs associated with such relocation ~~and/~~or removal.

(g) Electrical transmission lines thirty-five kilovolts (35 kV) or higher, will not be permitted on any bridge or highway structure.

(h) No vehicles weighing in excess of the legal load, or the load limit posted, and no off-road hauling equipment, cranes, or other nonlegal highway vehicles or equipment will be allowed to cross or be placed on any bridge deck without the submittal of an engineering analysis for review by the department.

(i) No materials will be permitted to be stored or stockpiled on any bridge deck without the submittal of an engineering analysis for review by the department.

(j)(1) Each submitted engineering analysis shall be prepared by a registered professional engineer who shall certify the adequacy of all components for the

anticipated loads.

(2) Inspection records and, when available, design drawings may be obtained from the department for use in the analysis of the structure.

27 CAR § 91-402. Request guidelines for bridge attachments.

(a) When other arrangements for utility lines to span an obstruction are not feasible, the Arkansas Department of Transportation may consider an attachment to a bridge or highway structure.

(b) Each attachment will be considered on an individual basis and permission to attach will not be considered as establishing a precedent for granting of subsequent requests.

(c) The following guides are established for attachment of utilities to bridges or highway structures:

(1)(A) Sufficient details and information about the proposed attachment shall be furnished to allow a stress analysis to determine the effect of the added load on the structure.

(B) Other details of the proposed attachment as they affect safety and maintenance should also be provided;

(2) When a pipeline is encased, the encasement pipe shall be effectively opened or vented at each end to prevent possible buildup of pressure and to detect leakage of gases or fluids;

(3) Shut-off valves, preferably automatic, shall be installed in lines at or near the ends of structures unless segments of the lines can be isolated by other sectionalizing devices within a reasonable distance;

(4) When an encasement is not provided for a pipeline, additional protective measures shall be taken, such as employing a higher factor of safety in the design, construction, and testing of the pipeline than would normally be required for cased construction;

(5)(A) Communication and electric power lines shall be suitably insulated, grounded, and carried in protective conduit or pipe from the point of exit from the

ground to reentry.

(B) The cable shall be carried to a manhole located beyond the backwall of the structure;

(6) Carrier and encasement pipe for other utilities should be suitably insulated from electric power line attachments;

(7) All attachments will be made in such a manner as not to interfere with the:

(A) Stream flow;

(B) Highway traffic; or

(C) Routine maintenance;

(8) The ~~utility owner~~utility shall provide for the lineal expansion and contraction of its facility due to temperature differentials between the utility facility and the structure;

(9) Utility mountings shall be of a type, design, and material that will effectively muffle vibration noise;

(10) Any maintenance, servicing, or repair of utility lines shall be the responsibility of the ~~utility owner~~utility;

(11) An engineering analysis of the load effects of an attachment on the structure shall be submitted when requested; and

(12) When a utility tunnel within a bridge or highway structure is utilized, mutually hazardous ~~transmittants~~ materials, such as fuels and electric energy, must be isolated by compartments or separate encasements.

Subpart 5. Utility Permits

27 CAR § 91-501. General.

(a) With the exception of ~~district~~ general permit described in 27 CAR § 91-503(a), the Utilities Section, in cooperation with the District Engineer, is responsible to make all arrangements for the accommodation of utility facilities within Arkansas Department of Transportation highway right-of-way.

(b) Verbal approvals by the District Engineer will be considered only for emergency

or extreme hardship situations.

(c) The department issues three (3) types of utility permits to allow the installation, relocation, maintenance, or removal of utility facilities on department highway right-of-way or property:

(1) ~~District~~ General utility permits, known as GU permits;

(2) ~~Department~~ Regular utility permits, known as UD permits; and

(3) Vegetation control permits, known as VC permits.

27 CAR § 91-502. Permit application and approval procedures.

(a) Regardless of the permit type, ~~utility ownerutilitysutilities~~ are required to secure a permit prior to the commencement of work.

(b) A written permit application, signed by an employee of the ~~utility ownerutility~~ or owner of the private facility, including plans, shall be submitted to the ~~appropriate~~ proper District Engineer or Section Head as appropriate.

(c) The permit application ~~and plans~~ shall include, at a minimum, the following:

(1)~~(A) Two (2) sets of plans with crossing profiles, when applicable~~ The type and description of the facility;

(A) Digital plans shall include a crossing profile as necessary.

(B) ~~Plans printed on eleven inches by seventeen inches (11" x 17") sheets are preferable.~~

~~(C)~~ Plans may be submitted in electronic form utilizing portable document format~~, if acceptable to the District Engineer~~;

(C) Plans may be rejected if not legible or capable of being reproduced in an electronic format;

(2) ~~Type and description of the facility;~~

~~(3)~~ Location with reference to centerline stations from Arkansas Department of Transportation plans or other well-known permanent landmarks;

(4) The measured distance from:

(A) The right-of-way line;

(B) The centerline;

(C) Ditch lines;

(D) Toe of slopes; and

(E) The edge of pavement of the highway; and

(5) A traffic control plan.

(d) The ~~utility owner~~utility shall also comply with the provisions of 27 CAR § 91-504 or 27 CAR § 91-505.

(e)(1) All permits shall constitute a binding contract and agreement.

(2)~~, therefore, proxy~~ applications, verbal, or unsigned requests will not be valid.

27 CAR § 91-503. Types of permits.

(a) **District utility permit.**

(1) The ~~utility owner~~utility may undertake the following work under a ~~district~~ general utility permit:

(A) Buried highway crossings, excluding those under bridges, of noninterstate primary and secondary highways that do not involve a pavement cut;

(B) Aerial crossings of noninterstate highways;

(C) Buried or aerial longitudinal installations up to one-quarter (1/4) mile on noninterstate highways;

(D)(i) Spot repairs of utility facilities, including emergency repairs.

(ii) Emergency situations may include pavement cuts;

(E) Minor work, including pole replacements, pedestal installations, meter taps not requiring pavement cuts, routine maintenance, etc.; and

(F) Temporary crossings as described in 27 CAR § 91-602.

(2) Under the ~~district~~ general utility permit, it is the District ~~Engineer~~ Engineer's responsibility ~~is responsible~~ to:

(A) Review plans to ensure proposed utility facilities will not interfere with existing or planned highway facilities or with highway maintenance and operation;

(B) In the absence of a standing bond as described in 27 CAR § 91-504, determine the amount of the deposit or bond required;

(C) Approve the permit;

(D) Provide inspections as needed to ensure that utility installations are done in accordance with the approved permit; and

(E) Make final inspection of the work area restoration and release the permit.

(3) A ~~district~~ general utility permit is valid for a period of four (4) months from the date of issue.

(b) **Department utility permits.**

(1) Any utility work not addressed in subsection (a) of this section, excluding vegetation control and utility relocation, will be considered under a department regular utility permit.

(2) Under the ~~department~~ regular utility permit, it is the District ~~Engineer is responsible~~ Engineer's responsibility to:

(A) Review plans to ensure proposed utility facilities will not interfere with existing or planned highway facilities or with highway maintenance and operation;

(B) In the absence of a standing bond as described in 27 CAR § 91-504, determine the amount of the deposit or bond required;

(C) Submit the permit to the Utilities Section for review and approval;

(D) Provide inspections as needed to ensure that utility installations are done in accordance with the approved permit; and

(E) Make final inspection of the work area restoration and recommend release of the permit and deposit or bond, when applicable.

(3) A ~~department~~ general utility permit is valid for a period of twelve (12) months from the date of issue.

(c) **Vegetation control permits.**

(1) The Utilities Section, in cooperation with the district, the Maintenance Division, and the Environmental Division are responsible to make all arrangements for the mechanical and chemical vegetation removal on department highway right-of-way.

(2) ~~Utility owner~~~~Utilitys~~Utilities may obtain permits to remove vegetation by mechanical or chemical methods subject to the following conditions:

(A)(i) Vegetation control is necessary for the safe and continuous operation of utility facilities within the highway right-of-way.

(ii) Vegetation control may be applicable to either underground or overhead utility installations, including appurtenances;

(B)(i) Vegetation control will not be allowed solely to provide visibility to utility facilities.

(ii) The limits of trimming or removal shall be held to the minimum necessary:

(a) For maintenance access;

(b) To provide for the continued operations of the facility; and

(c) To meet governing laws and regulations;

(C) The ~~utility owner~~utility shall perform vegetation control on a periodic basis to preserve the aesthetics of the area and prevent excessive overgrowth; and

(D)(i) The ~~utility owner~~utility shall obtain a permit each time vegetation control is to be undertaken.

(ii) A vegetation control permit is valid for a period of four (4) months from the date of issue.

(3) In addition to all other requirements and conditions of this part, the following shall also apply to vegetation control permits:

(A) **Mechanical vegetation control.**

(i) The ~~utility owner~~utility shall trim trees in accordance with normal horticultural standards.

(ii) The ~~utility owner~~utility shall not remove healthy trees having trunks six inches (6") or more in diameter measured twelve inches (12") above the ground without specific approval of the District Engineer or the Section Head of the Utilities Section.

(iii) The ~~utility owner~~utility shall remove cut vegetation and debris from the highway right-of-way and shall be responsible for the proper disposal of all cut vegetation and debris.

(iv) The ~~utility owner~~utility shall not burn or bury the cut vegetation

and debris within the highway right-of-way.

(v) The ~~utility ownerutility~~ shall cut stumps flush with the ground or grind the stumps to remove them.

(vi) The ~~utility ownerutility~~ shall revegetate areas of bare ground resulting from their operations.

(vii)*(a)* The ~~utility ownerutility~~ shall be responsible for developing and implementing any stormwater pollution prevention plan (SWPPP) and obtaining a National Pollutant Discharge Elimination System permit from the Division of Environmental Quality necessitated by their work.

(b) The ~~utility ownerutility~~ shall indicate on the plans whether or not an SWPPP was prepared.

(c) If an SWPPP was prepared, the owner shall indicate if the project is permitted as an automatic coverage site or is a large construction site.

(d) If a notice of termination is furnished to the Division of Environmental Quality when the work is completed, the ~~utility ownerutility~~ shall provide a copy to the District Engineer.

(viii) The ~~utility ownerutility~~ shall assume full responsibility for safeguarding all utilities in the work area during the time of construction and shall notify One Call Center and have utility facilities located prior to beginning work that would disturb soil; and

(B) **Chemical vegetation control.**

(i) The ~~utility ownerutility~~ shall ensure that all requirements of the State Plant Board are met in the use and application of chemicals.

(ii) The ~~utility ownerutility~~ shall ensure that all personnel are licensed or certified by the board for the type of herbicide application being utilized.

(iii)*(a)* The ~~utility ownerutility~~ may use backpack sprayers or other spot application methods within the highway right-of-way.

(b) Broadcast spraying is not allowed.

(iv)*(a)* The ~~utility ownerutility~~ shall cut and trim overgrown vegetation prior to applying chemicals to avoid dead plants taller than six inches (6”) remaining.

(b) If dead plants taller than six inches (6") result from the chemical application, the ~~utility ownerutility~~ shall immediately trim the plants.

(v)*(a)* The ~~utility ownerutility~~ shall take precautions to avoid overspray from the operation.

(b) If overspray results in dead limbs or plants, the ~~utility ownerutility~~ shall use mechanical methods to cut or trim the plants.

(vi) The ~~utility ownerutility~~ shall utilize only those chemicals, rates of applications, and methods of application approved by the department.

(vii)*(a)* The ~~utility ownerutility~~ shall be responsible for developing and implementing any stormwater pollution prevention plan and obtaining a National Pollutant Discharge Elimination System permit from the Division of Environmental Quality necessitated by their work.

(b) The ~~utility ownerutility~~ shall indicate on the plans whether or not an SWPPP was prepared.

(c) If an SWPPP was prepared, the owner shall indicate if the project is permitted as an automatic coverage site or is a large construction site.

(d) If a notice of termination is furnished to the Division of Environmental Quality when the work is completed, the ~~utility ownerutility~~ shall provide a copy to the District Engineer.

(viii) The ~~utility ownerutility~~ shall not use chemicals within one hundred yards (100 yds.) of any stream, pond, lake, or garden or within twenty-five yards (25 yds.) of any human habitation or livestock feed lot.

(ix) The ~~utility ownerutility~~ shall not utilize chemicals in areas where the department has established or is establishing vegetative cover for aesthetic or erosion control purposes.

27 CAR § 91-504. Standing bond.

(a) The Arkansas Department of Transportation encourages ~~utility ownerutilitys~~utilities to more effectively carry out the installation, relocation, maintenance, or removal of their utility facilities on ~~department~~ Arkansas State Highway

Commission right-of-way or property, including vegetation control, by maintaining a standing bond based on the number of customers served in the State of Arkansas.

(b) The standing bond will be used by the department in restoring the highway right-of-way or property to its former condition if the ~~utility owner~~utility fails to do so.

(c) The standing bond ~~must~~ shall be provided in the name of the ~~utility owner~~utility.

(d) The following standing bond amounts shall apply:

Number of Arkansas customers	Standing bond required
Over 250,000	$250,000
100,000 to 249,999	$100,000
50,000 to 99,999	$50,000
10,000 to 49,999	$25,000
Under 10,000	$10,000

27 CAR § 91-505. Deposit or bond.

(a) In the absence of a standing bond as described in 27 CAR § 91-504, an individual deposit or bond to guarantee restoration of the highway right-of-way or property is required prior to the issuance of a permit.

(b) The District Engineer will determine the amount of the deposit or bond required.

(c) The deposit or bond will be used by the Arkansas Department of Transportation in restoring the highway right-of-way or property to its former condition if the ~~utility owner~~utility fails to do so.

(d) ~~The deposit or bond must be provided in the name of the utility owner~~ In lieu of a check deposit, a one-time bond shall be provided in the name of the ~~utility owner~~utility.

27 CAR § 91-506. ~~Utility owner~~Utility responsibility.

(a) Regardless of the permit type, the ~~utility owner~~utility shall do the following when performing any work on the highway right-of-way:

(1) Notify the District Engineer four (4) Arkansas Department of Transportation business days prior to beginning work;

(2) Maintain a copy of the utility permit on the job site throughout the work period;

(3) Ensure that work is accomplished in accordance with the approved permit and, unless the District Engineer gives prior approval, any installation which deviates from the approved permit is subject to removal from the highway right-of-way; and

(4) Notify the District Engineer upon completion of the installation for a final inspection and release of the deposit or bond.

(b) Violation of these requirements may result in the department ordering work to be stopped or forfeiture of bond.

(c) If at any time a change or improvement in the highway necessitates a relocation or removal of the facility installed in the right-of-way under a permit, it shall be at the expense of the owner.

(d) Damage to utility facilities on the right-of-way shall be the responsibility of:

(1) The utility company if caused by weather or other natural occurrence; or

(2) A negligent party if damaged by the act of a person.

27 CAR § 91-507. Acceptance of permit.

Work performed under a permit shall constitute full acceptance of all applicable requirements, laws, rules, regulations, and the specific terms and provisions as set forth in, or attached to, the permit.

27 CAR § 91-508. Transfer of ownership.

If a change in ownership takes place, the new owners shall give written notice of such change to the Utilities Section within ninety (90) days.

27 CAR § 91-509. Safety.

By undertaking work within the highway right-of-way, the ~~utility owner~~utility agrees to the applicable requirements and conditions in 27 CAR § 91-204.

27 CAR § 91-510. Working conditions.

By undertaking work within the highway right-of-way, the ~~utility ownerutility~~ agrees to the applicable requirements and conditions in 27 CAR § 91-205.

27 CAR § 91-511. Emergency conditions.

(a) In the event of conditions where immediate action by the ~~utility ownerutility~~ is necessary for the protection of persons or property, or to minimize damage to or loss of the ~~utility ownerutility's~~ facilities or highway property, a permit is not required prior to the commencement of work.

(b) The ~~utility ownerutility~~, at its own responsibility and risk, may undertake the necessary repairs and shall notify the District Engineer and the Utilities Section of such work as soon as practicable but no later than the next Arkansas Department of Transportation business day.

(c) If the situation necessitates closure of traffic lanes, the ~~utility ownerutility~~ shall immediately notify the office of the District Engineer.

(d) The ~~utility ownerutility~~ shall not undertake chemical vegetation control on an emergency basis.

~~**27 CAR § 91-512. Right to revoke.**~~

~~(a) The Director of State Highways and Transportation is authorized to revoke or annul a permit or agreement, subject to giving the utility owner reasonable notice.~~

~~(b) Justifications for revocation include, but are not limited to the following:~~

~~(1) Failure to comply with the provisions of this part;~~

~~(2) Failure to comply with the terms and conditions of the permit or agreement; and~~

~~(3) If the utility occupancy becomes an interference to the use of the highway right-of-way for highway purposes.~~

27 CAR § 91-513. Relocation of utility facility.

(a) When the Arkansas Department of Transportation determines a utility facility located on a public transportation facility or Arkansas Highway Commission right-of-way must be removed, relocated, or adjusted to accommodate a change to a public transportation facility, the department and the utility shall negotiate a relocation agreement establishing the reasonable schedule for relocation of the utility facility.

(b) The relocation agreement and this part shall establish the duties of the department and the utility concerning the removal, relocation, or adjustment of the facility.

(c) The relocation agreement shall be based on the negotiated and agreed upon relocation proposal.

(d) The relocation agreement shall include any amount eligible for reimbursement.

(e) Upon completion of the relocation of the utility under a relocation agreement and the end of the project requiring relocation of the utility, the relocation agreement shall be treated as a utility permit for the remainder of time the utility is located on the right of way of the commission or department right-of-way.

27 CAR § 91-514. Duties of a utility upon notification of a department project resulting in utility relocation.

When a utility is notified by the Arkansas Department of Transportation of the need to relocate a utility facility, the utility shall:

(1) Attend the utility relocation coordination meeting with the department.

(2) Submit to the department a relocation proposal that includes the following information without limitation:

(A) A plan for the relocation of the utility facility that is in accordance with the construction plans for the project provided by the department as required under this part;

(B) A reasonable schedule for the completion of the relocation taking into account the department's provided project completion schedule;

(C) Reasonable cost estimates for the relocation; and

(E) An estimated final date all work will be complete for the relocation.

27 CAR § 91-515. Notification of a department project resulting in utility relocation.

When negotiating the relocation agreement with the utility the Department shall:

(1) Provide a written notice to the utility of the possible need to relocate a utility facility that includes the following:

(A) The location of the utility facility to be moved if known or identified;

(B) Plans that:

(i) Clearly identify all known utilities that own a utility facility that is subject to relocation in the project area;

(ii) Identify the area of the public transportation facility the department or Arkansas State Highway Commission intends to acquire for the project;

(iii) Use criteria that satisfy Subsurface Utility Engineering Quality Level C or better; and

(iv) Identify the proposed right-of-way acquisition by the department; and

(C) The proposed right of way acquisition timeline of the project.

(2) Provide to the utility the construction plans for the project that demonstrate the need for the relocation;

(3)(A) Provide a written notice of the date of a relocation meeting with the owner of the utility facility prior to the date the relocation proposal is due.

(B) If the owner of the utility facility is unavailable at the time initially scheduled by the department in the written notice, the utility shall provide the department three (3) options within two (2) weeks of the initial relocation meeting date to reschedule the meeting.

(B) If the date is proposed by the utility, the department will choose the final date for the relocation meeting and provide written notice to the utility;

(4) Establish a reasonable date for the submission of the initial relocation proposal;

(5) Coordinate a relocation agreement for the work to be performed by the

utility, including a schedule for the relocation; and

(6) Issue a notice to proceed to the utility to begin the relocation upon execution of the relocation agreement.

27 CAR § 91-516. Relocation meeting between the Department and the utility.

(a) During a relocation meeting, the Arkansas Department of Transportation and the owner of the utility facility shall:

(1) Identify the scope of utility facilities that will be subject to relocation; and

(2) Discuss:

(A) Proposed arrangements for the relocation, including any right-of-way provided by the department for relocation;

(B) If the utility is in conflict with the proposed construction and a relocation agreement is necessary;

(C) The expected cost of the relocation, if necessary;

(D) A deadline by which the owner of the utility facility shall submit a relocation proposal to the department; and

(E) The number of days required for the relocation.

(b)(1) The department shall provide the utility with a written report summarizing the decisions made and agreements reached during the relocation meeting.

(2) The relocation report shall serve as the basis for the relocation proposal.

27 CAR § 91-517. Preliminary engineering.

(a) Initial authorization on highway projects is for preliminary engineering by the ~~utility owner~~utility's personnel (force account), the cost of which will be included in the subsequent relocation agreement.

(b)(1) ~~When the utility owner~~utility ~~is not adequately staffed with technical personnel or the present workload would be prohibitive to perform the necessary preliminary engineering, a~~ A consulting engineer may be employed by the ~~utility owner~~utility for preliminary engineering.

(2) If any part of the consultant's entire fee is eligible for reimbursement, the ~~utility owner~~utility shall submit a written request to the Utilities Section requesting approval for the use of a consultant.

(c) Preliminary engineering costs are reimbursable to the ~~utility owner~~utility only to the extent that the existing utility facilities that require adjustment are eligible for reimbursement.

(d) Additional information regarding the use of consultants for preliminary engineering services is contained in this part.

27 CAR § 91-518. Final relocation proposal and relocation agreement.

(a) The final relocation proposal submitted by a utility to the Arkansas Department of Transportation shall:

(1) Include the following information without limitation:

(A) A plan for the relocation of the utility facility that is in accordance with the construction plans for the project provided by the department as required under this part;

(B) A reasonable schedule for the completion of the relocation;

(C) Reasonable cost estimates for the relocation if reimbursement is being sought for the project; and

(D) Deadlines for the commencement and completion of the relocation work including a final date all work will be complete;

(2) Be provided to the department written form; and

(3) Be signed by the authorized representatives of the utility.

(b) The agreed upon and negotiated relocation proposal shall form the basis for the relocation agreement between the department and the utility.

(c) The relocation agreement shall be:

(1) Provided to both parties in written form; and

(2) Signed by the authorized representatives of the utility and the department.

(d) The relocation agreement shall be a tracking number associated with the project.

(e) After final approval of a relocation agreement, the relocation agreement may be modified if:

(1) An extraordinary event occurs; and

(2) Either party requests a modification to the relocation agreement.

(f) The modification of a relocation agreement shall:

(1) Be documented in writing;

(2) Include updated timelines, costs, or other relevant terms; and

(3) Be approved by both parties.

27 CAR § 91-519. Minimum information for relocation plans.

(a) Plans, whether for reimbursable or nonreimbursable relocations, shall, as a minimum, contain the following elements:

(1)(A) Be drawn to scale.

(B) ~~Utility owner~~Utility~~y~~Utilities shall utilize electronic files or reproduce the applicable portions of the plans and profile print furnished by the Arkansas Department of Transportation and add the necessary detail and notations to portray accurately the proposed relocation in the facilities as directly oriented with the highway construction plans;

(2) Show the existing and proposed highway right-of-way and distances from the centerline of survey;

(3) Show highway centerline stations at one-hundred-foot intervals and station number designations at five-hundred-foot intervals;

(4) Show the existing and proposed facilities clearly referenced by distance from and to exact highway survey centerline stations;

(5) Show quantity, size, class, and dimensions of all major items of material;

(6) Show, in appropriate symbol and plan location, all major facilities existing, relocated, and retired or abandoned, and indicate reimbursement eligibility status of each existing facility;

(7) Have a legend indicating the symbol used for the:

(A) Various types of facilities;

(B) Work to be done; and

(C) Reimbursable status;

(8) Show proposed plant betterments to be made for the convenience of the ~~utility owner~~utility either by work or symbol at the appropriate locations;

(9) Show control of access lines as well as right-of-way lines on fully or partially controlled access facility projects;

(10) Show:

(A) A north arrow to indicate true cardinal directions; and

(B) In a title block, the ~~utility owner~~utility's name, the highway project designation by job number, and job name as indicated on the title sheet of the department plans;

(11) Show, where facilities are jointly used, such as power and telephone poles, the ownership of the structures as well as the joint user or users, if known;

(12) Show, for an underground crossing, a profile of the crossing; and

(13) Show, for overhead crossings, the minimum clearance after relocation above the new road surface.

(b) The relocation plans shall include a narrative description of the work to be done.

(c) If needed and when identified, the relocation plans shall provide a traffic control plan.

27 CAR § 91-520. Responsibilities of utilities under relocation agreement.

A utility shall:

(1) Begin and complete the relocation within the time frame specified in the relocation proposal and finalized in the relocation agreement; and

(2) Submit a progress report every two (2) months to the Arkansas Department of Transportation regarding the status of the relocation after a notice to proceed is issued by the department until the relocation is complete and as set out in the relocation agreement.

27 CAR § 91-521. Notice to proceed.

(a) After a relocation agreement is executed the Arkansas Department of Transportation shall issue a notice to proceed with the relocation to the owner of the utility facility that is the subject of the relocation agreement.

(b) The notice to proceed serves as the formal authorization for the utility to commence work on the relocation in accordance with terms of the relocation agreement.

27 CAR § 91-522. Assessment of civil penalties.

(a) The Arkansas Department of Transportation may assess ~~and collect~~ a civil penalty from a utility other than a municipal utility if a utility fails to follow the process established in this part or the relocation agreement to complete the relocation within the time period stated in the relocation agreement.

(b) A civil penalty may not be assessed against a municipal utility.

(c) The department shall give a utility written notice of the intent to assess a civil penalty and an opportunity to appeal the department's decision and show cause why the civil penalty should not be assessed.

(d) A civil penalty may be assessed and collected after the department:

(1) Provides notice to the utility of the intent to assess a penalty;

(2) Allows thirty (30) days for the utility to come into compliance with this part or relocation agreement.

(e) The department may assess civil penalty on a utility in the amount five hundred dollars ($500) for each business day the utility fails to:

(1) Respond to the written notice to the utility of the need for the relocation located on the public transportation facility;

(2) Enter into negotiations for a relocation agreement between the department and the utility;

(3)(A) Comply with a relocation agreement to which the utility is a party, including completing the work according to the schedule in the relocation agreement.

(B) A civil penalty shall not be assessed if the utility does not meet the

agreed-upon schedule but meets the final relocation completion date in the relocation agreement;

(4) Act in good faith to comply with the relocation agreement; or

(5) Request a reasonable modification of the schedule.

(f) A civil penalty shall not be assessed for a delay that is the result of:

(1) An extraordinary event;

(2) Excavation that damages an underground utility facility for which:

(A) The owner of the utility facility was not provided notice of the intent to excavate; or

(B) The utility facility was not located and marked properly under the Arkansas Underground Facilities Damage Prevention Act, Arkansas Code § 14-271-101 et seq.; or

(3) A delay in acquiring right-of-way after a good faith effort by the utility to complete the acquisition of the right-of-way.

(g) An appeal of a decision to assess a civil penalty shall be in accordance with this part and the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

27 CAR § 91-523. Collection of civil penalties.

(a) Upon a finding that a civil penalty should be assessed and all appeals concerning the assessment of the penalty are completed, the Arkansas Department of Transportation shall issue an order assessing the penalty to the utility and requiring payment of the civil penalty.

(b) If a civil penalty has not been paid in full within ninety (90) days after the entry of an order, the civil penalty may be:

(1) Deducted from the final reimbursement payment by the department to the utility and accounted for by written notice; or

(2) Subject to a collection action by the department.

(c) A civil penalty assessed under these rules shall not be deducted from any reimbursement payment or subject to a collection action until all administrative appeal rights have been exhausted or have expired without appeal.

(d) If a collection action is initiated by the department for failure to pay the civil penalty, all costs associated with the collection action shall be paid by the utility failing to pay the civil penalty.

(e) Moneys collected as civil penalties shall be:

(1) Paid into the State Highway and Transportation Department Fund; and

(2) Designated for use in a utility relocation grant and loan program to be established by the department for the purpose of providing a grant or loan to a small utility for a relocation that is nonreimbursable.

27 CAR § 91-524. Failure of a municipal utility system to comply with relocation agreement and rules.

(a) If a municipal utility system fails to follow the process established in this part or the relocation agreement to complete a relocation within the time period stated in the relocation agreement, the Arkansas Department of Transportation may relocate the utility facility that is the subject of the relocation agreement.

(b) If the department relocates a utility facility, the department may enter into a contract to complete the engineering, relocation, or other work required to relocate the utility facility of a municipal utility system after providing written notice to the municipal utility system.

(c) If within ten (10) days of the receipt of written notice from the department of the intent to relocate the municipal utility facility, the municipal utility system shall provide the department with a list of three (3) or more approved engineers and three (3) or more approved contractors to perform the relocation or design specifications for the utility facility that is to be relocated.

(d) The department shall enter into a contract for the relocation of the municipal utility facility from the list provided by the municipal utility facility.

(e) The department shall not enter into a contract with an engineer or contractor who does not comply with the procurement process of the department.

(f) If within ten (10) days of the receipt of written notice from the department the municipal utility system provides the department with design specifications for the utility

facility that is to be relocated, then the department shall require compliance with the design specifications in the contract for the relocation.

(g) A contract entered into by the department to relocate a utility facility of a municipal utility system under this section shall identify the municipal utility system as the beneficiary of the contract.

(h) A municipal utility system that has entered into a contract with the department to relocate a utility system of the municipal utility system under this section may:

(1) Inspect the relocation of the utility facility;

(2) Inspect an underground utility facility before it is covered; and

(3) Pursue a claim against a person or entity other than the department based on the relocation of the utility facility whether provided under the contract with the department or by law.

(i) Within ninety (90) days of the receipt of a written invoice from the department for the cost of a relocation under this section, a municipal utility system shall:

(1) Pay to the department the nonreimbursable portion of the cost of the relocation that the municipal utility system does not dispute; and

(2) Enter into a dispute resolution process with the department for any disputed portion of the invoice.

(j) If a municipal utility system fails to comply with subsection (i) of this section, the department may offset and collect the amount owed by the municipal utility system from any funds administered by the department for disbursement to the municipality, including without limitation turnback and state aid street funds that may be lawfully applied to the relocation costs.

(k) A municipal utility system may agree to the relocation of a utility facility of the municipal utility system by the department.

(l)(1) The department shall not assume the relocation of a municipal utility facility if an extraordinary event prevents the completion of a relocation within the time frame specified in the relocation agreement.

(2) If an extraordinary event occurs, the municipal utility shall provide the department with a:

(A) Written notice of the extraordinary event; and

(B) Revised relocation proposal and schedule.

(m) Upon receipt of a written notice asserting the occurrence of an extraordinary event, the department shall issue a modification to the relocation agreement reflecting a new date for the completion of the relocation as determined by the department.

Subpart 6. Miscellaneous

27 CAR § 91-601. Privately owned facilities.

(a)(1) Privately owned facilities are lines that convey or transmit communications, electricity, gas, oil, water, or any other similar commodities, but are devoted exclusively to private use.

(2) This includes:

(A) Privately owned lines from gas and oil wells;

(B) Lines owned by oil companies within refinery and oil storage complexes;

(C) Irrigation lines; and

(D) Any other private purpose lines or service lines owned by individuals or companies.

(b) **Permanent installations.**

(1) Longitudinal installations of permanent private lines are not allowed.

(2) Permit applications are required for permanent private crossings, and all private installations allowed to cross state highway right-of-way shall follow the applicable requirements of this part.

(c) **Temporary installations.**

(1) Longitudinal installations of temporary private lines are not allowed.

(2) The placement of a temporary line to cross a highway right-of-way shall be permitted through an encasement under the roadway installed in accordance with this part, or it may be placed through an existing drainage structure with a minimum of twenty feet (20') of clear waterway opening if approved by the District Engineer.

(3)(A) An exception may be granted to place a temporary line through an existing drainage structure with less than twenty feet (20') of clear waterway opening ~~providing~~ provided that a drainage analysis is made by a qualified individual and submitted by the owner.

(B) The decision whether to allow the use of the drainage structure for a temporary crossing will be made by the Arkansas Department of Transportation based on the impact of the drainage analysis.

(4) Regardless of size, if the department allows the use of any existing bridge opening or highway drainage structure for the placement of a temporary line, the ~~utility owner~~utility will be required to assume all responsibility for any damages or violations of state or federal environmental law or regulations caused by the placement of the line.

27 CAR § 91-602. Utilities not specifically covered.

(a) Various types of utilities not specifically covered herein will be considered within the provisions of this part in accordance with the nature of the utility.

(b) It shall be a general practice to consider all lines carrying caustic, flammable, or explosive materials under the provisions for high-pressure gas and liquid fuel lines.

27 CAR § 91-603. Highway lighting.

(a) Requests for permits to install or renovate highway lighting systems by electric ~~utility owner~~utility~~s~~utilities or municipalities shall be treated as special cases.

(b) Each request shall be submitted to the District Engineer for further review and recommendation as to:

(1) Acceptability of the design;

(2) Adequacy of lighting; and

(3) Safety factors.

(c) In addition, the permit must meet the other applicable provisions of this part.

27 CAR § 91-604. Correction of hazardous installations.

When it becomes evident that an existing utility facility has become a hazard to the

safe operation of a highway facility, the Arkansas Department of Transportation will require the ~~utility owner~~utility to correct the condition at the ~~utility owner~~utility's expense, regardless of when the hazard was discovered.

27 CAR § 91-605. Abandonment of facilities.

(a)(1) If a ~~utility owner~~utility abandons any portion of its facilities located on highway right-of-way, it must notify the Arkansas Department of Transportation of that status in writing and indicate whether the facility will be removed or abandoned in place.

(2) The notification must include a statement certifying that the abandoned facility does not contain, or is not composed of, hazardous or contaminated materials.

(b) The ~~utility owner~~utility shall indicate, on the plans, the location, size, and disposition for all utility facilities being abandoned.

(c)(1) If a ~~utility owner~~utility discontinues use of an above-ground facility, the facility shall be entirely removed from the highway right-of-way within six (6) months after its use is discontinued, unless the department grants written approval for a time extension.

(2) All removal costs shall be the responsibility of the ~~utility owner~~utility.

(d)(1) If a ~~utility owner~~utility discontinues use of an underground facility but desires to leave it in place on the highway right-of-way, written approval to do so shall be obtained from the department and a record shall be retained in the ~~utility owner~~utility's permanent files in order that such facility may be accurately located in the field.

(2) The department may, at its sole discretion, require abandoned and out-of-service pipes and appurtenant facilities, e.g., manholes, pull boxes, etc., to be filled in or removed.

(3) If so required, the ~~utility owner~~utility shall fill in or remove the abandoned facilities within six (6) months after its use is discontinued, unless the department grants written approval of a time extension.

(4) All necessary removal and related costs shall be the responsibility of the

~~utility ownerutility~~.

(e)(1) If a ~~utility ownerutility~~ discontinues use of a facility on a highway bridge or structure, the facility shall be removed within six (6) months, unless the department grants written approval of a time extension.

(2) Any abandoned or out-of-service facilities that are removed from a bridge must be done so utilizing removal procedures approved by the department.

(3) All removal costs shall be the responsibility of the ~~utility ownerutility~~.

(f) If the owner fails to remove the abandoned utility facilities, the department may do so at the expense of the ~~utility ownerutility~~.

(g) Abandonment shall not be construed as a change in ownership of the facility.

Subpart 7. Reimbursement for Relocation of Utilities

27 CAR § 91-701. Purpose.

The purpose of this subpart is to prescribe the policies and procedures for reimbursement of eligible costs associated with the relocation of utility facilities on Arkansas Department of Transportation highway construction projects, and to authorize the Utilities Section to make all contractual arrangements with ~~utility ownerutilitysutilities~~.

27 CAR § 91-702. Authority.

(a) The Federal-Aid Policy Guide, 23 C.F.R. § 645.101 et seq., as amended and supplemented, is adopted by reference herein with the same force and effect as if recited at length.

(b) Determination of reimbursement eligibility is pursuant to applicable state law and statutory law, and case law is generally interpreted by the Arkansas Department of Transportation's legal counsel.

27 CAR § 91-703. Applicability.

This subpart applies to all ~~utility ownerutilitysutilities~~ with facilities affected by a

highway construction project.

27 CAR § 91-704. Reimbursement eligibility.

(a)(1) A ~~utility owner~~utility will be considered eligible for reimbursement if they have the right of occupancy in the existing location because of holding the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain.

(2) The general criteria for determining eligibility for reimbursement for relocation costs shall be applied on the basis of the factual location of the existing utility facility in relation to existing highway right-of-way.

(b)(1) Existing utility facilities located on private property, street right-of-way of any incorporated town or city, county road, dedicated urban development road, ~~and/~~or private road right-of-way which were not a part of or on the state highway system at the time the facilities were installed, shall be considered eligible for reimbursement.

(2) A utility facility located on private right-of-way or easement outside the existing highway right-of-way is considered to be eligible for reimbursement for the cost of relocation~~of the cost of replacement right-of-way~~.

(3) Copies of an easement or affidavit verifying the ~~utility owner~~utility's right of occupancy must be submitted with the relocation proposal.

(4) Other than reimbursement for relocation costs under these rules, there will be no charge to the Arkansas Department of Transportation for that portion of the ~~utility owner~~utility's existing private right-of-way or easement being transferred to the department or Arkansas State Highway Commission for highway purposes.

(c) Utility facilities presently located on existing ~~Arkansas Department of Transportation~~department or commission highway right-of-way by permit or unwritten consent of the department are not eligible for reimbursement.

(d) The existence of a franchise agreement with a city or county and a utility entity alone does not automatically support reimbursement eligibility or a compensable property interest within commission or department right-of-way.

(e) A utility with a documented prior right or interest in a location now identified as

department or commission right of way may be eligible for reimbursement upon review.

~~**27 CAR § 91-705. Right-of-way.**~~

~~(a) A utility facility located on private right-of-way or easement (outside the existing highway right-of-way) is considered to be eligible for reimbursement of the cost of replacement right-of-way.~~

~~(b) Copies of an easement or affidavit verifying the utility owner's right of occupancy must be submitted with the relocation proposal.~~

~~(c) There will be no charge to the Arkansas Department of Transportation for that portion of the utility owner's existing private right-of-way or easement being transferred to the department for highway purposes.~~

~~**27 CAR § 91-706. Preliminary engineering.**~~

~~(a) Initial authorization on highway projects is for preliminary engineering by the utility owner's personnel (force account), the cost of which will be included in the subsequent relocation agreement.~~

~~(b)(1) When the utility owner is not adequately staffed with technical personnel or the present workload would be prohibitive to perform the necessary preliminary engineering, a consulting engineer may be employed by the utility owner.~~

~~(2) If any part of the consultant's entire fee is eligible for reimbursement, the utility owner shall submit a written request to the Utilities Section requesting approval for the use of a consultant.~~

~~(c) Preliminary engineering costs are reimbursable to the utility owner only to the extent that the existing utility facilities that require adjustment are eligible for reimbursement.~~

~~(d) Additional information regarding the use of consultants for preliminary engineering services is contained in 27 CAR § 91-901 et seq.~~

Subpart 8. Relocation Process

27 CAR § 91-801. Agreements and authorizations.

(a) After notification by the Utilities Section of an impending highway project, the ~~utility owner~~utility is obligated to make the necessary arrangements for planning and accomplishing the relocation work required by the highway construction.

(b) The ~~utility owner~~utility is responsible for the design and integrity of the utility facilities to be installed within highway right-of-way, in accordance with this part.

(c) The ~~utility owner~~utility's responsibilities include but are not limited to the following functions:

(1) Determination of any and all conflicts the existing utility facilities have with the proposed highway construction;

(2)(A) Preparation of detailed cost estimates and plans providing for the relocation work required to clear the highway construction.

(B) This information shall include sufficient detail to provide the Utilities Section a reasonable basis for analysis;

(3) Determination of whether the work will be:

(A) Accomplished by force account;

(B) Awarded on a continuing contract; or

(C) Let to contract to the lowest qualified bidder; and

(4)(A) Submission of a complete relocation proposal, including the detailed cost estimate and plans, within the time period specified by the Arkansas Department of Transportation.

(B) The ~~utility owner~~utility is expected to submit the relocation proposal within the time period specified so as not to delay or interfere with the schedule for the proposed highway construction.

(d)(1) In some instances, a combination of force account and contract labor may be required.

(2) Work normally done for a ~~utility owner~~utility by a contractor under an existing continuing contract may be acceptable, provided the established rates are reasonable.

(e) After the Utilities Section has reviewed and approved the plan information and

cost estimate (if applicable), work authorization will be given by one (1) of the following methods:

(1) Nonreimbursable relocation ~~work order~~ notice to proceed issued when the utility relocation work is one hundred percent (100%) nonreimbursable; or

(2)(A) ~~Work order~~ Notice to Proceed with utility relocation agreement (relocation agreement).

(B) If the ~~utility owner~~utility's relocation work is reimbursable, or partially reimbursable, the Utilities Section will prepare a relocation agreement.

(C) The relocation agreement may be the:

(i) Lump-sum method (confirmation by audit is not required); or

(ii) Actual-cost method (subject to audit because billing will be for actual expenditures).

27 CAR § 91-802. Relocation.

(a) After issuance of a ~~work order~~ notice to proceed by the Utilities Section, the ~~utility owner~~utility is expected to begin the relocation work and exercise due diligence to complete the work within the time periods specified in the ~~work order~~ notice to proceed so as not to delay or interfere with the highway contractor's operation.

(b) All utility work shall be undertaken and completed in accordance with the approved:

(1) Plans;

(2) Specifications; and

(3) Relocation agreement, ~~if applicable~~ including any change orders.~~; and~~

~~(4) Change orders.~~

(c) Changes in the work from that shown in the approved relocation plan must be authorized by the ~~resident engineer~~ utility coordinator prior to the implementation of the change in order for the cost to be eligible for reimbursement.

(d) ~~Utility owner~~Utilitys shall notify the resident engineer not less than a minimum of ~~four~~ (4) business days prior to starting work in order that observation and inspection of the work may be ~~provided~~ performed by the resident engineer.

(e) The ~~utility owner~~utility shall notify the resident engineer on the date the work is completed so that a final inspection by the resident engineer may be scheduled.

27 CAR § 91-803. Inspection.

(a) The resident engineer is responsible for the administration and inspection of utility relocations.

(b) Both reimbursable and nonreimbursable relocation work is subject to inspection by the resident engineer to ensure proper installation as approved in each utility's ~~work order~~notice to proceed.

(c) The resident engineer has the authority to order the stoppage ~~and/~~or removal of any work not in compliance with the relocation agreement or this part.

27 CAR § 91-804. Relocation change orders.

(a) When a change in the planned adjustments, including quantities or types of materials, proposed location of facilities, or additional work is identified, the ~~utility owner~~utility shall inform the ~~resident engineer~~ Section Head of the Utility Section of the reason for the requested change along with a detailed estimate of the revised cost, change in quantities or items to be installed, and plan sheets showing the requested changes.

(b) The ~~resident engineer~~ Section Head of the Utility Section will review the requested change and, if recommended, prepare the appropriate documentation, as necessary.

Subpart 9. Utility Engineering by Consultant

27 CAR § 91-901. Employment.

(a) ~~As noted in 27 CAR § 91-706(b), a~~ A ~~utility owner~~utility may be unable to perform preliminary or construction engineering work with their own forces.

(b) A consultant engineer may be employed by the ~~utility owner~~utility ~~under~~ subject to the following conditions for reimbursement eligibility:

(1) For any part of the consultant's fee to be eligible for reimbursement, the ~~utility ownerutility~~ shall submit a written request to the Utilities Section requesting approval for the use of a consultant;

(2) Consultant engineering cost is reimbursable only to the extent that the cost to relocate existing facilities is determined to be eligible for reimbursement;

(3)(A) Consultant engineering fees must be based on actual cost with a fixed amount for profit.

(B) However, reimbursement will not be allowed for profit in excess of twelve percent (12%) of the total cost for consultant engineering;

(4)(A) ~~Reimbursement~~ When reimbursement has been preliminarily approved,reimbursement of preliminary engineering fees may be handled on a lump-sum basis when the work is clearly defined and ~~the fee is relatively small~~ approved in writing by the Section of the Utilities Section.

(B) However, a breakdown of the fee is required; and

(5) Construction engineering fees shall be handled on an actual cost basis.

27 CAR § 91-902. Preliminary engineering procedures.

(a)(1) When the use of a consultant has been approved, the ~~utility ownerutility~~ will be authorized to have the consultant proceed with preparing a preliminary engineering fee estimate and contract.

(2) The engineer's fee shall not be based on a percentage of the cost of relocation.

(b) The preliminary fee estimate, contract documents, and the consulting engineer's certification, in the form designated by the Arkansas Department of Transportation, shall be submitted for Utilities Section approval.

(c)(1) The Utilities Section will then prepare a preliminary engineering agreement (PE agreement) to be executed by the department and the ~~utility ownerutility~~.

(2) The consultant will be required to begin and complete the preliminary engineering contractual obligations within a specified number of days.

(d) Following proper execution of the PE agreement, the Utilities Section will issue

a preliminary engineering ~~work order~~ notice to proceed to the ~~utility owner~~utility authorizing the consultant to begin the preliminary engineering of the work encompassing the following:

(1) Field surveys and investigations, including any and all work to secure the proper information to prepare plans, specifications, cost estimates, and necessary easements;

(2) Preparation of complete and detailed plans of the existing and proposed facilities with an itemized cost estimate for the relocation work;

(3)(A) Preparation of contract documents and specifications incident to the advertisement of bids.

(B) One (1) copy of the specifications is required in the initial submittal; and

(4) Submission of all necessary documents through the ~~utility owner~~utility to the Utilities Section and to other agencies having jurisdiction when required.

(e) After approval of the cost estimate and plans, a relocation agreement will be prepared and submitted to the ~~utility owner~~utility for execution.

(f) After receiving the fully executed relocation agreement, the Utilities Section will authorize the ~~utility owner~~utility to proceed with advertising for bids, ~~and/or~~ acquisition of necessary right-of-way, or both.

(g) After the bids have been opened, the ~~utility owner~~utility will submit one (1) copy of each bid received and the bid tabulation sheet to the Utilities Section with a request for the department concurrence in award of the contract to the lowest qualified bidder.

(h)(1) After concurrence, the ~~utility owner~~utility shall submit two (2) copies of the executed contract and two (2) sets of the completed specifications to the Utilities Section.

(2) After these documents have been approved, the Utilities Section will issue a contract ~~work order~~ notice to proceed to the ~~utility owner~~utility.

27 CAR § 91-903. Construction engineering procedures.

(a) Supervision and inspection by the consultant during the construction work will be considered as a part of the relocation agreement and reimbursed separately from the PE agreement.

(b) These activities will consist of, but not be limited to, the following:

(1) Field staking for locations and grades of the relocated work;

(2) Supervision and inspection of the construction work;

(3) Preparation and calculation of periodic estimates, if requested;

(4) Preparation and submission of change orders, if required;

(5) Coordination with the Arkansas Department of Transportation and ~~utility owner~~utility representatives; and

(6) Preparation and submission of billings and one (1) complete set of as-built plans.

27 CAR § 91-904. Engineering costs.

~~Utility owner~~~~Utilitys~~Utilities utilizing consulting engineers for design or construction engineering services shall comply with the following requirements:

(1) **Overhead rates**.

(A) Overhead rates must be computed in accordance with Federal Acquisition Regulations, 48 C.F.R. pt. 31, and AASHTO Uniform Audit and Accounting Guide for Audits of Architectural and Engineering (A/E) Consulting Firms.

(B) 23 C.F.R. § 645.117(d) states in part, "Overhead and indirect construction costs not charged directly to ~~work order~~ notice to proceed or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, actually incurred by the utility, and consistent with the provisions of 48 CFR Part 31.";

(2) **Profit.** Total profit to be reimbursed for consultant engineering services cannot exceed twelve percent (12%) of the total contract engineering expenditures;

(3) **Direct job expense.**

(A) These types of expenses must be itemized, i.e., mileage, copies,

postage, meals, lodging, etc.

(B) Mileage – Rate per mile must not exceed current reimbursement rate for private vehicle use authorized in the Arkansas Department of Transportation Accounting Manual.

(C) Meals and lodging – Daily rates must not exceed current reimbursement rates authorized in the Arkansas Department of Transportation Accounting Manual;

(4) **Invoices.** Invoices must include the following:

(A) Department job number;

(B) Project location/description;

(C) Time period for the work included in the invoice;

(D) Name, telephone number, and email address of a contact person;

(E) Signature of a consultant's representative and signature date;

(F) Summary comparison of actual project preliminary engineering costs to the estimated costs for each category from beginning of work to date;

(G) Detail of costs incurred;

(H) Total previous payments;

(I) Supporting documentation for overhead and indirect expense rates (initial invoice); and

(J) Explanation for any:

(i) Overrun of hours, rates, direct costs, additional items of work; or

(ii) Changes in scope of work; and

(5) ~~**Final certification of indirect**~~ **Indirect cost rate.** Any indirect cost rate shall be propertly documented in accordance with 23 C.F.R. pt. 645 and 48 C.F.R. pt. 31. ~~The following Certificate of Final Indirect Costs must be signed by the consultant's chief financial officer or vice president and submitted with the final invoice:~~

~~**Certificate of Final Indirect Costs**~~

~~AHTD Job No.:_____~~

~~Utility Name: _____~~

~~This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:~~

~~1. All costs included in this proposal dated _____ to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and~~

~~2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.~~

~~Firm: _____~~

~~Signature: _____~~

~~Name of Certifying Official: _____~~

~~Title: _____~~

~~Date of Execution: _____~~

27 CAR § 91-905. Engineering change orders.

(a) When the ~~utility owner~~utility identifies a need for change to the quantity, type, or scope of preliminary or construction engineering, the ~~utility owner~~utility shall inform the ~~Utilities Section Head or resident engineer~~ Section Head of the Utilities Section, as applicable, of the reason for the requested change along with a detailed estimate of the revised cost.

(b) The ~~Utilities Section Head or resident engineer~~ Section Head of the Utilities Section will review the requested change and, if recommended, prepare the appropriate documentation, as necessary.

(c) The change order shall be:

(1) A modification of the relocation agreement; and

(2) In writing and signed by both the designated representative of the utility and the designated representative of the Arkansas Department of Transportation.

Subpart 10. Relocation Proposal Standards

~~**27 CAR § 91-1001. Reimbursable proposals.**~~

~~When all or part of the cost of required relocation of a utility owner's facilities is determined to be reimbursable, the Utilities Section shall be furnished the following:~~

~~(1) One (1) copy of a detailed cost estimate;~~

~~(2) Three (3) sets of detailed relocation plans; and~~

~~(3) A letter transmitting the cost estimate and plans which includes statements to indicate:~~

~~(A) How many calendar days, after being authorized, it will take to begin the work;~~

~~(B) The number of working days required for completion of the relocation work; and~~

~~(C) A statement that no arbitrary percentages or amounts have been added to cover assumed costs.~~

27 CAR § 91-1002. Minimum requirements for a cost estimate.

(a) A ~~utility owner~~utility shall use an accounting system prescribed by the federal or state regulatory body under which it operates to accumulate costs as required in 27 CAR § 91-1104.

(b) The elements or components of a cost estimate should, at a minimum, include the following:

(1) Preliminary engineering costs;

(2) Right-of-way cost;

(3) Cost of replacement facility, with betterments;

(4) Cost of removal of replaced facility;

(5) Cost of restoring removed material to usable condition, if applicable;

(6) Credit for material returned to stores or salvageable material; and

(7)(A) Credit for plant betterments (improvements in the utility facility not

necessitated by the highway construction).

(B) In the respective components, all items of labor, materials, and equipment should be itemized to show quantity, type, unit cost, and extended cost, and be summarized by the various categories and recapitulated to produce the net estimated cost of the relocation for betterments.

(c) Preliminary engineering costs, right-of-way costs (including clearing), and construction supervision and inspection costs are to be shown as separate items.

(d) If overhead cost amounts are determined by using percentage factors, labor loadings, or some other similar method, an analysis of the basis for overhead cost computations setting forth the elements of overhead costs accumulated in the computations must be furnished.

(e)(1) Generally, the relocation of a ~~utility owner~~utility's facilities will be accomplished by company forces (force account).

(2) When certain items of the relocation are to be performed by contract forces, costs covering these items shall be shown separately in their respective categories.

(f) The reimbursement eligibility ratio, if relocation costs are less than one hundred percent (100%) eligible for reimbursement, should be developed, explained, and then applied in the estimate to show the proportionate costs of the relocation to be borne by the ~~utility owner~~utility and the Arkansas Department of Transportation.

~~**27 CAR § 91-1003. Nonreimbursable relocation proposals.**~~

~~For fully nonreimbursable relocations, the utility owner shall submit:~~

~~(1) A statement that the utility owner is not seeking reimbursement for the relocation;~~

~~(2) Three (3) sets of the detailed relocation plans;~~

~~(3) The number of calendar days required to begin relocation work; and~~

~~(4) Number of working days required to complete the relocation work.~~

~~**27 CAR § 91-1004. Minimum information for relocation plans.**~~

(a) Plans, whether for reimbursable or nonreimbursable relocations, shall, as a minimum, contain the following elements:

(1)(A) Be drawn to scale.

(B) Utility owners shall utilize electronic files or reproduce the applicable portions of the plans and profile print furnished by the Arkansas Department of Transportation and add the necessary detail and notations to portray accurately the proposed relocation in the facilities as directly oriented with the highway construction plans;

(2) Show the existing and proposed highway right-of-way and distances from the centerline of survey;

(3) Show highway centerline stations at one-hundred-foot intervals and station number designations at five-hundred-foot intervals;

(4) Show the existing and proposed facilities clearly referenced by distance from and to exact highway survey centerline stations;

(5) Show quantity, size, class, and dimensions of all major items of material;

(6) Show, in appropriate symbol and plan location, all major facilities existing, relocated, and retired or abandoned, and indicate reimbursement eligibility status of each existing facility;

(7) Have a legend indicating the symbol used for the:

(A) Various types of facilities;

(B) Work to be done; and

(C) Reimbursable status;

(8) Show proposed plant betterments to be made for the convenience of the utility owner either by work or symbol at the appropriate locations;

(9) Show control of access lines as well as right-of-way lines on fully or partially controlled access facility projects;

(10) Show:

(A) A north arrow to indicate true cardinal directions; and

(B) In a title block, the utility owner's name, the highway project designation by job number, and job name as indicated on the title sheet of the

~~department plans;~~

~~(11) Show, where facilities are jointly used, such as power and telephone poles, the ownership of the structures as well as the joint user or users;~~

~~(12) Show, for an underground crossing, a profile of the crossing; and~~

~~(13) Show, for overhead crossings, the minimum clearance after relocation above the new road surface.~~

~~(b) Describe by narrative work to be done.~~

~~(c) Provide a traffic control plan, as appropriate.~~

Subpart 11. Accounting and Record Requirements

~~**27 CAR § 91-1101. Purpose.**~~

~~(a) If the relocation of a utility owner's facilities is determined to be reimbursable, the process for reimbursement shall be in accordance with this subpart.~~

~~(b) These are the minimum requirements for:~~

~~(1) Requesting reimbursement;~~

~~(2) Documenting expenditures; and~~

~~(3) Processing payments.~~

27 CAR § 91-1102. Preliminary engineering agreement.

(a) An executed ~~PE~~ preliminary engineering "PE" agreement establishes the estimated cost for preliminary engineering services if a ~~utility owner~~utility is not adequately staffed to carry out the necessary preliminary engineering required for the relocations.

(b) Reimbursement will be made at the same ratio as the relocation of the facilities is eligible.

(c) The PE agreement may be on an actual cost or lump-sum basis.

27 CAR § 91-1103. Utility relocation agreement.

(a) The executed utility relocation agreement establishes the estimated cost and

reimbursement factor for the relocation of a ~~utility owner~~utility's facilities for a highway project.

(b) The utility relocation agreement may be on an actual cost or lump-sum basis.

27 CAR § 91-1104. Accounting system.

(a) A ~~utility owner~~utility shall use an accounting system prescribed by the federal or state regulatory body under which it operates, or in cases where a ~~utility owner~~utility does not use a prescribed accounting system, it shall use its established system of accumulating specific work order costs or establish a system of accounts which will provide for accumulating direct and related cost of the relocation.

(b) In any case, the system of accounts used must be in form and detail as will identify each claimed item of cost with the particular project.

(c) Costs for which all or partial reimbursement will be claimed must be completely documented and clearly identified with the specific highway project.

27 CAR § 91-1105. Conformity of estimate and invoices.

(a) The preliminary cost estimate and actual cost invoices must be prepared in conformity with the same accounting procedure and use comparable unit descriptions, quantities, and price structure by cost categories such as labor, equipment, overheads, materials used and recovered, etc.

(b) A comparison of the actual costs as billed will be made with the cost estimate used to prepare the relocation agreement to determine the invoice was prepared in the same manner as the estimate, and that all factors of cost are similarly itemized.

27 CAR § 91-1106. Availability of records.

~~Utility owner~~~~Utilitys~~Utilities, their consultants, and~~/or~~ contractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and make such material available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the Arkansas Department of Transportation or

Federal Highway Administration, and copies thereof shall be furnished if requested.

27 CAR § 91-1107. Billing invoices.

(a) The ~~utility owner~~utility's records must fully support the invoiced amounts.

(b) The invoice must contain only those costs actually incurred as direct or related costs in the relocation or removal of the ~~utility owner~~utility's facilities related to the specific highway project covered in the PE agreement or relocation agreement.

(c) The invoice must reference the Arkansas Department of Transportation highway project number for which costs are incurred.

(d) The ~~utility owner~~utility may submit an invoice for the reimbursement of costs to the department upon completion of the relocation;

(e) The invoice for the reimbursement of costs for the relocation shall reflect all costs and expenses incurred by the utility for the relocation.

(f) The department shall pay a complete invoice submitted within ninety (90) days of receipt of the complete invoice by the department.

27 CAR § 91-1108. Controlling dates for incurring reimbursable costs.

(a) Costs incurred for work accomplished prior to receiving written authorization as noted below will not be eligible for reimbursement.

(b) **Preliminary engineering.** Date of the Arkansas Department of Transportation's written authorization to the ~~utility owner~~utility to begin preparation of the preliminary plans and estimate of cost.

(c) **Relocation.** Date of the department's written authorization to the ~~utility owner~~utility to begin its relocation work.

(d) The ~~utility owner~~utility will be notified, in writing, of the date or dates that preliminary engineering or utility relocation costs may be incurred.

Subpart 12. Reimbursable Expenses

27 CAR § 91-1201. Documentation of cost.

(a) All cost records must be identified in the ~~utility owner~~utility's records with the specific relocation project.

(b) Guidelines for determining actual eligible costs shall be those contained in 23 C.F.R. § 645.101 et seq.

(c) Following are normal types of costs incurred for highway projects and the type of supporting documentation needed to support each.

27 CAR § 91-1202. Direct expenses for labor.

(a) Salary and~~/or~~ wage rates shall be calculated by classes on a monthly basis or labor hours by rate and amount for project.

(b)(1) Overtime must be approved in advance by the Arkansas Department of Transportation and reported separately.

(2) This includes labor associated with:

(A) Preliminary engineering;

(B) Construction engineering;

(C) Right-of-way acquisition; and

(D) Force account construction.

(c)(1) The following direct labor additives may be included in direct expenses:

(A) Social Security;

(B) Holiday pay;

(C) Vacation;

(D) Sick leave;

(E) Retirement and pension;

(F) Unemployment taxes;

(G) Compensation; and

(H) Hospitalization and liability insurance.

(2) Such additives must be shown as a percent of direct labor expense and listed as a separate item.

(3) ~~Utility owner~~~~Utilitys~~Utilities may compute a cost rate including these additives or a prorated version but must provide the items and base factors of the

computation.

(d)(1) Approval will not be given for fees paid to engineers, architects, and others for required technical services when such fees are determined on the basis of a percentage of the total actual or estimated cost of the relocation.

(2) These types of work shall not be undertaken until approval is given by the department.

27 CAR § 91-1203. Overhead costs.

(a)~~(1)~~ ~~Utility ownerUtilitysUtilities~~**.**

(1) Overhead costs include expenses for:

(A) General engineering and supervision;

(B) General office services;

(C) Legal services;

(D) Insurance; and

(E) Other items.

(2) Overhead charges must be stated in detail.

(b) Costs not eligible for reimbursement include, but are not limited to, the costs associated with:

(1) Advertising;

(2) Sales promotion;

(3) Interest on borrowings;

(4) The issuance of stock;

(5) Bad debts;

(6) Uncollectible accounts receivable;

(7) Contributions;

(8) Donations;

(9) Entertainment;

(10) Fines;

(11) Penalties;

(12) Sale and rate studies;

(13) Lobbying; and

(14) Research programs.

(c)(1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis.

(2) All costs included in the allocation shall be:

(A) Eligible for federal reimbursement;

(B) Reasonable;

(C) Actually incurred by the ~~utility owner~~utility; and

(D) Consistent with the provisions of 48 C.F.R. pt. 31.

(d)(1) Rates shall be established on the basis of the prior year cost experience to avoid the fluctuations that occur with a month-to-month method.

(2) Once established and confirmed, the ~~utility owner~~utility shall use the annual report for all billings in that year and include a schedule that shows the base figures and computations with the relocation proposal.

(3) If the rate changes prior to beginning relocation work, an updated schedule must be submitted with the first invoice.

(e) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and shall be provided upon request and are subject to audit by the Arkansas Department of Transportation ~~and/~~or federal representative or representatives.

(f) **Consultants.** See 27 CAR § 91-901 et seq., for information related to consultant overhead costs.

27 CAR § 91-1204. General indirect expense.

(a) **~~Utility owner~~~~Utilitys~~Utilities.**

(1) A rate may be developed from actual experience or a rate of five percent (5%) of total project costs may be used.

(2) Include a schedule that shows the base figures and computations with the relocation proposal.

(3) If the rate changes prior to beginning relocation work, an updated schedule must be submitted with the first invoice.

(4) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and shall be provided upon request and are subject to audit by the Arkansas Department of Transportation and/or federal representative or representatives.

(b) **Consultants.** See 27 CAR § 91-901 et seq., for information related to consultant indirect expense rates.

27 CAR § 91-1205. Materials expense.

The ~~utility owner~~utility shall, as necessary and appropriate:

(1)(A) Itemize all materials issued from stock for installation by type and show the number of:

(i) Items;

(ii) Average unit costs; and

(iii) Amount.

(B) Items of new materials and supplies shall be billed at current stock prices when furnished from the ~~utility owner~~utility's stock or at actual cost to the ~~utility owner~~utility delivered to the project site when such materials must be purchased;

(2) Itemize excess materials issued out but not used and show them as returned to stock for credit;

(3)(A) Provide a list, by vendor, of materials purchased directly for the project with a general description of the materials and total amount paid.

(B) Copies of invoices showing discounts, rebates, allowances, and inter-company profits are to be attached; and

(4) Provide a list of salvaged materials returned to stores for reuse, less a consideration for loss in service life at ten percent (10%).

27 CAR § 91-1206. Equipment expense.

(a)(1) In the accumulation of utility relocation costs necessitated by a highway

project, costs incurred in the operation and use of equipment and transportation vehicles are reimbursable when properly supported.

(2) Vehicle number, description, size, date of use, per-hour or per-mile rates, and total use, and the method for time and rate determination must be included with the invoice.

(b) Expenses cleared through transportation and heavy equipment accounts may include:

(1) Depreciation;

(2) Fuel and lubricants for vehicles including sales and excise taxes;

(3) Freight and express on fuel and repair parts;

(4) Heat, light, and power for garage and garage office;

(5) Insurance, including public liability and property damage insurance, on:

(A) Garage equipment;

(B) Transportation equipment; and

(C) Heavy work equipment;

(6) License fees for vehicles and drivers;

(7) Maintenance of transportation and garage equipment;

(8) Operation of garages; and

(9) Rent on garage buildings and grounds.

(c) Equipment costs may include the costs of supervision, labor, and expenses incurred in the operation and maintenance of heavy equipment and transportation equipment of the ~~utility owner~~utility, including direct taxes and depreciation.

(d) A particular class or type of equipment or vehicle may be charged to an individual account on an hourly rate or mileage depending upon the company's standard operating procedure in recording such costs.

(e)(1) Reimbursement of transportation and equipment costs will be limited to charges to an appropriate account for the cost of equipment used for the specific relocation project.

(2) Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

27 CAR § 91-1207. Rental of equipment.

(a) Where the ~~utility ownerutility~~ does not have equipment available of the kind or type required to perform the necessary utility relocation, reimbursement will be limited to the amount of rental paid to the lowest bidder following an appropriate solicitation for quotations from owner of the required kind or type of equipment.

(b)(1) In the event of an emergency, such as a breakdown of utility-owned equipment or there is a need for equipment not originally contemplated or included in the relocation agreement, reimbursement will be allowed for rental of equipment at the lowest rate available under the prevailing conditions.

(2) Such need must be approved by the resident engineer and documented in the diary.

(c)(1) Equipment rates should be based upon actual cost to the ~~utility ownerutility~~.

(2) Standard rates such as those published by the associated equipment distributor may not be applied to utility-owned equipment since an increment of profit is included in the published rates, which is not reimbursable.

27 CAR § 91-1208. Small tool expense.

(a) Reimbursement for the use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the ~~utility ownerutility's~~ clearing accounts or other equitable and supportable allocation basis, otherwise, it will be limited to actual loss or damage during the period of use.

(b) In the latter case, the loss or damage shall be billed in detail and supported to the satisfaction of the Arkansas Department of Transportation.

27 CAR § 91-1209. Contract labor.

(a) **Utilization.**

(1) Contracts may be entered into by the ~~utility ownerutility~~ for facility relocation when it is clearly shown that it is in the best interest of the Arkansas Department of Transportation~~, or that the utility owner is not adequately staffed or~~

~~equipped to perform the work with its own forces~~, or that the utility owner is not adequately staffed or equipped to perform the work with its own forces.

(2) Such contracts must have the prior approval of the department before execution.

(b) **Reimbursement.**

(1) If reimbursement is requested, any contract to perform work in connection with the utility relocation shall be accomplished by a contract secured under a fully competitive bidding process in accordance with the ~~utility owner~~utility's normal bidding process as required in 23 C.F.R. § 645.115.

(2) The contract shall be awarded to the lowest qualified bidder submitting a proposal in conformity with the requirements and specifications as set forth in an appropriate solicitation for bids that is approved by the Utility Section prior to advertisement.

(3) If a ~~utility owner~~utility chooses to utilize other than the lowest qualified bidder, reimbursement will be allowed only for the amount of the low bid.

(c) **Continuing contract.**

(1) With prior approval by the department, an existing written continuing contract may be used for relocation work where it is demonstrated that such work is regularly performed for the ~~utility owner~~utility under such contracts at reasonable costs.

(2) A copy of the continuing contract must be submitted with the ~~utility owner~~utility's proposal.

(3) This may include existing continuing contracts with another ~~utility owner~~utility.

(4) Where such other ~~utility owner~~utility has an ownership interest in the facility to be relocated, the inter-company profit will not be reimbursed.

(d) **Combined contract and force account work.**

(1) When work is to be done by both company forces and by contract labor, the relocation agreement shall specifically describe the portion of the work to be accomplished by each.

(2) For example, where right-of-way clearing is to be performed by contract

forces, the name of the contractor and the items of work covered by the contract should be clearly set forth in the relocation agreement or attachments thereto.

(e) **Contract work of a minor nature.**

(1) Where the ~~utility ownerutility~~ proposes to contract outside the foregoing requirements for work of relatively minor cost or nature, the ~~utility ownerutility~~ will be reimbursed provided it is demonstrated that such requirements are impractical and the ~~utility ownerutility's~~ action did not result in an expenditure in excess of that justified by the prevailing conditions.

(2) Approval for this type of contract shall be approved by the department prior to incurring cost.

27 CAR § 91-1210. Betterments and betterment credit.

(a) **General.**

(1) In some cases, the ~~utility ownerutility~~ may upgrade its facility during relocation.

(2) Betterments increase the facility capacity or improve transmission, including function and quality.

(3)(A) The Arkansas Department of Transportation only pays for a functional equivalent replacement of the impacted utility facility.

(B) The department shall receive credit for the difference between the cost of the functional replacement of the original facility and the cost of the facility as constructed.

(C) The ~~utility ownerutility~~ shall submit an estimate including any betterment for approval by the department.

(b) **Exceptions.**

(1) Some exceptions as outlined in 23 C.F.R. § 645.117(h), exist to the general rule.

(2) The department may reimburse for the following types of betterment:

(A) Those required by the transportation project or by state or federal law or regulation;

(B) Replacement devices or materials that are equivalent but not identical standards;

(C) Replacement of devices or materials no longer regularly manufactured with next higher grade or size; and

(D) Those required by current highway or industry design practices and offering direct benefit to the transportation project.

(c) **Amount of betterment.**

(1) The overall scope of the betterment will be determined when the relocation agreement is prepared and the ~~utility owner~~utility's calculation of the betterment credit will be verified.

(2) Betterment credit includes the cost of materials and the increased costs of engineering and installing the betterment facilities, such as:

(A) Additional engineering;

(B) Special construction methods; and

(C) Increased overhead.

Subpart 13. Submittal of Invoices

27 CAR § 91-1301. Preparation and processing of partial invoices.

(a)(1) Costs submitted for reimbursement must have actually been expended by the ~~utility owner~~utility prior to including the expense on an invoice, unless the Arkansas Department of Transportation has previously given approval in writing for an alternate procedure.

(2) If expenses have been incurred but not paid, the expense should not be included on the invoice.

(b) **Frequency.**

(1) ~~Utility owner~~~~Utilitys~~Utilities may submit periodic invoices for reimbursement of expenditures totaling five thousand dollars ($5,000) or more, no more often than once a month.

(2) One (1) original invoice and supporting documentation must be submitted

for progress billings.

(c) **Method of billing.** All progress invoices must include:

(1) Department job number;

(2) Project location/description;

(3) ~~Utility owner~~Utility work order number;

(4) Time period for the work included in the invoice;

(5) Name, telephone number, and email address of a contact person;

(6) Signature of a ~~utility owner~~utility representative and signature date;

(7) Summary comparison of actual project costs to the estimated costs for each category from beginning of work to date;

(8) Detail of costs incurred with comparison to original contract or approved change order quantities;

(9) Total previous payments;

(10) Copies of canceled checks or other documentation of payment to contractors or consultants for costs included in the current billing;

(11) Supporting documentation for overhead and indirect expense rates (initial invoice); and

(12) Explanation for any:

(A) Overrun of item quantities/amounts;

(B) Additional items of work; or

(C) Changes in scope of work.

(d) **Payment.**

(1) The department will review the invoice and supporting documentation upon receipt.

(2) Properly prepared and itemized invoices will be paid promptly upon verification.

(3) Any questioned cost may necessitate an explanation or additional documentation from the ~~utility owner~~utility before payment can be made.

(4) Partial payment for the supported cost may be processed pending resolution of the questioned amount or amounts.

(5) Under no circumstances can accumulated payments or a single payment exceed the total amount of the relocation or PE agreement and any modifications or change orders.

27 CAR § 91-1302. Preparation and processing of final invoices.

(a)(1) Costs submitted for reimbursement must have actually been expended by the ~~utility owner~~utility prior to including the expense on an invoice, unless the Arkansas Department of Transportation has previously given approval in writing for an alternate procedure.

(2) If expenses have been incurred but not paid, the expense should not be included on the invoice.

(b) **Timing.** The ~~utility owner~~utility must submit one (1) original of the final invoice and an itemized statement of costs to the department no later than one (1) year after completion of the relocation work.

(c) **Method of billing.** All final invoices must include:

(1) Department job number;

(2) Project location/description;

(3) ~~Utility owner~~Utility work order number;

(4) Time period for the work included in the invoice;

(5) Name, telephone number, and email address of a contact person;

(6) Signature of a ~~utility owner~~utility representative and signature date;

(7) Summary comparison of actual project costs to the estimated costs for each category (construction, engineering, right-of-way, etc.) from beginning of work to date;

(8) Detail of costs incurred with comparison to original contract or approved change order quantities;

(9) Total previous payments;

(10) Recomputation of any reimbursable percentage in accordance with the relocation agreement;

(11) Copies of canceled checks or other documentation of payment to

contractors or consultants for current claim;

(12) Supporting documentation for overhead and indirect expense rates;

(13) Explanation for any:

(A) Overrun of item quantities~~/~~ or amounts;

(B) Additional items of work; or

(C) Changes in scope of work; and

(14) As-built plans.

(d) **Certification.**

(1) Final bills, for other than lump-sum agreements, shall contain a certification by an appropriate official of the ~~utility owner~~utility, ~~i.e.,~~including, but not limited to the controller, chief financial officer, accounting department manager, facility manager, mayor, county judge, ~~etc.,~~ that all items billed reflect actual expenditures by the ~~utility owner~~utility for the relocation of its facilities.

(2)(A) An acceptable form of certification follows:

"This is to certify that the costs for labor, equipment, materials, supplies, contractor payments and other items included in this final bill reflect actual expenditures incurred by the ~~utility owner~~utility for the

relocation of its facilities under the Agreement for which the bill is submitted and that records to support all charges are on file in the ~~utility owner~~utility's offices at (insert ~~utility owner~~utility's address)."

(B) The department job number, job name, ~~utility owner~~utility name, printed name of official, signature, and date shall be shown on the certification form.

(e) **Payment.**

(1) The department will review the invoice and supporting documentation upon receipt.

(2) Properly prepared and itemized invoices will be paid promptly upon verification.

(3) Any questioned cost will necessitate an explanation from the ~~utility ownerutility~~ before payment can be made.

(4) Partial payment for the supported cost may be processed pending resolution of the questioned amount or amounts.

(5) Under no circumstances can accumulated payments or a single payment exceed the total amount of the agreement and any modifications or change orders.

27 CAR § 91-1303. Invoices for lump-sum agreements.

(a) **Timing.** The ~~utility ownerutility~~ shall submit one (1) original of the final invoice in the exact amount of the agreed lump-sum reimbursement to the Arkansas Department of Transportation no later than one (1) year after completion of the relocation work.

(b) **Method of billing.** All final invoices must include:

(1) Department job number;

(2) Project location/description;

(3) ~~Utility ownerUtility~~ work order number;

(4) Time period for the work included in the invoice;

(5) Name, telephone number, and email address of a contact person;

(6) Signature of a ~~utility ownerutility~~ representative and signature date; and

(7) As-built plans.

(c) **Certification.**

(1) Final bills for lump-sum agreements shall contain a certification by an appropriate official of the ~~utility ownerutility~~, i.e., controller, chief financial officer, accounting department manager, facility manager, mayor, county judge, etc., that the relocation work was done in accordance with the provisions of the approved agreement.

(2) An acceptable form of certification follows:

"This is to certify that the relocation of (include ~~utility ownerutility's~~ name) facilities required under the Lump Sum Agreement dated _____ was

completed in accordance with the approved agreement."

(d) The department job number, job name, ~~utility ownerutility~~ name, printed name of official, signature, and date shall be shown on the certification form.

27 CAR § 91-1304. Audit by the department.

(a) Invoices, time sheets, and other source documents supporting the ~~utility ownerutility's~~ work performed under an agreement or contract with the Arkansas Department of Transportation will be subject to an audit by the department to determine or validate the actual eligible cost of the relocation as provided for herein.

(b) Progress and final invoices are subject to audit.

(c)(1) After the department audit of the invoice, a notification will be sent to the ~~utility ownerutility~~ advising of any adjustment needed.

(2) If the ~~utility ownerutility~~ was overpaid, the owner shall reimburse the department for the amount overpaid.

(3) After making final payment or receiving a refund from the ~~utility ownerutility~~ in cases of overpayment, the department will close the file.

(4) The ~~utility ownerutility~~ shall maintain supporting records for a minimum of three (3) years from payment or completion of the job, whichever is greater.

27 CAR § 91-1305. Change orders.

Change orders must be prepared and approved in accordance with ~~27 CAR §§ 91-804 and 91-905~~ this part for applicable costs to be reimbursed.

Subpart 14 – Administrative Hearing Procedures

27 CAR § 91-1401. Administrative appeal filing.

A ~~utility ownerutility~~ may appeal the assessment of a civil penalty by the Arkansas Department of Transportation by filing a written notice of appeal with the Section Head

of the Utilities Section of the department, as designated on the official website of the Arkansas Department of Transportation, www.ARDOT.gov.

27 CAR § 91-1402. Administrative appeal.

(a) The appeal procedures shall be conducted in an orderly manner with the utility or its selected representative giving evidence showing why determination made by the Arkansas Department of Transportation is not satisfactory; and

(b) The appeal will be conducted in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

27 CAR § 91-1403. Administrative appeal procedures.

(a) Upon receipt of a written notice of appeal, the Utilities Section shall inform the Right of Way Division Head of the appeal;

(b) The Right of Way Division Head will review the appeal request within ten (10) days and will notify the Chief Legal Counsel of the need to convene the appeal hearing panel.

27 CAR § 91-1404. Administrative appeal hearing.

(a) The appeal hearing panel shall consist of three (3) persons:

(1) At least one (1) member that possesses a good working knowledge of this part appointed by the Right of Way Division Head;

(2) The District Engineer, or their appointee, from the district in which the respective utility relocation project is located; and

(3) An attorney appointed by the chief legal counsel, who shall serve as chairperson of the panel and shall have not been substantially involved in the underlying permitting, relocation, or enforcement action at issue.

(b) The chairperson or their appointee will make arrangements for the appropriate clerical personnel and accommodations for the appeal hearing, as well as the scheduling, communications, notifications, and coordination for the hearing.

(c) The chairperson shall preside over the appeal hearing and meetings of the panel.

(d)(1) The Arkansas Department of Transportation shall permit the appellant to inspect and copy all materials pertinent to their appeal, except materials that are exempt from disclosure as defined in the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et. sec.

(2) The department may impose reasonable conditions on the appellant's right to inspect, consistent with applicable laws.

(e) The appeal hearing shall be conducted in an orderly manner with the appellant or their selected representative giving evidence showing why a civil penalty should not be assessed on the ~~utility owner~~utility.

(f)(1) A ~~utility owner~~utility and the department may be represented by legal counsel during the appeal process.

(2) All legal counsel will be compensated by the party requesting representation.

(3) The department shall not provide legal representation to an appellant.

(4) An appellant may not seek reimbursement from the department for the use of legal counsel and all legal services requested by appellant shall be at their own expense.

(g) The appeal hearing panel will review and consider the available information, pertinent justification, evidence, and material submitted and needed to ensure a fair and full review.

(h) The panel will make a written determination, which will include an explanation of the basis on which the decision was made within thirty (30) days after the hearing.

(i)(1) The chairperson of the panel will notify the appellant and Right of Way Division Head of the decision in writing.

(2) If the decision to assess civil penalties is reversed, the chairperson of the panel shall notify both the ~~utility owner~~utility and the Right of Way Division Head and no penalty will be assessed or collected by the department;

(3) If the decision to assess civil penalties is upheld in total or in part and the appeal is denied, the chairperson will notify the appellant and advise them of their right to seek judicial review of the decision under the Arkansas Administrative Procedure Act Arkansas Code § 25-15-201 et seq.

Appendix A. Arkansas State Highway and Transportation Department Highway Districts

Link:
https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/231/27CARpt.91Appendix.pdf

State of Arkansas *As Engrossed: S4/7/25*
95th General Assembly **A Bill**
Regular Session, 2025 SENATE BILL 492

By: Senator J. Bryant
By: Representative Lundstrum

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE RELOCATION OF UTILITY FACILITIES; TO AMEND THE LAW CONCERNING THE ACQUISITION, CONDEMNATION, AND DISPOSITION OF REAL PROPERTY BY THE STATE HIGHWAY COMMISSION; TO ESTABLISH A PROCESS FOR THE RELOCATION OF A UTILITY FACILITY LOCATED ON A PUBLIC RIGHT OF WAY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE RELOCATION OF UTILITY FACILITIES; AND TO AMEND THE LAW CONCERNING THE ACQUISITION, CONDEMNATION, AND DISPOSITION OF REAL PROPERTY BY THE STATE HIGHWAY COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 27, Chapter 67, Subchapter 3, is amended to add additional sections to read as follows:

27-67-325. Relocation of utility facility — Definitions.

(a) As used in this section and § 27-67-326:

(1) "Extraordinary event" means:

(A) An event beyond the reasonable control of a utility; or

(B) A change of plans that causes a delay in the work of a utility required under a relocation agreement;

(2)(A) "Municipal utility system" means a utility system owned or operated by a municipality that provides or removes at least one (1) of the following:

(i) Electricity;

(ii) Water;

(iii) Wastewater;

(iv) Gas;

(v) Cable television; or

(vi) Broadband service.

(B) "Municipal utility system" includes without limitation a:

(i) Consolidated waterworks system under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

(ii) Utility system managed or operated by a nonprofit corporation under § 14-199-701 et seq.; and

(iii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated Public Utility System Improvement District Law, § 14-217-101 et seq.;

(3)(A) "Public transportation facility" means a transportation facility and a right-of-way that serves the public.

(B) "Public transportation facility" includes without limitation a:

(i) Highway, interstate, freeway, street, or other road;

(ii) Trail;

(iii) Bicycle *trail; and*

(iv) Sidewalk or other pedestrian facility;

(4)(A) "Relocation" means the adjustment, removal, or relocation of a utility facility determined by the Arkansas Department of Transportation to be necessary or appropriate in connection with the construction or reconstruction of a public transportation facility.

(B) "Relocation" includes without limitation:

(i) Removing and reinstalling a utility facility, including a necessary temporary utility facility;

(ii) Moving, rearranging, or changing the type of

existing utility facility;

(iii) Taking necessary safety and protective measures; and

(iv) Constructing a replacement utility facility that is functionally equivalent to an existing utility facility and necessary for the continuous operation of the utility service, the project economy, or the sequence of public transportation facility construction;

(5) "Relocation agreement" means a written agreement between the department and a utility concerning a specific relocation;

(6) "Relocation proposal" means a formal written submission prepared by a utility in response to a request from the department concerning a specific relocation;

(7)(A) "Utility" means a private, public, or cooperative utility that transmits or distributes *communications, including without limitation cable service and broadband service*, electricity, gas, liquids, *steam, or sewerage by means of a utility facility.*

(B) "Utility" does not include a railway or railroad engaged in interstate commerce;

(8) "Utility accommodation rules" means the rules adopted by the State Highway Commission and administered by the department that:

(A) Address the processes and procedures for a utility to receive reimbursement for a relocation on public transportation facilities of the commission; and

(B) Establish the process for permits for the placement of utility facilities on public transportation facilities of the commission; and

(9) "Utility facility" means a line, facility, or system of a utility that is used, is available for use, or was formerly used to transmit or distribute *communications, including without limitation cable service and broadband service,* electricity, gas, liquids, steam, water, or sewerage to the public.

(b)(1) When a utility facility located on a public transportation facility must be removed, relocated, or adjusted to accommodate a change to a public transportation facility, the department and the utility shall negotiate a relocation agreement establishing the reasonable schedule for relocation and the duties of the department and the utility concerning the relocation.

(2) When negotiating the relocation agreement under subdivision (b)(1) of this section, the:

(A) Department shall:

(i) Provide written notice to the utility of the need for the relocation located on the public transportation facility that shall include:

(a) Plans that clearly identify all known utilities that own a utility facility that is subject to relocation;

(b) The area of the public transportation facility the department or commission intends to acquire for the project; and

(c) The proposed right-of-way acquisition and timeline;

(ii) Provide to the utility the construction plans for the project that demonstrate the need for the relocation;

(iii) Establish a reasonable date for the submission of a relocation proposal;

(iv) Coordinate a relocation agreement for the work to be performed by the utility, including a schedule for the relocation; and

(v) Issue a *notice to proceed* to the utility to begin the relocation upon execution of a relocation agreement; and

(B) Utility shall:

(i) Submit to the department a relocation proposal in accordance with the utility accommodation rules that includes without limitation:

(a) A plan for the relocation in accordance with the construction plans for the project provided by the department as required under subdivision (b)(2)(A)(ii);

(b) A reasonable schedule for the completion of the relocation;

(c) Reasonable cost estimates for the relocation; and

(d) A final date all work will be complete for the relocation;

(ii) Begin and complete the relocation within the time frame specified in the relocation agreement negotiated under subdivision (b)(1) of this section; and

(iii) Submit a *progress report every two (2) months* to the department regarding the status of the *relocation after a notice to proceed is issued under subdivision (c)(1) of this section until* the relocation is complete.

(c)(1) After a relocation agreement is executed under this section, the department shall issue a notice to proceed with the relocation to the owner of the utility facility that is the subject of the relocation agreement.

(2) A notice to proceed issued under subdivision (c)(1) of this section serves as the formal authorization for the utility to commence work on the relocation in accordance with terms of the relocation agreement.

(d)(1) If a utility other than a municipal utility system fails to follow the process established in the utility accommodation rules or the relocation agreement to complete the relocation within the time period stated in the relocation agreement, the department may assess and collect a civil penalty from a utility other than a municipal utility system after:

(A) The department provides notice to the utility under subdivision (e)(2)(A) of this section; and

(B) The expiration of a thirty-day time period for the utility to comply with the requirements stated in the utility accommodation rules or the relocation agreement.

(2) The civil penalty authorized under subdivision (d)(1) of this section shall be five hundred dollars ($500) for each business day the utility fails to:

(A) Respond to the written notice to the utility of the need for the relocation located on the public transportation facility provided under subdivision (b)(2)(A)(i) of this section;

(B) Enter into negotiations for a relocation agreement between the department and the utility; or

(C)(i) Comply with a relocation agreement to which the utility is a party, including completing the work according to the schedule in the relocation agreement.

(ii) A civil penalty shall not be assessed under this subdivision (d)(2)(C) if the utility does not meet the agreed-upon schedule but meets the final relocation completion date in the relocation agreement.

(iii) A civil penalty may be assessed under this subdivision (d)(2)(C) if a utility fails to:

(a) Act in good faith to comply with the relocation agreement; or

(b) Request a reasonable modification of the schedule.

(e)(1) A civil penalty shall not be assessed under subsection (d) for a delay that is the result of:

(A) An extraordinary event;

(B) Excavation that damages an underground utility facility for which:

(i) The owner of the utility facility was not provided notice of the intent to excavate; or

(ii) The utility facility was not located and marked properly under the Arkansas Underground Facilities Damage Prevention Act, § 14-271-101 et seq.; or

(C) A delay in acquiring right-of-way after a good faith effort by the utility to complete the acquisition of the right-of-way.

(2)(A) The department shall give a utility written notice of the intent to assess a civil penalty under this subsection and an opportunity to appeal the department's decision and show cause why the civil penalty should not be assessed.

(B) Upon a finding that a civil penalty should be assessed under *subsection (d) of this section*, the department shall issue an appropriate order to the utility.

(C) If a civil penalty has not been paid in full within ninety (90) days after the entry of an order under subdivision (e)(3)(B) of this section, the civil penalty may be:

(i) Deducted from the final reimbursement payment by the department to the utility; or

(ii) Subject to a collection action.

(3) An appeal of a decision to assess a civil penalty under this subsection (e) shall be in accordance with the utility accommodation rules and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) Moneys collected as civil penalties under this subsection (e) shall be paid into the State Highway and Transportation Department Fund

and designated for use in a utility relocation grant and loan program to be established by the department for the purpose of providing a grant or loan to a small utility for a relocation that is nonreimbursable.

(f)(1) If a municipal utility system fails to follow the process established in the utility accommodation rules or the relocation agreement to complete a relocation within the time period stated in the relocation agreement, the department may relocate the utility facility that is the subject of the relocation agreement.

(2) If the department relocates a utility facility under subdivision (f)(1) of this section, the department may enter into a contract to complete the engineering, relocation, or other work required to relocate the utility facility of a municipal utility system after providing written notice to the municipal utility system.

(3)(A)(i) If within ten (10) days of the receipt of written notice from the department under subdivision (f)(2) of this section, the municipal utility system provides the department with a list of three (3) or more approved engineers and three (3) or more approved contractors to perform the relocation or design specifications for the utility facility that is to be relocated, the department shall enter into a contract only with an engineer or contractor contained in the list to perform the relocation.

(ii) The department shall not enter into a contract with an engineer or contractor who does not comply with the procurement process of the department.

(B) If within ten (10) days of the receipt of written notice from the department under subdivision (f)(2) of this section, the municipal utility system provides the department with design specifications for the utility facility that is to be relocated, then the department shall require compliance with the design specifications in the contract for the relocation.

(4) A contract entered into by the department to relocate a utility facility of a municipal utility system under this subsection shall identify the municipal utility system as the beneficiary of the contract.

(5) A municipal utility system that has entered into a contract with the department to relocate a utility system of the municipal utility system under this subsection may:

(A) Inspect the relocation of the utility facility;

(B) Inspect an underground utility facility before it is covered; and

(C) Pursue a claim against a person or entity other than the department based on the relocation of the utility facility whether provided under the contract with the department or by law.

(6) Within ninety (90) days of the receipt of a written invoice from the department for the cost of a relocation under this subsection, a municipal utility system shall:

(A) Pay to the department the non-reimbursable portion of the cost of the relocation that the municipal utility system does not dispute; and

(B) Enter into a dispute resolution process with the department for any disputed portion of the invoice.

(7) If a municipal utility system fails to comply with subdivision (f)(6) of this section, the department may offset and collect the amount owed by the municipal utility system from any funds administered by the department for disbursement to the municipality, including without limitation turnback and state aid street funds that may be lawfully applied to the relocation costs.

(g) A municipal utility system may agree to the relocation of a utility facility of the municipal utility system by the department using the process provided in subsection (f) of this section.

(h)(1) The department shall not act under subsection (d) or subsection (f) of this section if an extraordinary event prevents the completion of a relocation within the time frame specified in the relocation agreement.

(2) If an extraordinary event occurs under subdivision (h)(1) of this section, the utility shall provide the department with a:

(A) Written notice of the extraordinary event; and

(B) Revised relocation proposal and schedule under subdivision (b)(2)(B)(i) of this section.

(3) Upon receipt of a written notice under subdivision (h)(2) of this section, the department shall issue a modification to the relocation agreement reflecting a new date for the completion of the relocation as determined by the department.

(i) The department shall promulgate rules for the implementation of this section.

27-67-326. Relocation of utility facility — Rules.

(a)(1) Utility accommodation rules adopted by the State Highway Commission concerning relocation under § 27-67-325 shall include without limitation the relocation coordination process between the Arkansas Department of Transportation and the utility.

(2) Rules concerning the relocation coordination process between the department and the utility shall include without limitation that:

(A) The department shall schedule a meeting with the owner of the utility facility at a time mutually convenient for both parties; and

(B) Before a meeting under subdivision (a)(2)(A) of this section, the department shall provide the owner of the utility facility with plans for a proposed relocation.

(3) The plans for a proposed relocation under subdivision (a)(2)(B) of this section shall:

(A) Clearly indicate:

(i) All identified existing utilities affected by the relocation; and

(ii) The right-of-way the department intends to acquire for the relocation; and

(B) Use criteria that satisfy Subsurface Utility Engineering Quality Level C or better.

(4) During a meeting under subdivision (a)(2)(A) of this section, the department and the owner of the utility facility shall:

(A) Identify the scope of utility facilities that will be subject to relocation;

(B) Discuss:

(i) Proposed arrangements for the relocation, including any right-of-way provided by the department for relocation;

(ii) The expected cost of the relocation; and

(iii) A deadline by which the owner of the utility facility shall submit a relocation proposal to the department; and

(C) Agree upon the number of days required for the relocation.

(5)(A) The department shall provide the utility with a written report summarizing the decisions made and agreements reached during the

meeting held under subdivision (a)(2)(A) of this section.

(B) The report provided under subdivision (a)(5)(A) of this section shall serve as the basis for the relocation proposal.

(b)(1) The rules promulgated by the department concerning a relocation under § 27-67-325 shall include without limitation:

(A) The process for the creation of a relocation proposal and relocation agreement; and

(B) The procedure for the reimbursement of the costs of a relocation.

(2) The rules for a relocation proposal shall include without limitation that a relocation proposal:

(A) Be provided to each party in written form;

(B) Be signed by the authorized representatives of the department and the utility; and

(C) Include:

(i) The plan for the relocation;

(ii) The schedule for the utility to complete the relocation;

(iii) A cost estimate for the relocation;

(iv) Deadlines for the commencement and completion of the relocation; and

(v) The estimated cost of reimbursement by the department for the relocation.

(3)(A) The rules for a relocation agreement shall include that a relocation agreement may be modified if:

(i) An extraordinary event occurs; and

(ii) Either party requests a modification to the relocation agreement.

(B) The modification of a relocation agreement shall:

(i) Be documented in writing;

(ii) Include updated timelines, costs, or other relevant terms; and

(iii) Be approved by both parties.

(4) Rules for the reimbursement of the costs for a relocation shall include without limitation that the:

(A) Utility owner may submit an invoice for the

reimbursement of costs to the department upon completion of the relocation;

(B) Invoice for the reimbursement of costs for the relocation shall reflect all costs and expenses incurred by the utility for the relocation; and

(C) Department shall pay a complete invoice submitted under subdivision (b)(4)(A) of this section within ninety (90) days of receipt of the complete invoice by the department.

/s/J. Bryant

APPROVED: 4/16/25