Comments concerning the Utility Accommodation Rules of the
Arkansas Department of Transportation

Received
September 15, 2026
BLR

CAR Section: 91

Comment Submitted By: Cox Communications

Identify Change:

Shift emphasis to clarity in requirements from enforcement.

Comment:

The rule places significant emphasis on enforcement mechanisms, including civil penalties, permit denial, and step-in authority, without providing corresponding up-front clarity regarding scheduling expectations that could help avoid noncompliance. This approach relies on post-hoc enforcement rather than establishing shared standards at the outset of the relocation process, resulting in increased uncertainty for utilities acting in good faith.

Proposed Solution:

Establish shared standards regarding the requirements up front, as opposed to creating penalties for noncompliance.

Department Response:

The process allows for a case by case determination by the Utility to set the schedule with the Department to avoid any enforcement mechanisms and provides flexibility for all parties to address unique situations without a rigid schedule.

Disposition: Rejected

CAR Section: 91

Comment Submitted By: Cox Communications

Identify Change:

Clarification of Department Approvals

Comment:

Cox requests clarification regarding approval requirements for contractors and consultants, particularly with respect to when such approvals must be documented in writing. While Part 91 expressly requires written approval for certain matters—such as the use of consulting engineers and actions taken under municipal step-in authority—the rule is not consistent in specifying whether approvals related to contract labor or reimbursable work must likewise be memorialized in writing.

In several instances, the rule requires prior Department approval for the use of contractors or contract labor as a condition of reimbursement yet does not clearly state whether that approval must be provided in writing. This ambiguity creates uncertainty for utilities seeking to comply in good faith and may expose utilities to reimbursement risk or enforcement consequences based on informal or undocumented approval

Proposed Solution:

Cox recommends that ARDOT clarify when contractor and consultant approvals affecting reimbursement eligibility or enforcement must be documented in writing, and that such requirements be applied consistently across Part 91. Clear documentation standards or templates would further promote transparency, protect both parties, and avoid disputes regarding the status or scope of approvals during reimbursement review or audit.
Suggested new subsection (could be added to § 91-506 (Utility owner responsibility) or § 91-1209 (Contract labor)): Documentation of Approvals. Where this Part requires Department approval of a contractor, consultant, or contract labor in connection with utility relocation work, reimbursement eligibility, or enforcement actions, such approval shall be documented in writing. Written approval may be provided in electronic or hard-copy form and shall identify the approved contractor or consultant and the scope of work to which the approval applies. Written approval under this subsection is intended to provide clarity and documentation for purposes of reimbursement, audit, and enforcement and shall not be construed to expand or limit the Department's substantive approval authority under this Part.

Department Response:

Added approved reimbursement was to be in writing in Section 91-901. Other sections already include written approval requirements and a notice to proceed.

Disposition: Modified

CAR Section: 91

Comment Submitted By: Cox Communications

Identify Change:

Relief from enforcement.

Comment:

Part 91 authorizes several enforcement tools—such as permit denial, reimbursement offsets, and collection actions—without the same level of safeguards that apply to civil penalties. Only civil

penalties are governed by express notice-and-cure provisions and contain an appeal process, creating an imbalance between enforcement authority and transparency.

Proposed Solution:

Provide the same notice and cure provisions for all penalties.

Department Response:

Reimbursement decisions remain the determination of ARDOT and if there are disputes, an action in civil court is available to the utility. Permit denial likewise would be appealable to the circuit court under the Arkansas Administrative Procedures act as a final agency action.

Disposition: Rejected

CAR Section: 91

Comment Submitted By: Cox Communications

Identify Change:

Installation Standards

Comment:

While the installation standards in Part 91 are aligned with the national frameworks such as FHWA and AASHTO guidance, several requirements related to underground placement preferences, encasement expectations, clear-zone restrictions, and limitations on longitudinal installations appear more restrictive than those applied by many other state DOTs. These provisions reduce flexibility and may increase costs without clear standards governing when alternative measures may be acceptable.

Proposed Solution:

None

Department Response:

ARDOT allows for flexibility in the relocation agreements and the permitting process for engineering based decisions and guidance in situations that the installation guidelines create a problem. This allows for flexibility between all of the parties.

Disposition: Rejected

CAR Section: 91-1002 ((e)(1))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"Generally, the relocation of a utility owner's facilities will be accomplished by company forces (force account)."

Comment:

As drafted, this language could be read as mandating use of company forces, which risks intruding into the utility's operational and staffing decisions. Whether to self-perform or contract is a core business judgment based on efficiency, expertise, and safety, and should remain within the utility's discretion.

Proposed Solution:

Consider removing this language.

Department Response:

Addressed in (e)(2) and in current regulations and allows use of contractor or own forces

Disposition: Rejected

CAR Section: 91-103 (()(A))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"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.

Comment:

All references to "utility owner" throughout the rules should be revised to "utility." "Utility" is a defined term under Act 699 and is incorporated into the proposed rules, whereas "utility owner" is not defined in the proposed rules. In addition, the ordinary meaning of "utility owner" does not align with the intent of the rules, as it could be interpreted to refer to a utility's shareholders. In the cooperative context, "utility owners" could instead be understood to mean the member-owner cooperatives and, ultimately, their retail members. Retaining the term "utility owner" in the draft therefore creates ambiguity and does not reflect the intended meaning.

Proposed Solution:

Revise all references from "utility owner" throughout the proposed rules to "utility."

Department Response:

Changed throughout the rule

Disposition: Adopted

CAR Section: 91-103

Comment Submitted By: Arkansas Oklahoma Gas
(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Add definition of "public transportation facility" consistent with Act 699

Comment:

Including this definition is consistent with Act 699

Proposed Solution:

'"Public transportation facility" means a transportation facility and right-of-way that serves the public. 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.'

Department Response:

Definition included

Disposition: Accepted

CAR Section: 91-103 ((64)(iii))

Comment Submitted By: OG&E (Oklahoma Gas & Electric) (Oklahoma Gas & Electric)

Identify Change:

Taking necessary safety and protective measures

Comment:

This needs to be more clearly defined

Proposed Solution:

None

Department Response:

Language from the statute is being kept consistent

Disposition: Rejected

CAR Section: 91-103

Comment Submitted By: Summit Utilities
(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)
(Black Hills Corporation endorsed)

Identify Change:

Add definition of "public transportation facility" consistent with Act 699

Comment:

Including this definition is consistent with Act 699

Proposed Solution:

'"Public transportation facility" means a transportation facility and right-of-way that serves the public. 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.'

Department Response:

Definition included

Disposition: Accepted

CAR Section: 91-107 ((b)(2))

Comment Submitted By: AECI

Identify Change:

"Denial of future permits until past noncompliance is resolved."

Comment:

Same as Southwestern Electric Power Company and Entergy

Proposed Solution:

Same as Southwestern Electric Power Company and Entergy

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b)(2))

Comment Submitted By: Arkansas Oklahoma Gas

Identify Change:

"Denial of future permits until past noncompliance is resolved."

Comment:

The language of this section is amended to allow the Department to deny future permits for noncompliance of utilities other than municipal utilities. Such action was explicitly debated during the legislative process that resulted in the enactment of Act 699. The Legislature explicitly and intentionally removed language from a previous version of SB492 that would have allowed denial of future permits for past noncompliance. See Ark. S. Amend. 1 to S.B. 492, 95th General Assem., Reg. Sess. (Ark. 2025) (adopted Apr. 7, 2025). This draft of the Utility Accommodation Policy does not conform with legislative intent.

Proposed Solution:

Strike 27 CAR § 91-107(b)(2)

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b))

Comment Submitted By: Cox Communications

Identify Change:

Denial of permits.

Comment:

The permit-denial authority in Section 91-107(b) is at a minimum insufficiently defined and at its core is an unacceptable remedy expressly rejected by the legislative committee that reviewed Act 699. Cox is a state certified Video Service Provider and has the accompanying legal rights and responsibilities to serve our customers. We often deploy broadband under the terms and conditions of state and federal grants with strict timelines. When serving our customers and meeting our obligations require work under a permit issued by ARDOT, withholding that permit based on noncompliance on an entirely unrelated project is an untenable solution. Furthermore, the rule does not clarify the scope, duration, or project-specific application of permit denial, nor does it establish clear notice, cure, or reinstatement procedures.

Proposed Solution:

Because permit denial has a significant operational impact, this provision must be removed.

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b)(2))

Comment Submitted By: Entergy

Identify Change:

"Denial of future permits until past noncompliance is resolved."

Comment:

Denial of future permits an as enforcement mechanism exceeds the Department's authority under Arkansas law. EAL has a duty to serve its customers, and withholding unrelated permits cannot lawfully be used as an enforcement tool. Moreover, permit withholding was expressly discussed and removed as an enforcement tool in Act 699.

Supplemental Comment. As discussed at the November 20 meeting, denial of future or unrelated permits as an enforcement tool is not reasonable and is inappropriate, including for the reasons noted in EAL’s original comment above and the utilities’ broader comments at the meeting. All Arkansas utilities have expressed opposition to this provision.

Proposed Solution:

A civil penalty assessed under this Part shall not be deducted from any reimbursement payment, nor shall a collection action be initiated, until all applicable administrative appeal rights have been exhausted or have expired without appeal.

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b)(2))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

Denial of future permits until past noncompliance is resolved

Comment:

Denying future permits as a way to enforce compliance goes beyond the Department's authority. Holding back permits that have nothing to do with the alleged problem is not a lawful or appropriate enforcement tactic. This approach was specifically considered and then removed as an option during the legislative process, making it clear that permit denial was not intended to be used this way.*

Proposed Solution:

This action is unreasonable and should be removed.

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b)(4))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

"Assessment of a civil penalty as established in this part and under Arkansas Code § 27-67-325."

Comment:

We object to all civil penalties*

Proposed Solution:

Remove this

Department Response:

Placed in rule pursuant to Arkansas Code 27-67-325

Disposition: Rejected

CAR Section: 91-107 ((b)(2))

Comment Submitted By: Summit Utilities
(Black Hills endorsed)

Identify Change:

"Denial of future permits until past noncompliance is resolved."

Comment:

The language of this section is amended to allow the Department to deny future permits for noncompliance of utilities other than municipal utilities. Such action was explicitly debated during the legislative process that resulted in the enactment of Act 699. The Legislature explicitly and intentionally removed language from a previous version of SB492 that would have allowed denial of future permits for past noncompliance. See Ark. S. Amend. 1 to S.B. 492, 95th General Assem., Reg. Sess. (Ark. 2025) (adopted Apr. 7, 2025). This draft of the Utility Accommodation Policy does not conform with legislative intent.

Proposed Solution:

Strike 27 CAR § 91-107(b)(2)

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b)(2))

Comment Submitted By: Southwestern Electric Power Company

Identify Change:

"Denial of future permits until past noncompliance is resolved."

Comment:

Application of this enforcement remedy to relocation agreements is inconsistent with the Act 699 of 2025 as the General Assembly rejected a nearly identical provision during consideration of the Act. *

Proposed Solution:

SOUTHWESTERN ELECTRIC POWER COMPANY seeks deletion of this remedy. To the extent that deletion is not feasible, this remedy can and should be limited in the following ways: (1) This remedy should not be applied to the new relocation process beginning at section 91-513 in order for the rules to be consistent with the legislative intent; (2) This remedy should not be available to be applied to a utility, such as Southwestern Electric Power Company, that is under an obligation to servce customers with safe and reliable electric service; (3) A level of repetitive noncompliance should be demonstrated by a utility prior to the application of this type of penalty.

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-107 ((b)(2))

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Denial of Future Permits

Comment:

The rules contemplate “denial of future permits until past noncompliance is resolved,” 27 CAR § 91-107(b)(2), and refer to “revoking” a permit for reasons unrelated to noncompliance with the permit at issue, 27 CAR § 91-108. Ritter cannot lawfully be denied permits necessary to connect customers or based on unrelated, past noncompliance; moreover, withholding permits as an enforcement tool could impede deployment of broadband service to underserved areas in Arkansas. Finally, this enforcement mechanism was discussed and removed during enactment of Act 699, and multiple utilities oppose this provision.

Proposed Solution:

None

Department Response:

The permit process is permissive to allow and the Department should have the right to reject the issuance of a permit to a utility for failure to comply with other permit requirements.

Disposition: Rejected

CAR Section: 91-108 ((a))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

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

Comment:

Alternatively, if 91-108 is retained, these revisions clarify that revocation may occur only after written notice and an applicable cure period. Removing “annul,” along with the trailing “subject to” clause, would streamline the provision and eliminate duplicative notice language.

Proposed Solution:

Revise (a) as follows, only if 91-108 is retained: (a) After giving the utility written notice and the applicable cure period, the Director of State Highways and Transportation is authorized to revoke ~~or annul~~ a permit ~~or relocation agreement, subject to giving the utility owner reasonable notice~~.

Department Response:

Removed annul and added written to the notice requirement.

Disposition: Modified

CAR Section: 91-108 ((a),(b))

Comment Submitted By: AECI

Identify Change:

(a) The Director of State Highways and Transportation is authorized to revoke or annul a permit or relocation 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 relocation agreement; and (3) If the utility occupancy becomes an interference to the use of the highway right-of-way for highway purposes.

Comment:

Retaining 91-108, concerning revocation of permits or relocation agreements, does not address the Department's underlying concerns about construction delays or permit exceedances. Revoking a permit or relocation agreement would not remove the utility facility from the right-of-way, so the underlying interference would remain. In practice, the utility would still need to perform ongoing obligations such as vegetation management, meaning revocation does not effectively resolve the compliance or coordination issue the provision is intended to address.

Proposed Solution:

Consider removing 91-108 in its entirety.

Department Response:

The Department has the right ot control what occurs on the right of way. Revocation of a permit has always been an available remedy to the Department and is necessary for the management of the Department property.

Disposition: Rejected

CAR Section: 91-108 ((b)(1)-(3))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"(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 relocation agreement; and (3) If the utility occupancy becomes an interference to the use of the highway right-of-way for highway purposes."

Comment:

Alternatively, if 91-108 is retained, these revisions clarify that revocation is reserved for substantive, consequential noncompliance or impacts. This avoids making minor or technical violations an independent basis for revocation and aligns the standard with a more reasonable, proportional enforcement approach.

Proposed Solution:

Revise (b) as follows, only if 91-108 is retained: (b) Justifications for revocation include, but are not limited to the following:
(1) Failure to comply with the material provisions of this part;
(2) Failure to comply with the material terms and conditions of the permit or relocation agreement; and
(3) If the utility occupancy materially interferes with becomes an interference to the use of the highway right-of-way for highway purposes.

Department Response:

The Department has the right ot control what occurs on the right of way. Revocation of a permit has always been an available remedy to the Department and is necessary for the management of the Department property.

Disposition: Rejected

CAR Section: 91-108

Comment Submitted By: Arkansas Oklahoma Gas

Identify Change:

Revocation of Permits

Comment:

Plain reading of the current rule allows the Director of State Highways and Transportation to revoke a permit or agreement between the Department and a utility. Prior to Act 699 of 2025, a relocation agreement was not a legal construct recognized by Arkansas law. The “agreement” referenced in the current rule is not the same type, shape, or form as a “relocation agreement” contemplated by Act 699 or the other sections of this part. As such, it would be improper to insert “relocation” in this section to fundamentally change the meaning of this section from one related to a prior understanding between the Department and utility to the new legal term meaning a binding contract between the Department and the utility.

Proposed Solution:

Strike 91-108

Department Response:

The Department has the right ot control what occurs on the right of way. Revocation of a permit has always been an available remedy to the Department and is necessary for the management of the Department property.

Disposition: Rejected

CAR Section: 91-108 ((a), (b)(2))

Comment Submitted By: Central Arkansas Water

Identify Change:

"The Director of State Highways and Transportation is authorized to revoke or annul a permit or relocation agreement…"

Comment:

Arkansas law does not permit unilateral revocation of agreement.

Proposed Solution:

Strike the two proposed additions of the term "relocation" in (a) and (b)(2).

Department Response:

The relocation agreement upon completion of the physical relocation serves as the authorization or "permit" to remain on Department property. Therefore the Department has the right to revoke the ability for the utility to remain on Department property.

Disposition: Rejected

CAR Section: 91-108 ((a))

Comment Submitted By: Entergy

Identify Change:

"Revocation of a relocation agreement."

Comment:

Revocation of a relocation agreement is not authorized by Arkansas law. The agreement is a contract, and the chief end of Act 699 was to enact a structure for enforcing relocation agreements, not revoking them. For example, the rule does not specify whether deductions from reimbursement payments would occur automatically or only after exhaustion of administrative appeals, nor does it explain how such deductions would be reconciled with federal reimbursement requirements, project-specific eligibility determinations, or pre-existing relocation agreements.

Proposed Solution:

Prior to deducting a civil penalty from a reimbursement payment, the Department will provide the utility written notice identifying the amount of the penalty, the reimbursement payment from which the deduction is proposed, and the basis for the deduction. Any deduction shall be applied in a manner consistent with applicable state and federal law and the terms of the applicable relocation agreement.

Department Response:

The Department has the right to revoke a permit allowing a utility to remain on Department property as there is not a mandatory right that a utility is allowed to be on Commission right of way without limitation. Clarification was added to demonstrate that upon completion of the relocation agreement, the new location would be converted to a utility permit. That utility permit would then be subject to potential revocation. The word agreement was removed from the language with this change in effect in section 91 CAR 108(a).

Disposition: Modified

CAR Section: 91-108 ((b)(1))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

Supplemental Comment. As discussed at the November 20 meeting, 91-108(b)(1) is unreasonable and is an inappropriate enforcement tool. Revocation of a permit should not be permissible for violations unrelated to the permit at issue. Please also see the supplemental comment regarding 91-107 above. All Arkansas utilities have expressed opposition to this provision.

Supplemental Comment. Not only does the concept of revoking a relocation agreement need to be removed from 91-108(a)—it also needs to be removed from 91-108(b)(2) as well as for the reasons set forth above.

Proposed Solution:

Remove this provision.

Department Response:

The Department has the right to revoke a permit allowing a utility to remain on Department property as there is not a mandatory right that a utility is allowed to be on Commission right of

way without limitation. Clarification was added to demonstrate that upon completion of the relocation agreement, the new location would be converted to a utility permit. That utility permit would then be subject to potential revocation. The word agreement was removed from the language with this change in effect in section 91 CAR 108(a).

Disposition: Modified

CAR Section: 91-108 ((a),(b)(2))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

Right to Revoke

Comment:

A relocation agreement can't just be taken back. It's a contract, and the rules were meant to make sure agreements are followed—not to undo them.

Proposed Solution:

Remove relocation

Department Response:

The relocation agreement upon completion of the physical relocation serves as the authorization or "permit" to remain on Department property. Therefore the Department has the right to revoke the ability for the utility to remain on Department property. Clarification was added to demonstrate that upon completion of the relocation agreement, the new location would be converted to a utility permit. That utility permit would then be subject to potential revocation. The word agreement was removed from the language with this change in effect in section 91 CAR 108(a).

Disposition: Modified

CAR Section: 91-108 ((a))

Comment Submitted By: Summit Utilities
(Black Hills endorsed)

Identify Change:

Right to revoke

Comment:

Plain reading of the current rule allows the Director of State Highways and Transportation to revoke a permit or agreement between the Department and a utility. Prior to Act 699 of 2025, a relocation agreement was not a legal construct recognized by Arkansas law. The “agreement” referenced in the current rule is not the same type, shape, or form as a “relocation agreement” contemplated by Act 699 or the other sections of this part. As such, it would be improper to insert “relocation” in this section to fundamentally change the meaning of this section from one related to a prior understanding between the Department and utility to the new legal term meaning a binding contract between the Department and the utility.

Proposed Solution:

Strike the addition of "relocation"

Department Response:

The relocation agreement upon completion of the physical relocation serves as the authorization or "permit" to remain on Department property. Therefore the Department has the right to revoke the ability for the utility to remain on Department property. Clarification was added to demonstrate that upon completion of the relocation agreement, the new location would be converted to a utility permit. That utility permit would then be subject to potential revocation. The word agreement was removed from the language with this change in effect in section 91 CAR 108(a).

Disposition: Modified

CAR Section: 91-108 ((a) and (b))

Comment Submitted By: Southwestern Electric Power Company

Identify Change:

inclusion of "relocation" in the Right to Revoke authority

Comment:

Act 699 does not contemplate this as a remedy and extending ARDOT's existing revocation right to relocation agreements is inconsistent with the underlying legislation.

Proposed Solution:

Remove the addition of "relocation"

Department Response:

The relocation agreement upon completion of the physical relocation serves as the authorization or "permit" to remain on Department property. Therefore the Department has the right to revoke the ability for the utility to remain on Department property. Clarification was added to demonstrate that upon completion of the relocation agreement, the new location would be converted to a utility permit. That utility permit would then be subject to potential revocation. The word agreement was removed from the language with this change in effect in section 91 CAR 108(a).

Disposition: Modified

CAR Section: 91-108

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Revocation of Relocation Agreements

Comment:

The proposed rules would allow ARDOT to revoke relocation agreements, 27 CAR § 91-108, but revocation is not authorized by Arkansas law. Relocation agreements are contracts, and Act 699 provides a framework—including penalties—for enforcement, not revocation.

Proposed Solution:

None

Department Response:

The relocation agreement upon completion of the physical relocation serves as the authorization or "permit" to remain on Department property. Therefore the Department has the right to revoke the ability for the utility to remain on Department property. Clarification was added to demonstrate that upon completion of the relocation agreement, the new location would be converted to a utility permit. That utility permit would then be subject to potential revocation. The word agreement was removed from the language with this change in effect in section 91 CAR 108(a).

Disposition: Modified

CAR Section: 91-109, 522

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

Civil Penalties and Assessment of Civil Penalties

Comment:

We still object to all civil penalties.

Proposed Solution:

Remove all civil penalties

Department Response:

Authorized under Arkansas Code 27-65-325

Disposition: Rejected

CAR Section: 91-1207 ((b)(2))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"Such need must be approved by the resident engineer and documented in the diary."

Comment:

The provision is unnecessary because costs for specialized equipment rental are typically not included in standard construction units and are instead addressed and agreed upon in the relocation agreement. As such, requiring additional approval and documentation by the Resident Engineer is duplicative and not needed for reimbursement under the agreed terms.

Proposed Solution:

Consider removing this language.

Department Response:

Provision is intended for equipment not already included in the relocation agreement. Clarification added.

Disposition: Modified

CAR Section: 91-1209 ((a)(1))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"(1) Contracts for labor may be entered into by the utility owner for facility relocation when it is shown that it is in the interest of the Arkansas Department of Transportation, or that the utility is not adequately staffed or equipped to perform the work with its own forces."

Comment:

The proposed deletion removes language that could be read as conditioning a utility's contracting decisions on an assessment of its internal staffing or capabilities. Determinations regarding whether to use in-house forces or contract for services are operational matters within the utility's discretion and outside the Department's enforcement role. Eliminating this language avoids unnecessary intrusion into those decisions while preserving the ability to contract for relocation work when appropriate.

Proposed Solution:

Revise as follows: "(1) Contracts for labor may be entered into by the utility owner for facility relocation when it is shown that it is in the interest of the Arkansas Department of Transportation~~, or that the utility is not adequately staffed or equipped to perform the work with its own forces.~~"

Department Response:

Removed.

Disposition: Accepted

CAR Section: 91-1401

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"A utility owner may appeal the assessment of a civil penalty by the Arkansas Department of Transportation by filing a written notice of appeal with the Utilities Section of the department."

Comment:

This revision removes "owner" for consistency with the defined term "utility" used throughout the rules and avoids unnecessary ambiguity. The addition of "other action" clarifies that the appeal process is not limited to civil penalties and applies more broadly to other Department decisions affecting utilities, ensuring a clear and comprehensive administrative remedy.

Proposed Solution:

Revise as follows: "A utility ~~owner~~ may appeal the assessment of a civil penalty or other action by the Arkansas Department of Transportation by filing a written notice of appeal with the Utilities Section of the department."

Department Response:

Changed to provide additional direction on proper addresses and emails.

Disposition: Modified

CAR Section: 91-1401

Comment Submitted By: Entergy

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

None

Comment:

Should this provision specify an address or email address where the notice of appeal should be filed?

Proposed Solution:

Amend the provision to include an email address where the notice of appeal should be filed.

Department Response:

Changed to provide additional direction on proper addresses and emails.

Disposition: Modified

CAR Section: 91-1401

Comment Submitted By: Southwestern Electric Power Company

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

None

Comment:

An email address or mailing address should be identified for clarity.

Proposed Solution:

Southwestern Electric Power Company requests inclusion of an email address or mailing address where a utility may direct the notice of appeal.

Department Response:

Changed to provide additional direction on proper addresses and emails.

Disposition: Modified

CAR Section: 91-1402 ((c) (new addition))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

None

Comment:

This addition clarifies that penalties are stayed during the pendency of an appeal, ensuring the utility is not subject to enforcement while the determination is under formal review. It promotes procedural fairness and preserves the effectiveness of the administrative appeal process by avoiding premature or duplicative penalties before final resolution under the Arkansas Administrative Procedure Act.

Proposed Solution:

Addition as follows: (c) The civil penalty shall not be assessed against a utility for the period of the appeal process.

Department Response:

Process is subject to intential delay by utility. The appeal process can determine the proper amount of penalty, if any, and this argument can be presented during that apepal.

Disposition: Rejected

CAR Section: 91-1404 ((d)(1))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"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."

Comment:

This revision clarifies that FOIA governs public disclosure, not the scope of materials available in an administrative appeal. While certain materials may be exempt from public release, due process requires that appellants have access to information necessary to prepare and present their case. The revision allows the chairperson to implement appropriate safeguards, such as confidentiality or non-disclosure requirements, while ensuring those materials are still made available for purposes of the appeal.

Proposed Solution:

Revise as follows: "The Arkansas Department of Transportation shall permit the appellant to inspect and copy all materials pertinent to their appeal~~, except. in~~ Materials that are exempt from disclosure as defined in the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et. se~~e~~q., may be subject to appropriate confidentiality protections, as determined by the chairperson, but shall not be withheld to the extent necessary to afford the appellant a meaningful opportunity to prepare and present the appeal."

Department Response:

The Department complies with FOIA and there is no exemption provided in the FOIA to allow this determination outside of a judicial proceeding.

Disposition: Rejected

CAR Section: 91-1404 ((a)(3))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"An attorney appointed by the chief legal counsel, who shall serve as chairperson of the panel."

Comment:

This revision promotes impartiality and fairness in the appeal process by ensuring the chairperson does not have prior substantive involvement in the matter under review. It aligns with basic administrative due process principles by avoiding potential conflicts of interest and reinforcing the independence of the appeal panel, while imposing minimal administrative burden on the Department.

Proposed Solution:

Revise as follows: "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."

Department Response:

Language added.

Disposition: Accepted

CAR Section: 91-204 ((b)(5))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"The utility owner 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 in connection with work operations, occupancy, or use of department highway right-of-way or property."

Comment:

These revisions are intended to align the indemnification obligation with standard fault-based liability principles and avoid an overly broad allocation of risk. Clarifying that the obligation applies only to grossly negligent acts or omissions of the utility and its contractors or agents ensures the provision is appropriately limited to serious departures from reasonable care, rather than ordinary operational errors, and remains proportionate to actual fault. The additional language further confirms that the utility is not required to indemnify the State for the State's own negligence, which promotes fairness and consistency with typical indemnity standards.

Proposed Solution:

Revise as follows: The utility owner shall indemnify and save harmless the State of Arkansas, the Arkansas 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 grossly 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 agent. The utility shall not be obligated to indemnify the Arkansas State Highway Commission, Arkansas Department of Transportation, or their officials or employees for losses or damages caused by the negligence of the Arkansas State Highway Commission, Arkansas Department of Transportation, or their officials or employees.

Department Response:

Most language accepted. "Grossly" not accepted and proper name of Commission is State Highway Commission.

Disposition: Modified

CAR Section: 91-301 ((a)(1))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

First, the provision is unclear. The proposed rules do not define "survey ticket." And the One Call law does not appear to contain a category for "survey" tickets. While the use of such tickets may have arisen by an informal arrangement between utilities and ARDOT, it is not reasonable to connect the One Call law with a concept unrecognized by that law. Second, if the intent of the proposed rule is that Entergy Arkansas will perform field locates under the requirements of the One Call law for a "survey ticket," then that is not feasible. The One Call law places strict time requirements on locates, and those timelines are not feasible for mass-locates under a so-called "survey" ticket. If that is the intent, then this rule would effectively expand the One Call law enacted by the legislature, which is not permissible.

It is difficult for Entergy to fully engage with this provision without knowing AR-DOT's intent. But Entergy suggests that the best way to proceed is for ARDOT to work pragmatically with utilities on locates, and remove this section from the rules.

Proposed Solution:

For purposes of this section, a "collection action" refers to efforts undertaken by the Department to collect an unpaid civil penalty after final determination, following written notice to the utility.

Department Response:

Removed.

Disposition: Accepted

CAR Section: 91-301 ((a)(1))

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Survey Tickets for Underground Locates

Comment:

The draft would require ARDOT “survey tickets” to be located per the Underground Facilities Damage Prevention Act (One-Call Law), 27 CAR § 91-301(a)(1), yet “survey ticket” is undefined and not recognized under the One-Call law, rendering the requirement unclear. If intended to impose One-Call timelines for mass “survey” locates, the requirement is infeasible and would improperly expand statutory obligations; Ritter suggests removing this section and continuing pragmatic coordination on locates.

Proposed Solution:

None

Department Response:

Removed.

Disposition: Accepted

CAR Section: 91-303 ((b)(2))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"All appurtenances shall be installed to allow normal highway maintenance including without limitation…"

Comment:

“Normal highway maintenance” should be clarified to reflect that it refers to routine maintenance activities consistent with the roadway’s current use and operational conditions at any given time. These conditions evolve over the life of the highway, including changes in traffic volumes, roadway configuration, and maintenance practices. A utility facility, once installed, is a long-term asset, while highway maintenance needs may change significantly over time. The term is intended to capture that evolving set of routine maintenance activities rather than a fixed condition at the time of installation, while utility design, installation, and safety remain governed by applicable standards such as the NESC.

Proposed Solution:

Define "normal highway maintenance" as follows: "Normal highway maintenance" shall include such activities as they may reasonably evolve over time in response to changes in traffic volumes, roadway configuration, and maintenance practices."

Department Response:

Added definition.

Disposition: Accepted

CAR Section: 91-303 ((b)(2))

Comment Submitted By: Central Arkansas Water

Identify Change:

"All appurtenances shall be installed to allow normal highway maintenance including without limitation…"

Comment:

The term "normal highway maintenance" is not sufficiently developed.

Proposed Solution:

Exclusively define the term "normal highway maintenance" in 27 CAR § 91-103.

Department Response:

Added definition.

Disposition: Accepted

CAR Section: 91-303 ((b)(2))

Comment Submitted By: Entergy

Identify Change:

"All appurtenances shall be installed to allow normal highway maintenance including without limitation…"

Comment:

“Normal highway maintenance” is undefined, and is impermissibly vague even in the context in which it is used here. Utility installation, operation, and maintenance is governed by the National Electrical Safety Code, and utilities are not presumed to know the standard of “normal highway

maintenance," or what that means regarding any particular appurtenance. Moreover, the utility's plans are submitted to and approved by ARDOT, so ARDOT should be aware of the installation.

Proposed Solution:

Clarify to reference that facilities shall be constructed and maintained consistent with the requirements of the National Electrical Safety Code.

Department Response:

Added definition.

Disposition: Modified

CAR Section: 91-303 ((c)(3))

Comment Submitted By: Entergy

Identify Change:

Unmetered service lines

Comment:

A new addition to the proposed rules states that"unmetered 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:' 27 CAR§ 91-303(c)(3). This provision is unacceptable. En-tergy does not treat metered and unmetered services differently in terms of ownership.

Unmetered service lines in the ARDOT right-of-way do not belong to Entergy. (In many cases, they belong to ARDOT.) Entergy cannot be made responsible for service lines that it does not own.

Proposed Solution:

Remove this provision.

Department Response:

Clarified it only applies to unmetered sewer service lines

Disposition: Modified

CAR Section: 91-303 ((b)(2))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

Appurtenances

Comment:

"All appurtenances shall be installed to allow normal highway maintenance…"

Proposed Solution:

Normal highway maintenance needs futher definition.

Department Response:

Added definition.

Disposition: Accepted

CAR Section: 91-303 ((b)(2))

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Installation Location Standards

Comment:

The proposal would require aboveground appurtenances to be installed "to allow normal highway maintenance," 27 CAR § 91-303(b)(2). Normal highway maintenance is a vague standard despite listed examples. In addition, utilities design, install, operate, and maintain their facilities pursuant to the NESC. ARDOT reviews and approves these plans, so ARDOT will be aware of the location of the installation regardless of this proposed rule.

Proposed Solution:

None

Department Response:

Added definition.

Disposition: Accepted

CAR Section: 91-303 ((c)(3))

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Unmetered Service Lines

Comment:

A new provision would treat unmetered service lines within the right-of-way as the property of the associated utility for compliance, 27 CAR § 91-303(c)(3). But unmetered service lines in ARDOT right-of-way are not Ritter's property in many cases, and Ritter cannot be made responsible for facilities it does not own.

Proposed Solution:

None

Department Response:

Clarified it only applies to unmetered sewer service lines.

Disposition: Modified

CAR Section: 91-306 ((a))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"Overhead utility line supports (poles) shall be located within one foot (1') from the right-of-way line unless otherwise approved by the District Engineer or Section Head of the Utilties Section."

Comment:

This revision fixes a minor spelling error and clarifies the intended siting standard by tying primary placement to a consistent and functional reference point at the roadway edge or shoulder, while also maintaining proximity to the right-of-way line. This better reflects the practical objective of keeping poles consistently located near the traveled way for safety, maintenance access, and operational predictability.

At the same time, the revision preserves the ROW boundary limitation to ensure consistency within highway corridors. Exceptions are expressly limited to cases where physical or site-specific constraints make compliance infeasible, reinforcing that deviations should be uncommon and not treated as routine administrative approvals.

Proposed Solution:

Revise as follows: Overhead utility line supports (poles) shall be located within one foot (1') from the right-of-way line unless otherwise approved by the District Engineer or Section Head of the ~~Utilties~~ Utilities Section, including consideration of available space beyond construction limits within the Department's right-of-way.

Department Response:

Added recommended language.

Disposition: Accepted

CAR Section: 91-306 ((b)(2))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"The joint use of pole lines is encouraged and may be required at some locations."

Comment:

This provision could create jurisdictional ambiguity, as pole attachment and joint use requirements are generally regulated by the Arkansas Public Service Commission. Stating that joint use "may be required" by the Department risks conflicting with that authority.

Proposed Solution:

Revise as follows: The joint use of pole lines is encouraged and may be required at some locations, to the extent permitted under applicable law and subject to the jurisdiction of the Arkansas Public Service Commission.

Department Response:

Language changed to reflect authority over Department right of way only.

Disposition: Modified

CAR Section: 91-306 ((j)(2)(B))

Comment Submitted By: Entergy

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

None

Comment:

Markings of guywires and push braces are governed by the NESC under Arkansas law. The NESC does not require push braces to have a conspicuity marker because they are conspicuous by nature. Guy wires require a conspicuity marker only in certain defined situations, and those situations rarely exist in highway rights-of-way. This attempt to impose requirements beyond Arkansas law is not acceptable.

Supplemental Comment. As discussed at the November 20 meeting, 91-306(j)(2)(B) is unreasonable. It goes beyond the requirements of the NESC, which has been adopted as law in Arkansas.

Proposed Solution:

Remove the requirements for conspicuity markers.

Department Response:

Marking is necessary to ensure they are easily located.

Disposition: Rejected

CAR Section: 91-306 ((j)(3))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

Overhead Installations

Comment:

These facilities shall be installed to allow normal highway maintenance.

Proposed Solution:

Normal highway maintenance needs futher definition.

Department Response:

Added definition.

Disposition: Accepted.

CAR Section: 91-306 ((j)(2)(B))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Overhead Installations

Comment:

"All push braces and guy wires shall be marked with a conspicuous marker."

Proposed Solution:

This should be removed. These facilities are already open and notorious.

Department Response:

Marking is necessary to ensure they are easily located.

Disposition: Rejected

CAR Section: 91-306 ((b)(2))

Comment Submitted By: Southwestern Electric Power Company

Identify Change:

"The joint use of pole lines is encouraged and may be required at some locations."

Comment:

The joint use of pole lines is inappropriately mandated in this provision. Pole attachment is generally under the jurisdiction of the Arkansas Public SErvice Commission. Further, in certain circumstances, joint use of poles is impossible and thus should not be mandated by the Department.

Proposed Solution:

Southwestern Electric Power Company agrees with the recommendation by AECI encouraging, but not requiring the joint use of poles with a reference to the jurisdiction of the Arkansas Public Service Commission.

Department Response:

Language changed to reflect authority over Department right of way only.

Disposition: Modified

CAR Section: 91-306 ((j)(2)(B))

Comment Submitted By: Southwestern Electric Power Company

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

"All push braces and guy wires shall be marked with a conspicuous marker"

Comment:

This provision is unnecessary. Push braces, by their very nature, are conspicuous and do not require implementation of additional markings.

Proposed Solution:

Remove this provision.

Department Response:

Marking is necessary to ensure they are easily located.

Disposition: Rejected

CAR Section: 91-306 ((j)(2)(B))

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Conspicuous Markers

Comment:

The proposal would require all push braces and guy wires to have conspicuous markers, 27 CAR § 91-306(j)(2)(B), but marking is governed by the National Electrical Safety Code (NESC). The NESC does not require conspicuity markers for push braces and requires markers for guy wires only in defined circumstances that rarely occur in highway rights-of-way.

Proposed Solution:

None

Department Response:

Marking is necessary to ensure they are easily located.

Disposition: Rejected

CAR Section: 91-307 ((a)(7))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

Same issue as with § 91-306: the utility owner is not responsible for joint-users' attachments.

Proposed Solution:

Remove this provision.

Department Response:

Changed to reflect this is only applicable to small wireless facility structures.

Disposition: Modified

CAR Section: 91-503 ((c)(3)(A)(ii))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"The utility owner 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."

Comment:

This provision is overly restrictive given that utilities must often locate within ARDOT right-of-way due to limited adjacent space, which already reduces vegetation impacts. In practice, tree removal decisions are part of project-specific coordination and should be evaluated through the permit review process based on site conditions, safety, and engineering needs rather than a categorical prohibition in the rule. If ARDOT determines that removal of certain trees is inappropriate, the appropriate mechanism is to deny or condition the permit rather than impose a fixed regulatory threshold. As written, the provision may unnecessarily limit necessary utility work and flexibility in addressing field conditions and safety requirements.

Proposed Solution:

Consider removing this language.

Department Response:

Changed to reflect Section Head of Utilities Section has the ability to authorize this change as well on a case by case basis.

Disposition: Modified

CAR Section: 91-503 ((c)(3)(A)(ii))

Comment Submitted By: Southwestern Electric Power Company

Identify Change:

"The utility owner 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."

Comment:

A utility should be afforded the bandwidth of handle vegetation management in a manner that is appropriate to maintain service and reliablity for its customers. The general prohibition stated in this provision is not consistent with a jurisdictional electric utility's obligation to serve.

Proposed Solution:

Consider the removal of this language.

Department Response:

Changed to reflect Section Head of Utilities Section has the ability to authorize this change as well on a case by case basis.

Disposition: Modified

CAR Section: 91-504 & 505

Comment Submitted By: Axon Enterprise, Inc.

Identify Change:

Bonding Requiements

Comment:

Axon sells LPR hardware directly to law enforcement agencies, who own the equipment upon purchase. The Proposed Rules, as written, make no distinction between (1) private commercial vendors placing vendor-owned equipment on ARDOT right-of-way under a lease or service contract, and (2) governmental agencies that own their equipment outright and deploy it for a public safety mission. This creates a structural disadvantage for agency-owned deployments relative to vendor-leased models, and imposes bonding costs of $10,000–$250,000 on governmental entities that are already subject to robust accountability mechanisms — appropriations oversight, procurement law, and ARDOT's existing permit revocation authority under §§ 91-108 and 91-512.

Exempting publicly-owned law enforcement LPR equipment from the bond requirement does not create a gap — it applies the same logic the Commission already codified for municipal utilities. The bond exists to protect ARDOT against the risk that a private commercial actor becomes insolvent or abandons its obligations. That risk does not exist for a governmental agency, which cannot dissolve and whose obligations run to the public.

The Proposed Rules already establish a two-track accountability system — and the bond is not part of the governmental track. The rules make this explicit in three places:

§ 91-107(b) limits bond-based enforcement to utilities "other than a municipal utility system." Increased bonding as a compliance remedy is already carved out for governmental entities by the rules' own language.

§ 91-107(c) and § 91-109(b) establish that when a municipal utility fails to comply, ARDOT's remedy is to perform the work directly and recover costs by offsetting state funds — not by drawing on a bond. The rules already contemplate a bond-free governmental accountability model.

§ 91-108 and § 91-604 apply universally: permit revocation and mandatory correction of hazardous installations at the owner's expense apply to all permit holders regardless of bond status. ARDOT retains full compliance authority over governmental entities without a bond in place.

Proposed Solution:

Axon proposes the following addition to § 91-504(a):

(e) Exemption for publicly owned license plate reader systems. Notwithstanding any provision of this section or § 91-505 to the contrary, a standing bond, deposit, or individual bond shall not be required for the installation, maintenance, or operation of license plate reader systems when:

(1) The license plate reader system is owned by a federal, state, or local public safety or law enforcement agency; and

(2) The system is installed, operated, or maintained by or on behalf of that agency for public safety purposes.

(f) Leased or privately owned systems not exempt.

The exemption under subsection (e) of this section shall not apply to license plate reader systems

that are leased, licensed, or otherwise owned by a private entity, vendor, or third party, even if such system is used by or in coordination with a public safety or law enforcement agency.

Department Response:

Bonding is required of all entities, including cities as it is a guarantee that the right of way will be restored if it is damaged.

Disposition: Rejected

CAR Section: 91-514 ((2)(B))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"A reasonable schedule for the completion of the relocation;"

Comment:

This revision improves coordination by ensuring utilities have access to the Department's project timeline when available. Sharing the projected completion date supports more accurate scheduling of relocation work and reduces the risk of conflicts between utility activities and construction sequencing, while adding minimal administrative burden.

Proposed Solution:

Revise as follows: A reasonable schedule for the completion of the relocation, taking into account the Arkansas Department of Transportation's provided project completion schedule;

Department Response:

Added recommended language.

Disposition: Accepted.

CAR Section: 91-514, 91-518, & 91-520

Comment Submitted By: Cox Communications

Identify Change:

Relocation timing and agreed schedules

Comment:

As drafted, the rule requires utilities to comply with “agreed schedules” set forth in negotiated relocation agreements, yet it provides no substantive guidance regarding what constitutes a reasonable schedule, what project-specific factors should be considered in setting schedules, or how interim delays short of the final completion date are to be evaluated. The absence of such guidance creates uncertainty for utilities seeking to plan and resource relocations in good faith, particularly for complex projects involving right-of-way acquisition, permitting, third-party coordination, or seasonal construction constraints.

Proposed Solution:

Suggested Clarification to 27 CAR : 91-514, 91-518, and 91-520, For purposes of this Part, an “agreed schedule” means the schedule for completion of relocation activities that is proposed by the utility and accepted by the Department as part of a negotiated relocation agreement. In developing and approving an agreed schedule, the Department and the utility shall consider relevant project-specific factors, which may include the scope and complexity of the relocation, right-of-way acquisition status, permitting requirements, coordination with third parties, seasonal or construction constraints, and the need to maintain safe and continuous utility service. The relocation agreement shall identify the final completion date for the relocation and may include interim milestones, as appropriate. Interim milestone dates are intended to support coordination and progress tracking and shall not, by themselves, constitute noncompliance unless expressly identified as enforceable conditions in the relocation agreement. If circumstances arise after execution of the relocation agreement that materially affect the utility’s ability to meet the agreed schedule, the utility may request a reasonable modification of the schedule. Schedule modification requests shall be considered in good faith and approved when supported by changed conditions, delays outside the reasonable control of the utility, or other justifiable project-related factors. Approved schedule modifications shall be documented in writing. Nothing in this clarification is intended to alter the Department’s authority to enforce relocation agreements, but rather to provide transparency and consistency in the establishment, evaluation, and modification of agreed schedules under this Part.

Department Response:

The intent is to maintain flexibility in the negotiation process and this limits the utilites.

Disposition: Rejected

CAR Section: 91-515 ((2))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

“Provide to the utility the construction plans for the project that demonstrate the need for the relocation"

Comment:

This needs to be more clearly defined

Proposed Solution:

Add: "by showing the existing utility facilities on the construction plans."

Department Response:

The Department may not know the location of all of the utilities to show them.

Disposition: Rejected

CAR Section: 91-516 ((a)(2)(E))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"The number of days required for the relocation."

Comment:

The revision clarifies that the schedule is an estimate rather than a fixed deadline, reflecting the inherent uncertainty in utility relocation work. Factors such as right-of-way acquisition, coordination with other utilities, and safety conditions at the time of contracting make it impractical to establish a definitive completion timeframe. This approach ensures the schedule remains reasonable and realistic while still providing the Department with a useful planning estimate.

Proposed Solution:

Revise as follows: The estimated number of days required for the relocation, contingent upon safe working conditions.

Department Response:

It is part of the negotiated process and assumed that safe working conditions will be maintained throughout all work.

Disposition: Rejected

CAR Section: 91-517 ((b)(1))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"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."

Comment:

The proposed revision removes subjective criteria that could be seen as interfering with the utility's internal staffing and workload determinations. Decisions on staffing and use of consultants fall within the utility's business judgment, and the deleted language risks inconsistent interpretation. Retaining only the authorization to employ a consulting engineer preserves flexibility without unnecessary constraints.

Proposed Solution:

Revise as follows: ~~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.~~

Department Response:

Language removed.

Disposition: Accepted

CAR Section: 91-519 ((a)(2)-(4))

Comment Submitted By: Arkansas Oklahoma Gas

Identify Change:

Minimum information for relocation plans

Comment:

The Department has not historically requested or required plans submitted by utilities to contain centerline measurements. Including this requirement will result in an increased burden on the utility to provide this superfluous information and thus delay the Department's receipt of the plans.

Proposed Solution:

Strike 27 CAR § 91-519(a)(2)-(4)

Department Response:

Accurate locations are needed for plan development.

Disposition: Rejected

CAR Section: 91-519 ((a)(8))

Comment Submitted By:

Arkansas Oklahoma Gas

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Minimum information for relocation plans

Comment:

It seems unnecessarily burdensome to require utilities to illustrate or document plant betterments for projects that are non-reimbursable. As a non-reimbursable project, the Department is not paying for the relocation, so the Department should not have an interest in the utility's business decision to implement any plant betterment.

Proposed Solution:

Amend to "Show proposed plant betterments to be made for the convenience of the utility owner either by work or symbol at the appropriate locations, if the project is eligible for reimbursement;"

Department Response:

The information may be needed for schedule impacts.

Disposition: Rejected

CAR Section: 91-519 ((a)(11))

Comment Submitted By: Entergy

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

None

Comment:

This provision is not feasible. In many cases, utilities cannot show ownership of joint-use attachments, as joint-users do not update their records and often transfer ownership without the utility's knowledge and without notice to the utility.

Supplemental Comment. As discussed at the November 20 meeting, there are sometimes limitations on utilities' ability to identify joint-users. This provision is therefore not feasible and not acceptable.

Proposed Solution:

Remove this provision.

Department Response:

Added qualification to provide it if it is known to the utility.

Disposition: Modified

CAR Section: 91-519 ((b))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

"The relocation plans shall include a narrative description of the work to be done."

Comment:

Is this necessary in addition to plans?

Proposed Solution:

Remove this requirement

Department Response:

Necessary for the development of the Relocation Agreement

Disposition: Rejected

CAR Section: 91-519 ((a)(11))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

"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;"

Comment:

Joint users often change ownership without notification to the utility limiting our ability to identify the joint user.

Proposed Solution:

The utility should not be responsible for providing this information.

Department Response:

Added qualification to provide it if it is known to the utility.

Disposition: Modified

CAR Section: 91-519 ((c))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

"If appropriate, the relocation plans shall provide a traffic control plan."

Comment:

We do not usually have a traffic control plan in place at the relocation design stage.

Proposed Solution:

"If appropriate…" needs to be more clearly defined to show when the traffic control plan is needed.

Department Response:

Extending time to provide the plan

Disposition: Modified

CAR Section: 91-519 ((a)(2)-(4))

Comment Submitted By: Summit Utilities
(Black Hills endorsed)

Identify Change:

Minimum information for relocation plans

Comment:

The Department has not historically requested or required plans submitted by utilities to contain centerline measurements. Including this requirement will result in an increased burden on the utility to provide this superfluous information and thus delay the Department's receipt of the plans.

Proposed Solution:

Strike 27 CAR § 91-519(a)(2)-(4)

Department Response:

Accurate locations are needed for plan development.

Disposition: Rejected

CAR Section: 91-519 ((a)(8))

Comment Submitted By: Summit Utilities

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Minimum information for relocation plans

Comment:

It seems unnecessarily burdensome to require utilities to illustrate or document plant betterments for projects that are non-reimbursable. As a non-reimbursable project, the Department is not paying for the relocation, so the Department should not have an interest in the utility's business decision to implement any plant betterment.

Proposed Solution:

Amend to "Show proposed plant betterments to be made for the convenience of the utility owner either by work or symbol at the appropriate locations, if the project is eligible for reimbursement;"

Department Response:

Information may be needed for schedule considerations.

Disposition: Rejected

CAR Section: 91-519 ((a)(11))

Comment Submitted By: Southwestern Electric Power Company

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

"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;"

Comment:

Identifying the owner of joint users can be challenging at times as ownership can change without notifications to the owner of the pole. As such, a utility would not have this information to share and should thus not be required to produce it.

Proposed Solution:

Southwestern Electric Power Company is not necessarily in possession of the information and can therefore not provide such information. This requirement should be eliminated.

Department Response:

Added qualification to provide it if it is known to the utility.

Disposition: Modified

CAR Section: 91-521 ((b)(2))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Notice to Proceed

Comment:

Clearly indicate all ROW acquisitions have been secured

Proposed Solution:

"Include updated timelines, costs, ROW acquisitions, or other relevant terms"

Department Response:

There may be times that acquisition does not impact the work of the utility

Disposition: Rejected

CAR Section: 91-522 ((d))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"(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."

Comment:

Deleting “and collected” avoids redundancy and potential inconsistency within the rule. Because a later provision (27 CAR § 912-523) already specifies that penalties will not be collected until after the appeals process concludes, retaining this language is unnecessary and could create confusion regarding timing.

Proposed Solution:

"(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."

Department Response:

Removed

Disposition: Accepted.

CAR Section: 91-522 & 91-523

Comment Submitted By: Cox Communications

Identify Change:

Civil Penalties and Assessment of Civil Penalties

Comment:

While § 91-522 establishes the circumstances under which civil penalties may be assessed against utilities other than municipal utility systems, § 91-523 states that unpaid penalties may be deducted from final reimbursement payments or may be subject to a collection action, without further explanation of the timing, scope, or procedural safeguards associated with these remedies. The absence of additional detail creates uncertainty regarding how offsets or collection actions would be administered and how they interact with existing relocation agreements and reimbursement determinations. In addition, the phrase “pursue a collection action” is undefined and could reasonably be interpreted to include a wide range of actions, from administrative offsets to judicial proceedings. Greater specificity is requested regarding the intended scope of this authority, the applicable process, and the rights available to the utility prior to any collection action being initiated.

Proposed Solution:

Suggested Clarification to 27 CAR : 91-523: A civil penalty assessed under this Part shall not be deducted from any reimbursement payment, nor shall a collection action be initiated, until all applicable administrative appeal rights have been exhausted or have expired without appeal. Prior to deducting a civil penalty from a reimbursement payment, the Department will provide the utility written notice identifying the amount of the penalty, the reimbursement payment from which the deduction is proposed, and the basis for the deduction. Any deduction shall be applied in a manner consistent with applicable state and federal law and the terms of the applicable relocation agreement. For purposes of this section, a “collection action” refers to efforts undertaken by the Department to collect an unpaid civil penalty after final determination, following written notice to the utility.

Department Response:

Made changes to clarify.

Disposition: Modified

CAR Section: 91-704 ((b)(4))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"There will be no charge to the Arkansas Departmet of Transportation for that portion of the utility owner’s existing private right-of-way or easement being transferred to the department or Arkansas State Highway Commission for highway purposes."

Comment:

The revision fixes a minor spelling error and ensures consistent use of the correct agency name and clarifies the intent of the provision regarding cost responsibility. While the transfer of existing private right-of-way or easement to the Arkansas Department of Transportation remains at no cost, the added language recognizes that the utility should not bear the financial burden of securing a comparable replacement interest. This approach preserves the principle of making the utility whole, avoids shifting relocation-related costs improperly, and ensures fair treatment when replacement property interests are required for continued utility operations.

Proposed Solution:

"There will be no charge to the Arkansas ~~Departmet~~ Department of Transportation for that portion of the utility owner's existing private right-of-way or easement being transferred to the department or Arkansas State Highway Commission for highway purposes; however, the Arkansas Department of Transportation shall be responsible for all costs associated with the utility replacing its current right-of-way or easement with an equivalent private easement or right-of-way."

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(__))

Comment Submitted By: Arkansas Oklahoma Gas

Identify Change:

Reimbursement Eligibility

Comment:

The company believes that a similarly drafted provision related to municipal rights-of-way would be prudent while already amending these rules.

Proposed Solution:

"A utility facility located on municipal right-of-way or other municipal property under a municipal franchise agreement is eligible for reimbursement if the municipal right-of-way or municipal property under a municipal franchise agreement is: (i) outside the existing highway right-of-way; or (ii) inside the existing highway right-of-way but predates the existence of the highway right-of-way."

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(4))

Comment Submitted By: Arkansas Oklahoma Gas

Identify Change:

Reimbursement Eligibility

Comment:

The language, as drafted in the amended rule, is ambiguous.

Proposed Solution:

“Other than reimbursement for relocation costs in accordance with this section, 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 or Arkansas State Highway Commission for highway purposes.”

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((d))

Comment Submitted By: Arkansas Oklahoma Gas

Identify Change:

Reimbursement Eligibility

Comment:

As drafted, this amended language states that an executed franchise agreement between a municipality and a utility does not support reimbursement. This language directly conflicts with established Arkansas law that holds that franchise agreements grant certain property rights. See Ark. State Highway Comm. v. Ark. Power & Light Co., 231 Ark. 307, 310 (1959).

Proposed Solution:

The company recommends the Department strike 27 CAR § 91-704(d) entirely.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(2))

Comment Submitted By: Arkansas Oklahoma Gas

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

The language, as drafted in the amended rule, fails to comport with existing and settled provisions of Arkansas law.

Proposed Solution:

“A utility facility located on private right-of-way or easement is eligible for reimbursement if the private right-of-way or easement is: (i) outside the existing highway right-of-way; or (ii) inside the existing highway right-of-way but predates the existence of the highway right-of-way."

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(2))

Comment Submitted By: Central Arkansas Water

Identify Change:

Cost of replacement

Comment:

This provision would exclude reimbursement for an easement that predates and now lies within a highway right-of-way.

Proposed Solution:

A utility facility located on private right-of-way or easement is eligible for reimbursement if the private right-of-way or easement lies: (i) outside the existing highway right-of-way; or (ii) inside the existing highway right-of-way and predates the existence of the highway right-of-way.

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(2))

Comment Submitted By: Central Arkansas Water

Identify Change:

Cost of replacement

Comment:

Cost of replacement right-of-way is not the correct measure of damages. Cost of relocation is the proper measure of damages.

Proposed Solution:

This provision should be revised to read, “A utility facility located on private right-of-way or easement…is considered to be eligible for reimbursement for the cost of relocation.”

Department Response:

Language changed.

Disposition: Accepted.

CAR Section: 91-704 ((b)(4))

Comment Submitted By: Central Arkansas Water

Identify Change:

Reimbursement for Relocation Costs

Comment:

The section states that there would be no charge to ARDOT for the portion of a utility owner's existing private right-of-way or easement being transferred to ARDOT. Reimbursement for relocation costs, however, should encompass this specific cost.

Proposed Solution:

Other than reimbursement for relocation costs in accordance with this section, Therethere 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 or Arkansas State Highway Commission for highway purposes.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((d))

Comment Submitted By: Central Arkansas Water

Identify Change:

Franchise Agreement and Reimbursement

Comment:

That section would provide that 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.

Proposed Solution:

Strike proposed subsecction (d).

Department Response:

Fanchise alone does not guarantee a prior right.

Disposition: Rejected

CAR Section: 91-704 ((b)(1))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

Cost of replacement right-of-way is not the legally correct measure of damages under Arkansas law. Relocation cost is the proper measure of damages. Thus, this provision should be revised to read: "A utility facility located on private right-of-way or easement…is considered to be eligible for reimbursement of the cost of relocation replacement right-of-way."

Proposed Solution:

Amend this provision as described in the preceeding column.

Department Response:

Language removed.

Disposition: Accepted.

CAR Section: 91-704 ((b)(1))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

This provision omits a long-recognized category of reimbursable cost under Arkansas law: private easement within existing highway right-of-way that predates the area becoming highway right-of-way. It therefore should be revised to read: "A utility facility located on private right-of-way or easement, where the private right-of-way or easement is either (i) outside the existing highway right-of-way or (ii) inside the existing highway right-of-way but predates the existence of the highway right-of-way, (outside the existing highway right-of-way) is considered to be eligible for reimbursement…."

Proposed Solution:

Amend this provision to read:"A utility facility located on private right-of-way or easement, where the private right-of-way or easement is either (i) outside the existing highway right-of-way or (ii) inside the existing highway right-of-way but predates the existence of the highway right-of-way, (outside the existing highway right-of-way) is considered to be eligible for reimbursement…."

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(xx))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

This subsection should include another category of reimbursement eligibility: "A utility facility located on municipal right-of-way or other municipal property under a municipal franchise agreement, where the municipal right-of-way or other municipal property is either (i) outside the existing highway right-of-way or (ii) inside the existing highway right-of-way but where the municipal franchise predates the existence of the highway right-of-way, is considered to be eligible for reimbursement…."

Proposed Solution:

Amend this provision as described in the preceeding column.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((d)(1)-(2))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

This is unlawful and unacceptable. As ARDOT counsel is aware, this issue has been the subject of multiple Arkansas Supreme Court cases, and most recently the subject of a lawsuit against

ARDOT in which EAL prevailed in the circuit court, and which ARDOT chose not to appeal. Supplemental Comment. In its original comments, EAL took great care to suggest revisions to the reimbursement-eligibility provisions that would comport with Arkansas law, and therefore be lawful. At the November 20 meeting, it was suggested by ARDOT that the reimbursement-eligibility provisions in the rules were merely categories that would be considered for reimbursement, but were not exclusive. That is not how the provisions read. Instead they appear to provide an exclusive list of reimbursable scenarios. More fundamentally, they expressly contradict longstanding Arkansas law regarding franchise rights as a basis for reimbursement. They also contravene Arkansas law by looking only at "existing utility facilities," rather than solely at the "right of occupancy." As the Pulaski County Circuit Court said last year at the summary-judgment hearing in Entergy Arkansas, LLC v. Arkansas State Highway Commission, speaking of Energy's franchise-based right-of-way, "[i]t's a property right. It's not contingent on a physical structure being present…."[1] Section 91-704 should be deleted in its entirety except for 91-704(a)(1), and "municipal franchise agreement" should be added to 91-704(a)(1)

Proposed Solution:

(comment continued: should be added to 91-704(a)(1) so that it reads: "…because of holding the fee, an easement, other real property interest, or a municipal franchise agreement…." Prior right of occupancy is the only lawful test under Arkansas law. If the utility's private-easement or franchise-based right of occupancy predates the highway right-of-way at the location at issue, then the relocation is reimbursable. All this to say, if 91-704 is adopted in its current form, it will almost certainly result in litigation. EAL strongly urges ARDOT to reconsider its position regarding 91-704. Remove this unlawful provision or amend as described.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(2))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

Identify Change:

Reimbursement Eligibility

Comment:

"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."

Proposed Solution:

This should read cost of relocation, not just replacement of right-of-way. Also, language should be added to include private easments that are in inside existing highway right-of-way but predate the existence of the highway right-of-way.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((d))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

"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."

Proposed Solution:

Language should be added: "unless the street and/or franchise agreement predate the existence of the highway right-of-way."

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(2))

Comment Submitted By: Summit Utilities
(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)
(Black Hills endorsed) (Central Arkansas Water endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

The language, as drafted in the amended rule, fails to comport with existing and settled provisions of Arkansas law.*

Proposed Solution:

“A utility facility located on private right-of-way or easement is eligible for reimbursement if the private right-of-way or easement is: (i) outside the existing highway right-of-way; or (ii) inside the existing highway right-of-way but predates the existence of the highway right-of-way."

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(__))

Comment Submitted By: Summit Utilities
(Black Hills endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

The company believes that a similarly drafted provision related to municipal rights-of-way would be prudent while already amending these rules.

Proposed Solution:

“A utility facility located on municipal right-of-way or other municipal property under a municipal franchise agreement is eligible for reimbursement if the municipal right-of-way or municipal property under a municipal franchise agreement is: (i) outside the existing highway right-of-way; or (ii) inside the existing highway right-of-way but predates the existence of the highway right-of-way."

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(4))

Comment Submitted By: Summit Utilities
(Black Hills endorsed) (Central Arkansas Water endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

The language, as drafted in the amended rule, is ambiguous.

Proposed Solution:

“Other than reimbursement for relocation costs in accordance with this section, 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 or Arkansas State Highway Commission for highway purposes.”

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((d))

Comment Submitted By: Summit Utilities
(Black Hills endorsed) (Central Arkansas Water endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

As drafted, this amended language states that an executed franchise agreement between a municipality and a utility does not support reimbursement. This language directly conflicts with

established Arkansas law that holds that franchise agreements grant certain property rights. See Ark. State Highway Comm. v. Ark. Power & Light Co., 231 Ark. 307, 310 (1959).

Proposed Solution:

The company recommends the Department strike 27 CAR § 91-704(d) entirely.

Department Response:

Subsection (e) added to address documented prior rights and interests and eligibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(2))

Comment Submitted By: Southwestern Electric Power Company

Identify Change:

Reimbursement Eligibility

Comment:

Reimbursement eligibility in the rules should be consistent with settled Arkansas law on the topic. As currently drafted, the provision eliminates a facility located inside existing highway ROW but pre-dating the highway ROW.

Proposed Solution:

Edit as recommended by Summit/AOG.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((d))

Comment Submitted By: Southwestern Electric Power Company

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Reimbursement Eligibility

Comment:

Reimbursement eligibility in the rules should be consistent with settled Arkansas law on the topic. As currently drafted, the provision overlooks the significance of a franchise agreement between a municipality and a utility.

Proposed Solution:

Either remove or amend for consistency with settled law.

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Relocation Costs

Comment:

Relocation-cost reimbursement remains a substantial point of disagreement and has been the subject of recent litigation. If the rules state categories of reimbursement eligibility, they must align with Arkansas law. Ritter urges revision of 27 CAR § 91-704 accordingly, or removal of categorical provisions if ARDOT intends a case-by-case approach. Ritter supports the specific redline proposals for § 91-704 that appear in Appendix A to Entergy Arkansas' comments.

Proposed Solution:

None

Department Response:

Subsection (e) added to address documented prior rights and interests and elibibility for reimbursement.

Disposition: Modified.

CAR Section: 91-704 ((b)(3))

Comment Submitted By: Entergy

Identify Change:

None

Comment:

This provision is ambiguous and, depending on the interpretation, unlawful. If the idea is to avoid double payment, it should be revised to state: “Other than reimbursement for relocation costs in accordance with this section, tThere 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.”

Proposed Solution:

Amend this provision as described in the preceeding column.

Department Response:

Language clarified.

Disposition: Accepted

CAR Section: 91-802 ((a))

Comment Submitted By: Arkansas Oklahoma Gas

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Relocation

Comment:

Drafting error; proposed solution brings clarity and conformity.

Proposed Solution:

The unstricken use of “work order” should be changed to “relocation agreement.”

Department Response:

changed throughout

Disposition: Accepted

CAR Section: 91-802 ((a))

Comment Submitted By: Entergy

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

None

Comment:

91-802(a). Should the second instance of “work order” be changed to “relocation agreement”?

Proposed Solution:

Amend this provision as described in the preceeding column.

Department Response:

changed throughout

Disposition: Accepted

CAR Section: 91-802 ((c))

Comment Submitted By: OG&E (Oklahoma Gas & Electric)

(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

Relocation

Comment:

"Utility Coordinator"

Proposed Solution:

Needs to be defined

Department Response:

Position not necessary to define

Disposition: Rejected

CAR Section: 91-802 ((a))

Comment Submitted By: Summit Utilities
(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)
(Black Hills endorsed)

Identify Change:

Relocation

Comment:

Drafting error; proposed solution brings clarity and conformity.

Proposed Solution:

The unstricken use of “work order” should be changed to “relocation agreement.”

Department Response:

changed throughout

Disposition: Accepted

CAR Section: 91-802; 803 (all); 804 (all)

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"resident engineer" in Subpart 8

Comment:

Revise Subpart 8 to replace all references to “Resident Engineer” with “ARDOT,” to ensure the provision remains functional regardless of staffing or organizational changes.

This approach is appropriate because internal ARDOT procedures, workflows, and standard forms are the proper mechanism for designating specific routing, review, and approval responsibilities. The rule itself should remain position-neutral, allowing the Department’s internal processes to control how submissions are directed to appropriate staff. This reduces the risk of outdated or incorrect position references in the regulation and ensures routing can be updated administratively without requiring future rule amendments.

Proposed Solution:

Change references from "resident engineer" to "Arkansas Department of Transportation" in Subpart 8.

Department Response:

This posistion is still in use and it clarifies which engineer in the Department is responsible.

Disposition: Rejected

CAR Section: 91-901 ((a))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"A utility owner may be unable to perform preliminary or construction engineering work with their own forces."

Comment:

The statement is unnecessary and potentially restrictive because it characterizes the utility's capabilities in absolute terms and could be read as limiting its discretion to use in-house resources. Whether to perform work internally or through other means is an operational decision within the utility's business judgment. Removing the provision avoids implying any limitation on staffing or capability and preserves flexibility in how engineering work is performed.

Proposed Solution:

Consider removing this language.

Department Response:

Does not impair the utilities ability to perform work internally or externally.

Disposition: Rejected

CAR Section: 91-901 ((b))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"A consultant engineer may be employed by the utility owner under the following conditions:"

Comment:

This revision clarifies that the provision addresses reimbursement eligibility, not whether a utility owner may retain a consultant engineer. Utilities independently decide when to engage engineering support, and the rule should not be read to regulate that decision. The focus is properly on the conditions under which such costs are eligible for ARDOT reimbursement,

ensuring the provision is limited to cost eligibility and avoids implying restrictions on utility staffing or project delivery choices.

Proposed Solution:

Revise as follows: "A consultant engineer may be employed by the utility ~~owner,~~ subject to ~~under~~ the following conditions for reimbursement eligbility:"

Department Response:

Change made

Disposition: Accepted

CAR Section: 91-901 ((b)(4)(A))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"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."

Comment:

This revision clarifies that lump-sum treatment is contingent on prior preliminary approval of reimbursement eligibility, ensuring appropriate administrative sequencing. It also maintains ARDOT oversight by requiring approval from the Section Head of the Utilities Section and limits lump-sum use to situations where the scope of work is clearly defined, promoting consistency and reducing ambiguity in reimbursement determinations.

Proposed Solution:

Revise as follows: 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 approved by the Section Head of the Utilities Section, ~~and the fee is relatively small.~~

Department Response:

Language changed.

Disposition: Accepted

CAR Section: 91-902 ((a)(1))

Comment Submitted By: AECI (Arkansas Electric Cooperative, Inc.)

Identify Change:

"When the use of a consultant has been approved, the utility owner will be authorized to have the consultant proceed with preparing a preliminary engineering fee estimate and contract."

Comment:

The revision clarifies that the approval is preliminary and relates solely to reimbursement eligibility, not approval of the consultant itself. This distinction ensures the provision is not read as restricting a utility's ability to engage a consultant, while making clear that the consultant's activities proceed at the utility's discretion but are tied to potential reimbursement parameters.

Proposed Solution:

Revise as follows: "When the reimbursement ~~use of a consultant~~ has been preliminarily approved, the utility owner will be authorized to have the consultant proceed with preparing a preliminary engineering fee estimate and contract."

Department Response:

No cost is evaluated at this stage.

Disposition: Rejected

CAR Section: Subpart 14

Comment Submitted By: Entergy
(AECI (Arkansas Electric Cooperative, Inc.) Endorsed)

Identify Change:

None

Comment:

How do these administrative-hearing procedures compare with the Attorney General's model rules of procedure for use by agencies as required by Ark. Code Ann. § 25-15-215?

Supplemental Comment. EAL agrees with, and echoes, comments by other utilities at the November 20 meeting that the proposed administrative procedures may be inconsistent with Act 699, especially in terms of penalty imposition and burden-shifting. The administrative procedures in the rules need to follow the procedures specified in the Act.

Proposed Solution:

Clarify as suggested in the preceeding column. Amend the rule to follow the procedures set out in Act 699.

Department Response:

The Attorney General does not have current procedures published, however it complies with the Ark. Admin. Procedures Act and Act 699.

Disposition: Rejected

CAR Section: None

Comment Submitted By: AR Rural Broadband Association

Identify Change:

No Appeals Process for Civil Penalties

Comment:

A right-of-way agreement is, by its nature, a two-party arrangement that exists to serve the public interest in both safe and efficient transportation infrastructure and reliable communications service. The proposed rules, however, effectively cast ARDOT as the unilateral decision-maker on virtually every disputed question — interpretation of the agreement, compliance, cost reimbursement, and penalty assessment — without a y corresponding accountability to the other party. Because there is no avenue for a utility to appeal an ARDOT decision to an independent body, the structure of the rule grants one party to the contract the power to act as judge, jury, and enforcer over the other. This structural imbalance should be corrected by introducing a third party to arbitrate between the parties involved in the agreement or an appeals mechanism so that both signatories to the agreement have a meaningful voice in resolving disputes.

Proposed Solution:

None

Department Response:

The Utility has the right to appeal any decision made concerning civil penalties to the Circuit Court under the Arkansas Administrative Procedures Act.

Disposition: Rejected

CAR Section: None

Comment Submitted By: AR Rural Broadband Association

Identify Change:

Risk to carrier-of-last-resort obligations.

Comment:

Rural broadband carriers and incumbent telephone companies in Arkansas operate under carrier-of-last-resort obligations that require them to provide service to customers across their entire service territory, including the most rural and high-cost areas where no other provider is willing to build. If ARDOT denies future permits to a utility based on alleged conflicts arising from current relocation agreements — or uses permit issuance as leverage in unrelated disputes — affected providers may be unable to extend, maintain, or repair the facilities needed to fulfill those statutory responsibilities. The result would be a direct and avoidable harm to rural Arkansans who depend on these carriers for voice and broadband service, and a conflict between ARDOT's rules and the providers' obligations under state and federal law.

Proposed Solution:

None

Department Response:

The Department has the responsibility to ensure that all actions occuring on the right of way are in the best interest of the public. The utiltiy always has the option of proceeding to provide their service on private easement not highway right of way.

Disposition: Rejected

CAR Section: None

Comment Submitted By: AR Rural Broadband Association

Identify Change:

“Small Utility” is defined but not operationalized, and exemptions are needed.

Comment:

The proposed rules add a definition for “Small Utility,” but the term is not carried through into any substantive provisions, which means small and rural providers are subject to exactly the same requirements, timelines, and cost burdens as the largest utilities operating in the state. Many of the most burdensome obligations — particularly those tied to relocation agreements, engineering pre-approvals, documentation, and penalty exposure — fall disproportionately hard on smaller cooperatives and rural carriers that lack dedicated regulatory, legal, and engineering staff. Several sections of the rules, especially those governing relocation agreements, should incorporate explicit smallutility exemptions or modified compliance pathways so that the defined term has practical effect and the final rules align with the intent of Act 699.

Proposed Solution:

None

Department Response:

The relocation agreement process allows for small utilities and rural utilities to engage in the process to determine the least impact to the utility.

Disposition: Rejected

CAR Section: None

Comment Submitted By: AR Rural Broadband Association

Identify Change:

Pre-approval required to use outside engineering firms.

Comment:

The proposed rules condition reimbursement of relocation costs on a utility first obtaining ARDOT preapproval to engage an outside engineering company. While this may be a workable expectation for the largest utilities that maintain in-house engineering departments, it is a significant and unnecessary hurdle for smaller cooperatives and rural carriers, which by necessity rely on outside engineering firms for the majority of their relocation and construction work. Inserting an additional approval step into an already time-sensitive process risks delaying projects, increasing costs, and — in cases where pre-approval is withheld or delayed — leaving small utilities to absorb expenses that the statute clearly contemplates being reimbursed. The pre-approval requirement should be narrowed, streamlined, or replaced with a notification-based process for small utilities.

Proposed Solution:

None

Department Response:

A utility may proceed in its chosen path, however for reimbursement, certain requirements are necessary under federal law, and therefore pre-approval is required to ensure all reimbusement procedures are in compliance.

Disposition: Rejected

CAR Section: None

Comment Submitted By: AR Rural Broadband Association

Identify Change:

Easement/affidavit requirement conflicts with state law.

Comment:

The proposed rules require a utility to submit a copy of an easement or a written affidavit to ARDOT to verify the utility's right of occupancy before relocation costs will be reimbursed. This requirement directly disadvantages telephone cooperatives and similarly situated rural providers, because under Arkansas statute these entities hold an implied easement once cable has been in the ground for a period of two years — meaning that, by operation of law, no written easement exists to produce. Requiring documentation that state law has expressly made unnecessary creates a paperwork barrier with no corresponding public benefit, exposes affected cooperatives to denial of legitimate reimbursement claims, and effectively re-litigates an easement right that the legislature has already settled. The rules should be revised to recognize statutory implied easements as a valid basis for verifying right of occupancy.

Proposed Solution:

None

Department Response:

The documentation for an implied easement can be provided as the proof of the utiltiies right of occupancy to ensure the rights of the private property owners. The Department does not have the information that the Utility does concerning their property interest.

Disposition: Rejected

CAR Section: None

Comment Submitted By: Liberty Utilities

Identify Change:

None

Comment:

While Liberty is still reviewing the proposed changes, the Company can state agreement with the proposed edits and concerns highlighted within Entergy’s comments.

Proposed Solution:

None

Department Response:

Please see other comments.

Disposition: N/A

CAR Section: None

Comment Submitted By: Ritter Arkansas, LLC

Identify Change:

Penalty Procedures

Comment:

As noted by other utilities, the proposed administrative procedures may conflict with Act 699, including with respect to penalty imposition and burden-shifting, and should instead follow the procedures specified in the Act.

Proposed Solution:

None

Department Response:

The Department states that these rules do not conflict with Act 699.

Disposition: Rejected

CAR Section: None

Comment Submitted By: Uniti

Identify Change:

None

Comment:

Uniti supports the comments of other utilities filed in this matter and agrees that the administrative procedures in the rules should follow the legislative framework specified in Act 699. Specifically, the provision involving “denial of future permits until past noncompliance is resolved” was discussed as an enforcement tool with the creation of Act 699, but ultimately removed from the enacted legislation. Uniti continues to object to the withholding of permits as an enforcement tool for potential issues that may arise in another area. Given the nature of utility services, such actions would directly harm Arkansans and could create public safety risks by

delaying or prohibiting emergency repairs or deployment activities; in Uniti's case, this could leave customers without access to 911 services.

Proposed Solution:

None

Department Response:

The Department complies with the requirements of Act 699, and the Department has the right to control the actions and placement of utilities on the Department's right of way. Including the ability to deny or not grant a permit.

Disposition: Rejected

CAR Section: None

Comment Submitted By: Entergy, Public Hearing, 5/14/2026

Identify Change:

Locates

Comment:

We are willing to continue working [with ARDOT] on mass locates or survey locates, as we do not consider these to be the best subject for the rules.

Proposed Solution:

None

Department Response:

ARDOT agrees to work on survey locates outside of these rules.

Disposition: N/A

CAR Section: 91-504 ((a))

Comment Submitted By: Axon Enterprises, lferreira@axon.com

Identify Change:

None

Comment:

Axon Enterprise, Inc. respectfully requests that the Commission amend the bonding requirements in proposed §91-504 and §91-505 to exempt license plate reader (LPR) equipment owned outright by law enforcement or public safety agencies.

Proposed Solution:

None

Department Response:

All utilities are treated the same if it falls into the definition of a utility. Entitites that do not fall under the definition of a utility are not covered by these rules but may be covered by other ARDOT policies and requirements.

Disposition: Rejected

CAR Section: 91-505 ((a))

Comment Submitted By: Axon Enterprises, lferreira@axon.com

Identify Change:

None

Comment:

Axon sells LPR hardware directly to law enforcement agencies, who own the equipment upon purchase. The Proposed Rules, as written, make no distinction between (1) private commercial vendors placing vendor-owned equipment on ARDOT right-of-way under a lease or service contract, and (2) governmental agencies that own their equipment outright and deploy it for a public safety mission. This creates a structural disadvantage for agency-owned deployments relative to vendor-leased models, and imposes bonding costs of $10,000–$250,000 on governmental entities that are already subject to robust accountability mechanisms — appropriations oversight, procurement law, and ARDOT's existing permit revocation authority under §§ 91-108 and 91-512.

Exempting publicly-owned law enforcement LPR equipment from the bond requirement does not create a gap — it applies the same logic the Commission already codified for municipal utilities. The bond exists to protect ARDOT against the risk that a private commercial actor becomes insolvent or abandons its obligations. That risk does not exist for a governmental agency, which cannot dissolve and whose obligations run to the public.

The Proposed Rules already establish a two-track accountability system — and the bond is not

§ 91-107(b) limits bond-based enforcement to utilities "other than a municipal utility system." Increased bonding as a compliance remedy is already carved out for governmental entities by the rules' own language.

§ 91-107(c) and § 91-109(b) establish that when a municipal utility fails to comply, ARDOT's remedy is to perform the work directly and recover costs by offsetting state funds — not by drawing on a bond. The rules already contemplate a bond-free governmental accountability model.

§ 91-108 and § 91-604 apply universally: permit revocation and mandatory correction of hazardous installations at the owner's expense apply to all permit holders regardless of bond status. ARDOT retains full compliance authority over governmental entities without a bond in place.

The bond's purpose — ensuring right-of-way restoration if a permit holder abandons its obligations — applies most compellingly to private commercial actors at risk of insolvency or dissolution. Governmental agencies do not dissolve, and their obligations run to the public.

Department Response:

All utilities are treated the same if it falls into the definition of a utility. Entities that do not fall under the definition do not fall under these rules but may be covered by other ARDOT policies and requirements.

Disposition: Rejected

Additional language change requests submitted on September 9, 2026 from Charlie Spakes, Pinnacle Policy; Sara Tacker; John Bethel, Entergy; Bill Gossage, Entergy; Shanda Hunter; Drake Moudy, Summit Utilities.

Comment:

The following language suggestions were made for 27 CAR § 97-107 Enforcement:

(2) Denial of future permits for the specific location or public transportation facility project associated with a violation of this part until the past ~~noncompliance~~violation is resolved;

(c) Noncompliance at one location or project shall not serve as a basis for denial of future permits for other locations or public transportation facility projects.

Department Response:

The language for paragraph 2 was not incorporated. This change would impair the department and Commission from making decisions concerning the use of its own property by limiting the ability to choose not to issue a permit. The language in the suggested subsection (c) was incorporated as subsection (d) as it captures the intent of the department to not unreasonably deny utilities permits without a basis.

Disposition: Partial adoption

Comment:

Changes were suggested for 27 CAR § 91-108. Right to Revoke. The changes included adding the phrase for good cause to subsection (a) concerning when the department had the right to revoke a permit. The comment also requested language that stated the utility would have 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. Additional language under subdivision (b)(1) included clarifying language that addressed the right to revoke was for a specific permit, not a general statement.

Department Response: The clarification is agreeable.

Disposition: Adopted.

Comment:

Additional language was requested to be a (b)(4) If the utility facilities covered by the permit have been relocated from the permitted location.

Department Response: This language is inconsistent with the intent of the section.

Disposition: Rejected.

Comment:

A request was made to delete 27 CAR § 91-108(c).

Department Response:

This change was denied because this rule is needed. It ensures that once a relocation agreement is completed, the entire facility at its new location is treated as a utility permit or a right to occupy the right of way. Without this rule utilities could ignore all utility accommodation and safety provisions, and the department would have no recourse to enforce its rules, require the movement of the facility for a highway purposes, or protect the safe use of its property.

Disposition: Rejected.

Comment:

A change was requested in 27 CAR § 91-306(j)(2)(B). concerning changing a change from “conspicuous marking” to “in accordance with applicable requirements of the National Electrical Safety Code.”

Department Response:

The requirements of the National Electrical Safety Code are acceptable concerning markings.

Disposition: Accepted.

Comment:

A change was requested in 27 CAR § 91-306(j)(3) to delete the requirement that utility facilities had to be installed to allow normal highway maintenance.

Department Response:

This change was rejected as it is the principal duty of the department to use the right-of-way for the maintenance and safety of the road system of the state and maintenance is an important part of that duty. Utility facilities should not interfere with the primary duty of the department.

Disposition: Rejected.

Comment:
A change was requested in 27 CAR § 91-523(d), collection of civil penalties, to delete the ability of the department to recover any expenses associated with a collection action against a utility for the failure to pay civil penalties that have been assessed.

Department Response:

If a penalty is assessed and required to be paid under the statute and a utility fails to do so, the taxpayers should not bear the expense of a collection action to recover those funds.

Disposition: Rejected.

Comment:

Numerous language changes were requested in 27 CAR § 91-704, reimbursement eligibility.

Department Response:

These changes reflect the utilities' desire to incorporate all municipal franchise agreements in mandatory reimbursement agreements when the Highway Commission and the department are under no obligation to reimburse relocation expenses for every facility. Each determination should be made on a case-by-case basis, dependent on the specific facts of the real estate interests. Sufficient proof of the real estate interest of the utility should be required before tax dollars are spent to reimburse the utility. If the utility has knowingly waived the right to reimbursement through a previous agreement, the department should not be required to provide reimbursement. If there is a disagreement concerning the amount of reimbursement, the utility may negotiate with the department, may choose to relocate to private easements and be reimbursed, or may proceed with litigation to challenge the amount of relocation benefits provided. This is consistent with the federal requirements for utility relocation benefits.

Disposition: Rejected.

Comment:

A request was made to reinsert language from the original rule that was removed in 27 CAR § 91-1209. Contract labor.

Department Response: This was an agreeable change.

Disposition: Accepted.