WEST VIRGINIA CODE: §17-4-17B

§17-4-17b. Relocation of public utility lines on highway construction projects.

(a) Whenever the division reasonably determines that any public utility line or facility located upon, across, or under any portion of a state highway needs to be removed, relocated, or adjusted in order to accommodate a highway project, the division shall give to the utility reasonable notice in writing as mutually agreed, but not to exceed 18 months, directing it to begin the physical removal, relocation, or adjustment of such utility obstruction or interference at the cost of the utility, including construction inspection costs and in compliance with the rules of the division and the provisions of §29A-3-1 et seq. of this code.

(b) If the notice is in conjunction with a highway improvement project, it will be provided at the date of advertisement or award. Prior to the notice directing the physical removal, relocation, or adjustment of a utility line or facility, the utility shall adhere to the division's utility relocation procedures for public road improvements which shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set of plans for the proposed highway improvement project;

(2) The utility must within a reasonable time submit to the division a written confirmation acknowledging receipt of the plans and a declaration of whether or not its facilities are within the proposed project limits and the extent to which the facilities are in conflict with the project;

(3) If the utility is adjusting, locating, or relocating facilities or lines from or into the division's right-of-way, the utility must submit to the division plans showing existing and proposed locations of utility facilities.

(4) The utility's submission shall include with the plans a work plan demonstrating that the utility adjustment, location, or relocation will be accomplished in a manner and time frame established by the division's written procedures and instructions. The work plan shall specify the order and calendar days for removal, relocation, or adjustment of the utility from or within the project site and any staging property acquisition or other special requirements needed to complete the removal, relocation, or adjustment. The division shall approve the work plan, including any requests for compensation, submitted by a utility for a highway improvement project if it is submitted within the established schedule and does not adversely affect the letting date. The division will review the work plan to ensure compliance with the proposed improvement plans and schedule.

(c) If additional utility removal, relocation, or adjustment work is found necessary after the

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letting date of the highway improvement project, the utility shall provide a revised work plan within 30 calendar days after receipt of the division's written notification of the additional work. The utility's revised work plan shall be reviewed by the division to ensure compliance with the highway project or improvement. The division shall reimburse the utility for work performed by the utility that must be performed again as the result of a plan change on the part of the division.

(d) Should the utility fail to comply with the notice to remove, relocate, or adjust, the utility is liable to the division for direct contract damages, including costs, fees, penalties, or other contract charges, for which the division is proven to be liable to a contractor caused by the utility's failure to timely remove, relocate, or adjust, unless a written extension is granted by the division. The utility shall not be liable for any delay or other failure to comply with a notice to remove, relocate or adjust that is not solely the fault of the utility, including, but not limited to, the following:

(1) The division has not performed its obligations in accordance with the division's rules;

(2) The division has not obtained all necessary rights-of-way that affect the utility;

(3) The delay or other failure to comply by the utility is due to the division's failure to manage schedules and communicate with the utility;

(4) The division seeks to impose liability on the utility based solely upon oral communications or communications not directed to the utility's designated contact person;

(5) The division changes construction plans in any manner following the notice to remove or relocate and the change affects the utility's facilities; or

(6) Other good cause, beyond the control of and not the fault of the utility, including, but not limited to, labor disputes, unavailability of materials on a national level, act of God, or extreme weather conditions.

(e) In order to avoid construction delays and to create an efficient and effective highway program, the division may schedule program meetings with the public utility on a quarterly basis to assure that schedules are maintained.

(f) If a utility that is required by law to bear all or a portion of its own relocation costs elects to pursue a reimbursement agreement with the division pursuant to this subsection and provides the division with sufficient evidence to demonstrate that the utility is not adequately staffed, equipped, or capitalized to perform such relocation work with its own forces or contractors at a time convenient to and in coordination with the associated highway project, the division may pay for the associated relocation costs, including, but not limited to, design engineering, design review, construction, and inspection costs, out of the State Road Fund: Provided, That the utility shall reimburse the division in full for such portion of the relocation costs that it is required by law to bear within two years of the

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completion of the highway project. The division shall deduct from the utility's reimbursement amount any costs resulting from work performed as a result of plan changes made by the division. Before the division may pay any relocation costs, the division and the utility shall enter into a written reimbursement agreement containing terms that are mutually acceptable to the division and the utility seeking the reimbursement agreement.

(1) Preliminary engineering design work associated with utility relocations to be paid for by the division pursuant to a reimbursement agreement shall be completed by any of the following methods:

(A) The division's or the utility's internal forces;

(B) A consultant selected by the division if the contract is administered by the division: Provided, That the selected consultant shall be pre-approved by the utility; or

(C) Inclusion as part of the highway construction contract let by the division as agreed to by the utility: Provided, That the subcontractor performing the preliminary engineering design work associated with the relocation is pre-approved by the utility.

(2) Utility relocation construction work paid for by the division pursuant to a reimbursement agreement shall be completed by either of the following methods:

(A) A contract awarded by the division to the lowest qualified bidder based on an appropriate competitive solicitation: Provided, That the lowest qualified bidder for utility relocation construction work is pre-approved by the utility; or

(B) Inclusion as part of the highway construction contract let by the division as agreed to by the utility: Provided, That the subcontractor performing the utility relocation construction work is pre-approved by the utility.

(3) All design and construction work paid for by the division pursuant to a reimbursement agreement is subject to the reasonable inspection and acceptance of the utility, whose acceptance shall not be unreasonably withheld, and shall be performed in accordance with the specifications and standards required by the utility.

(4) All relocation work performed pursuant to a reimbursement agreement shall conform to applicable state and federal laws or regulations.

(5) The provisions of this subsection are completely voluntary and shall not be interpreted to require any utility to enter into a reimbursement agreement with the division or avail itself of the options authorized by this subsection.

(6) The division may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code and the division may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code in order to comply with this subsection.

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