CHAPTER 10

RAILROADS
AND
UTILITIES

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NOTE: This Chapter has associated appendices and forms that can be found on our website at: www.dot.ny.gov/plafap

10.1 INTRODUCTION

This chapter is intended to guide Sponsors of locally administered federal aid transportation projects involving railroads and/or utilities.

10.2 RAILROAD INVOLVEMENT

During the Project Initiation phase the Sponsor must determine if the scope of the project will require a railroad to participate in the design and/or construction of the project. Title 23 CFR 646[1] defines railroads as:

> "...all rail carriers, publicly-owned, private, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads and passenger carrying railroads such as rapid transit, commuter and street railroads."

Railroad companies operating in New York State effectively own and/or control the access to the rights-of-way on which their tracks are located. Therefore, they have the right to review plans for projects which may impact their property, facilities or operations. The railroads must consent to survey crews, consultant employees, or contractors entering the right-of-way during all phases of a project. Federal and State laws, rules and regulations govern many aspects of the project process regarding interactions between the Sponsors and the railroad companies or agencies. The rules pertain to funding projects with federal aid while protecting the proprietary rights of a railroad throughout the duration of a project.

A list of Railroad contacts is contained in Appendix 10.4.

10.2.1 Project Insurance

The FHWA participates in various types of projects which can affect railroad property in different manners; however, the issue of insurance is common to all projects involving a railroad. Sub-part A of 23 CFR 646 explains FHWA's rules regarding Sponsor reimbursement for the contractors' insurance premiums. When the contractor must work on or near the railroad's right-of-way, insurance protects the contractor and the railroad against liability claims or damages related to project operations. The same rule applies to subcontractors on the site. The FHWA requires the contractor to give evidence to NYSDOT, the Sponsor, and the railroad showing the required coverages are in effect.

Title 23 CFR 646.107, 646.109 and 646.111 explain FHWA rules governing Railroad Protective Liability insurance. Similar to the liability and property damage coverage required above, the contractor must provide the railroad with protective liability insurance. The insurance protects the railroad against injuries suffered by railroad employees or passengers. It also protects the railroad's customers against damage to their property caused by the contractor's operations or negligence. Finally, it protects the contractor against injury to its employees resultant from railroad employee operations or negligence. At present, FHWA rules allow reimbursement of the premium cost of this insurance up to the amount charged to provide coverage of $2 million per occurrence up to a maximum yearly total of $6 million. In circumstances where the Sponsor can show extraordinary danger and risks, the Sponsor may be reimbursed with federal aid for premium costs for additional coverage.

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[1] http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm

A copy of the Certificate of Insurance (see Appendix 10-3) is to be submitted to the Engineer-in-Charge and each affected railroad.

10.2.2 Allocating Project Costs

Title 23 CFR Sub-part B, starting with Section 646.200 includes FHWA definitions used to decide which railroad construction costs, incurred as part of a highway project, are reimbursable to the Sponsor and explains procedures used to calculate the reimbursements. Title 23 CFR 646.212(a) states "Federal funds are not eligible to participate in costs incurred solely for the benefit of the railroad."

This sub-part focuses on federal aid transportation projects where the scope includes highway and railroad crossings at-grade or where grade-separation structures exist. Railroads are usually exempt from participating in the cost of Federal aid grade-crossing projects which only maintain or repair the existing crossing and render "...no ascertainable net benefit..." to the railroad [23 CFR 646.210(b) (1)]. The exception to this rule is where the railroad has a specific, contractual obligation to a state or local authority to pay a share of the project costs. Finally, if the Sponsor receives Federal aid, FHWA rules exempt railroads from State laws requiring railroads to contribute toward the costs of projects designed to eliminate crossing hazards.

When the project involves elimination of an at-grade crossing, Title 23 CFR 646.210 assigns a share of project costs to the railroad. Railroads must pay at least 5 percent of "...preliminary engineering, right-of-way [acquisition] and construction" costs of projects designed to eliminate an at-grade crossing protected by active warning devices, or where the railroad would be mandated to install the devices. If the project provides for a new structure to separate the grades, FHWA requires the railroad to pay 5 percent. Similarly, on a project designed to eliminate an at-grade crossing through the relocation of the highway or railroad, the railroad must provide at least 5 percent. These cost shares are in accordance with the FHWA formula. Title 23 CFR 646.212 and the Appendix to Sub-part B of Section 646 specify the components of the formula and the methods used to compute both the railroad share and the Federal contribution. The railroad may volunteer to pay more than a 5 percent share. Finally, "...other parties may voluntarily assume the railroad's share" or make their own contributions toward the costs.

10.2.3 Design

When the Sponsor progresses preliminary and detailed design phases of any project affecting a railroad, the following standards, laws and policies must be considered to assure conformity with railroad design criteria:

- American Railway Engineering Association and Maintenance-of-Way Association's Manual for Railway Engineering.
- The Railroad's own standards and specifications.
- FHWA Federal Aid Policy Guide.
- Federal Railroad Administration (FRA) Rules and Regulations.
- New York State Railroad Law.
- NYSDOT Railroad Highway Grade Crossing Handbook.
- NYSDOT Railroad Grade Crossing policies.
- NYS General Municipal Law.
- NYS Highway Law.
- NYSDOT Standard Specifications.

Title 23 CFR 646.214 addresses the issue of the design standards for Federal aid railroad-related projects. The regulation requires facilities usually maintained and operated by the railroad to be designed in conformity with the railroad's standards and specifications. Sponsors or the project designer should have the railroad's design criteria available before progressing to the final design phase. The design is subject to approval by NYSDOT, acting on behalf of FHWA.

Sponsors should be aware the USDOT and NYSDOT have adopted policies intended to eliminate at-grade crossings. The policies focus especially on the railroads' principal lines and lines carrying inter-city passengers.

As part of the design process, it may be necessary for the Sponsor or the Sponsor's consultant to send employees onto the railroad's property to complete certain engineering-related tasks. These may include soils investigation; survey and mapping; hazardous waste assessment; and evaluation of the potential effects of the project on the railroad property, facilities and operations. Each railroad has different requirements for allowing non-railroad employees on the right-of-way. Some require a flagging person to accompany visitors, and charge the cost to the visitors' employer (Sponsor) via a Right-of-Entry Permit. The Sponsor or consultant should make arrangements with the railroad prior to entering the railroad's property. It should be noted, some railroads require safety training for all individuals entering on to their right of way.

The railroads have the right to review and approve plans for project work which will impact their facilities and/or operations. As early as possible in the design process, a railroad must be advised of a project which potentially affects their operations or facilities. NYSDOT practice affords the railroads a minimum of sixty (60) days for a railroad to review plans and return comments, although it is not uncommon that railroads require more time. Some railroads have internal review processes requiring more than two sets of plans. The Sponsor should be prepared to provide multiple copies of the project plans and specifications to the affected railroad according to each railroad's process.

Design features of particular interest to the railroads include:

- Vertical and horizontal clearances during and after construction.
- Changes in patterns of draining highway runoff.
- Excavation in proximity to track structure or bridge footings.
- Deck work on highway bridges over tracks.
- Location of underground utilities within their right-of-way.
- Location of project staging areas.
- Contractors' access to project sites.
- Project schedules.
- Maintenance and protection of traffic.
- Proximity of demolition/blasting to tracks or facilities.
- Temporary at-grade crossing(s).
- Restoring railroad facilities after construction.
- Location/protection of bridge abutments and piers.
- Changes to existing at-grade crossings.

Design of traffic control devices for projects intending to improve at-grade crossings must conform to the latest edition of the *National Manual on Uniform Traffic Control Devices* and, to the extent required by State law, the *New York State Supplement*. In addition, federally-aided projects containing at-grade crossings which meet **any** of the following conditions **must** have active warning

devices consisting of automatic flashing lights and gates:

- Multiple mainline railroad tracks.
- Multiple tracks where the presence of a train or locomotive may restrict the motorist's vision and obscure the movement of another train or locomotive.
- A single track with limited sight distance and used by high speed trains.
- A track where vehicles operate at high speeds and there is a high volume of both trains and automobiles.
- Sites exhibiting special concerns such as:
    - Frequent or severe accidents.
    - Numerous school buses use the crossing.
    - When a diagnostic team recommends installing gates and flashers.

While the design phase is underway, the Sponsor or the design consultant should prepare special notes to include in the contract bid documents (see Appendices 10-2.1 through 10-2.4 for samples). The notes should tell prospective bidders the following:

- A railroad will be involved with the project.
- The contractor will be required to provide Railroad Protective Liability Insurance.
  an agreement between the Sponsor and the railroad must be in effect before the contractor will be allowed on railroad property.
- The contractor will have to coordinate construction activities with the railroad's project activities and routine operations.

NYSDOT routinely includes such notes in its contract bid documents. Several railroads have negotiated language with NYSDOT exclusively referencing their properties. Sponsors are advised to contact NYSDOT's RLPL to obtain a copy of the notes for each railroad affected by the Sponsor's project. Other notes detailing railroad standards and specifications relative to the design issues listed above may also need to be included with the contract bid documents. The RLPL will contact the Main Office Rail agreement unit for updated notes.

10.2.4 Rail Agreement Procedures

FHWA rules allow Sponsors to be reimbursed for costs incurred by a railroad to provide preliminary design engineering and construction engineering services for a federally-funded project. According to 23 CFR 646.216, the Sponsor and the railroad must have a written agreement which calls for the railroad to provide design and/or construction-related engineering services. The Sponsor and railroad may agree that the services will be provided by one of five methods:

1) The railroad may request the Sponsor use the Sponsor's engineers,
2) The railroad may utilize its own in-house engineers,
3) The Sponsor may hire, after consulting with the railroad, a consulting engineering firm,
4) The railroad may hire, with approval from the Sponsor, a consulting engineering firm, or
5) The railroad may assign the work to a consulting engineer under the terms of a current written contract if the work is of the same nature regularly performed by the consultant for the railroad under the contract and the firm charges reasonable rates.

In all cases, the Sponsor and the railroad have the right to review and approve the plans generated by the design engineer. NYSDOT has the right to review and approve of the process used to hire a consulting engineer for the project (see Chapter 6). Federal funds may be used to reimburse expenditures for engineering services provided by the railroad as long as the amounts being

reimbursed are not derived as a percentage of the construction costs. Preliminary engineering costs are reimbursable under the terms of a negotiated agreement between the Sponsor and the railroad, with NYSDOT giving approval in lieu of FHWA's review. The Railroad - Sponsor Agreement should be in place before the railroad begins to incur costs.

As noted above, the FHWA requires a written agreement to be executed between the project Sponsor and the railroad. NYSDOT must approve the agreement in order for the Sponsor to be eligible for Federal reimbursements, but NYSDOT may forego the requirement in certain extraordinary circumstances. The written agreement may take one of three forms:

1) A Railroad-Sponsor Agreement pertaining to a single, specific project (see agreement in Appendix 10-1);
2) A Railroad-Sponsor Agreement between the Sponsor and the railroad to which one or more project-specific work schedule(s) may be appended; or
3) An official order, issued by a regulatory agency, to which a supplementary document listing project specifications is added.

In each case, however, the written Railroad Sponsor Agreement must include a minimum of the following specific items as listed in 23 CFR 646.216 (d):

- Specific reference to the incorporation of the provisions of 23 CFR 140[2] and 23 CFR 646,
- A detailed statement of the work to be performed by each party,
- Method of payment (either actual cost or lump sum),
- For projects which are not for the elimination of hazards of railroad-highway crossings, the
- extent to which the railroad is obligated to move or adjust its facilities at its own expense,
- The railroad's share of the project cost,
- An itemized estimate of the cost of the work to be performed by the railroad,
- Method to be used for performing the work, either by railroad forces or by contract,
- Maintenance responsibility,
- Form, duration and amounts of any needed insurance,
- Appropriate reference to or identification of plans and specifications,
- Statements defining the conditions under which the railroad will provide or require protective
- services during performance of the work, the type of protective services, and the method of reimbursement to the railroad, and provisions regarding inspection of any recovered materials.

The length of time required to produce a fully executed agreement varies, and the RLPL will, on the Sponsor's behalf, consult with the Rail Agreement Unit of the NYSDOT Design Quality Assurance Bureau (DQAB) with any questions regarding agreement requirements on specific projects.

The Sponsor and NYSDOT must be given an opportunity to inspect recovered material before the railroad may dispose of it. The railroad's costs to provide and handle materials currently in the railroad's stores are reimbursable. Title 23 CFR Part 140.900 through Part 140.922 provide details of the costs and procedures NYSDOT will follow to reimburse the Sponsor for costs incurred according to the eligibility rules described above. Title 23 CFR 140.922 allows for the railroad's project-related "cost records and accounts" to be audited by the State or Federal government for a

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2 http://www.access.gpo.gov/nara/cfr/waisidx_03/23cfr140_03.html

three-year period after the railroad has received final payment.

Other issues which must be resolved by the Railroad Sponsor Agreement include:
- Providing the contractor with a right to enter onto the railroad's property.
- Protecting property rights on easements granted by the railroad to other corporate or public entities.
- Temporary crossings either to be used by the contractor for access to the site or to provide a public detour.
- Maintaining temporary railroad facilities necessitated by the project.
- Restoring the railroad's permanent track structure or facilities when the project is complete.

A lump sum contract may be executed to reimburse the railroad for its work.

Acting under authority delegated by the FHWA, NYSDOT must approve both the written Railroad – Sponsor Agreement between the railroad and the Sponsor, and also the plans, specifications and estimates of the work to be completed relative to the railroad's property.

It must be determined if project falls under the New York State Railroad Law which may require an administrative hearing. Sections 89 through 99 of the law address procedures to be followed before work commences to build, alter or rehabilitate highway-railroad crossings (at-grade or grade-separated). If required, NYSDOT's Commissioner will schedule a public administrative hearing before an Administrative Law Judge for the affected parties to present their positions on the proposed crossing work. After receiving the Administrative Law Judge's recommendation, the Commissioner issues an order determining what alterations or changes, if any, will be made at the crossing. The Commissioner's decision is appealable in the State's courts.

Title 23 CFR 646.216(f) specifies four methods by which the actual physical construction of the railroad work may be accomplished <u>by the railroad</u>:

1) Railroad force account (whereby the RR utilizes its own employees to perform all tasks),
2) Contracting with the lowest qualified bidder based on appropriate solicitation,
3) Existing continuing contracts at reasonable costs, or
4) Contract without competitive bidding, for minor work, at reasonable costs.

A combination of two or more of the four methods may also be used.

As an alternate, the railroad work could be performed <u>by the Sponsor's contractor</u> by including appropriate pay items in the construction contract. This method would require the railroad's concurrence.

Title 23 CFR 646.218 and 23 CFR 646.220 describes simplified procedures which States may use for expediting projects to improve grade crossings. Title 23 CFR 646.218 stipulates that only grade-crossing projects which can be designed and built within two years of initial authorization may be progressed under this simplified process. Certain types of highway-railroad projects, except those involving Interstate highways, may be progressed under 23 CFR 646.220 wherein the State has been authorized by FHWA to act on their behalf. Both of these simplified procedures are restricted to grade crossing improvements and are not typically used on highway projects crossing railroads. For more information on use of these procedures, contract the RLPL.

10.3 UTILITY INVOLVEMENT

As noted in previous chapters, during the Project Initiation phase the Sponsor must coordinate with the various utility companies to decide if the scope of the project will require a utility company to participate in the design and/or construction of the project. In Title 23 CFR 645.105 the FHWA defines a utility as:

> "A privately, publicly or cooperatively-owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public. The term utility shall also mean the utility company including any wholly owned or controlled subsidiary."

For federal aid transportation projects, all utility relocations, adjustments, reimbursement and accommodations are subject to 23 CFR 645[3]. NYSDOT has been approved to act on behalf of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related utility matters as per 23 CFR 645.119 *Alternate Procedures*.

Additionally, NYS Highway Law[4] Section 81 stipulates all provisions of the Highway Law dealing with utilities are applicable to locally administered federal aid transportation projects. This means that State Highway Law, Sections 10(24), 10(24-b) and 52, Title 17 NYCRR Part 131 *Accommodation of Utilities within State Highway Right-of-Way* and the Utility Reimbursement Procedure contained in Chapter 13, Appendix G of NYSDOT's Highway Design Manual, as well as other procedures used by NYSDOT for their projects, except as modified herein, also apply.

10.3.1 Allocating Project Costs

The FHWA has identified activities eligible for reimbursement related to altering utility facilities within the boundaries of a highway project per 23 CFR 645. However, as per 23 CFR 645.103 (d), State Highway Law governs in cases when it is more restrictive than federal law.

In general, for these federal aid projects only three sections of Highway Law will be applicable: Section 52, and Section 10 (24) and (24-b). Section 81 of the Highway Law Section 81 makes these provisions applicable to locally administered, federal aid transportation projects.

Section 52 – For utilities who are Transportation Corporations or acting as Transportation Corporations (i.e. non-municipal electric, water, gas, and telephone) located on the highway right-of-way, as interpreted, this section places the sole responsibility of any relocation costs on the utilities.

Section 10, Subdivision 24 – This section enables the Commissioner of Transportation (or in this instance, by virtue of Section 81 of the Highway Law, the Sponsor) to provide, using construction funds, for the expense of adjusting municipally owned utilities when such work is necessary as a result of the highway work.

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3 http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm

4 http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@SLHAY0A3+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=26708135+&TARGET=VIEW

Section 10, Subdivision 24-b – As interpreted by NYSDOT, authorizes reimbursement (using construction funds) for the removal, relocation, replacement or reconstruction of privately, publicly, cooperatively owned utility facilities or facilities of a transportation corporation located on private property.

Utility Betterments as defined either in Federal or State regulations are not eligible for reimbursement. The New York State Highway Law Section 10 (27) and 10(33) allow a utility betterment to be included as part of the construction contract, the betterment must be fully funded by the utility under a separate agreement with the Sponsor and not included in any federal aid request for payment.

A simplified summary of the applicable laws would be: municipally owned utilities are eligible for reimbursement whether on highway right-of-way or private property and non-municipally owned utilities (transportation corporations or private) would only be eligible when on private right-of-way.

10.3.2 Planning

To avoid unnecessary delays and costs in the physical construction of a highway project, it is essential that full consideration be given at the earliest practicable date to the problems involved in right-of-way clearance and utility adjustments, and as feasible and economical, the work involved in such clearance and adjustments actually be accomplished before the physical construction work is undertaken. Recognition must be given to the fact that if utility owners are to complete the adjustments of their facilities by the time desired, they must have ample opportunity and time to design the adjustments, budget the costs, procure the necessary materials and supplies, fit the work into operating schedules, assemble the required crews and equipment, and perform the work.

As soon as the highway location and design have advanced sufficiently to the point where the necessary right-of-way clearance and utility adjustment work becomes apparent, the Sponsor should initiate joint studies, including on-site investigations, to estimate the costs and assess potential difficulties associated with the current design. At this point, design revisions should be considered, as appropriate, to reduce such costs and difficulties. There should be participation in these studies by representatives of all affected government agencies and utility owners. When several utilities are involved, as in urban areas, it will be desirable to have representatives of all owners present at the same conferences in order that their plans for proposed adjustments can be properly coordinated, and consideration be given, where feasible, to the joint use of certain facilities such as pole lines or utility tunnels or conducts. As a result of these studies, determinations should be made as to the nature and extent of the work to be completed, the responsibility for its performance, and the general distribution of the costs. Agreement should also be reached regarding the timing of the utility work in order to avoid scheduling conflicts with the construction of the transportation facility.

To be eligible for reimbursement, Utility Relocation Costs (including Preliminary Engineering) may not be incurred prior to receiving written consent from the Design Support Section of DQAB. Eligible construction costs shall not be incurred prior to the date on which RLPL authorizes the Sponsor to proceed with the work. Any work performed without this approval will be deemed ineligible.

10.3.3 Estimates

The owner of the facility eligible for reimbursement shall prepare the following data, which shall be submitted to the Sponsor as promptly as possible:

- A plan and cross sections and/or profile of the present and proposed facilities within the

affected area.

- A detailed estimate of the cost to cover all work to be performed. This estimate must be broken down separately by temporary and permanent work. Salvage credit must also be separated in the same manner. All additions and betterments must be clearly identified.

The RLPL will accept any of the following forms of estimates:

- A detailed estimate showing quantities and unit prices of materials, hours and rates of labor; plus hours, rates and descriptions of equipment used; together with all overhead, allowances, etc.
- The actual original cost of the portion involved, adjusted by the application of the appropriate cost index variations.
- An estimate based upon composite unit prices derived from average annual costs of the individual components involved in the replacement.

In preparing the estimate, the owner should consider those costs and credits defined more fully in this chapter under *Billing for Reimbursement*. An average percentage to cover the incidental overhead cost may be added. The bills, however, must show all details of overhead on an actual cost basis.

10.3.4 Utility Inventories, Coordination Schedules, and Agreements

10.3.4.1 Utility Inventory Report

This report, prepared by the Sponsor during design for submission to the RLPL, shows the status of all utility relocations. Instructions and a sample copy of this report are provided in Appendix 10-5.

10.3.4.2 Coordination with the Utility Schedule

The objective is to establish with the utility owners reasonable time schedules for relocating their facilities, thereby avoiding any delay to the progress of the federally-aided transportation project. It is important that, working together, the Sponsor and utilities identify as early as possible the facilities to be removed, relocated or replaced so these time schedules can be included in the contract documents prior to bidding.

After identifying utility facilities affected, and discussing time schedules with the utility owners, a *Coordination with Utility Schedule* needs to be prepared (see Appendix 10-6). This schedule must be included with all *Utility Work Agreements* and made part of the construction contract documentation. It should be noted, in some instances, the contractor may need to complete certain work (layout, clearing and grubbing, etc.) before the utility companies can begin their relocation work.

Authority to require a utility owner to comply with such time schedules is found in Section 11-102 of the General Obligation Law[5], Section 11-102.

[5] http://public.leginfo.state.ny.us/LAWSSEAF.cgi?+&QUERYDATA=general%20obligation%20law+&SEARCH=SEA+&BROWSER=EXPLORER+&TOKEN=26708135&TARGET=VIEW

10.3.4.3 Utility Work Agreements

A *Utility Work Agreement* is required for all affected utilities and must be forwarded to the RLPL. The purpose of this agreement is to fully document, prior to the project letting, all information relating to utility relocation necessary for the transportation project. Any agreements containing reimbursable relocations must be approved and signed by the Design Support Section of DQAB (see Appendix 10-8).

When all efforts by the Sponsor and the utility fail to bring about a fully executed Utility Work Agreement, the Sponsor may submit its proposal and a full report of the circumstances to the RLPL who will, in turn, submit to FHWA. Conditional authorizations for the relocation work to proceed may be given by FHWA to the RLPL/Sponsor with the understanding that federal funds will not be paid for work done by the utility until the Sponsor's proposal has been approved by FHWA. Further, if the contract is awarded without an executed Utility Work Agreement, any additional costs associated with delay in the project as a result of utility coordination work will not be eligible for Federal Aid.

Reimbursement can be accomplished by incorporating utility work into the transportation project or by direct payment to the utility for work performed. If direct payments are to be made then either a *Municipal Utility Agreement* or an *Agreement to Provide Compensation for the Removal, Relocation, Replacement or Reconstruction of Utility Facilities and Appurtenances Located on privately Owned Property* will be required (see Appendix 10-11).

10.3.4.4 Municipal Agreements

When the project necessitates relocation of a municipally owned facility, reimbursement of such work is covered under an agreement in connection with cost of relocating municipally owned facilities maintained for public use (Appendix 10-9). These agreements cover the total estimated cost of the utility work (for permanent and temporary installations). If abandoned conduit is left in place, this should be noted in the agreement and in the as-built plans.

Utility work covered by a municipal agreement shall not commence until the agreement has been approved by the Sponsor and utility owner and a copy forwarded to the RLPL.

If it later appears the amount of funds allocated in the municipal agreement will not sufficiently cover completion of the utility work, a supplemental agreement (Appendix 10-10) shall be prepared and processed in the same manner as the original. After completion of the work, and upon agreement of the final billing, the municipality will be required to sign a *General Release (Appendix 10-13 and 10-14)* as described in the municipal agreement.

10.3.4.5 Agreement to Provide Compensation for Utilities Located on Private Property

Private property situated utilities requiring relocation or adjustment as a result of the transportation project are eligible for reimbursement. After completion of the work and upon agreement of the final billing, the utility will be required to sign a release (as described in the agreement). (See Appendix 10-11).

10.3.4.6 Notice to Utilities

As previously stated, the authority to require a utility owner to comply with time schedules for relocations and adjustments is found in the General Obligations Law, Section 11-102. To ensure

compliance and to avoid any possible confusion, the Sponsor needs to provide proper notice to the utilities as to when the project will be let and awarded, which should include the tasks and time schedules contained in the *Coordination with Utility Schedule*. It is recommended that the Sponsor adopt procedures similar to the NYSDOT's as outlined in Chapter 13 Utilities of the NYS Highway Design Manual.

10.3.4.7 Reestablishing Utility Service Connections

Utility service connections (i.e., from a utility distribution or feeder line or main to the premises served) are defined in 17 NYCRR 131.5. Only under the following conditions will the Sponsor be obligated to pay (and will get reimbursed) for utility service reconnections:

- The work is paid for as a contract item.
- The property owner does not have the work performed by others.
- The work is limited to similar replacement only.
- The relocation is necessary as a result of the transportation project.
- The property owner (and not the utility) would normally be responsible for such costs.

The Sponsor shall obtain appropriate releases from all affected property owners.

10.3.5 Supervision, Inspection and Field Records

Relocation or adjustment of utilities may be performed by utility forces, by a contract let by the utility, or by a contract let by the Sponsor.

The field work shall be under the direct supervision of the utility's representative and all records shall be kept in accordance with the established practices of the utility consistent with the approved CMP.

When the work is included in the construction contract, inspection and documentation of such work is to be completed by the Sponsor or designee.

10.3.5.1 Force Account Work – Municipal Utilities (Including Districts & Authorities) and Non-Municipal Utilities

According to NYS Highway Law, Section 10, (24) and (24-b), the relocation or adjustment of utilities owned by municipalities, district authorities, etc., necessitated by a Federal aid transportation project is reimbursable. This work may be performed by utility forces or a contract let by the utility or by the transportation project contractor.

For non-municipal utilities reimbursement is normally not allowed except when the facilities are located on private property.

When the work is included in the transportation project contract, inspection and documentation of such work is to be handled in the same manner as any other contract item.

When the utility work is performed by utility forces or by a contract let by the utility, the Engineer-in-Charge (EIC) shall inspect the work to the extent necessary to insure the work is being performed in acceptable conformance with the approved plans and specifications. This should not normally require constant surveillance of the work in progress; to the contrary, it is expected that the EIC will exercise prudent judgment in determining both the frequency and duration of the inspection which may be required for each specific instance.

In the case of reimbursable utility work, the EIC shall record, where applicable, information on labor, materials, and equipment in sufficient detail to check and verify the reasonableness of the final utility bills. In addition, the EIC should record in the project diary the first day of work, each succeeding day of work, the completion date, and information relating to special problems or unusual developments such as weather conditions, social conditions, labor strikes, plan changes, etc. which could affect the prosecution and/or cost of work. Information relative to retired materials and their disposition (i.e., abandoned, salvaged, junked) should also be noted. Inadequate Documentation by the EIC of adequate information to substantiate charges in the final bill is required.

The EIC shall record, by survey notes and/or sketches, the location and description of utilities installed or relocated within the right-of-way, regardless of whether or not reimbursement is involved.

10.3.5.2 Billing for Reimbursement

All estimates and bills submitted by each utility to show actual or estimated (as appropriate) costs for the following general categories of work:

- Preliminary Engineering.
- Removal of existing facilities.
- Installation of temporary facilities.
- Removal of temporary facilities.
- Installation of new permanent facilities.
- Expenses incurred for rights-of-way.

Separate supporting billing schedules should be used for each of the above types of work.

10.3.5.3 Summary Sheet

When the supporting billing schedules showing the separate costs for the six general categories of work have been completed, the information provided must be consolidated on a billing Summary Sheet. The total net cost as shown on the Summary Sheet will be the actual cost of the project. When used for billing, certifications must appear on the Summary Sheet and in every instance, executed by the authorized officials. In the event there are substantial variations between the estimate and the actual bill, an explanation must accompany the bill or be explained thereon.

10.3.5.4 Labor Statement

Each class of labor must be billed separately, preferably at actual payroll rates. Reasonable composite rates, based upon actual rate, including various allowances, taxes, benefits, insurance, etc., paid by the utility owner, will be accepted if such billing is in accordance with the utility's established practice for company work. A sample breakdown of these various allowances may be required. A rate representative of the actual cost of construction overhead, such as general supervisory, engineering, office, salaries and expenses applicable to the project, will be reimbursed.

10.3.5.5 Professional Service - Attorneys

Reimbursement will not be made for incidental legal services rendered by regularly employed attorneys or attorneys serving under an annual retainer.

In the event that it is necessary to secure the services of an attorney to perform necessary work in connection with facility changes covered herein, RLPL shall first be advised of this fact in writing.

The extent of the work to be performed shall be outlined, and the expenditures involved stated. RLPL's written approval shall be obtained before any commitment is made. These costs need to be part of the approved agreement **before** costs are incurred to be eligible for reimbursement.

10.3.5.6 Professional Service - Engineers

The utility owner, if a private corporation, will be reimbursed for all direct engineering costs. Incidental engineering costs will be covered by the actual overhead rate.

The salary of engineers regularly employed by a municipality will be reimbursed on the basis of time actually expended on the project (at payroll rates plus necessary expenses actually incurred).

In the event the utility owner does not have a qualified engineer on staff, the same procedure as required for attorneys will apply. Reimbursement for such engineering services will be in accordance with standards approved by NYSDOT (See Chapter 6). These costs need to be part of the approved agreement **before** costs are incurred to be eligible for reimbursement.

10.3.5.7 Materials from Owner's Stores

New material from stock must be charged at the actual cost to the utility. The computation of costs shall include the deduction of all offered discounts and allowances. Used material shall be billed at the value at which carried on the utility's books.

10.3.5.8 Equipment Charges

Charges for use of a utility's equipment must be billed at rates used in computing costs of company work. Average annual or monthly rates will be accepted if standard practice of the owner is based upon the use of such averages. Billings from maintenance, repairs or parts will not be accepted. If oil and fuel are not included in the rates used, the actual amount used should be billed at actual cost.

Equipment rental will be allowed only for the time the equipment is actually and necessarily held on the job, plus time in transit from its regularly assigned base.

Municipally owned equipment may be charged at actual rental rates or at the rates shown in the current equipment rental schedule issued on NYSDOT[6] website. Equipment rented by the municipality will be reimbursed at the actual rental rate charged to the municipality by the vendor.

The cost of transporting utility employees to and from the project site will be reimbursed on the basis of the utility's accepted practice.

10.3.5.9 Contract Payments and Direct Purchases for All Projects

The requirements of NYSDOT's *Highway Design Manual Chapter 13 and Appendix 13G of the Highway Design Manual* should be observed in the award of contracts. See Chapter 13 on Contract Requirements.

Materials charged, if acquired by direct purchase, must be covered by itemized bills.

6 Equipment Rental

Competitive bids must be taken if the utility owner purchases any class or kind of material at a cost exceeding $5,000.

In billing for materials purchased in this manner the utility must submit duplicate originals or photocopies of the following:

- Invitations to at least five responsible vendors or manufacturers of the material required.
- The proposal or declinations resulting from these invitations.
- Tabulation of bids.
- Copy of order to low bidder.
- Itemized bill for materials so purchased.

Municipalities must furnish receipted vouchers or bills. All amounts billed should be net after all discounts.

Premiums paid to an insurance carrier for worker's compensation, Public Liability, and Property Damage Insurance are reimbursable. Where the utility's policy is to self-insure, reimbursement will be at the rate developed by the utility or in lieu thereof at one percent of the salaries and wages charged to the job.

Interest charges which may have accrued in financing changes to facilities will not be reimbursed.

10.3.5.10 Material Retired and Salvaged

For all salvageable materials recovered from facilities replaced and from temporary facilities a reasonable salvage credit consistent with the utility's practice of determining salvage value shall be given.

If a project involves substantial retirements, the value of the salvage before removal must, if possible, be determined jointly by a representative of the utility and the Sponsor.

The cost of loading salvaged material, together with the cost of transportation thereof to the utility's storehouse, plus the cost of unloading, shall constitute the complete accounting of expenses connected therewith. The cost of salvage shall not exceed the value of the material salvaged.

10.3.5.11 Betterments

Credit will be required for the cost of any betterment to the utility facility being replaced or adjusted, except if the additions or improvements are:

- Required by the transportation project,
- Replacement devices or materials which are of equivalent standards although not identical,
- Replacement devices or materials no longer regularly manufactured, with next highest grade or size,
- Required by law under governmental and appropriate regulatory commission code.

10.3.5.12 Depreciation

Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or other

similar operation unit. Such accrued depreciation is the amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

Depreciation credits for a segment of the utility's service, distribution, or transmission lines shall not be required if both of the following requirements are met:

- Not a public service facility which would mean not governed by a public regulatory commission such as Public Service Commission, International Code Council, Federal Communications Commission, etc.; and
- The service life of the line relocated has not been extended, i.e. the replacement is not expected to continue in operation for a longer period than the sections to which it is connected.

In order to qualify for exemption from the basic requirements for a depreciation credit, the utility involved must furnish a detailed statement explaining the basis for claiming exemption.

10.4 REFERENCES

23 CFR 140
23 CFR 645
23 CFR 646
General Municipal Law
General Obligations Law
NYSDOT Highway Design Manual Chapter 13 Utilities and Appendix 13G
NYSDOT Standard Specifications, Construction and Material Publication (Section 105-09)
NYSDOT Utility Reimbursement Procedure Manual
New York State Insurance Law (Section 117)
NYS Highway Law Section 52
NYS Highway Law Section 10, (24) and (24-b)
NYS Highway Law, Section 81
NYS Railroad Law, Sections 89-99
17 NYCRR Part 131
US Department of Transportation Federal Aid Policy Guide
Workmen's Compensation Law