



LATE UTILITY RELOCATION: TOOLS TO PREVENT AND GET PAID IF IT OCCURS

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DEATH, TAXES AND LATE UTILITY RELOCATION

1. Each of these issues *seems* to be both *inevitable* and *unpreventable*.
2. LATE UTILITY RELOCATION, along with *unmarked* and *mismarked utilities*, together are the NUMBER ONE CAUSE OF DELAY ON HIGHWAY-HEAVEY PROJECTS ACROSS THE COUNTRY.
3. See U.S. Department of Transportation, Federal Highway Administration of Infrastructure, “National Utility Review: Utility Coordination Process” Final Report FHWA A0HIF-18-039 (October 2018).



“WHY” IS THERE LATE UTILITY RELOCATION?

- In the hierarchy of life, there is God.
- Above God are **Utility Owners**.
- And above **Utility Owners**, are **Railroads**.
- As a consequence, **Utility Owners** have historically not been accountable to man's laws.

CAN ANYTHING BE DONE TO PREVENT LATE UTILITY RELOCATION? TO GET PAID WHEN LATE UTILITY RELOCATION OCCURS?

- The answer to both questions is **YES!!**
- We have successfully developed tools to **PREVENT LATE UTILITY RELOCATION.**
- We have also developed tools to **GET CONTRACTORS PAID** when **LATE UTILITY RELOCATION OCCURS.**

- Contractors can use these tools **ON THE JOBSITE** to **COOPERATIVELY PREVENT/GET PAID** for **LATE UTILITY RELOCATION**

HOW TO PREVENT LATE UTILITY RELOCATION: DESIGN PHASE

- **Educate ENGINEERS on the use of:**
 - **1. Franchise Agreements**
 - **2. Ordinances**

DESIGN PHASE

- Public owners have franchise agreements or some other similar *utility agreements*.
- These **agreements** grant utilities the ‘RIGHT’ to use the public right-of-way.
- These **agreements** also set forth ‘OBLIGATIONS.’

DESIGN PHASE

- Many cities and counties also have ordinances.
- These **ordinances** also grant utilities the 'RIGHT' to use the public right-of-way.
- These **ordinances** also set forth 'OBLIGATIONS.'

DESIGN PHASE

- Such 'OBLIGATIONS' include having to RELOCATE WITHIN A STATED PERIOD OF TIME UPON REQUEST OF THE OWNER.
- Such 'OBLIGATIONS' also include having to PAY FOR THE EXTRA CONSTRUCTION COSTS INCURRED IF THE UTILITY FAILS TO RELOCATE WHEN REQUESTED/REQUIRED.

HOW TO PREVENT LATE UTILITY RELOCATION: BUILD PHASE

- **Engineers** should:
 - 1. Make copies of these agreements/ordinances;
 - 2. Send copies of these to the utility owners;
 - 3. Request relocation as set forth in the agreements/ordinances;
 - 4. Declare that if utility owners fail to relocate when requested/required, the utility be pay for the related extra costs.

BUILD PHASE

- **Contractors** should *prior to the pre-construction meeting*:
 - 1. Request and obtain copies of franchise/easement agreements from the project engineer.
 - 2. The agreements should cover *all of the utilities noted as being within the project area*.
 - 3. Educate yourself on the utility owner's OBLIGATIONS set forth in the agreements, as well as any applicable ordinances.

BUILD PHASE

- **Contractors** should *prior to the pre-construction meeting*:
 - 1. Review these OBLIGATIONS with the project engineer.
 - 2. Determine ‘when’ you want the utilities relocated, and tell the engineer.
 - 3. Get the engineer to agree to request such relocation *pursuant to the franchise/utility agreements/ordinances at the pre-construction meeting*.

BUILD PHASE

- **Contractors** should *at the pre-construction meeting*:
 - 1. Ensure that ALL UTILITY OWNERS *who may have utilities within the project area* are in attendance.
 - 2. Ensure that the project engineer requests utility relocation per the applicable franchise/easement/utility agreements/ordinances.
 - 3. Ensure that ALL UTILITY OWNERS respond re: whether they will relocate when requested.
 - 4. For any UTILITY OWNERS who will *not*, have engineer read applicable language from agreements/ordinances re: *financial consequences for late utility relocation*.

BUILD PHASE

- **Contractors** should *after the pre-construction meeting*:
 1. Confirm that meeting minutes reflect the communications re: utility relocation.
 2. Confirm that engineer sends meeting minutes to all UTILITY OWNERS, including those who did not attend.

HOW TO GET PAID FOR LATE UTILITY RELOCATION: BUILD PHASE

- If you experience LATE UTILITY RELOCATION, you need to determine and use all applicable sources for PAYMENT (whether from the project owner and/or the UTILITY OWNER). Sources may include:
 1. Contract Provisions
 2. Regulations
 3. Statutes
 4. Utility Agreements
 5. Ordinances

GET PAID

1. If you have an *applicable contract provision, regulation or statute*, DO WHAT IT PROCEDURALLY REQUIRES TO GET PAID.
2. If you do NOT have either of the above, you should contact an attorney to research applicable law for **NEGLIGENCE CLAIM AGAINST UTILITY OWNER**.
3. Most, if not all states, should have law which provides that a *breach of a duty established by ordinance or some other source (e.g. franchise agreement)* may require the delinquent UTILITY OWNER to pay.

GET PAID

If you do NOT HAVE A CONTRACTUAL, REGULATORY AND/OR STATUTORY RIGHT TO PAYMENT FOR **LATE UTILITY RELOCATION**, you should have an attorney:

- » PREPARE A DEMAND LETTER TO SEND TO THE UTILITY COMPANY
- » YOUR FOCUS CAN AND SHOULD BE TO USE THIS TO *COOPERATIVELY RESOLVE THE ISSUE ON THE JOBSITE, NOT THE COURT ROOM.*
- » WE KNOW FROM *SUCCESSFUL EXPERIENCE* THAT YOU CAN ACCOMPLISH THIS.

CONCLUSION

- **LATE UTILITY RELOCATION** is a problem that regularly plagues construction projects.
- And, there are tools which both **contractors** and **engineers** can/should use to *minimize this problem*.
- And, if **LATE UTILITY RELOCATION** cannot be prevented, there are tools to *get paid for this problem*.

QUESTIONS?



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