**R930. Transportation, Preconstruction.**

**R930-8. Utility Relocations Required by Department Projects.**

**R930-8-1. Purpose.**

This rule sets forth the department's requirements and authority as to a Utility Company's coordination and cooperation when removal, relocation, or alteration of a utility facility is made necessary by a department project and sets forth the options the department may pursue to proceed with a department project if a utility company fails to cooperate or coordinate with the department as required by statute or rule.

**R930-8-2. Authority.**

This rule is enacted pursuant to Subsections 54-3-29(5)(b), (6), and (7), and Section 72-6-116.

**R930-8-3. Definitions.**

As used in this Rule R930-8:

(1) "Department" means the Utah Department of Transportation.

(2) "Department project" has the same definition as provided in Section 72-6-116.

(3) "Non-operating Property" and "Non-operating Real Property" refer to property owned by a Utility Company that is not directly part of the Utility Company's physical plant or facilities that provide the utility service.

(4) "Right-of-Way" has the same definition as provided in Section 72-1-102.

(5) "Utility" and "Utility facility" are used interchangeably and have the same definition as "utility" as provided in Section 72-6-116.

(6) "Utility company" has the same definition as provided in Section 72-6-116.

**R930-8-4. Utility Company Coordination and Cooperation.**

When the department notifies a Utility that relocation of a utility facility may be necessary due to a department project, both the department and the Utility shall follow Subsection 72-6-116(6). The Utility shall:

(1) Provide to the department, the location of each utility facility likely to be affected following the process set forth in Subsection R930-7-11(6).

(2) Identify for the department conflicts department project and the Utility's operation of its utility facilities.

(3) Submit to the department all conveyances, vesting documents, or other evidence of title to real property related to the potential relocation of utility facilities as early as practicable.

(4) Submit to the department the Utility's proposed design for relocation; detailed cost estimates; a reasonable relocation schedule to accommodate the department project; reasonable limits on department project work, including utility outage windows and construction loadings by the department; and communication procedures between the parties. A reasonable relocation schedule for the project includes, work sequencing, task durations, material ordering, notification requirements, mobilization, third-party coordination, communication between the parties, and any other activity necessary for the relocation of the utility facility to accommodate the department project. If the relocation work is to be completed before the department awarding the department project to its contractor, the Utility shall include specific dates in the schedule.

(5) Execute a written relocation agreement with the department. The agreement shall include terms and conditions, including, the relocation scope of work, reimbursement provisions, federal requirements, description and location of the work to be undertaken, plans and drawings, and detailed cost estimates.

(6) After the department has awarded the department project to a contractor, coordinate with the contractor to develop a detailed work plan and schedule and address other matters of mutual concern during construction. Submit to the department written acknowledgment of the approved schedule.

(7) Perform the work necessary for removal, relocation, or alteration of the utility facility in accordance with the detailed work plan and schedule developed in Subsections (4) and (6), and as described in the relocation agreement and supplemental agreements.

**R930-8-5. Timeliness.**

The work listed in Subsections R930-8-4(1) through (7) must be timely completed by the Utility so as not to delay the department project or otherwise increase costs to the project. The department will provide reasonable deadlines for the Utility, so the Utility can meet the deadlines and not unnecessarily delay the department project. The department will also provide the Utility with reasonable updates of department project schedule changes.

**R930-8-6. Relocation.**

The basic concept when relocating utility facilities is to functionally restore the Utility's operation facilities that existed before the department constructing a department project.

(1) The department incorporates by reference 23 CFR Section 645, subpart A (12/03/2021), for utility facility relocations required by department projects. For deviations in determining whether the Utility's real property needed for the department project should be handled as a utility relocation or right-of-way acquisition, Subsection R930-7-13(5) shall apply.

(2) If the Utility's regulatory and construction requirements can be met, the department may require utility companies to jointly occupy trenches for a department project. To the extent Utilities have valid agreements concerning the joint use of above-ground facilities, the utility companies shall cooperate with each other for the relocated joint use.

(3) If a Utility determines the existing utility facilities do not need to be replaced or are not needed to maintain its operational facilities, payment for the real property, which is needed to accommodate the construction of the department project where the utility facilities are located, shall be handled as a right-of-way acquisition.

**R930-8-7. Replacement of Property Rights.**

(1) When the department replaces a Utility's fee interest or easement, the Utility shall transfer title to the prior fee or easement to the department without charge.

(2) If the Utility has facilities within a fee or easement and the facilities are relocated within the department's right-of-way, the Utility shall transfer title to the fee or easement without charge to the department and the department shall reimburse the Utility 100% of the future utility relocation costs in compliance with 23 CFR Section 645, subpart A.

(3) When the Utility's facilities are located in a public utility easement as defined in Section 54-3-27, the department may purchase a replacement public utility easement and may require the Utility to relocate its facilities to the replacement public utility easement.

(4) The Utility shall pay UDOT for any betterment between the existing real property interest and the real property interest acquired for relocation.

(5) If the department obtains a court ordered occupancy or right-of-entry from a property owner, the Utility shall relocate its facilities onto the replacement property rights while the department obtains the final order or deeds from the property owner.

(6) Acquisition of Non-operating Real Property from a Utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable right-of-way procedures in 23 CFR Section 710.203.

**R930-8-8. Reimbursement of Relocation Costs.**

(1) Reimbursement for relocation costs shall be determined in accordance with 23 CFR Part 645, Subpart A, and the Program Guide, Utility Relocation and Accommodation on Federal-Aid Highway Projects, Sixth Edition, January 2003, as amended, Cost Development and Reimbursement, pages B-21 to B-29.

(2) If a Utility cannot provide a copy of a permit that shows the department's acceptance of the deviation from the rule in effect at the time of installation of the utility facilities and the utility facilities do not meet the overhead and depth of bury clearance requirements, the Utility must relocate its facilities without any reimbursement from the department. The Utility shall be responsible for 100% of its relocation costs for non-compliant utility facilities.

(3) When reimbursement is made on the basis of actual costs, the Utility's estimate and final billing shall be itemized and show the totals for labor, overhead construction costs, travel expenses, transportation, equipment, materials, and supplies, handling costs, and other services.

(4) The Utility's final billing statement shall be provided in a format that facilitates making comparisons with the department's approved estimates.

(5) A Utility must submit final billings to the department within six months following the completion of the relocation work. The department may make a final payment when the final bill is received from a Utility more than six months after the completion of the relocation work if the department and the Utility have agreed in advance that a longer time period is needed.

(6) The costs incurred by the department and a Utility for compliance with federal and state statutes, rules, and regulations will be included as part of the utility relocation costs.

(7) Temporary utility facility relocations required by the department project will be included as part of the utility relocation costs.

(8) Telecommunication utility companies granted longitudinal interstate access are required to pay any relocation costs pursuant to Section 72-7-108.

**R930-8-9. Betterments.**

No betterment credit is required for the replacement of utility devices or materials that are:

(1) Required by the department project;

(2) Of equivalent standards although not identical;

(3) Of the next highest grade or size when the existing devices or materials are no longer regularly manufactured;

(4) Required by law pursuant to governmental and appropriate regulatory commission code; or

(5) Required by current design practices regularly followed by the Utility in its own work, and there is a resulting direct benefit to the department project.

**R930-8-10. Issuance of Administrative Order; Enforcement.**

(1) If a Utility fails to timely coordinate and cooperate with the department at any point in the utility relocation process, the department may issue an administrative order pursuant to Subsection 72-6-116(2)(b) to the Utility to accommodate the department project. The administrative order shall be issued by the department's Statewide Utilities Manager and will include a reasonable timeframe for Utility Company actions to complete the relocation of the utility facilities, including any design.

(2) If the Utility fails to comply with the department's administrative order, and the failure to comply is not caused by a third party whom the Utility has no control over, the department may issue an administrative order to remedy non-compliance. The department may order any the following remedies:

(a) Recovery from the Utility for increased costs to the department caused by the Utility's unreasonable or unjustified delays. Such actual and indirect costs may include increased costs on the current department project or related projects, added expenses from loss of a construction season, and loss of project funding.

(b) Denial of further permits for utility installation under Rule R930-7 until the Utility's non-compliance is resolved.

(c) Performing design work and construction work on behalf of the Utility for those utility facilities located within the right-of-way, except for fiber for telecommunications, electricity, and natural gas. The department will only perform such work if the work can be performed without violating any state or federal statute, regulation, or safety requirement. The Utility shall reimburse the department for the costs the department incurs to relocate the Utility's facilities, in amounts allowed by Subsection 72-6-116(3).

(3) The department may also pursue additional remedies or claims against a Utility in a district court in Utah.

(4) The department may not limit or waive any of its remedies or claims allowed in this rule or law.

(5) The department may require a Utility to comply with a practicable shortened process or expedited schedule when an emergency exists that could affect public safety or the structural or functional integrity of the highway.

**R930-8-11. Agency review.**

A Utility aggrieved by an administrative order issued under Section R930-8-10 and Subsection 72-6-116(2)(b) may file a written request for agency review with the department pursuant to Title 63G, Chapter 4, Administrative Procedures Act and Rule R907-1. The presiding officer for the agency review will be the department's Director of Operations, who will issue the department's Final Order. The administrative proceedings shall be informal.

**KEY: right-of-way, utility accommodation, utility facilities, utilities**

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**Authorizing, and Implemented or Interpreted Law: 54-3-29(5)(b); 54-3-29(6); 54-3-29(7); 72-6-116(2); 72-6-116(6)**