

## **Work Done By Utilities and Railroads**

Utilities and railroads often must adjust or relocate some of their facilities to allow ODOT to construct a project. Also, the railroads often require ODOT to reimburse them for costs they incur for protective services, such as flagging, while the ODOT Contractor is working on, over, or adjacent to railroad property or facilities.

The need for adjustment or relocation of utilities or railroad protection services should be identified during project development. The Region Utility Specialist or the Railroad & Utility Engineer will work with the utility or railroad to identify and schedule the needed work, as well as preparing the agreement for the work. The Project Manager may be involved at that time in locating planned contract work or identifying potential conflicts.

### Relocation or Adjustment of Utilities or Railroad Facilities

The utilities must generally bear the costs of relocation or adjustment work that is done within existing highway right-of-way. ODOT is responsible for most other costs of relocation or adjustment. Contact the Region Utility Specialist or the Railroad & Utility Engineer if you have questions.

When ODOT will be responsible for some or all costs of utility or railroad relocation or adjustment, the Railroad & Utility Engineer will prepare an agreement for the work. The Project Manager must monitor the work in order to verify billings from the utility or railroad if requested.

Whenever a utility or railroad must adjust or relocate its\* facilities to accommodate an ODOT project, the Project Manager must establish and maintain close contact with the proper utility or railroad personnel to assure that:

- All conflicts with project facilities are addressed
- Relocation or adjustment is being done using proper line and grades for the ODOT project
- Relocation or adjustment will not cause further conflicts with other utilities
- Relocation or adjustment will be completed within the timelines specified in the ODOT contract. If the relocation or adjustment will delay project work, the Project Manager must record the information needed to analyze the delay and resolve the delay with the Contractor, as discussed below.
- Appropriate information about the work is recorded to allow justification of billings from the utility or railroad for the work

The Project Manager must record information regarding utility activities in the project diary, Daily Progress Report, or a separate diary. The Project Manager

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should also record the resources involved in the work if ODOT must pay the cost of the utility work.

If additional conflicts with utilities occur during the project, the Project Manager should involve the Region Utility Specialist.

If the Contractor has requested work by the utility or railroad that is strictly for the Contractor's convenience, the Contractor is responsible for the cost of that work. If the cost of that work is included in the billing sent to ODOT, that cost should be deducted from payments to the Contractor.

### Railroad Protective Services

Railroads often must provide protective flagging for trains or will install other protective devices if the ODOT\* Contractor will be working on or over the tracks. ODOT generally must pay the cost of these protective services or devices.

Some projects require the Contractor to provide details of a crossing, temporary structure, or construction operation for review by a railroad. When that occurs, the Project Manager must work with other ODOT units, normally the Bridge or Rail Crossing Safety Sections, and the railroad to facilitate the review and obtain approval.

If ODOT will be responsible for the costs of flagging by the railroad to protect railroad facilities during contract work, the Project Manager must submit an Order for Force Work, form 734-1105, and obtain proper approval before the work starts. The Project Manager must also record, in a diary or Daily Progress Report\* on a daily basis, the work performed and the resources used.

The Project Manager must also not allow the Contractor to perform any activity on, over, or near railroad facilities unless the required Railroad Protective Insurance is in effect. Contact the Railroad & Utility Engineer if you need assistance on the required railroad insurance.

The Project Manager must caution the Contractor to exercise due care in performing work on, over, or near the railroad facilities to avoid damage to the facilities. Do not allow the Contractor to work if the required railroad flagger or other protective devices are not present and operating .

The contract generally specifies a maximum time or amount\* that ODOT will pay for railroad protective services. The Project Manager must issue a Weekly Statement of Contract Time Charges, form 734-3483, to show the number of

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days or hours that have been used. If the Contractor requires railroad protective services beyond the time or amount\* specified in the contract, the Project Manager must assess liquidated damages as stated in the contract. This process is discussed in the Adjustments to Lump Sum and Other Items section (12-E) of this Manual.

If the Contractor has requested work by the Railroad that is solely for the convenience of the Contractor, the Contractor is responsible for the cost of any protective services associated with that work.

#### Billings for Work Done by Utilities or Railroads

If ODOT is required to pay, on an actual cost basis, for work done by a utility or railroad, the Project Manager must provide information, verify the billing, or actually pay the billing as follows:

1. For flagging performed by a Railroad, the Project Manager must obtain approval on an Order for Force Work. When the Project Manager receives the billing from the railroad, the Project Manager must verify the billing and make payment to the Railroad. If the Contractor has overrun the specified amount of railroad flagging, the Project Manager must assess appropriate liquidated damages.
2. For other protective work done by a Railroad, the Railroad will send the billing to the Railroad and Utility Engineer. The Railroad and Utility Engineer may request other supporting information from the Project Manager and will pay the billing.
3. For work done by utilities, the utility will send the billing to the Region Utility Liaison. The Region Utility Liaison will generally request the Project Manager to verify the billing and will send the billing to the Railroad & Utility Coordinator for payment.

#### Delays Caused by Utilities

ODOT contracts generally specify a timeframe within which the utilities will relocate or adjust their facilities. If they fail to relocate or adjust their facilities within the specified timeframe and the delay impacts the Contractor's work, ODOT generally will be responsible for adjustments to contract time and additional costs that the Contractor incurred due to the delay.

For that reason, it is imperative that the Project Manager assure that each utility will complete its work such that it does not delay the Contractor's work. The Project Manager must:

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- Assure that each utility knows what work is expected of it
- Assure that realistic timeframes are specified in the contract for that work
- Assure that the utility has planned for and will accomplish the required work within the specified timeframes
- If needed, remind the utility that it could be responsible for costs of delay caused by its work
- If the utility work may delay the Contractor's work, record the information needed to analyze and resolve a probable delay claim. The Project Manager should attempt to mitigate any delay wherever feasible.

If ODOT must pay the Contractor for delay costs caused by utility work, ODOT may recover those delay costs from the utility that is responsible for the delay. When that occurs, the Region must take action to recover those costs.

The Project Manager must also work with the railroad(s) to assure that it accomplishes its\* work such that the Contractor's work is not impacted. Although ODOT would probably be responsible for costs of delay caused by the railroad work, it may have a tougher time collecting those delay costs from the railroad. If such a situation occurs, the Project Manager and Area Manager should consult the Contract Administration Engineer.

Also refer to the Contract Time section (13) and the Disagreements, Disputes, and Claims section (27) of this Manual.

#### Billing a Utility for Extra ODOT Costs\*\*

If ODOT incurs additional costs because a utility failed to timely relocate, remove, protect, or otherwise modify its facilities to accommodate the needs of ODOT and its Contractor, ODOT may recover the additional costs from the utility. The additional costs may include any delay damages, paid by ODOT, needed to mitigate the impact(s) resulting from the utility facilities.

Use the following procedure to recover the additional costs from the responsible utility:

**PROCEDURE**  
**BILLING A UTILITY FOR EXTRA ODOT COSTS**  
 For

DELAY CLAIMS OR OTHER COST RECOVERY ISSUES INVOLVING UTILITIES

Steps in Procedure

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\*\* Revised July, 2002

<u>Responsibility</u>	<u>Step</u>	<u>Action</u>
ODOT Contractor	1	In accordance with the contract, communicates with the Engineer about work that may impact the cost or completion of the contract. Written notifications to be submitted as specified in the contract.
Project Manager	2	{some notices don't require acknowledgement-refer to Section 00180.60}  When the Project Manager receives communication from the Contractor regarding issues involving utilities, which could lead to additional compensation for the Contractor, the Project Manager communicates the situation to the Region Utility Specialist. The Project Manager and the Contractor should record and track the cost of the impacted work.
Region Utility Specialist	3	Composes letter, which puts the affected utility on notice for potential extra costs resulting from construction issue and includes a copy of material received by the Project Manager, to the utility representative. Informs the utility of its opportunity to monitor and track the costs of the impacted work.  Sends copies to the PM and Railroad & Utility Engineer (RUE) if applicable.
Project Manager	4	<b>(Optional, depending on potential size of issue)</b> Requests that Highway Finance, Funds and Grants Manager open standard subjob (040 non-participating) on the construction expenditure account, to track extra Engineering or other administrative costs that result from the utility failing to fulfill its obligations.
Highway Finance	5	Delivers revised memo to Project Manager of assigned (open) subjobs for the project.  Send copies to the RUS and RUE.
Project Manager	6	Works with the utility, RUE, RUS, and the Contractor to resolve issue at the lowest possible level. In accordance with the contract, the issue may be escalated to a claim under Section 00199. Requests assistance and advice from the Area Manager and Contract Administration as appropriate.

Project Manager	7	<p>Resolves the dispute with Contractor in accordance with the contract.</p> <p>If any settlement includes compensation for the Contractor, processes a contract change order (CCO).</p> <p>Communicates the dispute settlement outcome and the estimated utility assessment or liability to RUS.</p>
Region Utility Specialist	8	<p><b><u>Billing The Utility</u></b></p> <p>Delivers a cover letter with assessment and outcome information to the utility.</p> <p>Sends copy to RUE w/ attachments.</p>
Railroad & Utility Engineer	9	<p>Initiates utility billing process with Highway Finance Office. Determines method and timing of billing.</p> <p>Delivers acknowledgement to the Project Manager that the utility has been billed. Delivers in same correspondence or subsequent memoranda status report other special arrangements such as progress billings, interest billings, final remittance statement, etc.</p> <p>Sends copies to RUS and Contract Administration Engineer.</p>
Financial Services	10	<p>Invoices utility, receives payment(s), and disperses funds accordingly.</p>