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U.S. Department
of Transportation

**Federal Highway
Administration**

Utility Relocation and Accommodation:

A History of Federal Policy Under the Federal-Aid Highway Program

Part I: Utility Relocation

Office of Engineering
Railroads and Utilities
Branch

JUNE 1980
James E. Kirk
Special Consultant

"A HISTORY OF FEDERAL POLICY ON THE RELOCATION AND ACCOMMODATION OF UTILITIES UNDER THE FEDERAL-AID HIGHWAY PROGRAM"

PART I: A HISTORY OF FEDERAL POLICY ON UTILITY RELOCATIONS AND ADJUSTMENTS

(For more information see Part II: "A History of Federal Policy on the Accommodation of Utilities")

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ABBREVIATIONS USED THROUGHOUT THE TEXT

AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway and Transportation Officials
APWA	American Public Works Association
ARWA	American Right-of-Way Association
BPR	Bureau of Public Roads
CFR	Code of Federal Regulations
CM	Circular Memorandum
FHPM	Federal-Aid Highway Program Manual
FHWA	Federal Highway Administration
GAM	General Administrative Memorandum
NACE	National Association of County Engineers
HRB	Highway Research Board
IM	Instructional Memorandum
PPM	Policy and Procedure Memorandum
TRB	Transportation Research Board
USC	United States Code

NOTE:

The Federal-aid highway program is currently administered by the Federal Highway Administration (FHWA), an agency of the U.S. Department of Transportation. Over the period of this history the program has been administered at the Federal level as follows:

July 1918 - Bureau of Public Roads - Department of Agriculture

July 1939 - Public Roads Administration - Federal Works Agency

July 1949 - Bureau of Public Roads - General Services Administration

August 1949 - Bureau of Public Roads - Department of Commerce

April 1967 - Bureau of Public Roads - Department of Transportation

August 1970 - Federal Highway Administration - Department of Transportation

I

INTRODUCTION

Historically it has been in the public interest for public utility facilities to use and occupy the rights-of-way of public roads and streets. This is especially the case on local roads and streets that primarily provide a land service function to abutting residents, as well as on conventional highways that serve a combination of local, State, and regional traffic needs. This practice has generally been followed nationwide since the early formation of utility and highway transportation networks. Over many years it has proven to offer the most feasible, economic and reliable solution for transporting people, goods, and public service commodities (water, electricity, communications, gas, oil, etc.), all of which are vital to the general welfare, safety, health, and well being of our citizens. To have done otherwise would have required a tremendous increase in the acquisition of additional rights-of-way for utility purposes alone. This could have also resulted in significant added costs to be borne by the utility consumers through increased rates for utility services so provided.

Under the practice of jointly using a common right-of-way there are two broad areas of concern to highway and utility officials alike. First is the cost of relocating, replacing or adjusting utility facilities that fall in the path of proposed highway improvement projects, commonly referred to as "Utility Relocations and Adjustments." Second is the installation of utility facilities along or across highway rights-of-way and the manner in which they occupy and jointly use such rights-of-way, commonly referred to as the "Accommodation of Utilities."

Accordingly, Part I is a history of Federal policy on "Utility Relocations and Adjustments." Part II is a history of Federal policy on the "Accommodation of Utilities."

II

THE EARLY YEARS

1916 to 1944

During the years 1916 through 1944, the use of Federal-aid highway funds was limited, with few exceptions, to participation in the costs of the actual building of those portions of the one Federal-aid highway system then designated that were outside those places having a population of 2,500 or more. While there was Federal interest in the surveys, highway location studies and right-of-way acquisition associated with highway projects, there could be no Federal funds used for these phases of work under the provisions of the regular Federal-aid highway acts of this period. Since the cost of highway construction was then confined to rural areas, and generally had little or no effect on existing utility facilities, only modest costs were involved in adjusting utilities on Federal-aid highway projects. In most instances, the States were not required to make payments for relocating or adjusting existing utility installations located on highway rights-of-way. In the few instances where a State was obligated to pay for utility adjustments, it frequently elected not to request Federal-aid participation in such costs. This was because a State could easily use all the Federal-aid funds made available for the actual building of highways while using its own funds, without matching Federal funds, for preliminary engineering, right-of-way acquisition and utility adjustments. Where a State did elect to request Federal-aid participation in the cost of utility adjustments, the Public Roads Administration accepted such requests and made reimbursement for eligible portions of the physical adjustment work under an administrative interpretation of the definitions of "highway" and "construction," which regarded the cost of utility adjustment as part of the cost of highway construction. However, like any other construction cost, the utility adjustment work was eligible for Federal participation only to the extent that the State was obligated to pay for such work.

1944 FEDERAL-AID HIGHWAY ACT

The Federal-Aid Highway Act of 1944 made sizable increases in the amounts of Federal-aid funds to be apportioned to the States. It also modified the definition of construction to provide that the term would include "locating, surveying, and mapping, costs of rights-of-way, and elimination of hazards of railway-grade crossings." The Act authorized continuance of a Federal-aid primary highway system, the establishment of a Federal-aid secondary highway system, the establishment of a National System of Interstate Highways to be a portion of the primary system, and authorized extensions of these three systems within urban areas. The Act provided three classes of funds for primary, secondary, and urban projects. Thus, in 1944, the scope of the use of Federal-aid funds was considerably broadened to include preliminary engineering, rights-of-way, and the construction of highways in urban areas. All these factors when combined with the increased amounts and classes of funds made available to the States indicated that a corresponding increase in the amount and occasion for utility relocations could be expected under the Federal-aid highway program. Accordingly, detailed working procedures for such usages, including utility adjustments, were then developed by the Commissioner of Public Roads (Public Roads Administration, Federal Works Agency).

GENERAL ADMINISTRATIVE MEMORANDUM NUMBER 300 (GAM-300) [1]

And so it was on May 1, 1946, the Commissioner of Public Roads issued the first all inclusive detailed instructions under a single document for utility adjustments to the Public Road Administration field offices and State highway departments. These procedures were set forth in General Administrative Memorandum Number 300 (GAM-300)[1], dated May 1, 1946, on the subject: "Reimbursement of costs of changes to utility facilities." In retrospect, this policy statement can and should be viewed as a remarkable document for the following reason. Many of its basic provisions have stood the test of time and operations for more than 34 years under the largest public works program ever undertaken and some are equally valid today (1980) except for minor updating and for adding those requirements stemming from Federal law subsequently enacted. For example, Section VII, Agreements, of the GAM which required that there be a written agreement between the State and utility company regarding their separate responsibilities, properly supported by a detailed cost estimate and plans, remains today as a basic requirement of FHWA's current utility-highway directive system in the Federal-Aid Highway Program Manual (FHPM). Likewise, then as well as now, reimbursement of relocation costs continues to be made on the basis of the actual costs to cure that are attributable to the highway construction, as verified by audit of the supporting records and accounts. Many other instructions then contained in GAM-300 still remain, in part or in whole, as current FHWA utility-highway policy. Included are the costs of labor, materials, travel expense, transportation, equipment rentals, repairs, operations and depreciation, loss and damage to small tools, vacation allowances, payroll taxes, insurance, handling and loading of materials and supplies, provisions for betterments, salvage and appropriate credits, and many other items associated with this work.

It should be noted; however, that only a few States availed themselves of these new usages of Federal-Aid funds for utility work. Again, most of the States expressed a reluctance to use their available Federal-aid highway funds on any work other than actual highway construction.

1954 and 1955 STUDIES

The next event of significance to utility relocations and adjustments occurred in 1954. One of the provisions of the Federal-Aid Highway Act of 1954 (Section 11) directed the Secretary of Commerce to make a study, in cooperation with the State highway departments and other parties of interest, on the problems posed by the relocation and reconstruction of public utilities resulting from highway improvements. A report on the study was submitted to the Congress in April 1955 by President Eisenhower and subsequently published as House Document Number 127, 84th Congress, 1st Session entitled, "Public Utility Relocation Incident to Highway Improvement." Later that same year, a more detailed version of legal aspects of the study was published by the Highway Research Board (HRB) as "Special Report 21, Relocation of Public Utilities Due to Highway Improvement, An Analysis of Legal Aspects."

1 Refers to Attachment Number 1 at end of text. Numerical reference to other attachments used throughout text.

The studies found that all of the States had authority, either specifically or by implication, to grant permission to public utilities to occupy State highways. Additionally, numerous statutory provisions specified that permission must be obtained by utilities from local highway authorities to place their facilities within the highway right-of-way. This basic requirement has remained unchanged in the ensuing years.

The 1955 study found that in about half of the States legal authority existed, either by statute, judicial decision, attorney general opinion, or by construction of the statutes themselves, to require utilities to move their facilities at their own expense when made necessary by highway improvements. Additionally, in the absence of specific statutory provision requiring the highway authority to pay the cost of relocation, the courts uniformly held that utilities could be required to move their facilities located within the highway right-of-way in order to facilitate improvement of the highway, by a reasonable exercise of police power. Any damage the utility suffered under such an exercise of police power was considered incidental to regulation of the highway and in the public interest, thus the utility was not entitled to be compensated for the cost of relocation.

When a utility was located on its own private right-of-way; however, and the improvement of a highway necessitated its removal to another location, the utility would be compensated for the cost of such removal, generally including the cost of the new right-of-way.

As highway improvements became more numerous and of a greater magnitude, the incidence of utility relocations, as well as their cost, also increased, and the utilities made more and more of an effort at the State and Federal level for reimbursement of such costs. Extensive hearings on the subject were held in connection with the 1952 and 1954 Federal-Aid Highway Acts, and resulted in the 1955 study. There was considerable difference of opinion among highway authorities, utilities, members of Congress and others as to the desirability of legislation providing for reimbursement of the utilities for their relocation costs.

Much of the effort made by utilities for reimbursement came from small local concerns, both publicly and privately owned. It was claimed that when these small utilities were forced to relocate due to reconstruction of a national highway, the cost of relocation could be of such magnitude as to be beyond the fiscal ability of the utility. Another argument was that costs of relocation were usually passed along to the local utility consumers in the form of higher rates. The results were considered inequitable, inasmuch as utility consumers serviced by companies who had been forced to relocate their facilities at great cost would have to pay higher rates than those in areas where the utility facilities remained undisturbed. The utilities held that only Federal action could bring about an equitable sharing of the costs involved and urged Congress to place the burden where it belonged--on all the highway users in the Nation.

In the full committee report of the Committee on Public Works of the Senate it was stated that "the committee recognizes some merit in the claims of the utility companies, and the inequity that exists in the assessment of utility relocation costs under present conditions."[A] The Committee recommended that 50 percent of the costs of relocations be paid from Federal funds.[B] Certain safeguards were also set up to ensure that no more than 2 percent of the total Federal expenditures were used for utility relocations, that the salvage value be considered, and the betterments be taken into consideration. When the Federal-aid highway bill failed to pass in 1955, the utility relocation provision fell with it. However, such a provision was included in the 1956 act, although in somewhat modified form. The Committee on Public Works of the House of Representatives in its report on the bill (H.R. 10660) being submitted for consideration of the House recommended that the utility relocation provision be included in the final act, noting that the BPR had informed the committee that its present practice was to permit the use of Federal funds to reimburse the States for the pro rata share of the cost of relocation when such costs had been paid by a State, and that "in order that this procedure may be specifically authorized, the committee has in Section 113 approved this existing practice of the Bureau in order that there will be no question of the propriety of so using Federal funds where a State under its own laws or practices pays such costs on Federal-aid highway projects. There is no requirement in this section, either expressed or implied, that a State must pay all or any part of utility relocation costs."[C]

A) Federal-Aid Highway Act of 1955, Public Works Committee of the Senate, 84th Congress, 1st Session on S. 1048 (1955), p. 17

B) Ibid., p. 18

C) "Report of the Committee on Public Works, House of Representatives to Accompany H.R. 10660," 84th Congress, 2nd Session, House Report Number 2022.

III

THE INTERSTATE HIGHWAY PROGRAM

1956 FEDERAL-AID HIGHWAY ACT

The provisions as finally included in Section 111 of the Federal-Aid Highway Act of 1956 authorized Federal reimbursement of relocation costs in the same proportion as Federal funds were expended on the project, instead of restricting reimbursement to 50 percent of the costs as in the 1954 bill. Furthermore, it did not contain the provision restricting reimbursement to 2 percent of the total cost of highway construction, as had the 1954 provision. It did, however, require that cost of betterment and salvage values be taken into consideration, and reads as follows:

SECTION 111 - Relocation of Utilities (Now 23 U.S.C. 123)

"(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project: Provided that Federal funds shall not be apportioned to the States under this section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State."

"(b) For the purpose of this section, the term "utility" shall include publicly, privately, and cooperatively owned utilities."

"(c) For the purpose of section, the term "cost of relocation" shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility."

During the remainder of the year 1956, and in 1957 legislative sessions, laws were introduced in 40 States to make payment of relocation costs valid under certain circumstances. Although 22 of these new laws were passed by the State legislatures, six were vetoed by their governors, so 16 actually became law. Ten of these applied only to the Interstate System.

That such an enthusiastic response to the new legislation was unanticipated by Congress is apparent from the following statement of the House Committee on Public Works:

> The committee did not contemplate this drastic change in existing practices when the 1956 act was enacted, and realizes that the use of Federal funds for reimbursement to the States for this purpose will increase substantially, thereby reducing the amount of Federal funds available for construction of highways. (Report Number 1407, Senate Calendar Number 1432, 85th Congress, 2nd Session, p. 28)

The majority report advocated revision of the 1956 provision to limit Federal reimbursement to 70 percent rather than 90 percent of utility relocation costs on the Interstate System, and further recommended that such reimbursement be made only when the State could show that it had actually paid the utility in the first instance with its own funds.

A minority report criticized the majority report on the grounds that it wanted to limit reimbursement only because the cost was obviously going to be substantially more than had been contemplated at the time of passage of the 1956 Act. The minority argued that if the 1956 legislation had been found fair, equitable and in keeping with the public policy, it was still so, even though it was going to cost more than had been anticipated. (Senate Report Number 1407, 2nd Session, p. 53)

SECTION 111 OF THE 1956 ACT

The enactment of Section 111 represented a twofold change in the Federal position. First, it provided a statutory basis for Federal reimbursement to the States of part of the cost of relocating utility facilities necessitated by highway improvement. Secondly, and by far more significantly, it changed the concept of eligibility for such reimbursement. Initially, authority for making such reimbursement was founded upon administrative interpretation of Federal-aid highway laws, by regarding the cost of utility relocation as part of the cost of highway construction. Like any other construction cost item, it was eligible for Federal participation only to the extent that the States were required to pay for such relocation.

Under Section 111, the legal obligation of a State to a pay utility relocation cost became irrelevant, and, from the standpoint of the basis of legal authority, Federal reimbursement for such costs was no longer dependent upon its inclusion within the statutory definition of highway construction. Rather, such reimbursement under Section 111 was dependent solely upon the finding that the relocation was made necessary by highway improvement and that the State had actually paid such costs and had done so without violating either its own law or the provisions of a contract between itself and the utility. In other words, the only requirement was that the State had legal authority to make the payment, as distinguished from being required to do so.

The change in concept can be illustrated by reference to enacted laws in Massachusetts and Illinois during this period. In each of these States the highway authorities were granted discretion in the matter of whether or not utilities should be paid for relocating facilities. These statutes

were permissive rather than mandatory in nature, and prior to Section 111, payment of relocation costs by these States was not eligible for Federal reimbursement, since such payments, though legal, would not be made by reason of any obligation to do so. However, under Section 111 it was sufficient if the State had legal authority to pay, and, hence, payments by these States of relocation costs under such discretionary authority were then eligible for Federal reimbursement.

Between 1956 and 1959, a total of 42 States considered legislation permitting reimbursement for relocation costs. In 17 States these bills became law. It is significant that under those newly enacted laws only one State payed the cost of relocating the utility facilities on all State-maintained highways, only 5 of these laws related to all Federal-aid projects, and 11 related to projects on the Interstate System only, where the Federal share of the cost was at least 90 percent.

The constitutionality of some of these laws was challenged in the courts. The lower courts in New Mexico, Tennessee, and Minnesota, upheld the constitutionality of their respective laws. In Maine, the Supreme Court, in response to the legislature's request, rendered an advisory opinion holding that a pending bill would violate the anti-diversion provision of the State constitution; but in New Hampshire, the Supreme Court, pursuant to a similar request from its legislature, held to the contrary. In Pennsylvania and Minnesota, lower courts agreed with the New Hampshire court in holding that such statutes do not violate anti-diversion provisions of their respective constitutions. In Georgia, a statute authorizing the State highway department to loan money to political subdivisions for the purpose of relocating facilities situated on the rights-of-way of State-aid roads was held unconstitutional on the grounds that the funds were an unauthorized use of State funds and that the moving was not a necessary or usual adjunct to the construction of highways.

Following the early years and flurry of legislative activity in the States, the majority of the State courts confronted with the issue of constitutionality of these new laws, handed down decisions in the affirmative, holding that the prescribed payments to the utilities do not constitute a diversion of highway funds, do not sanction an unconstitutional extension of the State's credit, and do not constitute special legislation. Questions as to the legality of such payments have arisen in States where prior contracts or agreements with the utilities provided for payment by the utility. The courts have generally held that no abrogation of contract is involved. Minnesota and Montana courts noted that such contracts or obligations could be rescinded by mutual consent of the parties involved.

A Legislative Score Board

At the time of passage of the 1956 act, eight States -- California, Connecticut, Hawaii, Missouri, New York, New Jersey, Pennsylvania, and Vermont -- had existing legislation authorizing payment of relocation costs under certain circumstances. By 1980, legislation providing for some degree of reimbursement for utility relocations under certain circumstances had been introduced in most of the States. But the flurry of legislative

activity which took place in the early years after passage of Section 111 of the 1956 act is long past and the situation in the States as regards utility relocation has been stabilized for the past 15 years. State legislation passed during this 15-year period has been applicable, for the most part, to only limited portions of relocation costs, such as for publicly or municipally owned utilities, or publicly owned utilities only on Interstate projects. The legislative score card to date (1980) shows that 39 States, Puerto Rico and the District of Columbia, now have statutory authority to pay for utility relocations as a cost of highway construction. At the present time (1980) there is no statutory authority; however, for paying such cost in 11 States. Furthermore, about one-half of all the States having such authority have restrictions that limit reimbursement to utility adjustments on Interstate projects alone. For more information on this see the Highway Research Board, Special Report 91 (1966) on the Relocation of Public Utilities 1956 - 1966, "An Analysis of Legal Aspects." Report 91 adds a decade of experience to the previous study made in 1955 and published by the Highway Research Board as its Special Report 21 (see comments on the 1954 and 1955 studies in Chapter II of this history).

For the most recent updating of these matters see the report on, "Payments to Public Utilities for Relocation of Facilities in Highway Rights-of-Way", as published by the Transportation Research Board, National Research Council, in Digest 116 - February, 1980, Research Results Digest. (Also see Table 1 of this history which is borrowed from Appendix A of the report in said Digest 116.)

IMPACT OF THE 1956 ACT

The impact of the 1956 act on the utility adjustment phase, as well as on all other phases of the highway program, cannot be over stated. The funding authorizations for projects on the primary and secondary systems and their extensions within urban areas were continued, but in sizable increased amounts. A total of $24.823 billion was authorized for fiscal years 1957 through 1959 to expedite construction of the Interstate System.

Partly because of the need for many States to use all available State funds to match the significantly greater amount of Federal funds for Interstate projects and partly because Interstate funds would be apportioned to the States on the basis of needs, it became a practical necessity for all States to include under the Interstate highway program all work of preliminary engineering, rights-of-way, and construction, including all eligible work of associated utility adjustments. In addition, many States also found it necessary to request Federal participation on all phases of work for primary, secondary, and urban projects.

In recognition of the fact that all States would be applying for Federal-aid on all phases of work, at least for Interstate projects, and since, for the first time there was a provision in the Federal law (Section 111 of the 1956 Act) that Federal funds could be used to reimburse a State for the cost of utility relocations, the BPR reviewed all of its operating procedures and developed new ones, as needed, for the accelerated highway program.

TABLE 1

STATUTORY AUTHORITY RELATING TO REIMBURSEMENT OF PUBLIC UTILITY RELOCATION EXPENSE •/

	Interstate All	Interstate Urban Only	All Federal Aid Highways	Controlled Access Highways	State Highways	No Statutory Authority Located
ALABAMA Code of Ala. § 23-1-5	X					
ALASKA Alaska Stat. § 19.25.020			X			
ARIZONA						X
ARKANSAS						X
CALIFORNIA Deering's Calif. Code Street & Hwys § 700 et					X	
COLORADO Colo. Rev. Stat. § 43-1-225			X			
CONNECTICUT Conn. Gen. Stat. § 13a-126					X	
DELAWARE Del. Code Ann. Title 17 § 32; § 143			X			
FLORIDA Fla. Stat. Ann. § 338.19	X					
GEORGIA Geo. Code. Ann. 95A-1001					X	
HAWAII Ha. Rev. Stat. § 264-32					X	
IDAHO						X
ILLINOIS Ill. Ann. Stat. Title 121- § 3-107	X					
INDIANA Ind. Stat. Ann. §-1-9-3	X					
IOWA Iowa Code Ann. § 306A.10	X					

•/ This table of statutory references is included for the reader's convenience in locating the desired state statute. The table is illustrative only and reference must be made to the statute for important exceptions, limitations, or requirements. For example, although the table indicates that some authority exists for reimbursement for utilities located on state highways, the provision may apply only to facilities owned by municipalities or public service companies, or may include privately owned utilities. The provision may be limited to state freeways or parkways, include all limited access highways, or all state highways. In some instances a reimbursement provision clearly includes all federal aid highways and state highways. In sum, the reader is cautioned to consult the statute and any amendments.

TABLE 1 (Con't.)

	Interstate All	Interstate Urban Only	All Federal Aid Highways	Controlled Access Highways	State Highways	No Statutory Authority Located
KANSAS						X
KENTUCKY Ky. Rev. Stat. 179.265, 175A.080, 177.035					X	
LOUISIANA La. Rev. Stat. § 48-381 (c)		X				
MAINE Ma. Rev. Stat. Ann. 23 § 255	X					
MARYLAND Md. Ann. Code Art. 89D § 76 (b)	X					
MASSACHUSETTS Mass. Ann. L. Ch. 81, § 7G					X	
MICHIGAN						X
MINNESOTA Minn. Stat. § 161.46	X					
MISSISSIPPI						X
MISSOURI No. R.S. § 227.240					X	
MONTANA 32-2414 et seq			X			
NEBRASKA Rev. Stat. Neb. § 39-1304.02	X					
NEVADA Nev. Rev. Stat. 408.950			X			
NEW HAMPSHIRE N.H. Rev. Stat. Ann. §§ 229.6					X	
NEW JERSEY N.J. Stat. Ann. 27:7A-7				X		
NEW MEXICO N.M. Stat. 55-7-24					X	
NEW YORK Con. L. N.Y. Ann. § 10-24 [6]					X	
NORTH CAROLINA						X
NORTH DAKOTA N.D. Century Code 24-01-41	X					
OHIO						X
OKLAHOMA Okla. Stat. 69 § 12.06	X					

TABLE 1 (Con't)

	Interstate All	Interstate Urban Only	All Federal Aid Highways	Controlled Access Highways	State Highways	No Statutory Authority Located
OREGON Oregon Rev. Stat. Ch. 366.321					X	
PENNSYLVANIA Purdon's Penn. Stat. Ann. § 36-670-412.1					X	
RHODE ISLAND R.I. Gen. L. 24-8.1-1			X			
SOUTH CAROLINA						X
SOUTH DAKOTA						X
TENNESSEE Tenn. Code Ann. 54-563	X					
TEXAS Tex. Code. Ann. Art. 6674 w-4	X					
UTAH Utah Code 27-12-11			X			
VERMONT Vt. Stat. Ann. Title 19-1861(f)				X		
VIRGINIA Code of Va. § 33.1-54; 55; 56		X				
WASHINGTON Rev. C. Wash. 47.44.030	X					
WEST VIRGINIA West., Va. Code Ch. 17-4-17 b	X					
WISCONSIN Wis. Stat. Ann. § 59.965 g-h					X	
WYOMING						X

ADMINISTERING THE ACCELERATED HIGHWAY PROGRAM

FIRST EDITION OF PPM 30-4 [4]

Had it not been for said Section 111, BPR could have probably updated GAM-300 to the degree needed to administer the accelerated highway program. But such was not the case and so it was on December 31, 1957, the Federal Highway Administrator issued a new Policy and Procedure Memorandum 30-4, "Payment Procedures for Reimbursement of Utility Work,"[4] to all Public Roads field offices, State highway departments, and many utility companies and associations. The new PPM superseded GAM-300 and those parts of all other GAM's pertaining to utilities. During the development of PPM 30-4, there was extensive liaison between the various parties of interest, namely the BPR, State highway agencies, AASHO, representatives of State and Federal regulatory bodies, and nationwide utility industry. Special assistance was given by the Liaison Committee [26] of the ARWA and this liaison has continued to the present time on subsequent changes or revisions to Federal utility-highway policies and procedures.

OTHER PERTINENT POLICY STATEMENTS

Before getting into an analysis of PPM 30-4 it is appropriate to mention some of the other policies issued either shortly before or after the 1956 Act, especially those concerning contract and force account procedures which were not specifically included in PPM 30-4. Perhaps the most important statement pertaining to utility adjustments was the one in paragraph 5a of PPM 21-6.2, dated February 16, 1955, on Contract and Force Account (Justification Required for Force Account Work).[3] It was administratively determined by BPR, that by reason of the inherent nature of the operations involved, it was in the public interest to perform by force account the installation or adjustment of utilities or similiar type facilities owned or operated by a public agency, railroad, or utility company, provided the costs were reasonable. This basic determination has held fast through the years and is included in FHWA's current directive system for contract and force account work. It makes it possible to promptly authorize work to be performed by the forces of a utility or railroad without the need for a case-by-case finding that it is in the public interest to perform the work by other than the contract method and competitive bidding as prescribed by Federal law for all highway work.

Another important policy statement on this general topic relating to utility adjustments was PPM 20-11.1, dated October 10, 1958, on "Construction Planning (Right-of-Way Clearance and Adjustment of Utilities and Railroads)."[11] This PPM prescribed measures to be taken on preparatory work to be done in advance of the physical construction of highway projects to clear the right-of-way of major obstructions and to make necessary adjustments of utilities and railroads, all in the interest of avoiding unnecessary delays and costs to the physical highway construction.

HIGHWAY-UTILITY LIAISON

The impact of the 1956 Act, along with the sizable increased amounts of highway funds available for developing Interstate highways, dramatically focused attention on the need to improve the procedural relationships between the highway agencies and their public utility counterparts. This was especially needed in the areas of planning, scheduling, prosecuting, completing, and coordinating utility adjustment work with highway construction operations. The ARWA took the lead and began to urge highway-public utility liaison. The AASHO also set up a special committee to examine existing conditions and to suggest the means for improvement. The BPR supported these efforts.

As a result, the general principle was enunciated that proper procedural relationships between the highway agencies and the public utility groups would facilitate more efficient and timely relocation and adjustment of public utility facilities involved in highway improvement projects. All groups concerned endorsed the principle as being in the public interest. But recognition of the principle alone, although helpful generally, did not actually improve the existing situation very much. Those responsible for the administration of the highway and utility programs recognized that the general principle had to be spelled out in great procedural detail for any substantial improvement to be forthcoming from its application.

Looking toward that end, ARWA, AASHO, and BPR requested the HRB to undertake a comprehensive study of the problem. The BPR provided the funds and HRB accepted the assignment.

The resultant report summarizing the findings of the study makes general suggestions for improving and strengthening highway-utility liaison practice. The report was published in 1962 by HRB, as Special Report 77, An Analysis of Highway-Public Utility Liaison Practices. The report proved to be helpful to utility companies, and State and Federal highway officials for improving the procedural relationships between the various parties of interest. Notwithstanding these and other related efforts, the planning, scheduling, prosecution, completion, and coordination of utility work has continued over the years to be a matter of grave concern to highway officials and contractors.

A Circular Memorandum (CM), dated May 9, 1956, on "Construction Delays Caused by Delays in Effecting Public Utility Adjustments,"[25] described the problem and requested a report from all field offices along with recommendations for corrective measures. The situation disclosed by these reports were later set forth in a CM, dated January 3, 1957, on "Public Utility Adjustments,"[28] and made available to all field offices and State highway agencies. The objective was to be helpful in overcoming the problems in States where difficulty was encountered in accomplishing utility adjustments with sufficient promptness.

Additional CM's on this general topic were issued on March 30, 1959,[34] July 24, 1964,[50] and September 9, 1968.[56]

Notwithstanding all these efforts to achieve timely planning and scheduling of new utility installations with highway improvement projects, there continued to be glaring examples that indicated otherwise. For example, the FHWA Notice dated November 24, 1971, on the topic "Construction Maintenance, and Permanent Replacement of Utility Cuts in Highway Pavements,"[59B] expressed concern over numerous cases where utility excavations were made across practically new pavements on recently completed highway projects. In many of these cases, scheduling the utility work with the highway construction could have avoided this situation. The FHWA Notice recommended that municipalities and utility companies be strongly encouraged, and in some instances required, to consider their forseeable long-range, needs, say for at least 5 to 10 years, and make adequate provisions for these needs at the construction stage of the highway improvement. In turn, State highway departments were encouraged to establish policies under which no utility cuts would be allowed in new roadways for a certain period of time after construction, say 5 years, except in cases of emergency.

A LEGAL ANALYSIS OF PPM 30-4

Essentially, three basic legal principles were involved in the new PPM. First, just compensation was to be paid where there was a taking of property. This principle was reflected in the provision of paragraph 3a(1) which authorized Federal reimbursement where the utility had a right-of-occupancy in its existing location by reason of holding the fee, an easement, or other real property interest. A utility which was required by necessities of highway construction to give up such a real property right was viewed as being deprived of its property, and due process of law required payment of just compensation for the taking of property. PPM 30-4 accordingly provided for Federal reimbursement of the costs incurred under such circumstances.

The second principle was that Federal funds could participate where the State paid for utility relocations and such payment did not violate either State law or any legal contract between the utility and the State. This principle was a restatement of the requirements of said Section 111. Because the statute established these conditions as prerequisites for Federal reimbursement, the PPM required that, if a legal question would arise as to the State's authority to pay relocation costs, the State could be asked to cite or establish its authority to do so.

The third legal principle was one which is inherent in the administration of any statute, namely, that the administering agency has the authority and the duty to carry out its statutory responsibilities in a manner reasonably adapted to accomplish the purposes of the statute. This is the principle which, on the one hand, authorizes the administering agency to take measures reasonably adapted to carry out the objectives of the legislation and, on the other hand, imposes the responsibility, on any agency charged with the administration of a statute, to protect the Government's interest. This is the legal principle which underlied the administrative requirements in PPM 30-4 that were designed to assure that Federal funds would be devoted only to the intended and authorized purposes.

For example: the requirement in paragraph 4 that acquisition of rights-of-way by the State for a utility shall be in accordance with PPM 21-4.1; the requirement in paragraph 6 that the utility relocation must be included in the plans approved by the division engineer; and the requirement in paragraph 7 that there be a written agreement between the utility and the State regarding their separate responsibilities, were merely administrative requirements reasonably adapted to assure the carrying out of the statutory purposes and to protect the public interest. Correspondingly, those provisions also protected the State; for by requiring approval or mutual agreement in advance as to the work to be done and the method of ascertaining reimbursable costs, the procedures in PPM 30-4 clarified not only what the Federal Government could be asked to reimburse but also what reimbursement the State could expect to receive. It is important to note that these three basic legal principles remain in FHWA's current directive system for utilities and are as valid today (1980) as they were in 1957.

If these three legal principles seem relatively simple and PPM 30-4 rather complex, the explanation lies in the fact that, while the law itself may have been simple, its application to a complex factual situation usually involved difficult and complicated problems.

STATE VERSUS FEDERAL PAYMENT STANDARDS

One provision of PPM 30-4 that illustrates the foregoing point is paragraph 1(e), which provided that where agreement and payment standards authorized under State law varied from those in PPM 30-4, the more restrictive standards were to govern. Essentially, this was a matter of statutory requirement and was the result necessitated by applying the provisions of subsection (a) and (c) of Section 111. Subsection (c) defined cost of relocation as including the "entire amount paid by such utility properly atributable to such relocation." Since Federal reimbursement was authorized for relocation costs as so defined, the effect of subsection (c) was to require ascertaining how much of the amount paid by the utility was properly attributable to the relocation. This was the payment standard authorized in the PPM. The agreement and payment standards authorized by the PPM were the maximum permitted by the statute. Consequently, if State agreement and payment standards were more liberal than those authorized by the PPM, the Federal Government must reimburse on the more restrictive basis of the PPM because it could not exceed its own authority under Section 111(c). If, on the other hand, State reimbursement was more restrictive than that authorized by the PPM, then the Federal Government, in exercising its authority, was limited by the amount actually paid by the State, because Section 111(a) limited Federal reimbursement on the basis of the amount actually paid by the State.

OTHER MANAGEMENT CONCEPTS

Notwithstanding the merit and magnitude of the liaison effort to seek general agreement on a uniform policy for nationwide application, suggestions were received for BPR to adopt management concepts other than the one in the PPM to administer the nationwide utility-highway program. Two of these

concepts have occasionally appeared for reconsideration over the past 24 years and it might be timely to briefly review them and point out the reasons why they were not then and are not now considered acceptable under the provisions of either Section 111 or 23 U.S.C. 123. One concept suggested that utility relocation costs should be determined by a negotiated agreement between the State and utility, and that Federal reimbursement should be made on the basis of the agreed amount rather than on the basis prescribed in PPM 30-4. Section 111(c) required that reimbursement be limited to the amount actually paid by the utility that was attributable to the relocation. A negotiated amount may not necessarily be properly attributable to the relocation, and, therefore, it would be outside the scope of the authorized reimbursement.

Another concept suggested that the amount of utility relocation costs should be determined by application of the law of valuation in eminent domain in the same manner as acquisition of rights-of-way. Such a procedure would ignore a basic legal distinction between acquisition of right-of-way and utility relocation. It is true that we do speak of taking of property in connection with utility relocation, but as a legal proposition the essence of such a relocation is not so much the deprivation or taking away of a property right, as the substitution of one geographic site for another as the place where the right may be exercised. In that respect, reimbursement for utility relocation costs is analogous to the allowance of severance damages. Where property is taken, the law measures the just compensation in terms of the market value of the property taken and the depreciation in the market value of the owner's remaining real property resulting from the taking. Small segments of utility facilities are not ordinarily bought and sold in the open market, and the value of the taking and damaging resulting from a utility relocation project is not readily ascertainable by the market value approach. In the relocation of utility facilities, the right to maintain the facility is not taken. The utility is merely compelled to exercise that right at a different location. The measure of compensation is the cost actually incurred in effecting the change that is necessitated by the highway improvement. If the utility is reimbursed for such cost, its financial and productive situation is the same as if the relocation had not occurred.

While either of the above concepts may appear to simplify the administration of the utility-highway program, there would be no assurances under either one that Federal funds would not be used to increase the capital value of the utility's physical plant or operating facilities or to pay for any of its normal operating cost. Such uses would enhance the utility's position rather than restoring it to the same financial and productive position it had prior to the relocation.

V

A CLOSE LOOK AT SOME PROVISIONS

MEASURING AN INCREASE IN VALUE

The possibility of utility enhancement proved to be the most complex and controversial provision in the PPM. The problem stemmed from the rather innocent and simple definition of the term "cost of relocation" in subsection (c) of Section 111 (the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility. Where the utility voluntarily elected to install betterment facilities, such as upgrading its line by substituting a 12-inch pipe for a 6-inch pipe, there was no problem in identifying the increase in value stemming from the betterment. The problem was in determining whether an increase in value would occur by reason of extended service life when a new facility replaced one in service.

The policy adopted by BPR on this point was expressed in paragraph 7(f) of PPM 30-4.[4] This policy was premised on the concept that the use of new materials did not alone create an increase in the value of a utility facility. Rather, the new materials were viewed as a component of the facility and an increase in value recognized only where such component could be expected to remain in useful service beyond the time of replacement of the facility as a whole. To accomplish this a determination was required to be made by the utility, with concurrence by the State and BPR, whether the facility being replaced and relocated was a major and independent segment of the utility's system. Where the finding was in the affirmative, a credit was required to the highway project for the value of the expended service life of the old facility using the provisions of paragraph 7(f). If the finding was in the negative, a statement was required in the State/utility agreement, to the effect that the relocation did not involve a major and independent segment. Under this latter circumstance, a credit for expended service life would not be required. The intent was to charge the highway user for the amounts paid by the utility for the replacement facility and to charge to utility consumer for the benefit or increase in value received by the utility by reason of extending the service life expectancy of the facility.

While the intent was reasonable and fair, the policy was controversial from the onset and the cost of administering it soon exceeded the amounts of credit so obtained. In fact, in most instances involving these determinations an impasse was reached between the utility, State, and BPR as the utility would rarely admit that the segment of lines or other facility to be relocated and replaced was a major and independent segment of its system. The crux of the problem was due to the lack of understanding and acceptance of the term, major and independent segment, and by the importance given to this term in the PPM. It was a new term created by those who drafted the policy, and was unknown by the State highway departments and the utility industry. In fact, the industry soon discovered that the term could be used very effectively to avoid credit rather than to identify and measure an increase in value. And so it became routine for utilities to include a statement in most State-utility agreements that the transaction did not involve a major and independent segment. Subsequent changes to this policy will be discussed later in the text.

THE ADMINISTRATIVE PROVISIONS

The administrative provisions of the PPM under Definitions, Rights-of-Way, Preliminiary Engineering, and Construction were no different from similiar provisions that applied to Federal-aid highway projects not involving utility adjustments.

The provisions under Agreements and Authorizations were pertinent only to projects involving utility adjustments. The objectives of those provisions were to assure that there was complete understanding between the BPR and the State highway department, and between the State and any affected utility, as to the extent of the work under separate phases, the plans, specifications, and estimates therefor, the manner of construction, and the basis of payments, before the BPR gave approval and authorized the work to proceed. With these understandings, approvals and authorizations, all parties were protected in so far as the use of an the reimbursement from Federal-aid highway funds was concerned.

The provisions under Recording of Costs, Reimbursement Basis, Labor, Materials and Supplies, Equipment, Transportation, and Utility Bills were statements of standard practices of cost accounting that had been established through experience and found satisfactory for both payment and reimbursement purposes. A manner of recording of costs that was in accordance with the system of accounts prescribed for the utility company by a State or a Federal regulatory body was also proper for Federal-aid highway work.

COMPARISON WITH GAM-300

A summary and explanation of administrative changes in the new PPM from that of GAM-300 follow:

a. Since Federal and State regulatory bodies prescribed, in systems of uniform accounting, a means of accumulating job costs through work order accounting procedures, reimbursement would be made on the basis of costs properly reported and recorded in the work order accounts.

b. Utilities could be reimbursed on a lump sum basis ($2,500 ceiling) for minor relocations based on a predetermined detailed estimate of the actual costs that would be incurred.

c. No significant change was made in allowing payment for actual salaries, wages, and expenses paid to employees engaged on a job.

d. All overhead construction costs, not chargeable directly to construction accounts, could be reimbursed on the basis of rate or percentum factors supported by overhead clearing accounts, or such other means as would provide an equitable

allocation of actual and reasonable overhead costs to specific jobs. Costs which could be included would cover general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, law expenses, insurance, relief, pensions, and taxes. Reimbursement would not be made for interest during construction or on account of arbitrary rates, percentages or amounts to cover assumed overhead costs.

e. Charges would be accepted for new items at actual cost to the utility. Where inventory or stock records of new materials were averaged under a consistent pricing practice, such records would be accepted as price support. Charges would be allowed for used materials at prices maintained by the utility in its stores records and charged in accordance with the utility's practice on its own work.

f. Credits would be accepted for materials recovered in suitable condition for reuse from the original facility at the price chargeable to the material and supplies account. This meant that if the utility's accounting procedure required a credit to the materials and supply account at current price new, the work order account would receive credit accordingly. Likewise, if the material could be credited to the materials and supply account at original cost or a percentum of current price new and the utility followed a consistent practice in this regard, the work order would receive credit accordingly.

g. A flat reduction of 10 percent of stock prices would be accepted for computing salvage credit for materials recovered from temporary use and returned to stores in fit condition for use.

h. Reimbursement for use of equipment would be made on the basis of actual costs of operation, repairs and depreciation distributed through utilities' clearing accounts or an equitable and supported allocation basis. Where equipment costs were not carried through a central account, reimbursement could be made on the basis of cost, as supported by records reporting actual costs of operation, repairs and a rate for depreciation. Arbitrary rental rates which could not be supported by company records of cost and use would not be allowed.

STATE-UTILITY RELOCATION LAWS

Because the constitutionality of some of the newly enacted State laws permitting reimbursement of utility relocation costs was challenged in the courts, and because serious questions were raised on the propriety of Federal fund participation in the costs incurred pursuant to some of these State laws, special instructions were issued to the field offices in a CM, dated September 17, 1958, on the topic, "Relocation of Utilities From or Within Publicly Owned Land."[31] The CM confirmed that the contract referred

to in Section 111 of the 1956 Act was interpreted to include franchises and other type of occupancy permits granted by highway agencies to utility companies. The CM also established a procedure under which no reimbursement would be made to a State for the relocation of utilities from or within publicly owned lands until or unless the constitutional authority of the States to incur such costs was established to the satisfaction of the BPR. This procedure was followed for slightly more than 9 years at which time it was rescinded and a new one adopted, as described by the CM, dated December 28, 1967, on the topic, "Enactment of New Utility Relocation Statutes." [54] The new procedure required the State to furnish a statement establishing and/or citing its legal authority or obligation to pay for utility adjustments, which, in turn, would be subject to an affirmative finding by BPR that the statement formed a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123. This procedure is still followed today (1980) where a State enacts a new utility relocation statute.

1958 FEDERAL-AID HIGHWAY ACT

As noted earlier in the text (see comments on 1956 - Federal-Aid Highway Act - Chapter III), the majority of the House Committee on Public Works had recommended that the Federal share of the utility relocation cost under Section 111 be reduced to 70 percent. Despite this, no provision to this effect was included in the Federal-Aid Highway Act of 1958. Included, however, was a provision to the effect that "reimbursement shall be made only after evidence satisfactory to the Secretary (of Commerce) shall have been presented to him substantiating the fact that the State has paid such cost from its own funds with respect to Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities."

The reason for the 1958 amendment to Section 111 stemmed from an earlier BPR administrative decision which was incorporated into Cherry Memorandum Number 30-S,[2] dated February 14, 1957, which was distributed to all BPR field offices and State highway agencies. Briefly, the decision found that if a utility company repayed a State for the State's pro rata share of the cost of relocating utility facilities, the policy of BPR would be to disapprove the cost of relocation for participation with Federal funds.

VI

OPERATING PROBLEMS UNDER PPM 30-4 FROM 1958 THROUGH 1966

SUMMARY OF PROCEDURAL CHANGES

During the years 1958 through 1966, various operating problems associated with the PPM arose and suggestions to resolve them were considered and adopted. This resulted in six formal amendments to the PPM, designated as PPM 30-4 (1) through (6) inclusive, seven Instructional Memorandums (IM's), designated as IM's 4-1-59, 30-3-61, 21-6-63, 21-4-64, 30-6-64, and 30-2-66, and numerous Circular Memorandums (CM's) which provided additional guidance in response to various inquiries and questions on the directives issued during this period and on unusual operating problems. The more important topics in the CM's are discussed and identified in the text. Comments, on each of the foregoing mentioned directives follow.

THE SIX FORMAL AMENDMENTS TO PPM 30-4

The first formal amendment, PPM 30-4 (1),[5] dated April 3, 1961, clarified and simplified the rather burdensome and lengthy instructions on processing voucher claims after audit, in paragraph 14d of the December 31, 1957, PPM. The second amendment, PPM 30-4 (2), [6] dated September 15, 1961, revised paragraph 10b(1) of the PPM, on Overhead Construction Costs, by identifying several items not considered as necessary and incidental to the performance of a relocation, such as interest on borrowed funds or charges for the utility's own funds when so used.

Both of these amendments were administrative in nature and reflected the experiences gained through the audit of claims early in the program.

The third amendment, PPM 30-4 (3),[7] dated January 25, 1962, added a provision which, for the first time, qualified and amended the PPM's basic eligibility requirements, under paragraph 3a. It provided that Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities. This change stemmed from a decision made on a case in Tennessee as described in the September 19, 1961, memorandum from the BPR's General Counsel, on the topic, Reimbursement for Costs of Relocating Utility Facilities - Tennessee. [40]

The fourth amendment, PPM 30-4 (4),[8] dated October 11, 1963, increased the monetary ceiling for lump sum agreements in paragraph 7e (3) from $2,500 to $5,000. This represented an effort to decrease audit workloads and the cost of administering the utility-highway program, as well as to simplify the reimbursement and payment of costs. This amendment came about as a result of the survey described in the CM, dated December 2, 1960, on the topic, Public Utility Relocation Costs. [37] This $5,000 ceiling remained in effect for about 10 years, when on June 29, 1973, under paragraph 7h (3) of the fourth and final edition of PPM 30-4, the ceiling was raised to $10,000.

The fifth amendment, PPM 30-4 (5),[9] dated March 12, 1964, revised the provisions of paragraph 1c of the PPM to assure of their application on a relocation-by-relocation basis rather than on a project-wide or State-wide basis. This revision was necessary to implement a decision of the Comptroller General, B-149833 [48] dated January 2, 1964, in which he ruled on a case in California, where the provisions of paragraph 1c were applied on a Statewide basis. Under this approach he claimed there would be no assurance that the statutory provision (23 U.S.C. 123) limiting Federal participation to the cost of relocation would be given effect with respect to specific highway projects.

The sixth amendment, PPM 30-4 (6),[10] dated July 14, 1964, made changes to paragraphs 6b, 6d, and 10a (2) of the December 31, 1957, PPM. The change in 6b eliminated the requirement for prior approval by BPR's division engineer of the use of the contractual method (not the contract) where the utility work was to be performed by a contract entered into by a utility company. The change in paragraph 6d was administrative and minor in nature and in the interest of simplifying the processing and approval of work of minor cost and nature. The change to paragraph 10a (2) represented a clarification and restatement of policy in effect at that time for the use of consultants by a utility and as previously contained in the CM, dated March 27, 1963, on the topic, Utility Seminar - 1963.[46]

Briefly, it eliminated the requirement for prior approval by BPR of minor engineering fees on a case-by-case basis under conditions where the State's procedures for approving these fees were considered satisfactory. It also advocated the use of the procedures used for highway consultants (PPM 40-6) as guides where the relocation work was complex and the consultant fees costly.

THE SEVEN INSTRUCTIONAL MEMORANDUMS

The first IM issued after the initial publication of PPM 30-4 was IM 4-1-59, dated -November 20, 1959, on the topic, Reimbursement for Utility Work.[15] It was needed to simplify the processing of utility claims, especially during the transition years following the 1956 Act when the evolution of requirements had the effect of creating a heavy burden on BPR and the States in determining the eligibility of costs. This IM did not alter or change basic policy but provided a few guidelines to assist in the review and processing of claims received during this period.

The second IM issued during this period was IM 30-3-61, dated May 8, 1961, on the topic, Reimbursement for Utility Work,[16] Unlike the first IM, this one did alter and change basic policy with the intent of clarifying conflicting interpretations of several provisions of the PPM that had been repeatedly encountered since its publication.

Included were new instructions on (1) Definitions, (2) Rights-of-Way, (3) Preliminary Engineering, (4) Utility Construction Contracts, (5) Credit for Extended Service Life, (6) Authorization to Proceed with the Physical Adjustment or Relocation of Utility Facilities, (7) Approval of Utility PS&E, (8) Reimbursement Basis, and (a) The Use of Equipment Owned by Utilities.

Under paragraph 2 of the PPM (Definitions) three new terms, namely the total cost of the relocation, the replacement cost, and the total estimated service life of replaced facility were defined. These were needed for use in computing credits for extended service life under the new IM. New instructions were also provided under paragraph 4 (Rights-of-Way), paragraph 5 (Preliminary Engineering), and paragraph 7j (Agreements and Authorizations) for programming and authorizing these phases of work and for giving more flexibility and options to the States in this regard. The purpose was to avoid the problems experienced earlier when claims were received without adequate documentation and support, as noted above under the comments for IM 4-1-59.[15]

Special instructions were also included for the approval of utility plans and estimates, both by State and BPR. Another provision was included for assurances that the total of all credits required under paragraph 9 (Reimbursement) of the PPM would not exceed the total costs of relocation, exclusive of betterments.

New eligibility requirements were added for cases under paragraph 12 (Equipment) of the PPM where the accounting system of the utility did not provide for (1) capitalization of items of equipment owned, and (2) recovery of original cost through depreciation, and the use rates could not be determined from the utility's records.

A change in paragraph 6b of the PPM eliminated the requirement for prior approval of a specific contract let by the utility. This basic ruling was set forth earlier in the CM, dated July 31, 1959, on the topic, Title 23 U.S.C., Section 112(c) and Contracts for Utility Relocation or Installations.[35]

Finally, and as referred to earlier in the text as the most complex and controversial policy in the PPM, the provisions for determining an increase in value under paragraph 7f were revised extensively. Actually, all of the existing paragraph 7f was revoked and a new policy substituted, under which the term, major and independent segment, was dropped. The new determination required a finding whether or not the replacement (new) facility would remain in useful service beyond the time when the overall (old) facility, of which it was a part, would have remained in useful service or would be replaced. Expressed otherwise, would the new facility have a longer service life expectancy than the ends to which it was tied?

If so, a credit would be required for an extension in service life. The new policy also provided that where the utility voluntarily elected to increase the size or capacity of the replacement facility, this would constitute prima-facie evidence that the service life was extended and a credit would be required, i.e., an increase in size or capacity at the election of the owner would permit a longer functional or economic life than a replacement-in-kind.

This new policy was more successful than the former one in identifying situations where a credit was to be obtained for an increase in value due to an extension in service life expectancy. However, the determinations to be made were somewhat subjective and the matter continued to be controversial involving the utility's opinion matched against that of the State or BPR or both. More on this matter is included later in the text.

The third IM issued during this period was IM 30-7-61, dated November 13, 1961, on the topic, "Alternative Method of Supporting Certain Utility Admustment Claims."[17] It was needed to provide an alternative method for developing relocation costs and approving reimbursement involving a utility with an accounting system that was not designed or required to classify, record, and otherwise reflect the results of operations on a continuing basis.

The fourth IM issued during this period was IM 21-6-63, dated July 19, 1963, on the topic, "Removal of Utility Facilities Where Replacement or Relocation is not Required."[18] It was needed for situations, especially in cities where all the customers of a utility along a segment of lines were taken, and it was not necessary to replace the lines but removal was required. Essentially, these situations were treated as a matter of right-of-way clearance and the provisions of 23 U.S.C. 123 were not for application.

The fifth IM issued during this period was IM 21-4-64, dated September 14, 1964, on the topic, "PPM 30-4 (6), Numbered Paragraph 3."[19] This was merely a request for keeping the BPR Washington Headquarters Office informed of the actions taken pursuant to paragraph 3 of PPM 30-4 (6),[10] as to which division offices had approved statements of procedures from the States for approving minor engineering or consultant fees.

The sixth IM issued during this period was IM 30-6-64, dated December 24, 1964, on the topic, "Use of Consultants by Utility or Railroad Companies."[20] It added a requirement for a certificate, as a supplement to the consultant agreement, to be executed by a principal officer of the consultant firm retained. A similar certificate had long been required under PPM 40-6 where the State employed a consultant for highway engineering work. This was now being extended to apply to cases involving the use of consultants by utility and railroad companies.

The seventh IM issued during this period was IM 30-2-66, dated February 24, 1966, on the topic, "Utility Relocations - Eligibility - Paragraph 3a(1) of PPM 30-4."[20A] On situations where the utility had the right of occupancy in its existing location by reason of holding the fee, an easement or other property interest, the division engineer was advised not to issue authorization to proceed with a utility relocation under paragraph 3a(1) of the PPM until the State submitted a statement signed by the State Highway Administrative officer having final authority over utility adjustments, certifying the following:

1. That the utility has a real property interest in the facilities, the damaging of taking of which is compensable in eminent domain.

2. That it has on file, evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record, such evidence shall be supported by an opinion of the State's legal counsel.

This rather tight control was advocated by the BPR's General Counsel to assure that the State would pursue and document these transactions along the line indicated by the IM.

OTHER GUIDES ISSUED FROM 1958 THROUGH 1966

As previously mentioned, numerous circular memorandums were issued during this period to provide additional guidance in response to various inquiries and questions on the directives issued at that time and on unusual operating problems. For the convenience of the reader they have been assembled in groups according to the topic covered as follows: (1) Audits and Accounts; 2) Civil Rights and Labor Compliance; (3) Utility Reviews, and (4) General.

(1) Audits and Accounts

The CM, dated February 10, 1959, on the topic, "External Audit of Public Utility Relocation Claims (Section 123, Title 23 U.S.C.),"[32] called attention to the legislative requirements in Section 111 of the 1956 Act and Section 11 of the 1958 Act that Federal funds could be used to reimburse a State whenever the State shall pay the cost of relocation from its own funds and evidence is presented to the Secretary substantiating this fact. Further, the CM provided an acceptable procedure to be followed in this regard. As a followup measure, additional instructions were provided in the CM, dated March 30, 1959, on the topic, "Reimbursement for Public Utility Relocation Costs."[33]

Another CM was issued on September 12, 1960, on the topic, "Audit Consideration of Overhead Costs Presented by Utility Companies."[36] This contained general instructions for reviewing overhead costs where the utility company does not normally distribute its overhead costs on a work-order basis. The CM, dated December 6, 1960, on the topic, "Separability of States' Claim for Prompt Payment,"[38] established a procedure for the prompt payment of claims, although payment of a small portion of the claim was being withheld. The CM, dated December 22, 1961, on the topic, "Reimbursement to States Audits Performed by State Personnel," [42] encouraged the use of State forces for making audits on utility adjustments and listed the several benefits to be gained by this procedure.

(2) Civil Rights and Labor Compliance

The CM, dated June 4, 1963, on the topic, "Labor Compliance Manuals---,"[47] advised the field offices to suspend enforcement of the Federal minimum wage requirements for employees of contractors and subcontractors of railroad and public utility companies, pending a review and resolution of problems which had arisen at that time.

The CM, dated August 3, 1965, and the one dated February 7, 1966, both on the topic, "Title IV of the Civil Rights Act of 1965 - Interpretations Relative to the Applicability of the Civil Rights Assurances,"[52], [53] provided detailed instructions on the application of Appendix A clauses and other related matters to relocation agreements with railroad and utility companies.

(3) Utility Reviews

The CM dated February 20, 1961, on the topic, "Uniform Application of Utility Procedures and Field Reporting Instructions, "[39] summarized the reports received by the Washington Headquarters Office from the various regional offices on the principal points that needed emphasis at that time to improve upon and strengthen BPR's operations for utility relocations. Included were the principal objectives and activities of the regional utility engineers, the role and responsibility of division office personnel, and field reporting procedures. About a year later, this was followed up by a CM, dated March 2, 1962, on the topic, "Review of Utility Agreements."[44] These instructions urged action to encourage State highway officials to assume their responsibilities for the negotiation and development of satisfactory agreements with utility companies. BPR's role was to be that of providing guidance where there was a question of Federal policy interpretation or participation. The problem, of course, was that in too many instances the States were becoming dependent upon BPR to make detailed reviews of utility agreements.

The first major effort by BPR to make comprehensive reviews of the utility/highway program in all States was on March 6, 1963, when a CM was issued on the topic. "Program For Division Office Review of a State's Procedures and Practices Relating to Highway-Utility Matters."[45] The written program gave each division office an added means to establish and maintain control over the utility-highway programs in each State. It provided a means of measuring the total effectiveness of the State's administration of these programs and, where indicated, provided a basis for negotiations directed toward improving the State's execution of the same. An examination of these instructions indicates that they could be used currently under certification acceptance programs for the same general purposes that were intended in 1963. Supplementary instructions for the Law Section of the program were issued on January 13, 1964.[49]

As a result of numerous requests from the field offices, "A Guide For Review of Utility Proposals,"[51] was issued by CM on December 22, 1964. Its use was made optional and, in some instances, it was used to supplement existing similiar guides then in use at the BPR division office level.

(4) General

One of the most important steps taken during this period was set forth in the CM, dated December 12, 1961[41] on the topic, "Reimbursement For Utility Relocations." This message called attention to the numerous complaints from utility companies, usually after an audit, indicating they had never heard of PPM 30-4 even though their agreement with the State highway departments incorporated the PPM by reference. The message advocated taking a more aggressive approach in this area of communications and suggested several methods for accomplishing the same. This effort resulted in the mass distribution of all Federal directives on utility adjustments through the States to the various utility companies on the States mailing list. It was left up to the States to compile the mailing list and make the distribution. The BPR agreed to furnish the number of copies needed at no cost to the States or utility company. This practice is still followed today under the Federal-Aid highway program. It has proved to be very effective in keeping the utility companies well informed and controversial questions of reimbursement have been held at a minimum.

Another CM was issued on January 4, 1962, on the topic, "Reimbursement For Utility Work - Extended Service Life Credit."[43] These instructions responded to a question from the field whether a credit for extended service life should be considered in every case where a utility receives a new facility for an old one. The answer was no and the CM describes the reasons why not.

Numerous other CMs issued during this period that fell into the General category have already been identified in the text and will not be repeated here.

THE SIZE OF THE PROGRAM

The 1955 report to the Congress (House Document No. 127, 84th Congress, 1st Session, "Public Utility Relocation Incident to Highway Improvement") shows that during the 5-year period from July 1, 1949 to June 30, 1954, public utility relocation costs on Federal-aid projects for which reimbursement for such utility costs was sought amounted to $2,047, 365, of which the Federal Government reimbursed $650,855, or 31.8 cents of each dollar of relocation cost. The total reported costs of Federal-aid highway projects involving these utility relocations amounted to $231,512,025, of which the Federal share was $120,072,041.

For an analysis of the data for a single year during this period, the fiscal year ending June 30, 1954, seemed the most representative. In that year, approximately three-quarters of the $652,012 of utility relocation costs was spent in connection with Federal-aid rural projects and the remaining quarter on urban improvements.

And then came the 1956 Federal-Aid Highway Act and the tremendous impact of the accelerated highway program. During the 60's and 70's the annual total costs of reimburseable utility relocations authorized under the Federal-aid highway program averaged more than $100 million each year, a staggering increase when compared with the previous decade. The major share of these costs (about 78 percent) was associated with Interstate highway projects. The remaining costs were distributed among primary (9 percent), secondary (5 percent), and urban (8 percent) projects. The number of individual transactions involved each year is estimated to have ranged from 4 to 6 thousand State-utility contractual relocation agreements.

The foregoing costs do not reflect the numerous additional transactions that frequently occurred on State and many Federal-aid projects where the State did not seek Federal-aid reimbursement for utility relocation costs or where the utility had to bear the entire cost of relocation, without State or Federal funds participating. It is estimated that the total annual expenditure for relocating utilities under each of the latter two circumstances also averaged about $100 million each per year during this period, yielding a grand total average cost per year of about $300 million.

From the standpoint of its scope, effect, and costs, the utility-highway program of the 60's and 70's represented a tremendous increase and expansion of the corresponding program of the 1950's. For this reason alone it was necessary to develop new and modernize existing utility-highway policy directives to keep pace with the accelerated highway program, so the operations could proceed in an orderly manner in the best interests of the highway users and utility consumers.

VII

A TIME FOR A CHANGE

THE DECISION TO CHANGE

As previously mentioned, since the original publication of PPM 30-4 in late 1957, various operating problems associated with utility relocations and adjustments had arisen and suggestions to resolve them were considered and adopted, resulting in the issuance of six formal amendments and seven instructional memorandums to the PPM. Early in 1965, a decision was made to modernize the PPM. The primary purpose was to update the original issue by incorporating the overall policy into one document. A further purpose was to add several new provisions and revisions deemed necessary to resolve some of the difficulties being encountered. In May 1965 a discussion draft of a proposed new PPM was prepared which reflected the consensus of the views of BPR's Headquarters staff and field offices.

THE LIAISON TASK

It was at this point that the Joint Highway-Utility Liaison Committee of AASHO and ARWA offered to arrange for a correlation and review of the proposed policy with the many highway agencies and utility companies having a major interest in the matter. To accomplish this task, the committee appointed an Ad Hoc Study Group comprised of State highway officials from each of the AASHO regions and utility representatives from each of the several branches of the industry, namely gas, telephone, power, water, and pipelines. Through this process comments were solicited from all 52 highway agencies and the nationwide utility industry. After reviewing these comments, the Study Group met in Houston in December 1965, drafted a consensus report, and submitted the report, along with all the other material received, to BPR. This liaison practice was very effective in keeping all parties of interest well informed from the planning to completion stage of an activity of mutual interest, i.e., the PPM. It was not the first time this Joint Committee had coordinated this type of activity for BPR, nor was it the last. As it is no longer permitted under the Federal rulemaking process, it seemed appropriate to describe it on this occassion for the benefit and enlightenment of present day highway and utility officials at the Federal, State, and local levels. For more information on the history of liaison between BPR, AASHO, and the ARWA, see the paper entitled, "The Joint Committee - An Overview And A Look Ahead," as presented at the AASHO/ARWA Highway-Utility Joint Liaison Committee meeting at the 59th Annual Meeting of AASHO, Hilton Hotel, Los Angeles, California, November 14, 1973.[26]

MAINTAINING THE PROPER IDENTITY

Ordinarily, when the subject, purpose, and scope of a PPM was broadened, like in this instance, the new directive would have been divided into compartments, by topic or subject, assigned identification numbers in the appropriate series, and issued separately as two or more PPM's. In this case, it was decided to include everything under one umbrella and to

maintain the long established identity (PPM 30-4) that by this time was familiar to all State and utility personnel who worked in this area of operations. It was a wise decision and this identity has been maintained to the present time.

THE SECOND EDITION OF PPM 30-4 [12]

And so after nearly nine years of operations under the accelerated highway program with the original PPM, its amendments and supplements, a new updated version of PPM 30-4 with a new name entitled, "Utility Relocations and Adjustments,[12] was issued on October 15, 1966. Its scope was much broader than the old PPM, as it contained for the first time a new section on the "Accommodation and Installation of Utilities," and also many revisions, all gathered together in one document for the benefit and convenience of the several parties of interest.

THE MOST CONTROVERSIAL PROVISION

During the review process for the new updated PPM, some of its provisions attracted no comment at all, while others were commented on sparingly. Only a few provisions attracted comments from the majority who reviewed it. However, as was expected, one provision received more attention than all others combined - our old friend, credit for an increase in value by reason of an extension in service life. By this time, operations under the national program had reached a point where there was general acceptance by the State and utility companies that a credit was due to a project under circumstances where the utility voluntarily elected to increase its service capacity, thereby increasing its functional or economic life expectancy. There also was general agreement that such a credit would not be expected on a replacement-in-kind of a small segment of lines or on the replacement of a utility line crossing of the highway. Since all utility adjustments did not conveniently fall within either of the foregoing categories, the problem was to find a practical and equitable method to identify the other conditions where an extension in service life would or would not occur. This is exactly what was done by first identifying three situations that would constitute prima facie evidence that such a credit was due to a project and second by identifying two situations where such a credit was not required. The three situations constituting prima facie evidence were:

(1) a replacement-in-kind of a segment of lines one mile or more in length,

(2) a replacement involving a building, pumping station, filtration plant or similiar operating unit used for the production, storage, or transfer of the utility's products, other than its lines, and

(3) a replacement of greater functional capacity than the one it replaces, excluding utility line crossings of the highway.

The two situations where such a credit would not be required were:

(1) utility line crossings of the highway, and

(2) longitudinal segments of a utility line involving a replacement-in-kind, of less than one mile in length.

Of course much other information was included in the revised policy statement and for the details, see paragraph 9 (Reimbursement Basis) of the PPM.[12]

The factor of one mile in length was an administrative decision based on the fact that this was about the maximum length of a utility line crossing of the highway that could be expected, say on a cross street at a large traffic interchange on an Interstate project. The exemption of utility line crossings of the highway was also an administrative decision based on the experience that, in practice, utility companies would seldom attempt to salvage a highway crossing segment when upgrading or replacing a large section of their lines, even though the crossing may have recently been replaced on a highway improvement project, i.e., a matter of economics.

This policy was fairly well accepted and still remains in FHWA's current directives for utility relocations and adjustments under the Federal-aid highway program.

OTHER CHANGES TO THE PPM

Fortunately, the official transmittal memorandum[12] for the PPM contained detailed comments on the new provisions and changes, paragraph by paragraph. As there were more than 60 items listed, no attempt will be made to cover the same turf in this history. However, to fully understand and appreciate the complexity of this task, a reading of these more than 60 items is highly recommended.

Perhaps mention should be made about the PPM's new paragraph 15, Accommodation and Installation, which proved to be the forerunner of PPM 30-4.1 (Accommodation of Utilities),first published on November 29, 1968.(For more information on the Accommodation of Utilities, see Part II of this history).

VIII

GETTING READY FOR THE SEVENTIES

A QUIET PERIOD

The first major policy statement issued after publishing the 1966 PPM 30-4 was IM 30-6-67, dated May 2, 1967, on the topic, Utilities-Scenic Enhancement.[21] There were five distinct areas covered by the IM, all of them guarding against the improper use of scenic strips, overlooks, rest areas, landscape areas and other areas of roadside development or particular scenic enhancement by utility facilities. These provisions were directed toward avoiding any use by utilities that might detract from the appearance of these and adjacent areas and diminish the value of the public fund investment for highway beautification and scenic enhancement.

The next instructions issued were in the CM, dated September 5, 1968, on the topic, Utility Relocations-Evidence of Property Right or Interest-Paragraph 7 1(2), PPM 30-4.[55] This was the first step taken to simplify the task of demonstrating a compensable interest in land where the utility's property interest was not a matter of public or private record. Eventually in 1969 it led to the complete elimination of the certification requirement (except on Federal Lands) under said paragraph 71 of PPM 30-4.

Probably the most important policy decision made during this period (1966-1969) was to draft a new management procedure for processing Federal-aid utility relocation agreements costing $25,000 or less, including lump-sum agreements entered into under paragraph 7g (3) of PM 30-4.[57]

At that time it was estimated that 70 percent or more of the four to six thousand utility relocation agreements processed by the BPR's division offices each year involved adjustments costing $25,000 less. Under this new management procedure, referred to as the Alternate Procedure, these adjustments would be authorized by an exchange of correspondence between the State and BPR, without referral of agreements, plans, and estimates to the Bureau's division engineer. The more costly agreements would continue to be approved and processed in the normal manner. Use of the new procedure would be at the option of the State but subject to approval by the BPR's Regional Administrator. A discussion draft of this procedure was circulated for review by the Bureau's regional and division staffs. The States were also urged to comment on the desirability and merit of the proposed procedure. Transmittal was by the CM, dated September 18, 1968, on the topic, Proposed New Management Procedure of Utility Relocations-PPM 30-4.[57]

THE THIRD EDITION OF PPM 30-4 [13]

From a policy standpoint there was not much activity during the period from 1966 to 1969 on utility relocations and adjustments. Nevertheless, on February 14, 1969, BPR issued another complete revision to PPM 30-4, just 2 years and 4 months following the October 15, 1966, major revision. The reasons were twofold. First, on November 29, 1968, BPR had issued, for the first time, a new PPM 30-4.1 on the Accommodation of Utilities. This, in turn, required several changes to PPM 30-4, especially to paragraph 15, Accommodation and Installation. Second, a decision had been made to include the new Alternate Procedure, as mentioned above, as a formal revision to PPM 30-4 (new paragraph 16), rather than as a separate policy statement. These were the two major changes made to the PPM at this time. Other minor revisions are listed under paragraph 3 (Comments), of the transmittal memorandum[13] for the new PPM dated February 14, 1969.

Additional comments on this edition of the PPM were included in a set of Utility-Highway Briefing Session Notes on BPR's Utility Policies, dated March 21, 1969. These notes were prepared as an aid for representatives from BPR's headquarters office to conduct briefing sessions at various locations throughout the country during April, 1969. The purpose was to provide assistance to the field offices, State highway departments and utility industry in establishing a reasonable uniformity nationwide in operations under new PPM 30-4 and PPM 30-4.1. That part of the briefing session notes relating to PPM 30-4 is included here with other attachments at the end of the text. [13A]

THE LAST THREE IM's ON UTILITIES

The next policy statement issued was IM 20-1-69 (1) dated May 27, 1969, on the topic, Interim Criteria Promulgated under Paragraph 10e, PPM 20-8, Public Hearings and Location Approval, Relating to Utility Relocations.[22] This was a procedural change to permit the BPR's division engineer to authorize utility work before a design hearing under two special and unusual conditions (see the IM for details).

This was followed by IM 30-1-70, dated January 6, 1970, on the topic, Adjustment of Gas Pipelines.[23] The IM described recent cases where the owners of gas transmission or distribution pipelines were claiming added costs to meet the new standards prescribed by State public service commissions or other State regulatory bodies. The IM requested these cases to be referred to headquarters for further review and study.

The last and most recent IM issued on utilities was IM 30-4-71, dated July 14, 1971, on the topic, Federal-Aid Participation-Utility Installations Serving a Highway Purpose.[24] It prescribed what was to be done to permit Federal fund participation in cases involving the installation of highway lighting, traffic signal, water, electric power, and similiar facilities that were to serve a highway purpose, where under established practice in a locality, the ownership of such facilities was to remain with a privately owned public utility company, rather than the State or a political subdivision.

THE FOURTH AND FINAL EDITION OF PPM 30-4 [14]

The fourth and final edition of PPM 30-4, Utility Relocations and Adjustments,[14] was issued on June 29, 1973. Most of the changes were somewhat minor and routine and incorporated existing CM's and IM's on utility matters and simplified and clarified several provisions of the former PPM. Perhaps the most important change was to paragraph 16, Alternate Procedure. The previous $25,000 ceiling for minor cost utility relocations was revoked. Many more provisions of paragraph 16 were pruned extensively, all with the objective of attracting more States to seek approval to operate under the new Alternate Procedure. Although the Alternate Procedure had been previously introduced in the third edition of PPM 30-4 on February 14, 1969, only a few States had shown any interest in it. Many States contended that most of the reduced work load and other benefits to be received would go to the Federal Highway Administration, not the States, and they were not too far off the mark. The procedure was deliberately designed to shift the major share of responsibility for day to day operations on utility relocations and adjustments to the individual States, were it should be. Other minor revisions and changes are listed under paragraph 3 (Comments) of the transmittal memorandum[14] for the new PPM dated June 29, 1973.

THREE MORE CHANGES

During the years from 1973 to the present (1980) three more changes were made to FHWA's policy for utility relocations and adjustments but not by formal revision to the PPM. Two were accomplished by memorandums from FHWA's Associate Administrator for Engineering and Traffic Operations to the Regional Federal Highway Administrators.

The first one was dated May 23, 1974, on the topic, Relocation of Utilities-Federally Owned Land.[60] It concerned cases where federally owned land was transferred to a State for highway purposes and such land was occupied by utility facilities under the terms of a revocable permit issued to the utility by the Federal agency which owned the Land. Where it was necessary to relocate such utility facilities to accommodate the highway construction, the Regional Administrators were advised that Federal funds were eligible to participate in the cost of relocation, provided the payment to the utility by the State would not violate State law and would otherwise be in accordance with 23 U.S.C. 123.

The second one was dated June 24, 1974, on the topic, Applicability of the Uniform Act when a Utility Company Acquires Replacement Right-of-way.[61] It provided that the Uniform Act was applicable to cases involving the relocation of utilities on Federal-aid highway projects where each of the following conditions prevailed:

(1) Federal funds were participating in the cost of utility relocation, and the relocation involved the acquisition of replacement land for the utility being relocated, and

(2) such acquisition was performed by the State, or its political subdivision, on behalf of the utility.

(3) The third one occurred in October 1973 and involved the incorporation of PPM 30-4 into the new FHWA directive system, the Federal-Aid Highway Program Manual (FHPM). PPM 30-4 was incorporated intact as Volume 1, Chapter 4, Section 4.

IX

CURRENT ACTIVITIES

A PROPOSED UPDATING

By a memorandum[62] dated September 29, 1976, FHWA's Director, Office of Engineering, advised the Regional Federal Highway Administrators that plans were underway for a routine updating of PPM 30-4 and PPM 30-4.1. Comments were solicited from FHWA's division offices and the States. An advance notice of proposed rulemaking,[63] FHWA Docket 76-16 (41 FR 42220, September 27, 1976) discussed the proposed updating and invited interested parties to comment.

As only two comments were subsequently received on the proposed rulemaking, and as FHWA had meanwhile decided to make a more significant change to many of its regulations in the interest of simplifying them and cutting red tape, this proposed routine updating of PPM 30-4 and PPM 30-4.1 was dropped at that time.

A PROPOSAL TO CUT RED TAPE

No further official action was taken to revise PPM 30-4 until March 6, 1979, at which time another advance notice of rulemaking[64] was issued, FHWA Docket No. 79-8, inviting interested persons to comment on the proposed effort to simplify FHWA's regulations on utility relocations and adjustments (PPM 30-4), to eliminate unnecessary requirements, and to cut red tape.

It was at this point that FHWA engaged a consultant to prepare a set of written recommendations for updating current FHWA regulations and procedures on utility-highway requirements. The objective was to update and simplify all of FHWA's utility-highway directives and regulations on utility relocations and adjustments and on the accommodation of utilities (23 CFR 645, subparts A and B. -PPM's 30-4 and 30-4.1). A part of this contract was the preparation of a history of Federal policy on the relocation and accommodation of utilities under the Federal-aid highway program.

CONSULTANT REPORT

The Consultant's Report[65] for updating FHWA's regulations and procedures on utility-highway requirements was presented to FHWA on September 14, 1979. The report[65] includes recommendations for updating current regulations and procedures for utility relocations and adjustments as well as for the accommodation of utilities. The report[65] also contains numerous attachments, including drafts of proposed new directives submitted by the consultant for consideration by FHWA. These attachments are not included as part of this history but are located and maintained in the files of FHWA's Railroad and Utilities Branch, HNG-14, Office of Engineering in its Washington, D.C. headquarters.

A LOOK AHEAD

The Consultant's Report[65] along with all attachments, including drafts of proposed new directives, were next transmitted by FHWA to a Technical Advisory Panel for Updating Utility Directives (a special group of five highway engineers selected from FHWA's field offices and assembled for this purpose). Following review and deliberations on this matter the Panel submitted its recommendations to FHWA's headquarters office. A draft of a proposed new directive on utility relocations and adjustments is now (June, 1980) under review in FHWA's headquarters. It is expected that the proposed directive will soon be published in the Federal Register as a notice of proposed rulemaking with all interested persons given an opportunity to submit their comments.

It is also expected that the requirements in the new directive, the one that is eventually approved for publication, will be substantially reduced and simplied to the very minimum needed to implement the overriding provisions of Federal law and protect the government's interest. Finally, the evolution of transferring program responsibility and authority to the States should continue as it has over the past several years to the point where the utility relocation and adjustment programs in most all States will be administered by FHWA under a certification acceptance type program.

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PUBLIC ROADS ADMINISTRATION
FEDERAL WORKS AGENCY
Washington 25, D. C.

General Administrative Memorandum No. 300

(Supersedes General Administrative Memoranda Nos. 39, 45, 56, 70, 72, and 129 as they apply to this subject.)

Date: May 1, 1946

Subject: Reimbursement of costs of changes to utility facilities.

SECTION I.

A. This memorandum supersedes all previous memoranda and instructions relating to the subject. The provisions herein govern the reimbursement from Federal funds of the costs incurred by a utility companies which do not jointly own or use facilities with a railroad company at the site in making and incident to making changes to their facilities required in connection with the construction of a highway project. It shall apply to reimbursements claimed by a State for the costs incurred under agreements entered into subsequent to its effective date by the State or a subdivision thereof and a utility company as described above.

SECTION II. DEFINITIONS.

A. "Utility" shall mean and include all privately or publicly owned Telephone Lines and Systems; Telegraph Lines and Systems; Lines and Systems for the distribution and transmission of Electrical Energy; and Oil, Gas, Water, Steam, Sewer and other Pipe Lines.

B. The terms "Reimburse," "Participate," or their derivatives where used in this memorandum shall mean that Federal funds may be used to reimburse the State to the extent provided by the law which authorized the expenditure on the particular project.

C. "Costs of rights-of-way" means the costs of and the costs incident to the acquisition of land or interest in land.

D. "Preliminary engineering" means and includes locating, making of surveys, sinking of test holes, foundation investigations, and the preparation of plans, specifications and estimates in advance of construction operations.

E. "Construction" in the Federal-Aid Highway Act of 1944, approved December 20, 1944, includes locating, surveying, and mapping, and the costs of rights-of-way. "Construction" in the Act of July 13, 1943, includes the costs of rights-of-way. "Construction" for the purposes of this memorandum means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a project except locating, surveying, and mapping, and the costs or rights-of-way.

F. "Appropriate solicitation" means the making of requests for bids to a sufficient number of responsible and competent prospective bidders to insure the development of the lowest available prices for the materials and services required and the highest available prices for the materials to be disposed of. The method of making the requests for bids, which may be by personal contact, by the posting of notices in public places, by letters, or by the publication of advertisements, shall be that which is warranted by the total amount of the value of the materials and services required or by the total amount of the value of the materials to be disposed of. The following methods of solicitation are required by the amounts of total values involved,

$100 and less: By personal contacts.

Over $100 and less than $1,000: By posting notices in public places and by means of circular letters to at least three responsible and competent individuals known or believed to be in a position to quote in accordance with the requirements.

$1,000 and over: By the publication of advertisements or such alternate method as may be approved by the Division Engineer of the Public Roads Administration.

SECTION III. REIMBURSEMENT

GENERAL

A. Where a utility company is not obligated to move or to change its facilities at its own expense, reimbursement will be made from Federal funds for the costs without surcharge, except as hereinafter provided, of labor, materials, equipment and other services incurred by a utility company in making or incident to making changes to its properties required in connection with the construction of a highway project.

PUBLIC RIGHTS-OF-WAY AND PUBLIC LANDS OCCUPANCY

B. Where a utility occupies public rights-of-way and public lands pursuant to law, ordinance, franchise, easement, grant or otherwise, the State shall make a formal finding as to the extent that such utility company is obligated, or is relieved of the obligation, by law or otherwise to move or to change its facilities at its own expense. Where a utility company occupies public rights-of-way under a grant or otherwise from a municipality or other subdivision of a State which obligates the utility company, or pursuant to which the utility company may be required, to move or to change its facilities at its own expense, approval of the project will be contingent upon the municipality or other subdivision of the State exercising its right to require the removal or change of such facilities at the expense of the utility company. Where the law or the terms and conditions under which a utility occupies public rights-of-way do not specify who shall pay the costs of the change or removal, the State shall make a formal finding as to the extent the utility company is relieved or is required to move or to change its facilities at its own expense in accordance with the applicable precedent established by courts. If the State should determine in conformity herewith that a utility company is not under obligation, and may not be required to move or to change its facilities at its own expense, reimbursement may be made in an amount not exceeding the regular Federal pro rata share applicable in such State of the cost of such work actually paid by the State or its subdivisions, and where no part of such cost is paid by the State or its subdivisions there will be no Federal reimbursement.

OCCUPANCY OF RAILROAD RIGHTS-OF-WAY

C. Where a utility company occupies the rights-of-way of a railroad company at the site of a project which requires a change to the facilities of the railroad company, the approval of the agreement between the State and the railroad company will be contingent upon the railroad company exercising its rights under the terms and conditions of the grant or easement by which the utility company occupies the railroad company rights-of-way and is required or is relieved of the obligation to move or to change its facilities at its own expense.

JOINTLY OWNED FACILITIES

D. Where the facility required to be changed or relocated is jointly owned by two or more companies, the materials and supplies furnished and billed and the materials

replaced and retired and credited shall be furnished and billed and credited by one of the owning companies. Where, for example, the wholly owned wire lines of two separate companies occupy jointly owned poles, the provisions of this subsection will apply to the required changes to the jointly owned poles and not to the two wholly owned wire lines.

JOINTLY USED FACILITIES

E. Where the ownership of one of the two or more integral parts of a jointly used facility is different than the ownership of the other integral parts, the costs incurred, as provided herein, in making and incident to making the required changes to the joint facility as an entity are reimbursable from Federal funds. Reimbursement from Federal funds, however, shall not be made for the cost of the materials incorporated in an addition to one integral part which is fully compensated within the entity of the joint facility by an equal reduction in length or size of another integral part of the joint facility.

ADDITIONS

F. Where an addition to an existing facility is required, the actual costs of the items of materials in the addition are reimbursable from Federal funds to the extent the materials in the addition are not superior to the materials in the facility to which the addition is extended. The cost of any improvement in type or size which is required in connection with the construction of the project is reimbursable from Federal funds.

BUILDINGS AND OTHER SIMILAR STRUCTURES

G. The cost of the required relocation of buildings and other structures of a utility company is reimbursable from Federal funds. Where it is determined to be impracticable to move a building or another similar structure as a unit intact, the relocation may be effected by dismantling the building or structure at its original site end reassembling or reconstructing it at the new location. The reimbursable costs of relocation my include those of new foundations of a type equal to those formerly in place at the original site and of the adjustment of utilities without betterment. The costs of the items of materials used in the reassembling or reconstruction of buildings and other structures in new locations which are required to replace items of like materials deteriorated in place below a condition suitable for reuse shall be borne by the utility company. Except to the extent an improvement to a relocated building or structure is determined to be required in connection with the construction of a highway project, the entire cost of any improvement in the relocated building or structure in type, size or in incorporated materials shall be borne by the utility company.

H. When a building or other structure is required to remain in place and in service until the building or structure which replaces it in new location is in service, or when the building or other structure which is required to be relocated cannot either be moved as a unit intact or it is determined to be impracticable to effect the relocation by dismantling the existing building or other structure at its original site and by reconstructing it at the new location for reasons other than that of the condition of deterioration of the incorporated materials in place, the credit to be given to the cost of the project shall be the value of the materials as recovered from the building or other structure when removed as appraised and recorded by representatives of the State and of the utility company. Such appraised values will be subject to the review of the Division Engineer of the Public Roads Administration. In no event shall the reimbursable cost of salvaging the materials from the retired building or other structure when removed exceed the appraised values of the materials as recovered. Except to the extent an improvement in a new building or other structure which is constructed to replace a retired building or other structure is determined to be required in connection with the construction of the project, the

entire cost of any improvement in the type or size, or in the incorporated materials over the type, size or incorporated materials of the retired building or other structure shall be borne by the utility company.

SECTION IV. RIGHTS-OF-WAY

A. The cost of rights-of-way will be reimbursed from Federal funds only in the event the funds used to finance the project are available for the payment of such costs. Such costs when incurred by a utility company shall be supported by a statement which shall show for each parcel acquired:

Area. Show in square feet or in acres, or describe easements in other appropriate exact terms.

Cost. Show land and damage items separately.

Nature of title, (by easement, in fee simple, etc.).

Other pertinent facts.

B. The incidental costs for all acquisitions shall be shown at the end of the statement. In the event the costs of rights-of-way exceed those of similar and contiguous or adjacent areas, or where the cost of a single parcel exceeds $1,000, the independent findings of at least two qualified appraisers shall be attached to and be a part of the statement to support the acquisition. Any considerable difference between the cost of rights-of-way and the value of similar and contiguous or adjacent parcels or the amount of the appraisal shall be fully and satisfactorily explained. The salaries, wages and expenses paid to employees of a utility company who are real estate or land appraisers may be included as participating costs for the period of time they are engaged in connection with the acquisition of the required rights-of-way. Upon the request of a utility company, advance approval, comment or criticism of the consideration and other provisions of option agreements may be secured from a State and from the Division Engineer of the Public Roads Administration through the State.

C. Nothing herein shall be construed to require a utility company to transfer land for highway purposes at the cost at which it is carried in its investment account.

SECTION V. PRELIMINARY ENGINEERING

A. The costs of preliminary engineering which are incurred prior to the date on which the program which includes the project is approved will not be reimbursed from Federal funds.

SECTION VI. CONSTRUCTION

A. Construction costs incurred prior to the date on which the plans, specifications and estimates of a project are recommended for approval by the District Engineer of the Public Roads Administration will not be reimbursed from Federal funds.

PERFORMANCE OF WORK

B. Except where it is otherwise agreed to by the State with the approval of the Division Engineer of the Public Roads Administration, all required changes to the properties of a utility company and all work incident to such changes shall be performed by the utility company with its own forces or by a contractor paid under a

contract let by the utility company. No contract to perform any work in connection with such required changes to the properties of a utility company shall be entered into unless the contract is awarded to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications of the work to be performed following a request for bids by appropriate solicitation. No such contract shall be entered into except when a clear showing has been made that the utility company is not adequately staffed or equipped to perform the work with its own forces, nor without the prior approval of the State and the Division Engineer of the Public Roads Administration. Subject to the prior approval of the State and of the Division Engineer of the Public Roads Administration existing continuing contracts under which certain work is regularly performed for the utility company and under which the lowest available costs are developed will be held to conform to the above requirements. All labor, materials, equipment and other services furnished by a utility company in connection with the work performed under a contract let by the utility company shall be billed direct to the State, as provided herein, and shall not be billed to the contractor. The special provisions of such contract shall be explicit in this respect.

C. No reimbursement will be made to a State for the cost of any change in any property of a utility company in addition to those shown on the plans for the construction of the project which is made for the benefit or convenience of a contractor.

SECTION VII. AGREEMENTS

A. Before approval is given by Division Engineers to plans, specifications and estimates for a project, the proposed agreement between the State and a utility company shall be reviewed with special attention to the eligibility for reimbursement with Federal funds of the participating items of cost included therein. Any estimate submitted which includes work to be performed by a utility company shall be supported by a written agreement which has been entered into by the State and the utility company. This agreement shall contain a comprehensive detailed statement of the work to be performed and shall incorporate this memorandum by reference. The form of the written agreement is not prescribed. It may consist of an exchange of correspondence which amounts to an offer and acceptance by officers with authority to bind the parties thereto or a more formal document. A detailed and itemized estimate of the cost of the work to be performed, compiled in the order of the items in the statement of work, prepared and submitted by the utility company, shall be attached to and be a part of the agreement. The plans shall include reproductions of drawings which indicate the plan of the utility work, the original facilities to be changed, the changes to be made as follows: (a) as before construction starts; (b) as to be temporarily located or constructed during the period of construction, and (c) as to be located or constructed permanently. Where a consequential change in grade is involved, the profile of the facility to be changed or of the location of such facility shall be shown by stages as indicated above for plan. Copies of all such agreements between the States and utility companies shall bear the Division Engineer's approval.

B. The Division Engineer's approval shall be indicated in the following form on the page of the agreement on which the other signatures appear:

"Examined as to provisions and
participating items of cost.

APPROVED

_____ _____
Date Division Engineer"

C. Any estimate of the total cost of the project which is received without the supporting utility agreement may be approved at the election of the Division Engineer

as to the total project, but approval of the work contemplated to be performed by a utility company shall not be construed as having been given until the required agreement has been received and approved.

CHANGE ORDERS

D. In the event it is determined that a change from the statement of work contained in the agreement is required, it shall be authorized only by a written change or extra work order issued by the State and approved by the Division Engineer of the Public Roads Administration prior to the performance of the work involved in the change. Where an emergency requires, the advance approval of the Division Engineer of the Public Roads Administration may be obtained by telegraph.

SECTION VIII. LABOR COSTS

GENERAL

A. The actual salaries, wages and expenses paid by a utility company to individuals during the periods of time they are directly engaged in making and incident to making the changes to its facilities and properties which are required in connection with the construction of a highway project are reimbursable from Federal funds. This shall include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and those who are directly engaged in essential engineering at the site of the project and in the actual preparation of the plans and estimates of the work in connection with the changes required by the construction of a highway project. In no event will the cost of the preparation of "as constructed" plans for record only by a utility company be reimbursed from Federal funds. The salaries and expenses paid to individuals within the structure of the overhead organisation of a utility company who are directly engaged at the project site may be reimbursed from Federal funds only where a reasonable showing is made that the work performed by such individuals was essential to the prosecution of the construction of the highway project and could not have been accomplished as economically by employees outside of the structure of the overhead organization of the utility company.

B. Reimbursable labor costs shall include retroactive pay adjustments which are included in a claim submitted by a State prior to the final settlement thereof.

C. A rate which is representative of the actual costs to a utility company for the services of general engineering, legal and administrative direction which is not in excess of three percent of the total amount of the salaries and wages, to include vacation pay and allowances, paid by a utility company to individuals directly engaged in making and incident to making changes required by the construction of a highway project, as outlined above, may be reimbursed from Federal funds.

D. Where a utility company is not adequately staffed to prosecute the work to be performed in connection with the making of the changes to its properties which are required by the construction of a highway project, the amounts paid to engineers, architects and others for required technical services which are approved by the State and by the Division Engineer of the Public Roads Administration will be reimbursed from Federal funds. Approval shall not be given to fees for such technical services which are determined on the basis of a percentage of the total actual cost of making the required changes to the properties of the utility company.

ACCOUNTING

E. The amounts of the actual salaries and wages paid by a utility company to employees who are directly engaged in the preparation of the billings of costs to the State and to employees who are directly engaged in essential accounting at the site of the project will be reimbursed from Federal funds.

VACATION

F. Vacation pay or allowance which accrues to the credit of certain employees is reimbursable from Federal funds to the extent it is determined to be the perquisite of the employee and the clear obligation of the utility company. Vacation pay or allowance is earned only during work periods for which the basic rates are paid.

COMPANY SPONSORED BENEFITS

G. Where a utility company sponsors employees' benefits such as added retirement compensation, hospitalization, and others similar which can be determined to be the perquisite of the employee and the obligation of the employing company, reimbursement from Federal funds therefor will be limited to the experience rate which is developed by dividing the actual cost of the sponsored benefit to the employing company by the total amounts paid to the benefitted employees earned at basic rates of pay, to include vacation allowances, both over the same completed period of not less than one year and as nearly next preceding the period is which the rates are billed as is practicable.

INSURANCE

H. Unless it has been the policy of a utility company to carry insurance regularly with an insurance company on its own construction and maintenance projects and operations, insurance premiums paid to an insurance company by a utility company for protection incident to the employment of labor engaged in making changes required in connection with the construction of any highway project will not be reimbursed from Federal funds except where the approval of the State and the Division Engineer of the Public Roads Administration for the purchase of such protection is given prior to the date on which the forces of the utility company begin work on the project.

I. Where a utility company is a self-insurer and has developed experience rates from actual costs and the method of computation is determined to be correct, reimbursement from Federal funds will be limited to the developed rates which are not in excess of those of a regular insurance company for the classes of employment covered.

J. Reimbursement from Federal funds for the cost of workmen's compensation insurance to utility companies which are self-insurers and which have not developed acceptable rates of self-insurance will be limited to a rate which is not in excess of three and one-half percent of the salaries and wages paid to employees.

K. Reimbursement from Federal funds for the costs of public liability and property damage insurance to utility companies which are self-insurers and which have not developed acceptable rates of self-insurance will be limited to a rate which is not in excess of one percent of the salaries and wages paid to employees.

L. The amount of vacation allowances which is paid by a utility company or for which the utility company is obligated to pay, as outlined above, may be included with the total of the salaries and wages paid to employees to which the rates are applied in billing for self-insurance. The amount of insurance premiums paid by a utility company to an insurance company for workmen's compensation, public liability and property damage insurance is reimbursable from Federal funds to the extent it is determined that the amounts of the premiums are the products of the proper rates applied to the amounts of paid salaries and wages exclusive of vacation pay or allowances.

PAYROLL TAXES

M. The amounts paid by utility companies for taxes for unemployment and for taxes for old age and other benefits under the provisions of statutes will be reimbursed from Federal funds.

SECTION IX. MATERIALS AND SUPPLIES

PROCUREMENT

A. Except for minor quantities, all items of materials and supplies which are required in the work to be performed by a utility company in connection with the construction of a highway project which cannot be furnished from the utility company stock shall be purchased under competitive bids. This shall not be construed to prohibit a utility company from purchasing materials or supplies under existing continuing contracts under which the lowest available prices are developed, nor to require a utility company to change its existing standards for items of materials which are used in the permanent changes to its facilities.

COSTS

B. Items of new materials and supplies shall be billed at actual costs to a utility company delivered to the point of normal storage or to the point where delivery can be made with the greatest over-all economy to the cost of the project. Averages of actual unit costs of items of materials and supplies furnished from a utility company stock are reimbursable from Federal funds provided the method of computation of the average unit cost is correct. The costs of handling at stores or at material yards, hereinafter provided for, the costs of purchasing, and any charge for general overhead expense shall not be included to the computation of the prices of items of materials or supplies which are furnished by a utility company. A reasonable cost of plant inspection and testing may be included in the costs of items of materials and supplies where such costs have been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates and allowances. The deduction of offered discounts shall include the progressive discounts which accrue to the benefit of the purchaser and are determined by the volume of purchases within a period of time. When billings are made for purchase at materials or supplies prior to the end of an applicable progressive discount period, the rate of discount determined in the period next preceding shall apply.

C. Items of used materials and supplies furnished from utility company stock shall be billed at the book values of the utility company where such book values are representative of the reasonable value resident in the item of used material or supply.

RECOVERED FROM TEMPORARY USE

D. When materials which have been furnished by a utility company and used in temporary structures, forms, locations, pole lines or pipe lines are released, the utility company shall give credit for the appraised values of the items of materials recovered which are accepted for return to their stock. The appraisals of values shall be made and recorded by the representatives of the utility company and of the State and will be subject to the review of the Division Engineer of the Public Roads Administration. There shall be no predetermined depreciation. When the item of material is recovered in a condition and length suitable to be reused for the purpose for which the material was originally manufactured or processed, and which is accepted for return to the stock of the utility company, the appraised value of the item of material to be credited shall be the cost at which the useable lengths or units were originally billed to the project less a measure of depreciation or loss in service life of not to exceed the following:

1. Twenty-five percent of the unit price originally billed for heavy timbers and for all other lumber except poles in (2) below.

2. Fifteen percent of the price originally billed for wood poles such as telegraph, telephone or power line poles.

3. Six percent of the unit price originally billed for items of heavy iron or steel.

4. Fifteen percent of the unit price originally billed for electrical items and appurtenances of a mechanical type such as relays, transformers, rectifiers, etc.

5. Ten percent of the unit price originally billed for valves, metal pipe and all pipe fittings.

6. Ten percent of the unit price originally billed for all conductor cable, serial or underground, which was new when installed; and

   Six percent of the unit price originally billed for all conductor cable which was other than new when installed. Useable lengths of all conductor cable will be determined by appropriate tests and inspections. The costs of such tests and inspections are reimbursable from Federal funds.

7. Ten percent of the unit prices originally billed for minor items of pole line fittings such as crossarms, crossarm brackets, insulators, insulator pins, bolts, lag screws, guy rods, line wire, messenger cable, cable clamps, etc.

E. Items of materials recovered from temporary use in a condition and length suitable for reuse for the purpose for which originally manufactured or processed which are returned to a utility company stock shall not in any event be appraised for credit at a value which is less than fifty percent of the current market price of similar items of new materials except when such appraisal exceeds the price at which an item was originally billed to the project, in which event the credit appraisal shall be at a unit price which is equal to that at which the item was originally billed to the project.

F. Items of materials recovered from temporary use in conditions or lengths unsuited for the purpose for which originally manufactured or processed, which the utility company accepts for return to its stock shall be credited at values as appraised and recorded by representatives of the State and of the utility. The appraisals of values will be subject to the review of the Division Engineer of the Public Roads Administration.

G. Items of materials recovered from temporary use in conditions and lengths unsuited for acceptance by the utility company, which have been determined to have a sale value, shall be sold following an appropriate solicitation for bids to the highest bidder; and the proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the State, or at the request of the State, by the utility company. In no event shall the utility company be considered as an acceptable bidder for such material.

H. Except for the cost of the clean-up required to leave the site of a completed project in a neat and presentable condition, the reimbursable costs of removal, of transportation and of handling of materials, following release from temporary use, shall not exceed the value to be credited of the materials recovered.

BETTERMENTS AND OTHER CHANGES

I. Where the construction of a project necessitates a change in type or location or a betterment to a facility of a utility company, the utility company shall give credit for the items of materials retired at the current prices or similar items of new material except:

1. When a change in type or a change in type with a change in length or size of a facility of a utility company results in a reduction in the value of the facility, the credit required for the parts retired shall not exceed the amounts charged for all of the items of materials incorporated in the facility and billed in making the change.

2. When a part retired in a required change in type or betterment is replaced by a part which is charged at less than new value, the credit to be given for the retired part shall bear the same relation to its current value now that the amount which is charged for the part installed bears to its current value new.

3. When as the result of a required change in telegraph, telephone, or power transmission pole line, wood poles are retired and replaced with other poles, the poles retired shall be credited at the current price of new poles equal in length of the retired poles when originally installed and of the type and class of the poles installed in making the change less fifteen percent to compensate for the loss in service life occasioned by the removal. In the event the total amount of the current value new of all of the poles retired on a project less the consideration for loss in service life exceeds the total amount billed for the poles installed, the credit required for the poles retired shall not exceed the total amount billed for the poles installed. When the required relocation of a pole line is accompanied by trenching over the poles, no consideration for loss in service life in the poles trenched over will be reimbursed from Federal funds.

4. When as the result of a required change in type or relocation of a facility of a utility company the cost of the removal of the materials retired in serviceable condition can reasonably be estimated to exceed the new value of the materials to be removed, and the retired facilities are left in place, no credit will be required.

5. No credit will be required for the reasonable loss of minor items of pole line fittings such as crossarms, crossarm brackets, insulators, insulator pins, bolts, lag screws, guy rods, anchors, messenger cable, cable clamps, line wire other then copper line wire, etc. Items of this class of material which are recovered in serviceable condition shall be credited at current prices of similar items of new material unless they are reused on the project without charge. Copper line wire which is recovered in a condition unsuited for reuse shall be credited at the current value of the scrap copper recovered.

6. The credit to be given for retired conductor cable need not include the total length of the required terminal splices.

7. No credit will be required for the materials in masonry or concrete foundations or footings which are retired and replaced by foundations or footings con-constructed in new locations. The costs of salvaging materials from masonry or concrete foundations or footings which have been retired and removed will not be reimbursed from Federal funds.

8. The credit required where buildings or other similar structures to be relocated are retired and replaced is outlined under "Buildings and Other Similar Structures" in Section III.

9. On projects wherein the utility company actually suffers loss by reason of the application of credits as required above, the utility company shall have the opportunity of submitting a detailed statement of each loss which will form a basis for such further adjustment as may be indicated.

HANDLING COSTS

J. The actual and direct costs of handling and of loading out of materials and supplies at and from a utility company stores or material yards and of unloading and handling of recovered materials accepted by a utility company at its stores or material yards are reimbursable from Federal funds. A rate representative of all such actual handling, loading and unloading costs which is not in excess of five percent of the amounts billed for the materials and supplies which are issued from the

utility company stores and material yards will be reimbursed from Federal funds. The amounts credited for the value of recovered materials accepted at a utility company's stores or material yards shall not be included in the amount to which the rate is applied for reimbursement of the costs of handling, loading and unloading of materials and supplies at stores and material yards. The costs of handling materials and supplies shall be billed either at the actual and direct costs incurred in handling, loading and unloading of materials and supplies or at a rate representative of such costs, as provided above. In no event will a combination of a billing of actual and direct costs and a rate representative of actual and direct costs on a highway project be reimbursed from Federal funds.

SECTION X. EQUIPMENT

GENERAL

A. A utility company shall make use of its available equipment without a charge for general overhead expense. This provision shall also apply to equipment which is rented to a contractor who is paid under a contract let by the utility company to perform work in connection with changes to its facilities required by the construction of a highway project.

OPERATION

B. Actual equipment operating costs are reimbursable from Federal funds. Average rates of operating costs which have been developed from actual operating costs by classes of equipment and from actual records of use of each class of equipment over a period of not less than six months and as nearly next preceding the period in which the rates are billed as is practicable will be considered for approval for reimbursement by the Public Roads Administration.

REPAIRS

C. The actual costs of light and running repairs to units of equipment; the need for which can be reasonably established to have been incurred during the use of the equipment on the project, are reimbursable from Federal funds. Average rates of the costs of light and running repairs which have been developed from actual costs of light and running repairs by classes of equipment and from actual records of use of each class of equipment over a period of not less than one year and as nearly next preceding the period in which the rates are billed as is practicable will be considered for approval for reimbursement by the Public Road Administration.

OPERATORS

D. The salaries, wages and expenses of operators and of others who are engaged in the operation of equipment are reimbursable project costs which shall not be included in equipment operating costs. The salaries, wages and expenses of these employees, when engaged in making light and running repairs to equipment, may be included in the actual costs of light and running repairs to equipment, when such costs are billed. Where average rates of light and running repairs to equipment are billed, the salaries, wages and expenses of employees engaged to making light and running repairs to equipment are not reimbursable from Federal funds. The entire cost of making repairs which are classified as greater than light and running repairs, including the salaries, wages and expenses of employees engaged in making such repairs, is not reimbursable from Federal funds.

DEPRECIATION

E. The amounts which a utility company charges to its own construction and maintenance projects and operations for the costs of depreciation of units of equipment

during the period of their use on a project, which have been determined to be equitable according to the utility company's experience and best sources of information as to the accruals of current loss from depreciation and which in the aggregate would not exceed the difference between the ledger value of any unit of equipment and its estimated scrap value, will be reimbursed from Federal funds.

AUTOMOTIVE

F. Where the unit of use of automotive equipment which uses the highway is the mile, a rate of five cents may be billed in lieu of all costs of operation, including depreciation and maintenance, for each mile recorded to have been used directly in essential work in connection with the project.

SMALL TOOLS

G. Reimbursement from Federal funds for the use of small tools on a project will be limited to the reasonable loss or damage during the period of use, when such loss or damage is not due to negligence. Claim for such loss or damage should be billed in detail.

RENTAL

H. Where a utility company does not own available equipment of the kind or type required, reimbursement from Federal funds will be limited to the amount of rental paid to the lowest bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment.

I. Where a utility company uses the equipment of a wholly owned affiliated company, or where a utility company is the wholly owned affiliate of the company whose equipment it uses, reimbursement from Federal funds will be limited to the payment of the equipment operating costs and of the costs of light and running repairs to the equipment, or of the approved rates representative of such costs, and of the costs of equipment depreciation. Such reimbursable costs shall be determined as outlined above for the equipment of the owning company.

SECTION XI. TRANSPORTATION

EMPLOYEES

A. The cost of the required transportation of utility company employees, including the cost of sleeper fares when night travel is involved, over the most economical usually traveled route and at not to exceed the lowest first class rate will be reimbursed from Federal funds.

B. The cost of essential transportation performed in automobiles or trucks owned by a utility company shall be held to have been reimbursed in the payment of the operating costs of the conveyance equipment or at the rates representative of the equipment operating expenses as provided herein under "Equipment."

C. Reimbursement from Federal funds for the required use of automobiles privately owed by employees of a utility company will be limited to the rates established at which the utility company reimburses its employees for each mile of use in connection with its own construction and maintenance projects and operations.

MATERIALS AND SUPPLIES

A. Materials and supplies shall be moved from the point of normal storage or from the point where delivery has been made by a vendor, as provided in SECTION IX. MATERIALS AND SUPPLIES--COSTS, to the site of the project, and materials recovered which

are accepted by the utility company from the project site to the nearest point of normal storage by the most economical method of transportation. When materials and supplies are moved by common carrier, reimbursement from Federal funds will be limited to the published tariff rates for the commodities transported. The cost of the transportation of materials and supplies by trucks or other conveyance equipment which to owned by the utility company shall be held to have been reimbursed in the payment of the operating costs of the equipment or of the rates representative of the equipment operating costs as provided herein under "Equipment."

EQUIPMENT AND SMALL TOOLS

E. The required equipment and small tools shall be moved to the project site from the nearest points they are available, and when released from use on the project and not destined for use on another project or operation within a reasonable length of time, from the project site to the nearest point at normal storage by the most economical method or transportation. The costs of moving equipment and small tools shall be held to have been reimbursed in the payment of the operating costs of the equipment in and by which it is moved. Reimbursement from Federal funds will be limited to paid freight charges at the published tariff rates for the commodities transported by common carrier. When equipment and small tools are released from a project and are moved to another project or operation, the project from which the equipment and small tools are released shall bear no part of the cost of their transportation to the other project or operation.

SECTION XII. MAINTENANCE DURING CONSTRUCTION

A. The cost of the maintenance of a utility company's temporary structures during the period of their use is reimbursable from Federal funds. The amount by which the costs of maintaining the other facilities of a utility company during the period of construction can be determined to exceed the costs of maintenance of facilities during normal operations is reimbursable from Federal funds.

SECTION XIII. UTILITY COMPANY BILLS

A. Monthly progress billings of incurred costs may be made to a State by a utility company.

B. One final and complete billing of all incurred costs shall be made to the State by the utility company at the earliest practicable date. The final and complete utility company bill should not be held by the State for its inclusion in the final voucher to the Public Roads Administration when it is received in time to be included in an earlier progress voucher. Prompt settlement of utility company bills is desired. While it is recognized the several States consider it to be desirable to retain certain percentages of the total amounts billed by utility companies pending the final settlement of the bills, it is recommended to the States that the amounts so retained do not exceed that which is consistent with sound business practices.

C. Before final reimbursement may be made to a State for the cost of the work performed by a utility company, the cost records and accounts of the utility company will be audited by a representative of the Public Roads Administration for the determination of reimbursable actual costs. The statement of the final and complete billing shall show the description and site of the project, the Public Roads Administration designation, the date on which the first work was performed or on which the earliest item of billed expense was incurred, and the date on which the last work was performed or the last item of expense was incurred, and the location where the records and accounts of the costs billed can be audited. The utility company shall make available an adequate reference from the statement of final and complete billing to its records, accounts and other relevant documents.

D. The statement of final and complete billing shall be compiled in sections and summarized. Each section shall include all of the items of costs for each separate phase of the work performed, and shall be in the order of the items in the estimate portion of the agreement between the State and the utility company. All elements of cost shall be stated in detail. The costs of labor, travel expense, transportation, equipment repairs, operation and depreciation, loss and damage to small tools, and other services shall be stated by months in which incurred. Vacation allowances, payroll taxes and insurance, and travel expenses shall follow the statement of labor costs. Handling and loading of materials and supplies at stores and material yards shall follow the itemized statement of materials and supplies billed. The costs of transportation shall follow the itemized statement of materials and supplies furnished and billed, the itemized statement of materials credited, and the statement of equipment repairs, operation and depreciation.

E. During the audit of the records and accounts which support the billed costs, the representative of the Public Roads Administration will discuss all items of costs to which exceptions may be taken or on which comments may be made with representatives of the utility company. The Division Engineer of the Public Roads Administration will refer one copy of the exceptions taken and of comments made direct to the utility company and one copy to the State. To permit consideration of the utility company's statement of explanation or rebuttal is reference to the audit exceptions and comments, one copy of such statement shall be transmitted by the utility company direct to the Division Engineer of the Public Roads Administration within ten days following the receipt of the audit exceptions and comments, or advice in writing should be made as to the date on which the utility company's statement will be transmitted, and one copy of the utility company's statement or advice in writing shall be transmitted to the State.

Thos. H. MacDonald
Commissioner of Public Roads

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DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

February 14, 1957

CHERRY MEMORANDUM NO. 30-S

TO: Assistant Commissioners and Regional Engineers

FROM: B. D. Tallamy, Federal Highway Administrator

SUBJECT: Utility Relocation

One of the States recently requested our interpretation of section 111 of the Federal-Aid Highway Act of 1956 as applied to a hypothetical case. The substance of our reply is as follows:

"You ask consideration of a hypothetical set of facts concerning reimbursement for relocation of utility facilities. You inquire if a State law provides for payment by the State of 100 percent of the cost of relocation of an utility's facilities, and pursuant to such authority the State makes payment to the utility and receives reimbursement from the Federal Government in accordance with section 111 of the Federal-Aid Highway Act of 1956, would a subsequent repayment by the utility to the State of an amount not exceeding the State's unreimbursed portion of such relocation cost affect the original reimbursement to the State by the Federal Government?

"There is grave doubt as to the legality of the suggested procedure. Section 111 of the 1956 Act expressly provides that the provisions thereof are applicable 'whenever a State shall pay' for the cost of utility relocations. If an arrangement should be worked out whereby the utility will make a contribution to the State for payment of an amount equal to the State's share of the cost, the practical effect is that the State has not actually incurred an out-of-pocket expense. Hence, it is highly questionable that in such circumstances the State would be considered as having paid for the cost within the meaning of section 111 and the Federal-aid regulations.

"Irrespective of its legality, however, as a matter of administrative policy the Bureau of Public Roads should not permit a State to emerge from this type of transaction without the ultimate expenditure of any State funds. The proposed procedure would initially require payment by the State of the entire cost of relocation but, in accordance with an agreement or understanding between the utility and the State, the utility would repay the State for all of the State's original expenditure not reimbursed by the Federal Government, thereby resulting in no actual cost to the State. Historically the State-Federal highway cooperative relationship is based on initial payment by the State of the cost of construction with reimbursement by the Federal Government of its pro-rata share. The proposed procedure technically follows this principle in form but does not follow it in substance, for there was never intended to be any ultimate obligation of the

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State to pay any part of the relocation cost. There would only be an interim initial payment to serve merely as a vehicle for obtaining Federal aid. This would result in the State having no real financial stake in the cost of relocation of utility facilities, which might tend to lessen the interest of the State in insuring that the relocation is accomplished economically and that all charges are proper. The many facets of utility relocation cost are already complex, and the wholehearted best efforts of both the Federal Government and the State should be devoted to protecting the public interest.

"It is my view that if a utility repays a State for the State's pro-rata share of the cost of relocation of facilities of the utility, the policy of the Bureau would be to disapprove the relocation cost for participation of Federal funds."

This Cherry Memorandum is to be distributed to the State highway departments.

U. S. DEPARTMENT OF COMMERCE

BUREAU OF PUBLIC ROADS

POLICY AND PROCEDURE MEMORANDUM 21-6.2

Date of Issuance: February 16, 1955

PROGRAM AND PROJECT PROCEDURES

SUBJECT: **CONTRACT AND FORCE ACCOUNT (Justification Required for Force Account Work)**

Supersedes: Those portions of G.A.M. 297 (Temporary Topic 20-K) and G.A.M. 307 (Temporary Topic 20-F) that relate to justification for force account work

1. Purpose

The purpose of this memorandum is to prescribe procedures in accordance with Section 17(a) of the Federal-Aid Highway Act of 1954 and Section 1.10(a) of the Federal-aid regulations for a State highway department to request approval that highway construction work be performed by some other method than by contract awarded by competitive bidding, and for the Bureau of Public Roads to make findings and report thereon to the Committees on Public Works of the Senate and the House of Representatives that the performance of said work by some other method than by contract awarded by competitive bidding is in the public interest.

2. Application

This memorandum applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State or a subdivision thereof in pursuance of agreements between any State highway department and the Bureau of Public Roads, except secondary projects undertaken in any State under the 1954 Secondary Road Plan.

3. Definitions

The following definitions shall apply for the purposes of this memorandum:

a. The term "some other method" of construction as used in the Act shall mean the "force account" method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.

b. The term "force account" shall mean the direct performance of highway construction work by a State highway department, a county, a railroad, or a public utility company by use of labor, equipment, materials and supplies furnished by them and used under their direct control.

c. The term "county" shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State highway department in highway matters.

4. Determination of Public Interest

a. The Congress has expressly provided in the cited legislation that the contract method based on competitive bidding shall be used by a State or county for performance of highway work financed with the aid of Federal funds unless there is an affirmative finding that under the circumstances relating to a given project it is in the public interest to perform the work by some other method.

b. It may be found in the public interest for a State or county to undertake a Federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the community at large are so affected as to require some

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special course of action, including situations where there is a lack of bids or the bids received are unreasonable. The cost, by force account, in all cases must be reasonable.

c. No precise rules can be prescribed nor can specific examples always be followed. If, however, a State or county in order to perform force account work must acquire or rent substanially more equipment than required for its normal operations or if force account work by a particular organization shows a substantial increase over a preceding year, it would be difficult under such circumstances to justify an affirmative finding compatible with the foregoing authorization.

5. Finding of Public Interest

a. Pursuant to authority in section 17(a) of the said Act of 1954, it is hereby administratively determined that by reason of the inherent nature of the operations involved it is in the public interest to perform by force account the installation or adjustment of utilities or similar type facilities owned or operated by a public agency, a railroad, or a public utility company, provided the costs are reasonable.

b. When a State highway department desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under paragraph 5(a) or Federal-aid secondary highway projects to be undertaken by a State or a county in accordance with the State highway department's plan of procedure under the 1954 Secondary Road Plan (PPM 20-5) approved by the Commissioner, be undertaken by force account, it shall submit a written request to the appropriate District Engineer of the Bureau of Public Roads identifying and describing the project and the kinds of work to be performed, the estimated costs therefor, the estimated Federal funds to be provided, and setting forth the reason or reasons that force account for such project is considered to be in the public interest.

c. The District Engineer shall promptly notify the State in writing of his determination that under the circumstances relating to the project, force account is or is not found to be in the public interest. In each case involving 1956 or subsequent fiscal year funds, the District Engineer shall promptly submit to the Commissioner through the Division Engineer three copies each of the State's request and the District Engineer's reply to the State. These papers are to be supplemented with an endorsement or statement by the Division Engineer with respect to the District Engineer's finding.

6. Report to Congress

The Deputy Commissioner for Engineering shall be responsible for reporting all affirmative findings involving 1956 or subsequent fiscal year funds promptly in writing to the Commissioner for transmittal to the Committees of Public Works of the Senate and the House of Representatives. Such written reports may be made by transmitting copies of the affirmative findings received pursuant to paragraph 5c or in such other form as may be satisfactory to said committees.

C. D. Curtiss
Commissioner of Public Roads

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U. S. DEPARTMENT OF COMMERCE **POLICY AND PROCEDURE MEMORANDUM 30-4**

BUREAU OF PUBLIC ROADS **Date of issuance:** December 31, 1957

PAYMENT PROCEDURES

SUBJECT: REIMBURSEMENT FOR UTILITY WORK

Supersedes: GAM 300 (Temporary Topic 30-C) and those parts of GAM's 95, 99, 107, 265, 266 and 271 that pertain to utilities (Temporary Topic 30-C), and memorandum dated March 25, 1953, (Temporary Topic 20-H)

1. PURPOSE AND APPLICATION

a. The purpose of this memorandum is to prescribe the extent to which Federal funds may be applied to costs incurred by or on behalf of utilities in the adjustment of their facilities required by the construction of highway projects under the supervision of a State highway department or of the Bureau of Public Roads.

b. Except as provided under paragraph 1c, the procedure set forth herein shall apply, (1) to reimbursement claimed for costs incurred under all State - utility and Public Roads - utility agreements entered into and governing work performed subsequent to the effective date hereof, and (2) subject to modification of the agreements to include appropriate reference to Policy and Procedure Memorandum 30-4 in lieu of GAM 300, to reimbursement claimed for costs incurred under State -utility or Public Roads - utility agreements entered into prior to the effective date. Except at the election of the State, procedures prescribed herein shall not apply to claims for reimbursement of costs of work performed under State-utility agreements now or hereafter entered into on projects under the 1954 Secondary Road Plan.

c. Where State law or regulation provided agreement and payment standards more liberal than those established by the provisions of this memorandum, the provisions of this memorandum shall govern. Conversely, where State law or regulation provides more restrictive agreement and payment standards, the State Standards shall govern. The division engineer shall determine which procedures will govern and will notify the State accordingly.

d. Where the highway construction which requires the utility relocation is under the direct supervision of Public Roads, all references herein to the State are inapplicable. Under such circumstances it is intended that Public Roads be considered in the relative position of the State.

2. DEFINITIONS

For the purposes of this memorandum, the following definitions shall apply:

a. "Utility" shall mean and include all privately, publicly or cooperatively owned communication lines and facilities, any systems, lines and facilities for the distribution and transmission of electrical energy, oil, gas and water, including sewer, steam and other pipe lines. Dependent upon the meaning intended in the context, "utility" shall also mean the utility company, inclusive of any wholly owned subsidiary.

b. The term "reimburse" and "participate," or their derivatives, shall mean that Federal funds may be used to reimburse the State or utility to the extent provided by applicable law.

c. "Division engineer" shall mean the division engineer of the Bureau of Public Roads.

d. "Costs of Rights-of-Way" shall mean the costs of land and interests in land and costs incident to the acquisition of land or interest in land required for the relocation of the utility facility.

e. "Preliminary Engineering" shall mean and include locating, making of surveys, and the preparation of plans, specifications and estimates in advance of construction operations.

f. "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project except preliminary engineering, right-of-way and engineering or inspection charges included in the utility's construction overhead account.

g. "Salvage value" is the amount received for utility property removed, if sold, or if retained for reuse, the amount at which the material recovered is charged to the materials and supplies account.

h. "Work Order System" is a procedure for accumulating and recording into separate accounts all costs to a utility in connection with any change in its system or plant.

i. "Program approval" shall mean the approval by Public Roads of programs of projects proposed by the State. The projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

j. "Authorization" shall mean authorization to the State by the division engineer to proceed with any phase of a project previously or concurrently given program approval. The date of authorization establishes the date of eligibility of expenses incurred on that phase of work.

k. "Relocation" shall mean the adjustment of utility facilities required by highway construction, such as removing and reinstalling the facility on new location, moving or rearranging existing facilities or changing the type of facility.

l. "Cost of Removal" is the cost of demolishing, dismantling, removing or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

m. "Costs of Salvage" is the amount expended to restore salvaged utility property to usable condition after its removal.

n. "Overhead Costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentum factor supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, and general office services, relocation engineering and supervision by other than the accounting utility, legal services, insurance, relief, pensions and taxes.

o. "Replacement facility" shall mean replacing of the function of the facility rather that reproducing a replica facility.

p. "Net replacement cost" shall mean the total of current charges for the replacement facility, exclusive of betterments, and the costs of removal of the replaced facility less the amounts credited for materials salvaged or scrapped.

3. ELIGIBILITY

a. Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a state or a political subdivision thereof for the costs of utility relocations made under one or more of the following conditions:

(1) Where the utility has right of occupancy in its existing location by reason of holding the fee, an easement or other property interest.

(2) Where the utility occupies publicly owned land or public right-of-way and the State certifies that payment for the utility relocation is not in violation of the laws of the State or any legal contract between the utility and the State. If there should be any question as to the State's authority to pay for such relocation, the State may be required to cite or establish its authority to pay for such utility relocation. The rights of an agency or political subdivision of a State under a contract, franchise or other instrument with the utility pertaining to rights of occupancy of publicly owned lands or public rights-of-way shall be considered to be the rights of the State in the absence of State law to the contrary.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense.

4. RIGHTS-OF-WAY

a. Cost of rights-of-way located outside publicly owned lands or highway rights-of-way which are incurred subsequent to the date on which that phase of the work is authorized by the division engineer may be reimbursed.

b. Expenses incurred by the utility incident to the acquisition of rights-of-way may be reimbursed. These expenses may include such items as salaries and expenses of utility employees while engaged in the appraisal of and negotiation for the right-of-way, amounts paid independent appraisers for appraisals made of the right-of-way, recording costs, deed fees and similar costs normally paid incident to land acquisition.

c. The utility shall determine and record its valuation of the rights-of-way that it acquires prior to negotiation of its acquisition. This means the utility should, by its records, be in a position to justify amounts paid for the right-of-way. The valuation may consist of appraisals by utility employees or by independent appraisers. Prudent practice would require adequate and formal appraisals of record where the cost of right-of way is more than nominal.

d. Acquisition of rights-of-way by the State for a utility shall be in accordance with PPM 21-4.1.

5. PRELIMINARY ENGINEERING

The cost of preliminary engineering incurred subsequent to the date on which that phase of the work is authorized by the division engineer may be reimbursed.

6. CONSTRUCTION

a. Construction costs incurred by a utility subsequent to the date on which the division engineer authorized the State to proceed with the relocation may be reimbursed. Federal funds will not participate in any utility relocation (1) not shown on the approved plans for the relocation or highway construction, or (2) not necessitated by the construction of the highway project, nor (3) for changes made solely for the benefit or convenience of a utility, its contractor or a highway contractor.

b. Unless the utility work is made a part of the State's highway construction contract, as agreed to by the utility and the State with the approval of the division engineer, all utility relocation and all work incidental to such relocation shall be performed by the utility with its own forces or by a contractor paid under a contract let by the utility. No contract shall be let by the State or entered into by the utility for utility relocation except when a clear showing has been made that it is to the best interests of the State, or that the utility is not adequately staffed or equipped to perform the work with its own forces, nor without the prior approval of the State and the division engineer.

c. If reimbursement is to be requested, any contract to perform work in connection with the utility relocation should be under an award to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed as set forth in an appropriate solicitation for bids, except as set forth in paragraph 6(d). Appropriate solicitation shall be accomplished through open advertising in publications or by circularizing to a list of prequalified contractors or known qualified contractors. A list of such contractors shall be submitted to the State for informational purposes in advance of the solicitation for bids. Subject to prior approval by the State and the division engineer, existing continuing contracts under which certain work is regularly performed for the utility and under which the lowest available costs are developed, will be considered to conform to these requirements. Existing continuing contracts may include agreements with a utility which has no joint use or ownership interest in the facility.

d. Where the utility proposed to contract outside the foregoing requirements, such as (1) for work of relatively minor cost or nature, or (2) where it feels the requirements are impractical in a specific situation, it shall furnish evidence in support of its proposal and obtain the concurrence of the State and division engineer prior to taking action thereon. Should the utility elect to award the contract to other than the lowest qualified bidder, reimbursement will be limited to the amount produced by the unit prices submitted by the lowest qualified bidder.

e. All labor, materials, equipment and other services furnished by the utility shall be billed by the utility direct to the State. The special provisions of contracts let by the utility or the State shall be explicit in this respect. The special provisions of a contract let by the State shall also provide for separate reporting of costs of contract bid items and force account items performed for the utility.

7. AGREEMENTS AND AUTHORIZATIONS

a. The State and the utility shall agree in writing on their separate responsibilities in accomplishing and financing the relocation, except as provided in paragraphs 7(l) and 7(m). The form of written agreement is not prescribed. Said agreement shall incorporate this memorandum and any supplements or revisions thereto by appropriate reference, and shall be supported by an estimate of cost, specifications and plan of the work agreed upon. Said agreement and plans, specifications and estimates shall be sufficiently informative and complete to provide the division engineer with a clear showing of work required.

b. Where applicable, the written agreement shall set out by separate clause the terms and amounts of any contribution made or to be made by the utility to the State in connection with payments by the State to the utility under the provisions of paragraph 3.

c. Where the relocation involves work to be paid for by the State and work to be done at the expense of the utility, the written agreement shall state the proportionate share to be borne by each party; that is, by the State and by the utility. Subject to adjustment required by changes in the work planned, and accomplished, the basis for reimbursement shall follow the basis of cost allocation set out in the agreement.

d. In the event it is determined that a substantial change from the statement of work contained in the agreement is required, reimbursement therefor shall be limited to costs covered by a modification of the agreement or a written change or extra work order approved by the State and the division engineer.

e. Agreements shall set forth the method of developing the relocation costs which shall be one of the following alternatives:

(1) Actual and related indirect cost accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and the division engineer. Where such a procedure is proposed by a utility, approval by the division engineer will be limited to an accounting procedure which the utility used in its regular operations.

(3) An agreed lump sum where the estimated cost of the proposed adjustment does not exceed $2,500. This estimate shall be representative of the estimated actual and related indirect cost. The lump sum agreement shall be supported by an analysis of the estimated cost of the proposed adjustment and shall be subject to the prior approval of the division engineer. This analysis shall show such details of man-hours by class and rate, equipment by type, size and rate, materials and supplies by items and price as will give the division engineer a clear understanding of the work proposed. Also, payroll additives and other overhead factors shall be shown individually with statement of what is included in each.

f. Increase in value of new facility on account of extended service life.

(1) In any instance where it is necessary to retain the old facility in service until a replacement facility is constructed and such facility is a major and independent segment of the utility's system, as determined by the utility and the State with the concurrence of the division engineer, credit will be required for the value of the expended service life of the old facility. The accrued depreciation shall be based on net replacement cost of the old facility and the estimated allowance therefor shall be set forth in a lump sum amount in the agreement between the utility and the State, which amount will be subject to any necessary adjustment and audit at the final billing stage. The estimate of cost which is a part of the agreement shall set forth the foregoing amount, as well as proposed credits allowed in the development of net replacement cost.

(2) In many instances the utility relocation will not affect major and independent segments of the utility's system. The burden of proof that the relocation does not involve a major and independent segment of the utility's system shall be upon the utility. Therefore, a statement in the proposed State utility agreement to the effect that the adjustment does not cover a major and independent segment of utility's system, if such is the case, will be required. When concurred in by the State and division engineer, the statement will be considered as satisfying the requirements of the preceding paragraph.

(3) Whenever the utility elects to construct and entirely new facility and retire the existing facility and the construction of the new facility is not required for maintenance of the utility service, overall project economy or sequence of construction, credit shall be given as provided in paragraph 7f(1).

(4) In no event shall credit be required in amounts exceeding the cost of the replacement facility.

g. The division engineer shall indicate his approval of the written agreement by endorsement thereon. Any conditions or qualifications attached to the approval shall be set out by letter from the division engineer to the State.

h. The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights-of-way and preliminary engineering in sufficient detail to provide the division engineer a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Items of material are to be itemized where they represent relatively major components or cost in the relocation.

i. The plans, sketches or drawings submitted with the proposed agreement shall show existing facilities, temporary and permanent changes to be made therein and the stages by which these changes are to be accomplished.

j. Authorization by the division engineer to the State to proceed with the utility relocation may be given,

(1) on or after the date the utility relocation is included in an approved program as an item of right-of-way acquisition or construction, and

(2) at such time as the division engineer is furnished and reviews plans and estimates reporting adequately the utility work proposed and the location of the highway project and the utility relocation, and

(3) when the division engineer has been furnished and has reviewed the proposed agreement between the State and the utility.

k. Federal funds may not reimburse the State for costs of utility relocations,

(1) until and unless the division engineer approves the executed agreement between the State and the utility (except as provided in paragraphs 7(l) and (m)), and

(2) until and unless a project agreement which includes the work is executed, and

(3) which are not required by the finally approved project location and plans.

1. Where all the efforts of the State and the utility fail to bring about written agreement of their separate responsibilities, the State shall submit its proposal and a full report of the circumstances to the division engineer. The division engineer shall make appropriate investigation and submit his report and recommendations to the Commissioner, it being understood that Federal funds will not be paid for work done by the utility until the Commissioner has given his approval to the State's proposal.

m. The Commissioner may consider for approval any special procedure under specific State law or appropriate administrative or judicial order or under blanket master agreements with the utilities that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

8. RECORDING OF COSTS

a. All utility relocations will be recorded by means of work orders or job orders, except as provided in paragraph 7e(2) and (3).

b. The individual and total costs properly reported and recorded in the work order account shall constitute the maximum amount on which Federal participation may be based on account of the work performed under the utility agreement. Separate work orders may be issued for additions and retirements, or the retirements may be included with the construction work order, provided, however, that all items relating to retirements shall be kept distinctly separate from those relating to construction.

c. Each utility shall keep its work order system in such manner as to show the nature of each addition to or retirement from a facility, the total cost thereof and the source or sources of cost.

d. The provisions of paragraphs 10, 11, 12, and 13 are intended for use as general guidelines in the development of reimbursable costs. It is further intended that cost development under prescribed or approved systems of accounts shall be the general controlling factor. The utility should recognize, however, that certain limitations on reimbursement are established in these paragraphs; for example, allowance for temporary use of materials, paragraph 11b(2) and the limitations on equipment use-charges, paragraph 12.

9. REIMBURSEMENT BASIS

a. General: Where payment to the utility may be made (paragraph 3), reimbursement will be made for the costs except as hereinafter provided, of labor, materials, equipment, rights-of-way and other services incurred by or for the utility in the relocation.

b. Betterments: Except to the extent that a betterment in the utility's facility or component part thereof is necessitated by the requirements of the project, including betterments necessitated by moving utility from existing location, the cost of a betterment in said facility or component part thereof being relocated, reconstructed or replaced will not be reimbursed.

c. Addition: Where an addition to an existing facility is required, such as an increase in the length of a relocated pole line, the actual costs of the items of materials in the addition are reimbursable to the extent the materials in the addition are not of a type or a class superior to the materials in the facility to which the addition is extended, except that the cost of any improvement in type or class which is required in connection with the construction of the project is reimbursable.

d. Buildings and Other Similar Structures: (1) Except that the amount shall be limited to the estimated cost of replacement, the cost of the required relocation of buildings and other similar structures of a utility which are used primarily for the production, transmission or distribution of the utility's products is reimbursable. Where it is determined to be impracticable to move a building or other structure as a unit intact, the relocation may be effected by dismantling the building or structure at its original site and reassembling or reconstructing it at the new location, not to exceed the estimated cost of replacement. The reimbursable costs of relocation may include those of new foundations of a type equal to those formerly in place at the original site and of the adjustment of utilities without betterment.

(2) Credit is required when a building or other structure is required to remain in place and in service until the building or structure which replaces it in new location is in service. Credit is also required when the building or other structure to be relocated cannot be moved as a unit intact or when it is impracticable to effect the relocation by dismantling the existing building or other structure at its original site and reconstructing it at the new location. The credit to be given to the cost of the project shall be the value of expended service life of the building or other similar structures being replaced based on the ratio of the period of actual use to the period of original life expectancy, or on such other basis as may have been prescribed by public regulatory bodies, applied to the net replacement cost of such building or other structure. Where the period of actual use is greater than the period of original life expectancy, the credit shall not exceed the net replacement cost.

10. LABOR COSTS

a. General: (1) Salaries and wages billed at actual rates or at average rates accounting for productive labor hours, retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are directly and incidentally engaged in the utility relocations are reimbursable when supported by adequate records. Costs to the utility of vacation, holiday pay, company sponsored benefits and similar costs incident to labor employment will be reimbursed when supported by adequate records. These may include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and in the actual preparation of the plans and estimates of the relocation.

(2) Where a utility is not adequately staffed to prosecute the relocation the amounts paid to engineers, architects, and others for required technical services which are approved in advance by the State and by the division engineer will be reimbursed. Approval shall not be given to fees for such technical services which are determined on the basis of a percentage of the total actual cost of the relocation.

b. Overhead Construction Costs: (1) So that each job or unit shall bear its equitable proportion of such costs all overhead construction costs not chargeable directly to construction accounts, such as general engineering and supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, legal expenses, insurance, relief and pensions and taxes shall be charged to particular jobs or units on the basis of the amount of such overheads reasonably applicable thereto. The instructions contained herein shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as requiring the assignment to particular jobs and accounts of actual and reasonable overhead costs.

(2) Insurance: Unless it has been the policy of the utility to carry Workmen's Compensation, Public Liability and Property Damage Insurance regularly with an insurance company on its own construction and maintenance projects and operations, insurance premiums paid to an insurance company for protection incident to the employment of labor engaged in the relocation will not be reimbursed except where the specific approval of the State and the division engineer for the purchase of such protection is given prior to the date on which the insurance is purchased. When purchased insurance is approved the amount of insurance premiums paid to an insurance company for insurance is reimbursable to the extent it is determined that the amounts of the premiums are the products of the proper rates applied to the amounts of paid salaries and wages exclusive of vacation pay or allowances.

(3) Where it has been the policy of the utility to self insure against public liability and property damage claims, reimbursement will be at the rate developed by the utility, or in the absence thereof at a rate not in excess of one percent of salaries and wages charged to the job.

(4) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate and allocation basis of each additive and be subject to audit by representatives of the State and Public Roads.

11. MATERIALS AND SUPPLIES

a. Costs: (1) Items of new materials and supplies shall be billed at actual costs to the utility. Average of actual unit costs of materials and supplies furnished from the utility's stocks are reimbursable. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and any charge for general overhead expense are provided for under paragraph 11c. When not so allocated in the utility's overhead accounts they may be included in the computation of the prices of materials or supplies. The computation of costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(2) In those instances where the book value does not represent the true value of used materials they shall be charged to the project at the same rate used by the utility in its own work but in no event shall they be charged at more than the value determined in accordance with paragraph 11a(1).

b. Materials Recovered: (1) From Permanent Facility:

(a) Materials recovered in suitable condition for reuse by the utility in connection with construction or retirement of property shall be credited to the cost of the project at current stock prices, or if a utility charges recovered material to the material and supply account at original cost or a percentum of current price new and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

(b) The State and the division engineer shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement will be satisfied by the utility giving notice to the State of the time and place the materials will be available for inspection. This notice is the responsibility of the utility and it may be held accountable for full value of materials disposed of without notice.

(c) If recovered materials are not useable they shall be disposed of as outlined in paragraph 11b(2) (b).

(2) From Temporary Use:

(a) Materials recovered from temporary use in connection with a highway project which are in suitable condition for reuse by the utility shall be credited to the cost of the project at stock prices charged to the job less ten (10%) percent for loss in service life. The State and division engineer shall have the right to inspect all recovered materials not reusable by the utility.

(b) Items of materials recovered from temporary use in a condition or length unsuited for acceptance by the utility, which have been determined to have a sale value, shall either be sold following an appropriate solicitation for bids to the highest bidder or, if the utility regularly practices a system of disposal by sale which it has been determined to be the most advantageous to the utility, credit shall be at the going prices for such used or scrap material as are supported by the records of the utility. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the utility or at its request, by the State. In no event shall the State or the company be considered as an acceptable bidder for such material.

(3) The cost of salvage shall not exceed the value of the recovered material, which value shall be determined as provided in paragraph 11b(1).

(4) The cost of removal of recovered materials from the job site to stores or storage point nearest the job will be reimbursed.

(5) The State, subject to the approval of the division engineer, shall determine whether it is desirable or economical to recover or to leave in place those materials that need not be removed because of project requirements or that are not acceptable for reuse by the utility.

c. Handling costs: The costs of supervision, labor, and expenses incurred in the operation and maintenance of the storerooms and materials yards including storage, handling and distribution of materials and supplies are reimbursable. A rate or other equitable method of distribution which is representative of the costs to the utility will be reimbursed.

12. EQUIPMENT

a. Accumulation of Costs: Accounts for transportation and heavy equipment are used for the purpose of accumulating expenses and distributing them to the accounts properly chargeable with the services. Among the items of expense clearing through these accounts are the following: depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts; heat, light, and power for garage and garage office; insurance (including public liability and property damage insurance) on garage equipment, transportation equipment and heavy work equipment; license fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds.

b. Reimbursement of Equipment Costs: The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

c. Reimbursement will be limited to charges which account for costs to the utility of expenses for equipment used (paragraphs 12a and b). Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

(1) Small Tools: Reimbursement for the use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the utilities clearing accounts or other equitable and supportable allocation basis; otherwise, it will be limited to actual loss or damage during the period of use. In the latter case the loss or damage shall be billed in detail and supported to the satisfaction to the State and division engineer.

(2) Rental: Where the utility does not have equipment available of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment, or in the event of an emergency, such as breakdown of utility equipment, reimbursement will be allowed for rental of equipment at lowest rate available. Existing continuing contracts for rental of transportation and heavy equipment which the utility determines to be of the most advantage to its operations shall be considered to comply with these requirements.

13. TRANSPORTATION OF EMPLOYEES

a. The cost of essential transportation performed in automobiles or trucks owned by the utility shall be considered to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment."

b. Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its employees for use in connection with its own construction and maintenance projects and operations.

c. Reimbursement will be made for the cost of required use of commercial transportation by employees of the utility.

14. UTILITY BILLS

a. Monthly progress billings of incurred costs may be made by a utility, if acceptable to the State.

b. One final and complete billing of all costs incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will follow as closely as possible the order of the items in the estimate portion of the agreement between the State and the utility. The totals for labor, overhead construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services shall be shown in such a manner as will permit comparison with the approved plans and estimates. Items of materials are to be itemized where they represent major components or cost in the relocation, following the pattern set out in the approved estimate as closely as is possible. It is desirable that salvage credits from recovered and replaced permanent and recovered temporary materials be reported in the bill in relative position with the charge for the replacement or the original charge for temporary use. The final billing shall show the description and site of the project; the Federal-aid project number; the date on which the first work was performed or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts billed can be audited. The utility shall make adequate reference in the billing to its records, accounts and other relevant documents.

c. All cost records and accounts are subject to audit by a representative of Public Roads. During the progress of construction and until the audit of the utility records has been completed, the records and the accounts pertaining to the construction of the project and accounting therefor will be available for inspection by the representatives of the State and the division engineer.

d. During the audit of the records and accounts which support the billed costs, the representative of Public Roads will discuss with the representatives of the utility all items of costs to which exceptions may be taken or on which comments may be made. The division engineer will refer one copy of the exceptions taken and of the comments made direct to the utility and one copy to the State. To permit consideration of the utility's statement of explanation rebuttal in reference to the audit exceptions and comments, one copy of such statement shall be transmitted by the utility direct to the division engineer within thirty days following the receipt of the audit exceptions and comments, or advice in writing should be made as to the date on which the utility's statement will be transmitted. One copy of the utility's statement or advice in writing shall be transmitted to the State. When the State expresses its desire to refer the exceptions to the utility and to receive the utility's comments relative thereto, the division engineer will refer two copies of the exception to the State with request that reply be furnished promptly.

R. D. Tallamy
Federal Highway Administrator

Attachment

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ATTACHMENT 5

U.S. DEPARTMENT OF COMMERCE **POLICY AND PROCEDURE MEMORANDUM 30-4(1)**

Bureau of Public Roads **Date of issuance:** April 3, 1961

PAYMENT PROCEDURES

SUBJECT: Reimbursement for Utility Work

Paragraph 14d of Policy and Procedures Memorandum 30-4 dated December 31, 1957, is revised to read:

d. Upon conclusion of the audit the further handling and processing of the State's voucher claim will be in the accordance with standard Public Roads procedures. The division engineer will refer copies of exceptions taken direct to the State.

F. C. Turner
Acting Commissioner of
Public Roads

ATTACHMENT 6

U.S. DEPARTMENT OF COMMERCE **POLICY AND PROCEDURE MEMORANDUM 30-4(2)**

Bureau of Public Roads **Date of Issuance:** September 15, 1961

PAYMENT PROCEDURES

Subject: REIMBURSEMENT FOR UTILITY WORK

Policy and Procedure Memorandum 30-4 dated December 31, 1957, as amended April 3, 1961, is further amended as follows:

Paragraph 10.b.(1) is revised to read:

b. Overhead Construction Costs: (1) Allocated:

(a) So that each relocation shall bear its equitable proportion of such costs all overhead construction costs not chargeable directly to work order or construction accounts such as, general engineering and supervision, general office salaries and expenses, construction engineering and supervision by others than the accountability utility, legal expense, insurance, relief and pensions and taxes shall be charged to the relocation of the basis of the amount of such overhead costs reasonably applicable thereto.

(b) The cost of advertising and sales promotion, interest on borrowed funds or charges for the utility's own funds when so used, resource planning and research programs, stock and stockholder's expenses and similar costs which occur irrespective of whether the relocation work is accomplished are not considered as necessary and incident to the performance of the relocation and are not eligible for Federal participation. The instructions contained herein shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as accepting assignment to the relocation of actual and reasonable overhead costs.

G. M. WILLIAMS
Acting Commissioner of
Public Roads

ATTACHMENT 7

U.S. DEPARTMENT OF COMMERCE
Bureau of Public Roads

POLICY AND PROCEDURE MEMORANDUM 30-4(3)
Date of issuance: January 25, 1962

PAYMENT PROCEDURES

Subject: REIMBURSEMENT FOR UTILITY WORK

Policy and Procedure Memorandum 30-4 dated December 31, 1957, as amended April 3, 1961, and September 15, 1961, is further amended as follows:

The first part of paragraph 3a is revised to read:

a. Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a State or a political subdivision thereof, except where conditions exist as stated in paragraph 3b below, for the costs of utility relocations under one or more of the following conditions.

The following subparagraph is added to paragraph 3:

b. Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

F. C. Turner
Assistant Federal Highway Administr
and Chief Engineer

ATTACHMENT 8

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS

October 11, 1963

POLICY AND PROCEDURE MEMORANDUM 30-4(4)

REIMBURSEMENT FOR UTILITY WORK

Paragraph 7e(3) of Policy and Procedure Memorandum 30-4, dated December 31, 1957, as amended is revised to read:

(3) An agreed lump sum where the estimated cost of the proposed adjustment does not exceed $5,000. This estimate shall be representative of the estimated actual and related indirect cost. The lump sum agreement shall be supported by an analysis of the estimated cost of the proposed adjustment and shall be subject to the prior approval of the division engineer. This analysis shall show such details of man-hours by class and rate, equipment by type, size and rate, materials and supplies by items and price as will give the division engineer a clear understanding of the work proposed. Also, payroll additives and other overhead factors shall be shown individually with statement of what is included in each.

F. C. Turner
Assistant Federal Highway Administrator
and Chief Engineer

ATTACHMENT 7 and 8

U. S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D. C. 20590

POLICY AND PROCEDURE MEMORANDUM

Transmittal 3
March, 12, 1964
39-30

1. MATERIAL TRANSMITTED

Amendment (5) of Policy and Procedure Memorandum 30-4

2. EXISTING ISSUANCES AFFECTED

Paragraph 1c of Policy and Procedure Memorandum 30-4, dated December 31, 1957, as amended, is revised.

3. COMMENTS

The provisions of the attached amendment are for application on a relocation by relocation basis rather than on a project-wide or Statewide basis. This revision is necessary to implement a decision of the Comptroller General, B-149833 dated January 2, 1964, in which he ruled where the provisions of paragraph 1c are applied on a State-wide basis there is no assurance that the statutory provision (Section 123 of Title 23) limiting Federal participation to the cost of relocation will be given effect with respect to specific highway projects.

The provisions of PPM 30-4(5) are to be applied to all utility relocations authorized on or after the date of receipt of this memorandum by the division engineer.

Upon receiving this memorandum, each division engineer shall advise the regional engineer whether or not in any instance, prior to the date of receiving this memorandum, he has made a determination that the State's procedures will govern and has notified the State accordingly. In turn, each regional engineer shall furnish a report (RCS 39-01-4 (OT)) thereon to the Office of Right-of-Way and Location, including the basis of the determinations made, if any.

Attachment

F. C. Turner

F. C. Turner
Chief Engineer

Distribution:
Basic

U. S. DEPARTMENT OF COMMERCE BUREAU OF PUBLIC ROADS
POLICY AND PROCEDURE MEMORANDUM

Transmittal 3
30-4(5)
March 12, 1964

REIMBURSEMENT FOR UTILITY WORK

Paragraph 1c of Policy and Procedure Memorandum 30-4, dated December 31,1957, as amended is revised to read:

c. Where State law or regulation provides agreement and payment standards more liberal than those established by the provisions of this memorandum, the provisions of this memorandum shall govern. Conversely, where State law or regulation provides more restrictive agreement and payment standards, the State standards shall govern. A determination shall be made for each relocation encountered as to which procedure will govern and the record documented accordingly.

F. C. Turner

F. C. Turner
Chief Engineer

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20235

POLICY AND PROCEDURE MEMORANDUM

Transmittal **10**
July 14, 1964
39-30

1. MATERIAL TRANSMITTED

Amendment (6) of Policy and Procedure Memorandum 30-4

2. EXISTING ISSUANCES AFFECTED

Paragraphs 6b, 6d and 10a(2) of Policy and Procedure Memorandum 30-4, dated December 31, 1957, as amended, are revised.

3. COMMENTS

Revised paragraph 6b eliminates the requirement for prior approval by the division engineer of use of the contractual method where the adjustment work is to be performed by a contract entered into by a utility company. However, this change does not alter the present basic requirement under paragraph 6b for showing that the public interest is being served when performing the adjustment work other than by force account, as established by administrative determination under PPM 21-6. 2(1).

Revised paragraph 6d clarifies the first sentence of the former paragraph by confining it for application to work of relatively minor cost or nature. The last sentence of the former paragraph has been entirely eliminated as this is a matter which should be judged on a case by case basis.

Revised paragraph 10a(2) is a restatement and clarification of present policy for the use of consultants by a utility, including the instructions outlined in Mr. Swick's blue circular memorandum, dated March 27, 1963, on the subject: Utility Seminar - 1963.

Rex M. Whitton
Federal Highway Administrator

Distribution
Basic

U.S. DEPARTMENT OF COMMERCE BUREAU PUBLIC ROADS

POLICY AND PROCEDURE MEMORANDUM

Transmittal 10
30-4(6)
July 14, 1964

REIMBURSEMENT FOR UTILITY WORK

SUPERSEDED ISSUANCE

Paragraph 4 of IM 30-3-61, dated May 8. 1961.

Policy and Procedure Memorandum 30-4, dated December 31, 1957, is amended as follows:

1. Paragraph 6b is revised to read:

6b. Unless the utility work is made a part of the State's highway construction contract, as agreed to by the utility and the State with the approval of the division engineer, all utility relocations and all work incidental to such relocation shall be performed by the utility with its own forces or by a contractor paid under a contract let by the utility. When the contractual method is utilized, pursuant to applicable State law or regulation, Federal funds may participate in the cost of the relocation where the division engineer is satisfied that the letting of a contract by the State or the utility was in the best interest of the State or that the utility, at the time of relocation, was not adequately staffed or equipped to perform the work with its own forces.

2. Paragraph 6d is revised to read:

6d. Where the utility proposes to contract outside the foregoing requirements, such as for work of relatively minor cost or nature where it feels the requirements set forth in paragraph 6c are impractical in a specific situation, it shall furnish evidence in support of its proposal and obtain the concurrence of the State and division engineer prior to taking action thereon.

3. Paragraph 10a(2) is revised to read:

(2) Where a utility is not adequately staffed to prosecute the relocation. Federal funds may participate in the amounts paid to engineers, architects and others for required technical services, provided such amounts are not based on a percentage of the cost of the relocation. Where utility relocations are relatively simple, prior approval by the division engineer of the minor engineering fees involved for each individual relocation is not necessary where he has previously approved a statement of procedures the State uses Statewide for these matters and he is satisfied that the State's procedures and practices thereunder follow sound business practices in contracting with consultants. Where individual relocations are complex and require alternate engineering studies or involve considerable engineering work of a highly technical nature, in each instance it is expected the State and the utility will, insofar as practicable, adopt and follow the procedures set out in PPM 40-6 and its supplements. In these latter cases, the qualifications of the consultant, the adequacy of the contract provisions, and the amount of the fees to be paid are subject to prior approval by the division engineer.

Rex M. Whitton
Federal Highway Administrator

POLICY AND PROCEDURE MEMORANDUM 20-11.1
Date of issuance: October 10, 1958

PROGRAM AND PROJECT PROCEDURES-20

SUBJECT: CONSTRUCTION PLANNING (Right-of-Way Clearance and Adjustment of Utilities and Railroads)

Supersedes: (This is an original issue.)

1. PURPOSE

The purpose of this memorandum is to prescribe policies and procedures relating to the preparatory work to to be done in advance of the physical construction of a highway project to clear the right-of-way of major obstructions and to make necessary adjustments in utilities and railroads.

2. APPLICABILITY

The provisions of this memorandum are applicable to all highway construction projects, except those under the 1954 Secondary Road Plan. Where the highway construction is under the direct supervision of Public Roads, all references herein to the State are inapplicable. Under such circumstances it is intended that Public Roads be considered in the relative position of the State.

3. DEFINITIONS

a. For the purposes of this memorandum, the following definitions shall apply:

(1) Right-of-way clearance–the removal, adjustment or demolition of buildings, structures, and other major obstructions within the right-of-way limits exclusive of such removal of trees, brush, and other vegetation as is normally performed as a part of the contract for physical construction of the highway.

(2) Utility adjustment–the removal, relocation, or adjustment of publicly or privately owned utilities as necessary to accommodate the highway

(3) Railroad adjustment–the removal, relocation or adjustment of railroad facilities as necessary to accommodate the highway. The term does not include the installation at new grade crossing protective devices except when incidental to a highway construction project; neither does it include the construction of new railway-highway grade separation structures.

b. The above definitions apply regardless of how the work is to be performed and regardless of whether Federal funds participate in the cost of the work.

4. PRELIMINARY PLANNING

a. 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 in utility and railroad adjustments, and that insofar as feasible and economical the work involved in such clearance and adjustments be actually accomplished before the physical construction work is undertaken. Recognition must be given to the fact that if utility and railroad companies 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 actually perform the work.

b. As soon as the highway location and design have advanced sufficiently so that the right-of-way clearance work and the utility and railroad adjustment work that will be required is apparent, joint studies of the situation, including on-site investigations, should be made to estimate the costs and difficulties involved and to consider whether revisions should be made in the location and design to reduce such costs and difficulties. There should be participation in these studies by such representatives as may be appropriate from Public Roads, the State highway department, local government agencies, the utility and railroad companies, and in some cases, property owners. Representation from Public Roads and the State highway departments should include those qualified to consider the problems from the standpoints of location, design, construction, and right-of-way. When several utility companies are involved, such as in urban areas, it will be desirable to have representatives of all companies present at

the same conferences in order that their plans for proposed adjustments can be properly coordinated and in order that consideration can be given, where feasible, to the joint use of certain facilities such as pole lines or utility tunnels. As a result of these studies, determination should be made as to the nature and extent of the work to be done, who is to be responsible for its performance, and who is to bear the costs thereof. Agreement should also be reached regarding scheduling the performance of the work for proper coordination with the physical construction of the highway project.

5. MEANS OF PERFORMING WORK

a. The work involved to right-of-way clearance should be performed in whichever of the following ways or combination thereof is in the public interest:

(1) By the property owner as a part of the right-of-way consideration.
(2) By purchasers of the buildings or structures from the highway agency.
(3) By State or other public forces.
(4) Under a contract let by the highway agency separately from the contract for physical construction of the highway.
(5) As an incidental part of the contract for the physical construction of the highway.

If in the case of methods (3) and (4), the work is to be done by some method other than by contract based an competitive bidding, an affirmative finding that the proposed method is in the public interest will be required in accordance with the provisions of PPM 21-6.2. An affirmative finding will not be required for methods (1) and (2).

b. With respect to utility adjustments and railroad adjustments, the work involved in the installation, moving, adjusting, or connecting of the actual service facilities, such as pole lines and railroad tracks, and minor items incidental thereto, will normally be performed by forces of the utility company and railroad company, respectively, or under a contract let by such company. In accordance with the provisions of paragraph 5a at PPM 21-6.2, no affirmative finding of public interest will be required in such cases. When the utility and railroad adjustments involve a substantial amount of work of items such as clearing, grading, trench digging, pipe laying and construction of drainage structures or of utility tunnels and manholes, it may be in the public interest for the highway agency to perform such items with its own forces or under its own contract. The contract might be for these items only or the work might be included in the contract for the physical construction at the highway. If the work of this type is of such character and amount that it is suitable for performance under the contract method based on competitive bidding, an affirmative finding of public interest in accordance with the provisions of PPM 21-6.2 will be required to justify performance by another method.

6. PLANS, SPECIFICATIONS, AND ESTIMATES

a. The nature and extent of any right-of-way clearance, utility adjustment or railroad adjustment work to be done as a part of a Federal-aid project with Federal participation in the cost thereof, is to be fully described in plans and specifications. Any work to be done as a part of the contract for the physical construction of the highway, together with the basis of payment therefor and all applicable conditions, is to be clearly set forth in the advertised plans and specifications in sufficient detail to enable the contractors to make suitable provision in their bids to cover such work. Such plans and specifications are to be reviewed and approved by the division engineer. When the work or any part thereof is to be done by the forces of the utility company, railroad company, or a public agency, or under a contract separate from that for the physical construction of the highway, agreements as to responsibilities for such work, and separate plans and specifications, will generally be necessary. In general, the separate plans and specifications for utility and railroad adjustment work will be prepared by the companies involved. The separate specifications and agreements should be completed as soon as conditions will permit in order that the clearance and adjustment work may proceed and be completed to the maximum extent feasible before the physical construction of the highway is undertaken. These separate plans and specifications are to be examined by the division engineer to determine that, from the standpoint of highway purposes, the work as proposed is necessary, will produce satisfactory results, and is appropriately scheduled in relation to the physical construction of the highway project. The agreements covering such separate work are to be reviewed and approved by the division engineer.

b. The estimated costs for any right-of-way clearance work, utility adjustment work, and railroad adjustment work in which Federal funds are to participate are to be set out separately. These estimates are to be as accurate as reasonably possible and in sufficient detail to permit those reviewing them to ascertain their completeness and reasonableness, and their eligibility for Federal participation.

ATTACHMENT 11

c. When there is to be no participation with Federal funds in the cost of right-of-way clearance or utility and railroad adjustment work on a highway location that is planned to be subsequently improved with participation of Federal funds, the division engineer should be advised of this situation in advance of the work being undertaken so that he may examine the plans and specifications and the scheduling of the work for the purpose of ascertaining whether the proposed clearance and adjustment work will be satisfactory with respect to the proposed subsequent improvement of the highway. He should bring to the attention of the State highway department any features that might result in any unnecessary delay or cost to the subsequent Federal-aid portions of the project.

7. AUTHORIZATION TO PROCEED

Authorization to proceed with right-of-way clearance, utility adjustment and railroad adjustment work in which Federal funds are to participate is to be issued in accordance with the provisions of PPM 21-12.

8. CONSTRUCTION INSPECTIONS

a. After the authorization to proceed with right-of-way clearance, utility adjustment or railroad adjustment work in which Federal funds are to participate has been issued, the site and the work shall be inspected with sufficient frequency and thoroughness to assure that the work is:

(1) Commenced and advanced to completion in accordance with the agreed schedules.
(2) Performed efficiently with no unnecessary costs being incurred, and that all materials that can be economically salvaged, are so salvaged.
(3) Completed in accordance with the approved plans and specifications and in such manner that the end product will be satisfactory from the standpoint at highway purposes.

b. For right-of-way clearance, utility adjustment, and railroad adjustment work not involving Federal funds, construction inspections should be made by the division engineer for the purpose of ascertaining that the work is progressing satisfactorily and will permit the planned subsequent Federal-aid improvement of the highway to proceed as it is or may be scheduled.
c. Construction inspection reports of right-of-way clearance and utility or railroad adjustment work authorized by the division engineer are to be prepared and submitted in accordance with the procedures prescribed in PPM 20-6 for projects involving the physical construction of the highway.

9. SUPERVISION

The State highway department is to provide such supervision as is necessary to assure accomplishment of the objectives set forth in paragraph 8.

10. REIMBURSEMENT

Federal participation in the cost of right-of-way clearance, utility adjustment and railroad adjustment work will be in accordance with the provisions of PPM's 21-4.1, 30-4, and 30-3, respectively.

B. D. Tallamy
Federal Highway Administrator

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U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON D.C. 20235

POLICY AND PROCEDURE MEMORANDUM

Transmittal 75
October 15, 1966
39-30

1. MATERIAL TRANSMITTED

PPM 30-4, Utility Relocations and Adjustments

2. EXISTING ISSUANCES AFFECTED

Supersedes: PPM 30-4, dated December 31, 1957, Amendment (1), dated April 3, 1961; Amendment (2) dated September 15, 1961; Amendment (3), dated January 25, 1962; Amendment (4), dated October 11, 1963; Amendment (5), dated March 12, 1964; Amendment (6), dated July 14, 1964.

IM 4-1-59, dated November 20, 1959
IM 30-3-61, dated May 8, 1961
IM 30-7-61, dated November 13, 1961
IM 21-6-63, dated July 19, 1963
IM 21-4-64, dated September 14, 1964
IM 30-6-64 dated December 24, 1964 (that part pertaining to utilities)
IM 30-2-66, dated February 24, 1966

3. COMMENTS

New provisions and significant changes are identified as follows:

1a: Subject and purpose of memorandum have been changed as they concern more than just reimbursement policy.

1b: Reference to GAM 300 has been eliminated; no longer needed. Reference to Secondary Road Plan has been revised to comply with paragraph 2 of PPM 20-5(2), dated October 18, 1963. Provision has been made for application of new PPM to agreements entered into 45 days after the date new PPM is issued.

1c: New paragraph; needed to identify situations where settlement is to be arrived at as an item of right-of-way acquisition under the provisions of PPM 21-4.1, not this memorandum.

1d: New paragraph; needed to account for cases where cost to cure may exceed amount of settlement established by the appraisal process.

1e: (Original paragraph 1c). Incorporates amendment (5), dated March 12, 1964. Expanded to explain application.

1g: New paragraph; needed to show State's role and responsibility for utility relocations an Secondary Road Plan Projects.

2a: Provides new definition of term "utility".

2k: Redefines term "relocation".

2o: Redefines term "betterment".

2p: Defines new term "Cost of my improvements necessitated by or in accommodation of the highway construction".

3a(1): Expanded to clarify that property interest must be compensable in eminent domain.

3a(2): Completely rewritten to conform to existing practices and policies. Expanded to account for facilities occupying privately owned land not having compensable interest therein.

3b: New paragraph. Requires State to furnish legal evidence of its authority to make payments under 3a(2) and 3a(3) to satisfaction of Public Roads. This has been completed or is underway in all States.

3c: Incorporates amendment (3), dated January 25, 1962.

3d: New paragraph; needed to provide basis for reimbursement of additional costs incurred by utility where advance installation of facilities, crossing or otherwise occupying the proposed right-of-way of future planned highway project, is either underway or scheduled to be underway.

4a: Replaces original paragraph and paragraph 2 of IM 30-3-61, dated May 8, 1961. Allows replacement right-of-way to be considered as an expense incidental to relocation. Accounts for all possible methods available for programming and authorizing replacemement right-of-way and conditions to qualify for reimbursement.

4c: Adds provision for sound valuation and acquisition practices and substitutes $500 for word "nominal".

4e: New paragraph to account for situations where no adjustment or relocation of facilities is required by the project but there is a taking or damage of the utility's real property or facilities. Incorporates portions of IM 21-6-63.

5a: New paragraph. Replaces existing provisions of paragraph 3 of IM 30-6-61. Accounts for all possible methods availabe for programming and authorizing preliminary engineering work.

5b and c:New paragraphs. Replace original paragraph 10a(2), paragraph 3 of amendment (6), dated July 14, 1964, and IM 30-6-64, dated December 24, 1964. Adds attachment No. 1 as sample certificate. Has been revised and shifted to this location in PPM as it concerns the use of engineering firms by utilities. Provides for special handling of engineering services where the fees for such services are $5,000 or less. Adds provision to account for engineering services under existing continuing contracts.

6b: Incorporates paragraph 1 of amendment (6), dated July 14, 1964, and makes minor changes thereto as needed for clarification.

6d: Formerly included as part of paragraph 6c of original PPM. Eliminates requirement for prior approval by division engineer for use of "continuing contracts". Adds explanation of reimbursement where continuing contract is with another utility having an ownership interest in the facility to be relocated.

6e: (Original paragraph 6d). Replaces original paragraph and provides new instructions for work of minor costs of nature.

6g: New paragraph. Provides for field verification by State to support payment of work accomplished and provides for reimbursement of as-built plans.

7a: Lists the several items to be incorporated into each State-utility agreement and to be considered for each relocation encountered. Recognizes the use of master agreements.

7c: Replaces original paragraph 7g. Sentence added to define the purpose of the division engineer's approval of the agreement.

7d: (Original paragraph 7b). Adds another sentence for explanation, as formerly provided by Cherry Memorandum 30-S dated February 14, 1957.

7f: (Original paragraph 7d). Expanded to amplify changes in the scope of work, extra work, and major changes in the planned work.

7g(2)(a): New paragraph. Adds provision for accepting use of unit costs where utility maintains and regularly uses such units in its own operations, subject to prior approval by the State and concurrence by the division engineer.

7g(3): (Original paragraph 7e(3)). Incorporates amendment (4) dated October 11, 1963, and allows for use of unit costs in preparing lump sum estimates, subject to satisfaction of State and division engineer. Adds explanation for clarifying application.

7g(4): New paragraph, incorporating essential provisions of IM 30-7-61, dated November 13, 1961.

7h: (Original paragraph 7h). Adds provision for using unit costs, such as broad gauge units, in preparing estimates. Adds to latter part of first sentence, "construction engineering, including an itemization of appropriate credits for salvage, betterments and expired service life".

7i: (Original paragraph 7i). Expands original paragraph as needed to improve quality and completeness of supporting plans for utility relocation work.

7j: Incorporates pertinent portions of paragraph 6 of IM 30-3-61. Adds another provision for programming all phases of utility work under one project.

7k: (Original paragraph 7j). Incorporates all of original paragraph and adds other provisions for authorizing physical adjustment or relocation work. Adds a provision for scheduling the planned utility work to minimize delays to a highway contractor.

7l: New paragraph. Incorporates essential of IM 30-2-66, dated February 24, 1966.

7m: New paragraph. Provides instructions for advanced authorization of all phases of utility work.

7n: New paragraph; needed to take care of emergency situations where unforeseen utility adjustments are discovered during construction of highway project.

7p: (Original paragraphs 7l and m). Adds phrase at end of first sentence "under the provisions of this memorandum". Adds provision for conditional authorization for work to proceed.

9a: New paragraph; replaces present policy under paragraph 5 of IM 30-3-61 (formerly paragraph 7f of original PPM) concerning credits for extended service life. Defines terms, "Costs of Relocation", "Increase in Value", and "Salvage Value".

9b: New paragraph. Provides new instructions for determining increase in value where (new) replacement facility is substituted for an existing facility.

9c: New paragraph. Establishes basis of reimbursement for additional costs incurred by utility through compliance with governmental or industry codes or current design practices in the utility industry.

9d: New paragraph. Establishes basis for reimbursement where utility installs facilities of a type different than the facilities being replaced.

9f: (Original paragraph 9d). Complete rewrite of original paragraph, consistent with the provision of new paragraphs 9a and b.

9g: Incorporates essentials of paragraph 8 of IM 30-3-61.

10b(l) and (2): Incorporates existing provision of amendment (2), dated September 15, 1961. Deletes phrase, "which occur irrespective of whether the relocation work is accomplished".

10b(3): (Original paragraph 10b(2)). Removes requirement for approval by State and Division Engineer prior to date insurance was purchased.

11a: Revises first sentence of paragraph to clarify billing of materials and supplies when issued from stocks and when purchased for the relocation.

11b(2): (Original paragraph 11b(l)(b)). Rewritten to provide for oral and written notice of time and place recovered materials will be available for inspection.

11b(4): New paragraph. Establishes ceiling on credit for salvage where (new) facility includes materials of a type different than the materials being replaced, say aluminum for copper and the like.

11f: (Original paragraph 11b(5)). New paragraph on removal costs. Incorporates portions of IM 21-6-63.

11g: New paragraph; provides for determination as to most desirable and economical method to employ for removal of facilities.

11h: New paragraph. Provides for deactivating or otherwise rendering harmless utility facilities an a necessary safety or protective measure.

12c(2): Expands provision for emergencies where the contract method need not be utilized in the rental of equipment.

12d and e: Incorporate existing pertinent provisions of paragraph 9 of IM 30-6-61.

14a: Adds provision that periodic progress payments so made by the State are eligible for Federal reimbursement.

14b: Adds exception where estimate and final billing are made pursuant to paragraph 7g(2)(a) using unit costs. Latter part or paragraph subdivided for amplification.

14d: (Original paragraph 14c). Makes utility's records available for inspection until 3 years after final payment has been received by utility company.

14e: New paragraph. Adds requirements to be met before reimbursement for a final utility billing is approved.

15: New paragraph; needed for compliance with Section 1.23 of Regulations and AASHO policy for accommodating utilities.

Rex M. Whitton
Federal Highway Administrator

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PPM 30-4	1 thru 8	December 31, 1957	PPM 30-4	1 thru 15
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PPM 30-4(2)	1	September 15, 1961		
PPM 30-4(3)	1	January 25, 1962		
PPM 30-4(4)	1	October 11, 1963		
PPM 30-4(5)	1	March 12, 1964		
PPM 30-4(6)	1	July 14, 1964		

U.S. DEPARTMENT OF COMMERCE BUREAU OF PUBLIC ROADS Transmittal 75
POLICY AND PROCEDURE MEMORANDUM 30-4
October 15, 1966

UTILITY RELOCATIONS AND ADJUSTMENTS

Par. 1. Purpose and Application
2. Definitions
3. Eligibility
4. Rights-of-Way
5. Preliminary Engineering and Engineering Services
6. Construction
7. Agreements and Authorizations
8. Recording of Costs
9. Reimbursement Basis
10. Labor Costs
11. Materials and Supplies
12. Equipment
13. Transportation of Employees
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15. Accommodation and Installation
Appendix A - Index

1. PURPOSE AND APPLICATION

a. To prescribe the policies and procedures relating to the adjustment, relocation and accommodation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Bureau of Public Roads. It also prescribes the extent to which Federal funds may be applied to the costs incurred by or on behalf of utilities in the adjustment or relocation of their facilities required by the construction of such projects.

b. Except as provided under paragraphs 1c, d and e, the provisions of this memorandum shall apply to reimbursement claimed by the State for costs incurred under all State-utility agreements, including utility work performed on projects under the Secondary Road Plan and for payment of costs incurred under all Public Roads-utility agreements, which are entered into 45 days after the date of this memorandum.

c. The provisions of PPM 21-4.1, not this memorandum, are for application where all of the following conditions exist: the lines or facilities to be relocated or adjusted by reason of the highway construction are privately owned, located on the owners' land, devoted exclusively to private use and not directly or indirectly serving the public or any portion thereof.

d. Where the utility holds a compensable interest in the land occupied by its facilities, and the relocation involves all or a substantial portion of, or extensive damage to, the utility's physical plant or operating facilities, an analysis shall be made by the State, subject to concurrence by the division engineer, to demonstrate whether the cost of relocation determined under the provisions of this memorandum will exceed the market value of the utility's real property determined by appraisals under PPM 21-4. 1. Any proposed settlement above the amount established by the appraisal process shall require justification as being the most feasible and economical solution available consistent with the public interest, welfare and good.

e. Where State law or regulation provides payment standards more liberal than those established by this memorandum the provisions of this memorandum shall govern Public Roads reimbursement to the State. Conversely, where State law or regulation provides more restrictive payment standards, the State standards shall govern such reimbursement. A determination shall be made by the State subject to the concurrence of the division engineer as to which standards will govern, and the record documented accordingly, for each relocation encountered. In making the determination as to which standard is the most restrictive, the net cost of relocation, excluding any cost sharing arrangement between the State and the utility, shall be computed by obtaining the reimbursable amount under each of the following. (a) the State's standards and (b) the standards provided for by this memorandum. Any cost sharing arrangement required by law or agreement between the State and the utility shall be applied to the lesser of the two sums so obtained to establish the amount eligible for Federal fund participation.

f. Where the highway construction which requires the utility relocation is under the direct supervision of Public Roads, all references herein to the State are inapplicable. Under such circumstances, it is intended that Public Roads be considered in the relative position of the State.

g. On Secondary Road Plan projects where Federal-aid participation is requested in the costs of utility relocations, it is intended that the State be considered in the relative position of the division engineer for making approvals and issuing authorizations required by this memorandum, subject to the provisions of PPM 20-5 and the approved Secondary Road Plans.

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2. DEFINITIONS

For the purpose of this memorandum, the following definitions shall apply:

a. "Utility" shall mean and include all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

b. The terms "reimburse" and "participate", or their derivatives, shall mean that Federal funds may be used to reimburse the State on Federal-aid projects, or to make payments to the utility on projects under the direct supervision of Public Roads to the extent provided by applicable law.

c. "Division Engineer" shall mean the division engineer of the Bureau of Public Roads.

d. "Replacement Rights-of-Way" shall mean the land and interests in land acquired for or by the utility as necessitated by the highway construction.

e. "Preliminary Engineering" shall mean locating, making of surveys, preparation of plans, specifications and estimates and other related preparatory work in advance of construction operations.

f. "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project, except for preliminary engineering or right-of-way work which is programed and authorized as a separate phase of work.

g. "Salvage Value" is the amount received for utility property removed, if sold; or if retained for reuse, the amount at which the material recovered is charged to the utility's accounts.

h. "Work Order System" is a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

i. "Program Approval" shall mean approval by Public Roads of programs of projects proposed by the State. Projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

j. "Authorization" shall mean authorization to the State by the division engineer to proceed with any phase of a project previously or concurrently given program approval. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

k. "Relocation" shall mean the adjustment of utility facilities required by the highway project, such as removing and reinstalling the facility, including necessary rights-of-way, on new location, moving or rearranging existing facilities or changing the type of facility, including any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

l. "Cost of Removal" is the cost of demolishing, dismantling, removing, or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

m. "Cost of Salvage" is the amount expended to restore salvaged utility property to usable condition after its removal.

n. "Overhead Costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentum factor supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, general office services, legal services, insurance, relief, pensions, taxes and construction engineering and supervision by other than the accounting utility.

o. "Betterments" shall mean and include any upgrading to the facility being relocated made solely for the benefit of and at the election of the utility, not attributable to the highway construction.

p. "The cost of any improvements necessitated by or in accommodation of the highway construction" shall mean the cost of providing improvements in the relocated or adjusted facility that are needed to protect or accommodate the highway and its safe operation.

3. ELIGIBILITY

a. Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a State, or a political subdivision thereof, for the costs of utility relocations under one or more of the following conditions:

(1) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain.

(2) Where the utility occupies either publicly or privately owned land or public right-of-way, and the State's payment of the costs of relocation does not violate the law of the State or violate a legal contract between the utility and the State, subject to the provisions in paragraphs 3b and c below.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State, and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense, subject to the provisions in paragraphs 3b and c below.

b. Reimbursement of relocation costs incurred pursuant to paragraphs 3a(2) and (3) above may be approved, provided the State has furnished a statement to the division engineer establishing and/or citing its legal authority or obligation to make such payments, and an affirmative finding has been made by Public Roads that such a statement forms a suitable basis for Federal-aid fund participation in such costs under the provisions of Section 123, Title 23, U.S. C. This statement should reflect the basis of the State's payment Statewide except where conditions otherwise limit its application to political subdivisions, projects or individual relocations.

c. Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

d. Where the advance installation of new utility facilities, crossing or otherwise occupying the proposed right-of-way of a future planned highway project, is either underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the State. arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the future planned highway project. Federal funds are eligible to participate in the additional costs incurred by the utility that are attributable to and in accommodation of the planned highway project, provided such costs are incurred subsequent to authorization of the work by the division engineer. For example, such additional costs may include the cost of providing higher poles or longer spans, encasement of cable or pipes, additional length of facilities and the like, that are needed to protect the planned highway and its safe operation, and which otherwise would not be required by the utility for its own operation. Subject to the other provisions of this memorandum, reimbursement may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest, and the adjustment of the facility is necessary by reason of the actual construction of the planned highway project. Emergency situations may be processed in the manner prescribed by paragraph 7n.

4. RIGHTS-OF-WAY

a. Replacement right-of-way to be acquired by or on behalf of a utility shall be programed and authorized either as an expense incidental to the cost of relocation, or as part of the right-of-way acquisition phase of either the highway project as a whole, or a separate utility relocation project. Reimbursement may be approved for the cost of replacement right-of-way incurred after the date any of the foregoing phases of work are included in an approved program and replacement right-of-way for utilities is authorized by the division engineer, provided:

(1) the State's payment does not violate the law of the State or violate a legal contract between 1he utility and State, and

(2) there will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the State for highway purposes, and

(3) the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project.

b. Expenses incurred by the utility incident to the acquisition of replacement rights-of-way may be reimbursed. These expenses may include such items as: salaries and expenses of utility employees while engaged in the appraisal of and negotiation for such right-of-way, amounts paid independent appraisers

for appraisals made of such right-of-way, recording costs, deed fees and similar costs normally paid incident to land acquisition.

c. The utility shall determine and record its valuation of the replacement rights-of-way that it acquires, prior to negotiation for its acquisition. This means the utility should, by its records be in a position to justify amounts paid for such right-of-way. The valuation may consist of appraisals by utility employees or by independent appraisers. Sound valuation and acquisition practices should be followed by the utility, including the use of adequate and formal appraisals of record where the cost of any replacement right-of-way tract is more than $500.

d. Acquisition of rights-of-way by the State for a utility shall be in accordance with PPM 21-4. 1.

e. Where the utility has the right-of-occupancy in its existing location by reason of holding the fee, an easement or other real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking and damage of the utility's real property, including the disposal or removal of such facilities, is a matter for consideration as a right-of-way transaction in accordance with PPM 21-4. 1.

5. PRELIMINARY ENGINEERING AND ENGINEERING SERVICES

a. Preliminary engineering work and other related preparatory work undertaken by or under the direction of a utility shall be programed and authorized either as an expense incidental to the cost of relocation, or as part of the preliminary engineering phase of either the highway project as a whole, or a separate utility relocation project. Reimbursement may be approved for such costs incurred after the date any of the foregoing phases of work are included in an approved program, and preliminary engineering for utilities is authorized by the division engineer.

b. Where a utility is not adequately staffed to prosecute the relocation. Federal funds may participate in the amounts paid to engineers, architects and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation. Where reimbursement is requested by the State for the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements therefor. Federal-aid funds may participate in the cost of such services performed under existing written continuing contracts where it is demonstrated that such work in regularly performed for the utility in its own work under such contracts at reasonable costs. It is expected the State and utility will, insofar as practicable, adopt and follow the procedures set out in PPM 40-6 and its supplements. The proposed use of such services, fees and arrangements therefor, are subject to prior approval by the division engineer, except as provided below:

(1) Where the proposed utility work is relatively simple, and the fees for the proposed engineering services are less than $5, 000, and the division engineer has previously approved a satisfactory statement of procedures the State uses Statewide for such matters.

(a) The statement of procedures shall establish a ceiling on the fees to be covered. not to exceed $5, 000, and outline the State's practices for reviewing and approving the need for such services, the reasonableness of the fee, the adequacy of the contract document or arrangements, and the qualifications of the individual or firm. The division engineer may approve the State's statement of procedures where he is satisfied that the State's procedures follow sound business practices and are satisfactory to provide adequate control for this type of work. Reimbursement may be approved where the costs incurred are in accordance with the approved statement of the State's procedures.

(2) Where the engineering services are performed under existing written continuing contracts for fees of $5,000 and less, and it is demonstrated this service is regularly performed for the utility in its own work under such contracts at reasonable costs.

c. All agreements for the engineering services outlined in 5b above, in which Federal-aid funds are to participate, shall include a certificate, as a supplement to said agreement, as shown by Attachment No. 1 to this memorandum. The certificate shall be executed by the individual so engaged, or by a principal officer of the firm retained.

6. CONSTRUCTION

a. Construction costs incurred by a utility subsequent to the date on which the division engineer authorized the State to proceed with the relocation may be reimbursed. Federal funds will not participate in any utility relocation (1) not necessitated by the construction of the highway project or (2) for changes made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

b. Unless the utility work is made a part of the State's highway construction contract or performed under a separate contract let by the State, as agreed to by the utility and the State with the approval of the division engineer, all utility relocations and all work incidental to such relocation shall be performed by the utility with its own forces, or by a contractor paid under a contract let by the utility, or both. When the contractual method is utilized, pursuant to applicable State law or regulation, Federal funds may participate in the cost of the relocation, where it is demonstrated that the letting of a contract by the State was in the best interest of the State, or that the letting of contract by the utility was necessary because the utility was not adequately staffed or equipped to perform the work with its own forces at the time of relocation.

c. Where reimbursement is to be requested, any contract to perform work in connection with the utility relocation should be under an award to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids, except as set forth in paragraphs 6d and e. Appropriate solicitation shall be accomplished through open advertising in publications, or by circularizing to a list of prequalified contractors or known qualified contractors. A list of such contractors shall be submitted to the State for informational purposes in advance of the solicitation for bids.

d. Federal funds may participate in the costs of relocation work performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility under such contracts at reasonable costs. This may include existing continuing contracts with another utility. Where such other utility has an ownership interest in the facility to be relocated, Federal funds will not be eligible to participate in intercompany profits.

e. Where the utility proposes to contract outside the requirements under paragraphs 6c and d for work of relatively minor cost or nature, for example, tree trimming and the like, Federal funds may participate in the costs so incurred, provided it is demonstrated that such requirements are impractical and the utility's action did not result in an expenditure in excess of that justified by the prevailing conditions.

f. All labor, materials, equipment and other services furnished by the utility shall be billed by the utility direct to the State. The special provisions of contracts let by the utility or the State shall be explicit in this respect. The costs of force account work performed for the utility by the State and of contract work performed for the utility under a contract let by the State, shall be reported separately from the costs of other force account and contract items on the highway project.

g. Field verification by the State, to justify and support payment for the work done, is necessary to the proper handling of utility relocations and adjustments. A minimum treatment is the procedure outlined under "Utility Adjustments" in the AASHO publication, AN INFORMATIONAL GUIDE ON PROJECT PROCEDURES, or any other equally acceptable written procedure mutually agreed upon by a State and the division engineer to accomplish the purpose. The cost of preparing as-built plans, to the extent necessary for the State to verify costs, and/or for highway maintenance purposes, is reimbursable.

7. AGREEMENTS AND AUTHORIZATIONS

a. Except as provided in paragraph 7p, where reimbursement is requested by the State, the utility and the State shall agree in writing on their separate responsibilities in financing and accomplishing the relocation work, either through the use of master agreements for relocation work to be encountered on an area-wide or Statewide basis, or through the use of individual agreements on a case by case or project basis, or both. The form of the written agreement is not prescribed. Said agreement shall incorporate this memorandum and any supplements and revisions thereto by reference, and by inclusion therein or by supplement thereto shall, for each relocation encountered, set forth:

(1) the basis of the State's authority, obligation, or liability to pay for the relocation (reference paragraph 3 of this memorandum),

(2) the scope, description and location of the work to be undertaken,

(3) the method to be used by the utility for developing relocation costs (reference paragraph 7g of this memorandum), and

(4) the method to be used for performing the relocation work, either by the utility's forces or by contract.

b. Where reimbursement is requested by the State, said agreement shall be supported by plans, specifications where required, and estimates of the work agreed upon, which shall be sufficiently informative and complete to provide he State and division engineer with a clear showing of work required in accordance with paragraphs 7h and i of this memorandum.

c. The division engineer shall indicate his approval of the written agreement by endorsement thereon. Any conditions or qualifications attached to his approval shall be set out by letter from the division engineer to the State. Such approval and any conditions or qualifications attached thereto are for the purpose of informing the State the extent that Federal funds are eligible to participate in the costs incurred under the approved agreement, subject to the provisions of this memorandum.

d. Where applicable, the written agreement shall set out by separate clause the terms and amounts of any contribution made or to be made by the utility to the State in connection with payments by the State to the utility under the provisions of paragraph 3. Federal funds are not eligible to participate in any costs for which the utility repays a State or political subdivision for the State's pro rata share, or portions thereof, of the cost of relocation.

e. Where the relocation involves work to be paid by the State and work to be done at the expense of the utility, and reimbursement is requested by the State, the written agreement shall state the share to be borne by each party; that is, by the State and by the utility. Reimbursement shall follow the basis of cost allocation set out in the agreement, except where adjustment is required by changes between the work planned and accomplished.

f. In the event there are changes in the scope of work, extra work. or major changes in the planned work covered by the approved agreement, plans and estimates, reimbursement therefor shall be limited to costs covered by a modification of the agreement, or a written change or extra work order, approved by the State and the division engineer. Emergency situations may be processed in the manner prescribed by paragraph 7n.

g. Agreements shall set forth the method of developing the relocation costs which shall be one of the following alternatives:

(1) Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and the division engineer. Where such a procedure is proposed by a utility, approval by the division engineer will be limited to an accounting procedure which the utility uses in its regular operations.

(a) The use of unit costs, such as broad gauge units of property, where the utility maintains and regularly uses such unit costs in its own operations will be considered as meeting the requirements under paragraphs 7g(1) and (2) above, provided a determination is made by the State, subject to the concurrence of the division engineer, that such unit costs and supporting records are representative of the actual direct and related indirect costs, accumulated under the accounting procedure prescribed by the regulatory body having jurisdiction over the utility or the accounting procedure approved by the State and division engineer.

(3) An agreed lump sum where the estimated cost to the State of the proposed adjustment does not exceed $5, 000, and where the State and the division engineer are satisfied that the utility's cost estimate and method of estimating, including the use of unit costs, such as broad gauge units of property, where used by the utility in its own work, are adequate to support the lump sum method. The lump sum agreement shall be supported by a plan prepared in accordance with paragraph 7i, specifications where required, and a detailed cost estimate prepared in a manner that will permit comparison with the agreement and supporting plans, which will give the State and division engineer a clear understanding of the work proposed. The agreement shall be subject to the prior approval of the State and the division engineer. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate; equipment charges by type, size, and rate; materials and supplies by items and price; and payroll additives and other overhead factors, with a statement of what is included in each, and the basis for determining the percentage used. Where determining whether the cost of relocation falls within the ceiling for lump sum utility agreements, it is not necessary to reflect the estimated costs of utility work not attributable to the highway construction or not eligible for Federal fund participation.

(4) Where work is to be performed by forces of a utility, the nature of whose regular business is such that its accounting system is not designed or required to classify, record, and otherwise reflect the results of operation on a continuing basis in terms of physical work items, the estimate of cost shall include reference to the support to be (a) presented with the claim for reimbursement, and (b) maintained by the utility for subsequent review The claim for reimbursement shall be accompanied by a duly certified post-construction compilation of cost, showing such details as man-hours by class and rate; equipment by type, size, and rate; materials and supplies

by items and price. Upon review of claims as herein contemplated and as otherwise required, the State and Public Roads shall make such determinations as are appropriate in the circumstances, including any necessity for audit at the site of the utility.

h. The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights-of-way, preliminary engineering, and construction engineering, including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide the State and division engineer a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the utility uses such units in its own operations.

i. The supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done and shall show:

(1) the location, length, size and/or capacity, type, class, and pertinent operating conditions and design features, of existing, proposed, and temporary facilities, including proposed changes thereto, and disposition thereof, all by appropriate nomenclature, symbols, legend, notes, color-coding or the like;

(2) the project number, plan scale and date, the horizontal and, where appropriate, the vertical location of the utility facilities in relation to the highway alignment, geometric features, stationing, grades, structures, and other facilities, proposed and existing right-of-way lines, and where applicable, the access control lines;

(3) where applicable, the limits of right-of-way to be acquired from, by or on behalf of the utility; and

(4) by appropriate notes or symbols, that portion of the work to be accomplished, if any, at the sole expense of the utility.

j. On projects where the State plans to request reimbursement for utility relocation costs, it is necessary to show under the character of work on Form PR-1 that "utility relocations" are included. The utility work may be programed either as part of the right-of-way acquisition phase, or the

construction phase of the highway project, or as a separate utility relocation project. Where feasible, arrangements should be made to program all phases of the utility work under a single project.

k. Where reimbursement is requested, except as otherwise provided by paragraphs 7l and m, authorization by the division engineer to the State to proceed with the physical adjustment or relocation of a utility's facilities may be given.

(1) on or after the date the utility relocation is included in an approved program, as part of the right-of-way acquisition phase (program Stage 1 or 2) or construction phase (program Stage 2 only) of a highway project, or as a separate utility adjustment project (program Stage 2 only), and

(2) at such time as the division engineer is furnished and reviews plans and estimates, reporting adequately the utility work proposed, the location of the highway project and the utility relocation, and

(3) when the division engineer has been furnished and has reviewed the proposed, or executed agreement between the State and the utility, including, where applicable, the agreements for accommodating the facilities to be relocated as prescribed by paragraph 15, and

(4) when the division engineer has been furnished a schedule for accomplishing the utility work based on the best information available at the time authorization is requested.

l. Where the basis of the State's payment for the cost of relocation is to be made pursuant to the conditions under paragraph 3a(1), the division engineer shall not issue authorization to proceed with a utility relocation, until the State has submitted to the division engineer a statement signed by the State highway official having the final authority over utility adjustments, certifying the following:

(1) that the utility has a real property interest in the land occupied by its facilities, the damaging or taking of which is compensable in eminent domain, and

(2) that it has on file, evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record, an opinion by the State's legal counsel of the utility's property interest will be accepted in lieu thereof.

In exceptional circumstances, and for good cause shown by the State, the division engineer may, at his discretion, waive the requirement of submittal of the above certification as a condition precedent to authorization to proceed. Such certification, however, shall in all instances be a condition precedent to Federal reimbursement.

m. Where mutually agreed to by the State and division engineer, arrangements may be made for advance authorization of utility relocation work. Either at the time of program approval or later, the division engineer may issue a letter of authorization to the State, on a selected construction location, to proceed with any or all necessary utility relocation work within a project, including preliminary engineering, related preparatory work and replacement right-of-way acquisition, but with the understanding that the actual physical adjustment or relocation of any utility facilities will not be undertaken until and unless, the division engineer is furnished and approves for each relocation, the proposed or executed agreement between the State and the utility, including the supporting plans and estimates therefor. The cost of replacement right-of-way so acquired and actually incorporated in the finally approved utility relocation will be eligible for Federal participation.

n. Where unforeseen circumstances during construction of the highway project necessitate adjustment or relocation of utility facilities, arrangements therefor can, and should, be made promptly by the State, and may be confirmed by telephone with the division engineer. Where necessary to prevent undue delay or interference with the highway construction, the division engineer may establish a date of eligibility for such work and authorize the State to proceed subject to his subsequent review and approval of a satisfactory State-utility agreement therefor. Any oral arrangements so made shall be confirmed in writing, to the State, by the division engineer.

o. Federal funds may not reimburse the State for costs of utility relocations:

(1) until and unless the division engineer approves the executed agreement between the State and the utility (except as provided in paragraph 7p), and

(2) until and unless a project agreement which includes the work is executed, and

(3) which are not required by the finally approved project location and highway construction plans.

p. Where all efforts of the State and the utility fail to bring about written agreement of their separate responsibilities under the provisions of this memorandum, the State shall submit its proposal and a full report of the circumstances to the division engineer.

(1) The division engineer shall make appropriate investigation and submit his report and recommendations through the regional engineer to the Administrator. Conditional authorization for the work to proceed may be given to the State, with the understanding that Federal funds will not be paid for work done by the utility, until the Administrator has given his approval to the State's proposal.

(2) The Administrator will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives, and accelerate the advancement of the construction and completion of projects.

8. RECORDING OF COSTS

a. All utility relocations will be recorded by means of work orders or job orders, except as otherwise approved under paragraphs 7g(2), (3) and (4).

b. Where the relocation costs are to be developed pursuant to the methods outlined in paragraphs 7g(l) or (2), the individual and total costs properly reported and recorded in the utility's accounts, in accordance with the approved method for developing such costs, shall constitute the maximum amount on which Federal fund participation may be based for the work performed under the approved utility agreement. Separate work orders may be issued for additions and retirements, or the retirements may be included with the construction work order, provided, however, that all items relating to retirements shall be kept distinctly separate from those relating to construction.

c. Each utility shall keep its work order system in such manner as to show the nature of each addition to, or retirement from a facility, the total cost thereof, and the source or sources of cost.

d. The provisions of paragraphs 10, 11, 12 and 13 are intended for use as general guidelines in the development of reimbursable costs. It to further intended that cost development under prescribed or approved systems of accounts shall be the general controlling factor.

9. REIMBURSEMENT BASIS

a. Where payment by the State for the costs of relocation is made pursuant to the provisions

of paragraph 3 of this memorandum, and such payment is for the entire amount paid by, or on behalf of, the utility properly attributable to the relocation, after deducting therefrom any increase in the value of the new facility, and any salvage value derived from the old facility, reimbursement of such costs may be approved, subject to the following understandings:

(1) "The entire amount paid by or on behalf of the utility properly attributable to the relocation" shall mean the cost of adjusting or rearranging the existing facility, or providing a replacement facility functionally equal to the facility, or portion thereof, being replaced, including the cost of any additions, improvements, removals, or replacement right-of-way necessitated by, or in accommodation of, the highway project.

(2) The deduction for "any increase in value of the new facility" shall include a credit to the project for the cost of:

(a) any betterments in the facility being replaced or adjusted, and

(b) where appropriate, any increase in value attributable to the substitution of a replacement facility for an existing facility, as determined in accordance with the provisions of paragraph 9b.

(3) The deduction for "any salvage value derived from the old facility" shall include a credit to the highway project for the value of the materials removed, as determined in accordance with the provisions of paragraphs 11b and c of this memorandum.

b. In any instance where the relocation involves the substitution of a replacement facility for an existing facility, a determination shall be made whether a credit is due to the project for the value of the expired service life of the facility being replaced, except as provided in paragraph 9b(1). Such credit shall take into account the effect of such factors as wear and tear, action of the elements, and functional or economic obsolescence of the existing facility, not restored by maintenance during the years prior to the relocation.

(1) A credit to the project for the value of the expired service life of the facility being replaced will not be required where such facility involves only:

(a) utility line crossings of the highway, or

(b) segments of a utility line, other than utility line crossings of the highway, less than one mile in length, provided the replacement facility for such a segment is not of greater functional capacity or capability than the one it replaces, and includes no betterments.

(2) The following shall constitute prima facie evidence that a credit is due to the project for the value of the expired service life of the facility being replaced:

(a) Where the replacement facility is functionally equal to the existing facility which it replaces, and such existing facility involves a segment of a utility line one mile or more in length.

(b) Where the replacement facility is other than a segment of the utility's service, distribution or transmission lines, such as a building, pumping station, filtration plant, power plant or substation, production, or transfer or storage facilities, and any other similar operating units of a utility's physical plant or operating facilities.

(c) Where the replacement facility involves betterments, or is of greater functional capacity or capability than the one it replaces, except for utility line crossings of the highway as provided in paragraph 9b(1)(a).

(3) Where an affirmative finding is made that a credit for the value of expired service life is due to the project, the credit to be given shall be in an amount bearing the same proportion to the original cost of the facility being replaced as its existing age bears to its estimated total life expectancy.

(4) "The estimated total life expectancy" is the sum of the period of actual use and the period of expectant remaining service life. The period of expectant remaining life may be taken from the utility's records, established through the use of age-life curves, or determined by the interested parties through field inspections, giving due consideration to the quality and frequency of maintenance.

(5) Where original costs are not ascertainable from the utility's accounts and records, they may be estimated by trending back present day costs.

(6) The burden of proof of any exceptions to the foregoing requirements lies with the utility company and will require written explanation to demonstrate that the replacement facility will not remain in useful service for a longer period than the existing facility would have remained in service, had the replace ment not been made, and the reasons therefor.

(7) Exceptions claimed on the basis of predicted functional obsolescence of the

replacement facility must be substantiated by formal and planned utility work programs, schedules, or equally suitable documentation, and the utility must satisfactorily demonstrate and justify the reasons why the planned replacement and expansion cannot be accomplished at the time of the highway-utility relocation. Exceptions claimed on the basis of predicted economic obsolescence of the replacement facility must also be substantiated by suitable documentation. Where such exceptions are substantiated and demonstrated to the satisfaction of the State and division engineer, an analysis shall be made to determine any increase in value to the utility resulting from the predicted early retirement and salvage of the replacement facility.

(8) The credit to be obtained for expired service life shall be determined jointly by the utility company and the State, subject to concurrence by the division engineer, and shall be set forth in the detailed estimate supporting the agreement between the utility and the State.

c. Additional costs incurred by a utility resulting from complying with governmental or industry codes, or current design practices regularly followed by the utility in its own work may be reimbursed provided either of the following conditions are satisfied, as determined by the State with the concurrence of the division engineer:

(1) There is a direct benefit to the highway project, for example, improved appearance, increased highway safety, or added protection.

(2) Compliance with such codes or practices is required under Federal, State or local governing laws and ordinances.

d. Except as provided for under paragraph 9c of this memorandum, where the utility elects to install, or it is current practice in the utility's own operations to install, facilities of a type different than the facilities being replaced, for example, the substitution of ACSR for copper conductors, underground cables for aerial lines and the like, reimbursement shall be limited to the cost of providing the most economical replacement facility, or restoration of service, functionally equal to the one being replaced.

e. Where an addition to an existing facility is required by the highway construction, such as an increase in the length of a relocated utility line, the actual costs of the addition are reimbursable to the extent the materials In the addition are not of a type or a class superior to the materials in the facility to which the addition is extended, except that the cost of any improvement in type or class which is required in connection with the construction of the project is reimbursable.

f. Where necessitated by the highway project, Federal funds are eligible to participate in the costs incurred for rehabilitating, moving, or replacing buildings of a utility company, including the equipment and operating facilities therein, which are used for the production, transmission, or distribution of the utility's products. Except where it is demonstrated that the existing building and/or facilities are required to remain in place and in service until a (new) replacement building and/or facilities are constructed and in service at a new location, an analysis shall be made by the State to determine the cost and feasibility of each of the following:

(1) to rehabilitate the building at its existing location,

(2) to move it as a unit intact to its new location,

(3) to dismantle it and reassemble or reconstruct it at its new location, or

(4) to replace it with a new building at the new location.

Reimbursement may be approved for the costs incurred under the most feasible and economical solution available, less appropriate credits for salvage and betterments, as determined by the State, subject to concurrence by the division engineer. Where a (new) replacement building and/or (new) equipment or facilities therein are constructed, credit will also be given to the project in accordance with paragraph 9b.

g. In no event will the total of all credits required under the provisions of this memorandum exceed the total costs of adjustment, exclusive of the cost of improvements necessitated by the highway construction.

10. LABOR COSTS

a. Salaries and wages billed at actual rates or at average rates accounting for productive labor hours, retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are engaged in the utility relocations are reimbursable when supported by adequate records, except for engineering or inspection charges which are being reimbursed under the utility's construction overhead account. Costs to the utility of vacation, holiday pay, company sponsored benefits, and similar costs incident to labor employment, will be

reimbursed when supported by adequate records. These may include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and in the actual preparation of the plans and estimates of the relocation.

b. Overhead Construction Costs:

(1) So that each relocation shall bear its equitable proportion of such costs, all overhead construction costs not chargeable directly to work order or construction accounts such as, general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, legal expense, insurance, relief and pensions and taxes shall be charged to the relocation on the basis of the amount of such overhead costs reasonably applicable thereto. The instructions contained herein shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as accepting assignment to the relocation of actual and reasonable overhead costs.

(2) The cost of advertising and sales promotion, interest on borrowed funds or charges for the utility's own funds when so used, resource planning and research programs, stock and stockholder's expenses and similar costs are not considered as necessary and incident to the performance of the relocation and are not eligible for Federal participation.

(3) Premiums paid to an insurance company for Workmen's Compensation, Public Liability and Property Damage Insurance will be reimbursed where, and to the extent, it is determined that, the amounts of the premiums are the products of the proper rates applied to the amounts of paid salaries and wages, exclusive of vacation pay or allowances, and are acceptable to the State and division engineer.

(4) Where it has been the policy of the utility to self insure against public liability and property damage claims, reimbursement will be at the rate developed by the utility, or in the absence thereof, at a rate not in excess of one percent of salaries and wages charged to the job.

(5) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate, and allocation basis of each additive, and be subject to audit by representatives of the State and Federal Government.

11. MATERIALS AND SUPPLIES

a. Costs: Materials and supplies shall be billed at inventory prices when furnished from the utility's stocks, and at actual cost to the utility when the materials and supplies are not available from the utility stocks and must be purchased for the relocation. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and any charge for general overhead expense are provided for under paragraph 11i. When not so allocated in the utility's overhead accounts, they may be included in the computation of the prices of materials or supplies. The computation of costs of materials and supplies shall include the deduction of all offered discounts, rebates, allowances and intercompany profits. In those instances where the book value does not represent the true value of used materials, they shall be charged to the project at the same rate used by the utility in its own work, but in no event shall they be charged at more than the value determined in accordance with the foregoing provisions of this paragraph.

b. Materials Recovered From Permanent Facility:

(1) Materials recovered in suitable condition for reuse by the utility, in connection with construction or retirement of property, shall be credited to the cost of the project at current stock prices; or if a utility charges recovered material to the material and supply account at original cost or a percentum of current price new, and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

(2) The State and the division engineer shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement will be satisfied by the utility giving written notice, or oral notice with later written confirmation, to the State of the time and place the materials will be available for inspection. This notice is the responsibility of the utility, and it may be held accountable for full value of materials disposed of without notice.

(3) If recovered materials are not suitable for reuse by the utility, they shall be disposed of as outlined in paragraph 11c(2).

(4) Where the (new) replacement facility includes materials of a type different than the materials being replaced, for example, aluminum for copper and the like, the credit for the materials recovered from the existing

facility shall not exceed whichever is the greater of the following amounts: (1) the original cost of the existing material, or (2) the current cost of the replacement materials.

a. Materials Recovered From Temporary Use:

(1) Materials recovered from temporary use in connection with a highway project, which are in suitable condition for reuse by the utility, shall be credited to the cost of the project at stock prices charged to the job, less ten (10%) percent for loss in service life. The State and division engineer shall have the right to inspect all recovered materials not reusable by the utility. Notice shall be given as provided by paragraph 11b(2).

(2) Items of materials recovered from temporary use which are unsuitable for reuse by the utility, and which have been determined to have a sale value, shall either be sold, following an appropriate solicitation for bids, to the highest bidder, or if the utility regularly practices a system of disposal by sale which has been determined to be the most advantageous to the utility, credit shall be at the going prices for such used or scrap material as are supported by the records of the utility. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the utility or at its request, by the State. In no event shall the State or the company be considered as an acceptable bidder for such material.

d. The cost of salvage shall not exceed the value of the recovered material, which value shall be determined as provided in paragraphs 11b and c.

e. The cost of moving recovered materials from the job site to stores or storage point nearest the job will be reimbursed, subject to the provisions of paragraph 11f.

f. Reimbursement of removal costs, as reduced by the salvage value of materials removed, may be approved subject to the following conditions:

(1) Where the existing facilities are being replaced by reason of the highway construction, provided:

(a) such removal is necessary to accommodate the highway project, or

(b) the existing facilities cannot be abandoned in place, or

(c) where it is demonstrated that the estimated salvage value of the materials to be removed will equal, or exceed, the

total cost of removal, taking into account all related charges for reconditioning, handling, and transporting the materials to be removed.

(2) Except as otherwise provided under paragraph 4e, where the existing facilities are not being replaced by reason of the highway construction, provided:

(a) removal is necessary to accommodate the highway project,

(b) the State has authority to pay the removal costs,

(c) the utility is not obligated by law, ordinance, regulation, franchise, written agreement or legal contract to remove its facilities at its own expense, and

(d) a credit is given to the project for the salvage value of the materials removed, not to exceed the cost of removal and related charges.

g. Where removal of the existing facilities is necessary by reason of the highway construction, but the materials to be removed are not suitable for reuse by the utility, or their recovery is not economical, the State shall determine, subject to concurrence by the division engineer, which is the most desirable and economical method of removal to employ, for example, by the utility or its contractor, by the highway contractor, or by a separate clearing contract let by the State.

h. Where, pending their subsequent removal or abandonment, utility lines must be deactivated and rendered harmless as a necessary safety and protective measure to the public or highway project, for example, by capping, plugging, or otherwise altering such lines. Federal funds may participate in payments so made by the State, exclusive of removal costs, provided-

(1) the work is necessitated by the highway project, and

(2) the State has authority to pay such costs, and

(3) the utility is not obligated by law, ordinance, regulation, franchise, written agreement or legal contract to do the work at its own expense, or

(4) the work is a necessary and incidental expense to the costs of relocation and/or removal which are eligible for Federal fund participation under the provisions of paragraphs 3 and 11f of this memorandum.

i. The costs of supervision, labor, and expenses incurred in the operation and maintenance of the storerooms and material yards, including storage, handling and distribution of materials and supplies, the costs of purchasing, and costs of testing and inspection, are reimbursable. Costs determined by a rate, or other equitable method of distribution which is representative of the costs to the utility, may be reimbursed.

12. EQUIPMENT

a. Accumulation of Costs: Accounts for transportation and heavy equipment are used for the purpose of accumulating expense and distributing them to the accounts properly chargeable with the services. Among the items of expense clearing through these accounts are the following: Depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts, heat, light, and power for garage and garage office; insurance (including public liability and property damage insurance) on garage equipment, transportation equipment and heavy work equipment; license fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds.

b. Reimbursement of Equipment Costs: The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

c. Reimbursement will be limited to charges which account for costs to the utility of expenses for equipment used (paragraphs 12a and b). Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

(1) Small Tools: Reimbursement for the use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the utilities clearing accounts, or other equitable and supportable allocation basis; otherwise, it will be limited to actual loss or damage during the period of use. In the latter case, the loss or damage shall be billed in detail and supported to the satisfaction of the State and division engineer.

(2) Rental: Where the utility does not have equipment available of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest qualified bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment.

Existing continuing contracts for rental of transportation and heavy equipment, which the utility determines to be of the most advantage to its operations, may be considered as complying with these requirements. In the event of an emergency such as a breakdown of the utility equipment or where additional equipment not originally contemplated is needed, and/or compliance with the foregoing requirements would seriously impair the prosecution of the utility work or highway construction, Federal fund may participate in the cost of equipment rental provided the utility can demonstrate to the satisfaction of the State and the division engineer the above circumstances existed, and the rental charges so incurred were reasonable and did not result in an expenditure in excess of that justified by the prevailing conditions.

d. Where the relocation work is to be performed by forces of a utility through the use of its own equipment, the accounting procedures and reimbursement standards established
under paragraphs 12a, b and c of this memorandum shall apply except where the accounting system of the utility does not provide for capitalization of items or equipment acquired and recovery of original cost through depreciation, and use rates cannot be readily determined from the records of the utility. Upon determination by the State and the concurrence therein of the division engineer that the utility's accounting system is inadequate in such respects,
and that it is not economically feasible to develop such costs under the reimbursement standards set forth in the foregoing mentioned subsections, then eligibility for reimbursement of costs incurred will be dependent upon:

(1) Approval by the State and concurrence therein by the division engineer of a detailed cost estimate submitted by the utility which shall include:

(a) description, rates, hours, compensation and number of units of equipment proposed for use on the relocation,

(b) an adequate explanation of the basis for developing the rates which the utility proposes as compensation.

(2) Incorporation in the State-utility agreement, or by supplemental letter agreement, of the classes and types of equipment and the proposed compensation for each.

e. The division engineer may require such verification or further justification as will provide him assurance as to the reasonableness for the compensation to the utility for the use of its equipment.

13. TRANSPORTATION OF EMPLOYEES

a. The cost of essential transportation performed in automobiles or trucks owned by the utility shall be considered to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment."

b. Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its employees for use in connection with its own construction and maintenance projects and operations.

c. Reimbursement may be made for the cost of required commercial transportation by employees of the utility.

14. UTILITY BILLS

a. Periodic progress billings of incurred costs may be made by a utility, if acceptable to the State, and reimbursement may be approved for claims of this type received from a State.

b. One final and complete billing of all costs incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will follow as closely as possible the order of the items in the estimate portion of the agreement between the State and the utility.
Except where the estimate and final billing are made pursuant to the requirements of paragraph 7g(2) (a), the statement of final billing shall be itemized to show the totals for labor, overhead construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services. In any case, the billing shall be shown in such a manner as will permit comparison with the approved plans and estimates. Materials are to be itemized, where they represent major components or cost in the relocation, following the pattern set out in the approved estimate as closely as is possible. It is desirable that salvage credits from recovered and replaced permanent and recovered temporary materials be reported in the bill in relative position with the charge for the replacement or the original charge for temporary use. The final billing shall show:

(1) the description and site of the project;

(2) the Federal-aid project number;

(3) the dates on which the State-utility agreement was executed and the first work was performed or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred;

(4) the date on which the last work was performed or the last item of billed expense was incurred; and

(5) the location where the records and accounts billed can be audited.

c. The utility shall make adequate reference in the billing to its records, accounts and other relevant documents.

d. All records and accounts are subject to audit by representatives of the State and Federal Government. During the progress of construction and for a period not less than three years from the date final payment has been received by the utility company, the records and the accounts pertaining to the construction of the project, and accounting therefor, will be available for inspection by the representatives of the State and Federal Government.

e. Reimbursement for a final utility billing shall not be approved until and unless the State furnishes evidence that it has paid the utility from its own funds, or funds of a political subdivision, pursuant to State law and subject to paragraphs 3c and 7d of this memorandum and, except for lump sums, following an audit of the costs included in the final billing.

15. ACCOMMODATION AND INSTALLATION

a. The purpose of this paragraph is to prescribe the policies and procedures to be followed on proposed or active Federal-aid highway projects with respect to the use and occupancy of the highway rights-of-way by utility facilities which must be retained, installed, adjusted or relocated to accommodate the construction of such projects, regardless of who bears the cost of installation, adjustment or relocation.

b. Utility facilities may be accommodated on the rights-of-way of a proposed or active Federal-aid project, provided such use and occupancy of the highway right-of-way does not impair the planned highway improvement or interfere with the free and safe flow of traffic thereon, as provided for by Section 1. 23 of the Regulations for the Administration of Federal-aid for Highways and on Federal-aid Freeway projects, as further provided by the AASHO, "A POLICY ON THE ACCOMMODATION OF UTILITIES ON THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS. " For the purpose of this paragraph,

a planned highway improvement will be considered as being a proposed or active Federal-aid projects on or after the date any phase of development of the highway project is programed for Federal-aid funds (program Stage 1 or 2). A project will be considered as being active until the date of final acceptance of the completed project by Public Roads.

c. Where utility facilities are to cross, or otherwise occupy, the right-of-way of a proposed or active Federal-aid project, the State and utility shall agree in writing as to the terms of such use and occupancy, and the manner in which such facilities are to be accommodated thereon. Such agreement shall include:

(1) a description of the size, type, nature and extent of the utility facilities being located within the highway right-of-way, and

(2) adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the planned highway improvement, the right-of-way lines and, where applicable, the control of access lines, and

(3) a statement indicating the State's and utility's liability for the cost of existing and future utility adjustments, and indicating the conditions regulating the installation, servicing and maintenance of the utility facilities located within the highway right-of-way, and

(4) other provisions as deemed necessary to comply with State law and regulations, said Section 1.23, and said AASHO Policy.

d. In any instance where utility facilities are to use and occupy the right-of-way of a proposed or active Federal-aid project, on or before the State is authorized to proceed with the physical construction of the highway project, the State shall demonstrate to the satisfaction of the division engineer that:

(1) A satisfactory agreement has been reached between the utility and State in accordance with the provisions of paragraph 15c, and

(2) The interest acquired by, or vested with, the State in that portion of the highway right-of-way to be vacated, used, or occupied by the utility facilities is of a nature and extent as are adequate for the construction, operation and maintenance of the highway project, and

(3) The utility facilities to be retained, installed, adjusted or relocated on, over, along or under the highway within the right-of-way limits will be located and accommodated in a manner that will not impair the planned highway, or its construction, or maintenance, or interfere with its safe operation, and

(4) Suitable arrangements have been made between the utility and State for accomplishing, scheduling and completing the utility work, for the disposition of any facilities to be removed from or abandoned within the highway right-of-way, and for the proper coordination of such activities with the planned highway construction. Such arrangements should be made at the earliest feasible date in advance of the planned highway construction, and

(5) The plans for the highway project have been prepared in accordance with the provisions of paragraph 4i of PPM 40-3. 1.

e. Any requests for new utility installations on or across the right-of-way of a proposed or active Federal-aid project, that occur during the period from the date the State authorizes the preparation of preliminary project plans to the date of final acceptance of the completed project by Public Roads, are subject to prior approval by the division engineer.

f. On Secondary Road plan projects, it is intended that the State be considered in the relative position of the division engineer for the purpose of complying with the provisions of paragraph 15. Suitable references to the provisions of this paragraph, or a description of acceptable alternative procedures the State proposes to follow for these matters on Secondary Road Plan projects, shall be included in any Secondary Road Plans which are revised subsequent to the date of this memorandum.

g. For the purpose of this memorandum, lands outside of the normal right-of-way acquired under Section 319(b), Title 23, U. S. C. (scenic strips - 1965 Highway Beautification Act) shall be considered to be highway right-of-way.

<M>

Attachment

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CERTIFICATION OF CONSULTANT

I hereby certify that I am the (title) and duly authorized representative of the firm of _____, whose address is _____, and

That, except as expressly stated and described herein, neither I nor the firm of _____ has, in connection with its contract with (name of utility), entered into pursuant to provisions of an agreement between the aforementioned utility and the State of _____, as a part of Federal-aid project _____,

(a) employed or retained for a commission percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract, or

(b) agreed, as an express or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person in connection with the carrying out of the contract, or

(c) paid, or agreed to pay, to any firm, company, organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

(Statement and explanation of exceptions, if any):

I acknowledge that this certificate is to be furnished to the State highway department and the Bureau of Public Roads, U.S. Department of Commerce, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

_____ (Date)

_____ (Signature)

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

POLICY AND PROCEDURE MEMORANDUM

Transmittal 142
February 14, 1969
34-30

1. MATERIAL TRANSMITTED

PPM 30-4, Utility Relocations and Adjustments.

2. EXISTING ISSUANCES AFFECTED

Supersedes: PPM 30-4, Utility Relocations and Adjustments, dated October 15, 1966.

IM 30-6-67, dated May 2, 1967, (that part under numbered paragraph: (4)).

Disposal of PPM 30-4, dated October 15, 1966, should be deferred until such time as the provisions of paragraph 3d of PPM 30-4.1 dated November 29, 1968, have been satisfied, i.e., until approval is given to the utility accommodation policies and procedures of the State or its political subdivision by the Regional Administrator under paragraph 7c of PPM 30-4.1.

3. COMMENTS

New provisions and changes to PPM 30-4 are identified as follows:

1b: Establishes effective date and provides for application and correlation with the provisions of PPM 30-4.1.

1c: Substitutes reference to the PPM 80-Series for former reference to PPM 21-4.1. Provides for the utilization of PPM 30-4 as a guide to establish a cost-to-cure.

1d: Substitutes reference to PPM 80-3 for former reference to PPM 21-4.1.

2c: Adds reference to Federal Highway Administration.

2q: Adds definition for "Director".

4c: In instances involving uncomplicated takings where the value estimate is less than $2,500, provides for an abbreviated appraisal report adequately related to comparable sales, prepared by a qualified appraiser.

4d: Substitutes reference to the PPM 80-Series for former reference to PPM 21-4.1.

4e: Substitutes reference to the PPM 80-Series for former reference to PPM 21-4.1.

4f: New paragraph. Transfer of numbered paragraph (4) of IM 30-6-67 (dated May 2, 1967, on the subject: Utilities

(more)

Scenic Enhancement) to PPM 30-4. This does not involve a change in policy but is merely a transfer of policy from an IM to a PPM. The remaining portions of the IM have been rewritten, and included under paragraph 6g of new PPM 30-4.1.

7a(5): New paragraph. Adds a provision to be incorporated in State-utility relocation agreements, or by supplement thereto, to require compliance with the provisions of PPM 30-4.1. (See companion change under paragraph 7k(3)).

7k(3): Deletes the latter part of former paragraph 7k(3) of PPM 30-4 dated October 15, 1966, which requires the State to furnish copies of use and occupancy agreements at the stage the division engineer authorizes the relocation work to proceed. (See companion change under new paragraph 7a(5)).

7p(1)&(2): Changes Administrator to Director.

15a: New paragraph. Makes appropriate reference to new PPM 30-4.1.

15b: New paragraph. Most of the existing provisions of paragraph 15 of PPM 30-4, dated October 15, 1966, have been transferred to new PPM 30-4.1, except for paragraph 15d which has been rewritten and retained as new paragraph 15b.

16: New paragraph. Establishes a new management procedure for processing Federal-aid utility relocation agreements costing $25,000 or less. All provisions and requirements of PPM 30-4 will apply to relocations processed under the alternate procedure, except that the detailed utility documents, agreements, cost estimates and plans need not be submitted for review and approval by the division engineer as a prerequisite for authorizing the utility work to proceed. The use of this alternate procedure will be at the State's option but subject to approval by the Regional Administrator.

Index: The index has been revised to reflect the foregoing.

F C Turner

F. C. Turner
Director of Public Roads

Distribution:
Basic & Special (see distribution of PPM 30-4 dated 10-15-1966)

REMOVE		INSERT
Pages	Date	Pages
1 thru 15	October 15, 1966	1 thru 17
Attachment 1	October 15, 1966	Attachment 1
Appendix A-1 and A-2	October 15, 1966	Appendix A-1 and A-2

See note in paragraph 2 of Transmittal 148

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION BUREAU OF PUBLIC ROADS

POLICY AND PROCEDURE MEMORANDUM

Transmittal 148

30 – 4

February 14, 1969

UTILITY RELOCATIONS AND ADJUSTMENTS

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3. Eligibility
4. Rights-of-Way
5. Preliminary Engineering and Engineering Services
6. Construction
7. Agreements and Authorizations
8. Recording of Costs
9. Reimbursement Basis
10. Labor Costs
11. Materials and Supplies
12. Equipment
13. Transportation of Employees
14. Utility Bills
15. Accommodation and Installation
16. Alternate Procedure
Appendix A - Index

1. PURPOSE AND APPLICATION

a. To prescribe the policies and procedures relating to the adjustment, relocation and accommodation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Bureau of Public Roads. It also prescribes the extent to which Federal funds may be applied to the costs incurred by or on behalf of utilities in the adjustment or relocation of their facilities required by the construction of such projects.

* b. The provisions of this memorandum apply to reimbursement claimed by the State for costs incurred under all State-utility agreements, including utility work performed on projects under the Secondary Road Plan and for payment of costs incurred under all Public Roads-utility agreements, which are entered into after the date of issuance, except as provided under paragraph 3d of PPM 30-4.1, dated November 29, 1968.

* c. Where the lines or facilities to be relocated or adjusted by reason of the highway construction are privately owned, located on the owners' land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the PPM 80-Series apply. Where applicable, under the foregoing conditions the provisions of this memorandum may be used as a guide to establish a cost-to-cure.

* d. Where the utility holds a compensable interest in the land occupied by its facilities, and the relocation involves all or a substantial portion of, or extensive damage to, the utility's physical plant or operating facilities, an analysis shall be made by the State, subject to concurrence by the division engineer, to demonstrate whether the cost of relocation determined under the provisions of this memorandum will exceed the market value of the utility's real property determined by appraisals under PPM 80-3. Any proposed settlement above the amount established by the appraisal process shall require justification as being the most feasible and economical solution available consistent with the public interest, welfare and good.

e. Where State law or regulation provides payment standards more liberal than those established by this memorandum the provisions of this memorandum shall govern Public Roads reimbursement to the State. Conversely, where State law or regulation provides more restrictive payment standards, the State standards shall govern such reimbursement. A determination shall be made by the State subject to the concurrence of the division engineer as to which standards will govern, and the record documented accordingly, for each relocation encountered. In making the determination as to which standard is the most restrictive, the net cost of relocation, excludin any cost sharing arrangement between the State and the utility, shall be computed by obtaining the reimbursable amount under each of the following: (a) the State's standards and (b) the standards provided for by this memorandum. Any cost sharing arrangement required by law or agreement between the State and the utility shall be applied to the lesser of the two sums so obtained to establish the amount eligible for Federal fund participation.

f. Where the highway construction which requires the utility relocation is under the direc supervision of Public Roads, all references herein to the State are inapplicable. Under such circumstances, it is intended that Public Roads be considered in the relative position of the State.

g. On Secondary Road Plan projects where Federal-aid participation is requested in the costs of utility relocations, it is intended that the State be considered in the relative position of the division engineer for making approvals and issuing authorizations required by this memorandum, subject to the provisions of PPM 20-5 and the approve Secondary Road Plans.

2. DEFINITIONS

For the purpose of this memorandum, the following definitions shall apply:

a. "Utility" shall mean and include all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

b. The terms "reimburse" and "participate", or their derivatives, shall mean that Federal funds may be used to reimburse the State on Federal-aid projects, or to make payments to the utility on projects under the direct supervision of Public Roads to the extent provided by applicable law.

* c. "Division Engineer" shall mean the division engineer of the Bureau of Public Roads, Federal Highway Administration.

d. "Replacement Rights-of-Way" shall mean the land and interests in land acquired for or by the utility as necessitated by the highway construction.

e. "Preliminary Engineering" shall mean locating, making of surveys, preparation of plans, specifications and estimates and other related preparatory work in advance of construction operations.

f. "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project, except for preliminary engineering or right-of-way work which is programmed and authorized as a separate phase of work.

g. "Salvage Value" is the amount received for utility property removed, if sold; or if retained for reuse, the amount at which the material recovered is charged to the utility's accounts.

h. "Work Order System" is a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

i. "Program Approval" shall mean approval by Public Roads of program of projects proposed by the State. Projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

j. "Authorization" shall mean authorization to the State by the division engineer to proceed with any phase of a project previously or concurrently given program approval. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

k. "Relocation" shall mean the adjustment of utility facilities required by the highway project, such as removing and reinstalling the facility, including necessary rights-of-way, on new location, moving or rearranging existing facilities or changing the type of facility, including any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

l. "Cost of Removal" is the cost of demolishing, dismantling, removing, or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

m. "Cost of Salvage" is the amount expended to restore salvaged utility property to unable condition after its removal.

n. "Overhead Costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentum factor supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, general office services, legal services, insurance, relief, pensions, taxes and construction engineering and supervision by other than the accounting utility.

o. "Betterments" shall mean and include any upgrading to the facility being relocated made solely for the benefit of and at the election of the utility, not attributable to the highway construction.

p. "The cost of any improvements necessitated by or in accommodation of the highway construction" shall mean the cost of providing improvements in the relocated or adjusted facility that are needed to protect or accommodate the highway and its safe operation.

q. "Director" shall mean the Director of the Bureau of Public Roads, Federal Highway Administration. *

3. ELIGIBILITY

a. Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a State, or a political subdivision thereof, for the costs of utility relocations under one or more of the following conditions:

(1) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain.

(2) Where the utility occupies either publicly or privately owned land or public right-of-way, and the State's payment of the costs of relocation does not violate the law of the State or violate a legal contract between the utility and the State, subject to the provisions in paragraphs 3b and c below.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State, and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense, subject to the provisions in paragraphs 3b and c below.

b. Reimbursement of relocation costs incurred pursuant to paragraphs 3a(2) and (3) above may be approved, provided the State has furnished a statement to the division engineer establishing and/or citing its legal authority or obligation to make such payments, and an affirmative finding has been made by Public Roads that such a statement forms a suitable basis for Federal-aid fund participation in such costs under the provisions of Section 123, Title 23, U.S.C. This statement should reflect the basis of the State's payment Statewide except where conditions otherwise limit its application to political subdivisions, projects or individual relocations.

c. Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

d. Where the advance installation of new utility facilities, crossing or otherwise occupying the proposed right-of-way of a future planned highway project, is either underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the State, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the future planned highway project. Federal funds are eligible to participate in the additional costs incurred by the utility that are attributable to and in accommodation of the planned highway project, provided such costs are incurred subsequent to authorization of the work by the division engineer. For example, such additional costs may include the cost of providing higher poles or longer spans, encasement of cable or pipes, additional length of facilities and the like, that are needed to protect the planned highway and its safe operation, and which otherwise would not be required by the utility for its own operation. Subject to the other provisions of this memorandum, reimbursement may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest, and the adjustment of the facility is necessary by reason of the actual construction of the planned highway project. Emergency situations may be processed in the manner prescribed by paragraph 7n.

4. RIGHTS-OF-WAY

a. Replacement right-of-way to be acquired by or on behalf of a utility shall be programed and authorized either as an expense incidental to the cost of relocation, or as part of the right-of-way acquisition phase of either the highway project as a whole, or a separate utility relocation project. Reimbursement may be approved for the cost of replacement right-of-way incurred after the date any of the foregoing phases of work are included in an approved program and replacement right-of-way for utilities is authorized by the division engineer, provided:

(1) the State's payment does not violate the law of the State or violate a legal contract between the utility and State, and

(2) there will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the State for highway purposes, and

(3) the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project.

b. Expenses incurred by the utility incident to the acquisition of replacement rights-of way may be reimbursed. These expenses may include such items as: salaries and expenses of utility employees while engaged in the appraisal of and negotiation for such right-of-way, amounts paid independent appraisers

for appraisals made of such right-of-way, recording costs, deed fees and similar costs normally paid incident to land acquisition.

* c. The utility shall determine and record its valuation of the replacement rights-of-way that it acquires, prior to negotiation for its acquisition. This means the utility should, by its records be in a position to justify amounts paid for such right-of-way. The valuation may consist of appraisals by utility employees or by independent appraisers. Sound valuation and acquisition practices should be followed by the utility, including the use of adequate and formal appraisals of record where the cost of any replacement right-of-way tract is more than $500. However, in instances involving uncomplicated takings where the value estimate is less than $2500, an abbreviated appraisal report adequately related to comparable sales, prepared by a qualified appraiser, is acceptable. Examples of uncomplicated takings would be whole takings of single family residences; whole takings of an unimproved lot other vacant land; strip or other partial taking not involving damages, cost-to-cure items, or benefits.

* d. Acquisition of rights-of-way by the State for a utility shall be in accordance with PPM 80-Series.

* e. Where the utility has the right-of-occupancy in its existing location by reason of holding the fee, an easement or other real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking and damage of the utility's real property including the disposal or removal of such facilities, is a matter for consideration as a right-of-way transaction in accordance with PPM 80-Series.

* f. Where utility company has a compensable property interest in land to be acquired for a scenic strip, overlook , rest area or recreation area, the State is to take steps necessary to protect and preserve the area or strip being acquired. This will require a determination by the State whether retention of the utility at its existing location, will now or later adversely affect the appearance of the area being acquired, and whether it will be necessary to subordinate or acquire the utility's interests therein, or to rearrange, screen or relocate the utility's facilities thereon, or both. Where the adjustment or relocation of utility facilities is necessary, the provisions of this memorandum apply. In such cases, the State shall determine, subject to concurrence by division engineer, whether the added cost of acquisition attributable to the utility's property interest or facilities which may be located thereon outweigh the aesthetic values to be received.

5. PRELIMINARY ENGINEERING AND ENGINEERING SERVICES

a. Preliminary engineering work and other related preparatory work undertaken by or under the direction of a utility shall be programed and authorized either as an expense incidental to the cost of relocation, or as part of the preliminary engineering phase of either the highway project as a whole, or a separate utility relocation project. Reimbursement may be approved for such costs incurred after the date any of the foregoing phases of work are included in an approved program, and preliminary engineering for utilities is authorized by the division engineer.

b. Where a utility is not adequately staffed to prosecute the relocation, Federal funds may participate in the amounts paid to engineers, architects and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation. Where reimbursement is requested by the State for the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements therefor. Federal-aid funds may participate in the cost of such services performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility in its own work under such contracts at reasonable costs. It is expected the State and utility will, insofar as practicable, adopt and follow the procedures set out in PPM 40-6 and its supplements. The proposed use of such services, fees and arrangements therefor, are subject to prior approval by the division engineer, except as provided below:

(1) Where the proposed utility work is relatively simple, and the fees for the proposed engineering services are less then $5,000, and the division engineer has previously approved a satisfactory statement of procedures the State uses Statewide for such matters.

(a) The statement of procedures shall establish a ceiling on the fees in the covered, not to exceed $5,000, and outline the State's practices for reviewing and approving the need for such services, the reasonableness of the fee, the adequacy of the contract document or arrangements, and the qualifications of the individual or firm. The division engineer may approve the State's statement of procedures where he is satisfied that the State's procedures follow sound business practices and are satisfactory to provide adequate control for this type of work. Reimbursement may be approved where the costs incurred are in accordance with the approved statement of the State's procedures.

(2) Where the engineering services are performed under existing written continuing contracts for fees of $5,000 and less, and it is demonstrated this service is regularly performed for the utility in its own work under such contract are reasonable costs.

c. All agreements for the engineering services outlined in 5b above, in which Federal-aid funds are to participate, shall include a certificate, as a supplement to said agreement, as shown by Attachment No. 1 to this memorandum. The certificate shall be executed by the individual so engaged, or by a principal officer of the firm retained.

6. CONSTRUCTION

a. Construction costs incurred by a utility subsequent to the date on which the division engineer authorized the State to proceed with the relocation may be reimbursed. Federal

funds will not participate in any utility relocation (1) not necessitated by the construction of the highway project or (2) for changes made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

b. Unless the utility work is made a part of the State's highway construction contract or performed under a separate contract let by the State, as agreed to by the utility and the State with the approval of the division engineer, all utility relocations and all work incidental to such relocation shall be performed by the utility with its own forces, or by a contractor paid under a contract let by the utility, or both. When the contractual method is utilized, pursuant to applicable State law or regulation, Federal funds may participate in the cost of the relocation, where it is demonstrated that the letting of a contract by the State was in the best interest of the State, or that the letting of contract by the utility was necessary because the utility was not adequately staffed or equipped to perform the work with its own forces at the time of relocation.

c. Where reimbursement is to be requested, any contract to perform work in connection with the utility relocation should be under an award to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids, except as set forth in paragraphs 6d and e. Appropriate solicitation shall be accomplished through open advertising in publications, or by circularizing to a list of prequalified contractors or known qualified contractors. A list of such contractors shall be submitted to the State for informational purposes in advance of the solicitation for bids.

d. Federal funds may participate in the costs of relocation work performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility under such contracts at reasonable costs. This may include existing continuing contracts with another utility. Where such other utility has an ownership interest in the facility to be relocated, Federal funds will not be eligible to participate in intercompany profits.

e. Where the utility proposes to contract outside the requirements under paragraphs 6c and d for work of relatively minor cost or nature, for example, tree trimming and the like, Federal funds may participate in the costs so incurred, provided it is demonstrated that such requirements are impractical and the utility's action did not result in an expenditure in excess of that justified by the prevailing conditions.

f. All labor, materials, equipment and other services furnished by the utility shall be billed by the utility direct to the State. The special provision of contracts let by the utility or the State shall be explicit in this respect. The costs of force account work performed for the utility by the State and of contract work performed for the utility under a contract let by the State, shall be reported separately from the costs of other force account and contract items on the highway project.

g. Field verification by the State, to justify and support payment for the work done, is necessary to the proper handling of utility relocations and adjustments. A minimum treatment is the procedure outlined under "Utility Adjustments" in the AASHO publication, AN INFORMATION GUIDE ON PROJECT PROCEDURES, or any other equally acceptable written procedure mutually agreed upon by a State and the division engineer to accomplish the purpose. The cost of preparing as-built plans, to the extent necessary for the State to verify costs, and/or for highway maintenance purposes, is reimbursable.

7. AGREEMENTS AND AUTHORIZATIONS

a. Except as provided in paragraph 7p, where reimbursement is requested by the State, the utility and the State shall agree in writing on their separate responsibilities in financing and accomplishing the relocation work, either through the use of master agreements for relocation work to be encountered on an area-wide or Statewide basis, or through the use of individual agreements on a case by case or project basis, or both. The form of the written agreement is not prescribed. Said agreement shall incorporate this memorandum and any supplements and revisions thereto by reference, and by inclusion therein or by supplement thereto shall, for each relocation encountered, set forth:

(1) the basis of the State's authority obligation, or liability to pay for the relocation (reference paragraph 3 of this memorandum),

(2) the scope, description and location of the work to be undertaken.

(3) the methods to be used by the utility for developing relocation costs (reference paragraph 7g of this memorandum).

(4) the method to be used for performing the relocation work, either by the utility's forces or by contract, and

(5) that the facilities be relocated to a position within the highway right-of-way will be accomplished in accordance with the provisions of PPM 30-4.1.

b. Where reimbursement is requested by the State, said agreement shall be supported by plans, specifications where required, and estimates of the work agreed upon, which shall be sufficiently informative and complete to provide the State and division engineer with a clear showing of work required in accordance with paragraphs 7h and i of this memorandum.

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c. The division engineer shall indicate his approval of the written agreement by endorsement thereon. Any conditions or qualifications attached to his approval shall be set out by letter from the division engineer to the State. Such approval and any conditions or qualifications attached thereto are for the purpose of informing the State the extent that Federal funds are eligible to participate in the costs incurred under the approved agreement, subject to the provisions of this memorandum.

d. Where applicable, the written agreement shall set out by separate clause the terms and amounts of any contribution made or to be made by the utility to the State in connection with payments by the State to the utility under the provisions of paragraph 3. Federal funds are not eligible to participate in any costs for which the utility repays a State or political subdivision for the State's pro rata share, or portions thereof, of the cost of relocation.

e. Where the relocation involves work to be paid by the State and work to be done at the expense of the utility, and reimbursement is requested by the State, the written agreement shall state the share to be borne by each party; that is, by the State and by the utility. Reimbursement shall follow the basis of cost allocation set out in the agreement, except where adjustment is required by changes between the work planned and accomplished.

f. In the event there are changes in the scope of work, extra work, or major changes in the planned work covered by the approved agreement, plans and estimates, reimbursement therefore shall be limited to costs covered by a modification of the agreement, or a written change or extra work order, approved by the State and the division engineer. Emergency situations may be processed in the manner prescribed by paragraph 7n.

g. Agreements shall set forth the method of developing the relocation costs which shall be one of the following alternatives:

(1) Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and the division engineer. Where such a procedure is proposed by a utility, approval by the division engineer will be limited to an accounting procedure which the utility uses in its regular operations

(a) The use of unit costs, such as broad gauge units of property, where the utility maintains and regularly uses such unit costs in its own operations will be considered as meeting the requirements under paragraphs 7g(1) and (2) above, provided a determination is made by the State, subject to the concurrence of the division engineer, that such unit costs and supporting records are representative of the actual direct and related indirect costs, accumulated under the accounting procedure prescribed by the regulatory body having jurisdiction over the utility or the accounting procedure approved by the State and division engineer.

(3) An agreed lump sum where the estimated cost to the State of the proposed adjustment does not exceed $5,000, and where the State and the division engineer are satisfied that the utility's cost estimate and method of estimating, including the use of unit costs, such as broad gauge units of property, where used by the utility in its own work, are adequate to support the lump sum method. The lump sum agreement shall be supported by a plan prepared in accordance with paragraph 7i, specifications where required, and a detailed cost estimate prepared in a manner that will permit comparison with the agreement and supporting plans, which will give the State and division engineer a clear understanding of the work proposed. The agreement shall be subject to the prior approval of the State and the division engineer. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate; equipment charges by type, size, and rate; materials and supplies by items and price; and payroll additives and other overhead factors, with a statement of what is included in each, and the basis for determining the percentage used. Where determining whether the cost of relocation falls within the ceiling for lump sum utility agreements, it is not necessary to reflect the estimated costs of utility work not attributable to the highway construction or not eligible for Federal fund participation.

(4) Where work is to be performed by forces of a utility, the nature of whose regular business is such that is accounting system is not designed or required to classify, record, and otherwise reflect the results of operation on a continuing basis in terms of physical work items, the estimate of cost shall include reference to the support to be (a) presented with the claim for reimbursement, and (b) maintained by the utility for subsequent review. The claim for reimbursement shall be accompanied by a duly certified post-construction compilation of cost, showing such details as man-hours by class and rate; equipment by type, size, and rate; materials ad supplies

by items and price. Upon review of claims as herein contemplated and as otherwise required, the State and Public Roads shall make such determinations as are appropriate in the circumstances, including any necessity for audit at the site of the utility.

h. The estimate to support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights-of-way, preliminary engineering, and construction engineering, including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide the State and division engineer a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the utility uses such units in its own operations.

i. The supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done and shall show:

(1) the location, length, size and/or capacity, type, class, and pertinent operating conditions and design features, of existing, proposed, and temporary facilities, including proposed changes thereto, and disposition thereof, all by appropriate nomenclature, symbols, legend, notes, color-coding or the like.

(2) the project number, plan scale and date, the horizontal and, where appropriate, the vertical location of the utility facilities in relation to the highway alignment, geometric features, stationing, grades, structures, and other facilities, proposed and existing right-of-way lines, and where applicable, the access control lines;

(3) where applicable, the limits of right-of-way to be acquired from, by or on behalf of the utility; and

(4) by appropriate notes or symbols, that portion of the work to be accomplished, if any, at the sole expense of the utility.

j. On projects where the State plans to request reimbursement for utility relocation costs, it is necessary to show under the character of work Form PR-1 that "utility relocations" are included. The utility work may be programed either as part of the right-of-way acquisition phase, or the construction phase of the highway project, or as a separate utility relocation project. Where feasible, arrangements should be made to program all phases of the utility work under a single project.

k. Where reimbursement is requested, except as otherwise provided by paragraphs 7l and m, authorization by the division engineer to the State to proceed with the physical adjustment or relocation of a utility's facilities may be given

(1) on or after the date the utility relocation is included in an approved program, as part of the right-of-way acquisition phase (program Stage 1 or 2) or construction phase (program Stage 2 only) of a highway project, or as a separate utility adjustment project (program Stage 2 only), and

(2) at such time as the division engineer is furnished and reviews plans and estimates reporting adequately the utility work proposed, the location of the highway project and the utility relocation, and

(3) when the division engineer is furnished and reviews the proposed, or executed agreement between the State and the utility, and

(4) when the division engineer is furnished a schedule for accomplishing the utility work based on the best information available at the time authorization is requested.

l. Where the basis of the State's payment for the cost of relocation is to be made pursuant to the conditions under paragraph 3a(1), the division engineer shall not issue authorization to proceed with a utility relocation, until the State has submitted to the division engineer a statement signed by the State highway official having the final authority over utility adjustments, certifying the following:

(1) that the utility has a real property interest in the land occupied by its facilities, the damaging or taking of which is compensable in eminent domain, and

(2) that it has on file, evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record, an opinion by the State's legal counsel of the utility's property interest will be accepted in lieu thereof.

In exceptional circumstances, and for good cause shown by the State, the division

engineer may, at his discretion, waive the requirement of submittal of the above certification as a condition precedent to authorzation to proceed. Such certification, however, shall in all instances be a condition precedent to Federal reimbursement.

m. Where mutually agreed to by the State and division engineer, arrangements may be made for advance authorization of utility relocation work. Either at the time of program approval or later, the division engineer may issue a letter of authorization to the State, on a selected construction location, to proceed with any or all necessary utility relocation work within a project, including preliminary engineering, related preparatory work and replacement right-of-way acquisition, but with the understanding that the actual physical adjustment or relocation of any utility facilities will not be undertaken until, and unless, the division engineer is furnished and approves for each relocation, the proposed or executed agreement between the State and the utility, including the supporting plans and estimates therefor. The cost of replacement right-of-way so acquired and actually incorporated in the finally approved utility relocation will be eligible for Federal participation.

n. Where unforeseen circumstances during construction of the highway project necessitate adjustment or relocation of utility facilities, arrangements therefor can, and should, be made promptly by the State, and may be confirmed by telephone with the division engineer. Where necessary to prevent undue delay or interference with the highway construction, the division engineer may establish a date of eligibility for such work and authorize the State to proceed subject to his subsequent review and approval of a satisfactory State-utility agreement therefor. Any oral arrangements so made shall be confirmed in writing, to the State, by the division engineer.

o. Federal funds may not reimburse the State for costs of utility relocations:

(1) until and unless the division engineer approves the executed agreement between the State and the utility (except as provided in paragraph 7p), and

(2) until and unless a project agreement which includes the work is executed, and

(3) which are not required by the finally approved project location and highway construction plans.

p. Where all efforts of the State and the utility fail to bring about written agreement of their separate responsibilities under the provisions of this memorandum, the State shall submit its proposal and a full report of the circumstances to the division to the engineer.

(1) The division engineer shall make appropriate investigation and submit his report and recommendations through the regional engineer to the Director Conditional authorization for the work to proceed may be given to the State, with the understanding that Federal funds will not be paid for work done by the utility, until the Director has given his approval to the State's proposal. *

(2) The Director will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives, and accelerate the advancement of the construction and completion of projects. *

8. RECORDING OF COSTS

a. All utility relocations will be recorded by means of work orders or job orders, except as otherwise approved under paragraphs 7g(2), (3) and (4).

b. Where the relocation costs are to be developed pursuant to the methods outlined in paragraphs 7g(1) or (2), the individual and total costs properly reported and recorded in the utility's accounts, in accordance with the approved method for developing such costs, shall constitute the maximum amount on which Federal fund participation may be based for the work performed under the approved utility agreement. Separate work orders may be issued for additions and retirements, or the retirements may be included with the construction work order, provided, however, that all items relating to retirements shall be kept distinctly separate from those relating to construction.

c. Each utility shall keep its work order system in such manner as to show the nature of each addition to, or retirement from a facility, the total cost thereof, and the source or sources of cost.

d. The provisions of paragraphs 10, 11, 12 and 13 are intended for use as general guidelines in the development of reimbursable costs. It is further intended that cost development under prescribed or approved systems of accounts shall be the general controlling factor.

9. REIMBURSEMENT BASIS

a. Where payment by the State for the costs of relocation is made pursuant to the provisions

of paragraph 3 of this memorandum, and such payment is for the entire amount paid by, or on behalf of, the utility properly attributable to the relocation, after deducting therefrom any increase to the value of the new facility, and any salvage value derived from the old facility, reimbursement of such costs may be approved, subject to the following understandings:

(1) "The entire amount paid by or on behalf of the utility properly attributable to the relocation" shall mean the cost of adjusting or rearranging the existing facility, or providing a replacement facility functionally equal to the facility, or portion thereof, being replaced, including the cost of any additions, improvements, removals, or replacement right-of-way necessitated by, or in accommodation of, the highway project.

(2) The deduction for "any increase in value of the new facility" shall include a credit to the project for the cost of:

(a) any betterments in the facility being replaced or adjusted, and

(b) where appropriate, any increase in value attributable to the substitution of a replacement facility for an existing facility, as determined in accordance with the provisions of paragraph 9b.

(3) The deduction for "any salvage value derived from the old facility" shall include a credit to the highway project for the value of the materials removed, as determined in accordance with the provisions of paragraphs 11b and c of this memorandum.

(b) In any instance where the relocation involves the substitution of a replacement facility for an existing facility, a determination shall be made whether a credit is due to the project for the value of the expired service life of the facility being replaced, except as provided in paragraph 9b(1). Such credit shall take into account the effect of such factors as wear and tear, action of the elements, and functional or economic obsolescence of the existing facility, not restored by maintenance during the years prior to the relocation.

(1) A credit to the project for the value of the expired service life of the facility being replaced will not be required where such facility involves only:

(a) utility line crossings of the highway, or

(b) segments of a utility line, other than utility line crossings of the highway, less than one mile in length, provided the replacement facility for such a segment is not of greater functional capacity or capability than the one it replaces, and includes no betterments.

(2) The following shall constitute prima facie evidence that a credit is due to the project for the value of the expired service life of the facility being replaced:

(a) Where the replacement facility is functionally equal to the existing facility which it replaces, and such existing facility involves a segment of a utility line one mile or more in length.

(b) Where the replacement facility is other than a segment of the utility's service, distribution on transmission lines, such as a building, pumping station, filtration plant, power plant or substation, production, or transfer or storage facilities, and any other similar operating units of a utility's physical plant or operating facilities.

(c) Where the replacement facility involves betterments, or is of greater functional capacity or capability than the one it replaces, except for utility line crossings of the highway as provided in paragraph 9b(1)(a).

(3) Where an affirmative finding is made that a credit for the value of expired service life is due to the project, the credit to be given shall be in an amount bearing the same proportion to the original cost of the facility being replaced as its existing age bears to its estimated total life expectancy.

(4) "The estimated total life expectancy" is the sum of the period of actual use and the period of expectant remaining service life. The period of expectant remaining life may be taken from the utility's records, established through the use of age-life curves, or determined by the interested parties through field inspections, giving due consideration to the quality and frequency of maintenance.

(5) Where original costs are not ascertainable from the utility's accounts and records, they may be estimated by trending back present day costs.

(6) The burden of proof of any exceptions to the foregoing requirements lies with the utility company and will require written explanation to demonstrate that the replacement facility will not remain in useful service for a longer period than the existing facility would have remained in service, had the replacement not been made, and the reasons therefor.

(7) Exceptions claimed on the basis of predicted functional obsolescence of the

replacement facility must be substantiated by formal and planned utility work programs, schedules, or equally suitable documentation, and the utility must satisfactorily demonstrate and justify the reasons why the planned replacement and expansion cannot be accomplished at the time of the highway-utility relocation. Exceptions claimed on the basis of predicted economic obsolescence of the replacement facility must also be substantiated by suitable documentation. Where such exceptions are substantiated and demonstrated to the satisfaction of the State and division engineer, an analysis shall be made to determined any increase in value to the utility resulting from the predicted early retirement and salvage of the replacement facility.

(8) The credit to be obtained for expired service life shall be determined jointly by the utility company and the State, subject to concurrence by the division engineer, and shall be set forth in the detailed estimate supporting the agreement between the utility and the State.

c. Additional costs incurred by a utility resulting from complying with governmental or industry codes, or current design practices regularly followed by the utility in its own work may be reimbursed provided either of the following conditions are satisfied, as determined by the State with the concurrence of the division engineer:

(1) There is a direct benefit to the highway project, for example, improved appearance, increased highway safety, or added protection.

(2) Compliance with such codes or practices is required under Federal, State or local governing laws and ordinances.

d. Except as provided for under paragraph 9c of this memorandum, where the utility elects to install, or it is current practice in the utility's own operations to install, facilities of a type different than the facilities being replaced, for example, the substitution of ACSR for copper conductors, underground cables for aerial lines and the like, reimbursement shall be limited to the cost of providing the most economical replacement facility, or restoration of service, functionally equal to the one being replaced.

e. Where an addition to an existing facility is required by the highway construction, such as an increase in the length of a relocated utility line, the actual costs of the addition are reimbursable to the extent the materials in the addition are not of a type or a class superior to the materials in the facility to which the addition is extended, except that the cost of any improvement in type or class which is required in connection with the construction of the project is reimbursable.

f. Where necessitated by the highway project, Federal funds are eligible to participate in the costs incurred for rehabilitating, moving, or replacing buildings of a utility company, including the equipment and operating facilities therein, which are used for the production, transmission, or distribution of the utility's products. Except where it is demonstrated that the existing building and/or facilities are required to remain in place and in service until a (new) replacement building and/or facilities are constructed and in service at a new location, an analysis shall be made by the State to determine the cost and feasibility of each of the following:

(1) to rehabilitate the building at its existing location,

(2) to move it as a unit intact to its new location,

(3) to dismantle it and reassemble or reconstruct it at its new location, or

(4) to replace it with a new building at the new location.

Reimbursement may be approved for the costs incurred under the most feasible and economical solution available, less appropriate credits for salvage and betterments, as determined by the State, subject to concurrence by the division engineer. Where a (new) replacement building and/or (new) equipment or facilities therein are constructed, credit will also be given to the project in accordance with paragraph 9b.

g. In no event will the total of all credits required under the provisions of this memorandum exceed the total costs of adjustment, exclusive of the cost of improvements necessitated by the highway construction.

10. LABOR COSTS

a. Salaries and wages billed at actual rates or at average rates accounting for productive labor hours, retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are engaged in the utility relocations are reimbursable when supported by adequate records, except for engineering or inspection charges which are being reimbursed under the utility's construction overhead account. Costs to the utility of vacation, holiday pay, company sponsored benefits, and similar costs incident to labor employment, will be

reimbursed when supported by adequate records. These may be include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and in the actual preparation of the plans and estimates of the relocation.

b. Overhead Construction Costs:

(1) So that each relocation shall bear its equitable proportion of such costs, all overhead construction costs not chargeable directly to work order or construction accounts such as, general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, legal expenses, insurance, relief and pensions and taxes shall be charged to the relocation on the basis of the amount of such overhead costs reasonably applicable thereto. The instructions contained herein shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as accepting assignment to the relocation of actual and reasonable overhead costs.

(2) The cost of advertising and sales promotion, interest on borrowed funds or charges for the utility's own funds when so used, resource planning and research programs, stock and stockholder's expenses and similar costs are not considered as necessary and incident to the performance of the relocation and are not eligible for Federal participation.

(3) Premiums paid to an insurance company for Workmen's Compensation, Public Liability and Property Damage Insurance will be reimbursed where, and to the extent, it is determined that, the amounts of the premiums are the products of the proper rates applied to the amounts of paid salaries and wages, exclusive of vacation pay or allowances, and are acceptable to the State and division engineer.

(4) Where it has been the policy of the utility to self insure against public, liability and property damage claims, reimbursement will be at the rate developed by the utility, or in the absence thereof, at a rate not in excess of one percent of salaries and wages charged to the job.

(5) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate, and allocation basis of each additive, and be subject to audit by representatives of the State and Federal Government.

11. MATERIALS AND SUPPLIES

a. Costs: Materials and supplies shall be billed at inventory prices when furnished from the utility's stocks, and at actual cost to the utility when the materials and supplies are not available from the utility stocks and must be purchased for the relocation. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and any charge for general overhead expenses are provided for under paragraph 11i. When not so allocated in the utility's overhead accounts, they may be included in the computation of the prices of materials or supplies. The computation of costs of materials and supplies shall include the deduction of all offered discounts, rebates, allowances and intercompany profits. In those instances where the book value does not represent the true value of used materials, they shall be charged to the project at the same rate used by the utility in its own work, but in no event shall they be charged at more than the value determined in accordance with the foregoing provisions of this paragraph.

b. Materials Recovered From Permanent Facility:

(1) Materials recovered in suitable condition for reuse by the utility, in connection with construction or retirement of property, shall be credited to the cost of the project at current stock prices; or if a utility charges recovered material to the material and supply account at original cost or a percentum of current price new, and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

(2) The State and the division engineer shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement will be satisfied by the utility giving written notice, or oral notice with later written confirmation, to the State of the time and place the materials will be available for inspection. This notice is the responsibility of the utility, and it may be held accountable for full value of materials disposed of without notice.

(3) If covered materials are not suitable for reuse by the utility, they shall be disposed of as outlined in paragraph 11c(2).

(4) Where the (new) replacement facility includes materials of a type different than the materials being replaced, for example, aluminum for copper and the like, the credit for the materials recovered from the existing

facility shall not exceed whichever is the greater of the following amounts: (1) the original cost of the existing materials, or (2) the current cost of the replacement materials.

c. Materials Recovered From Temporary Use:

(1) Materials recovered from temporary use in connection with a highway project, which are in suitable condition for reuse by the utility, shall be credited to the cost of the project at stock prices charged to the job, less ten (10%) percent for loss in service life. The State and division engineer shall have the right to inspect all recovered materials not reusable by the utility. Notice shall be given as provided by paragraph 11b(2).

(2) Items of materials recovered from temporary use which are unsuitable for reuse by the utility, and which have been determined to have a sale value, shall either be sold, following an appropriate solicitation for bids, to the highest bidder, or if the utility regularly practices a system of disposal by sale which has been determined to be the most advantageous to the utility, credit shall be at the going prices for such used or scrap material as are supported by the records of the utility. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the utility or at its request, by the State. In no event shall the State or the company be considered, as an acceptable bidder for such material.

d. The cost of salvage shall not exceed the value of the recovered material, which value shall be determined as provided in paragraphs 11b and c.

e. The cost of moving recovered materials from the job site to stores or storage point nearest the job will be reimbursed, subject to the provisions of paragraph 11f.

f. Reimbursement of removal costs, as reduced by the salvage value of materials removed, may be approved subject to the following conditions:

(1) Where the existing facilities are being replaced by reason of the highway construction, provided:

(a) such removal is necessary to accommodate the highway project, or

(b) the existing facilities cannot be abandoned in place, or

(c) where it is demonstrated that the estimated salvage value of the materials to be removed will equal, or exceed, the

total cost of removal, taking into account all related charges for reconditioning, handling, and transporting the materials to be removed.

(2) Except as otherwise provided under paragraph 4e, where the existing facilities are not being replaced by reason of the highway construction, provided:

(a) removal is necessary to accommodate the highway project,

(b) the State has authority to pay the removal costs,

(c) the utility is not obligated by law, ordinance, regulation, franchise, written agreement or legal contract to remove its facilities at its own expense, and

(d) a credit is given to the project for the salvage value of the materials removed, not to exceed the cost of removal and related charges.

g. Where removal of the existing facilities is necessary by reason of the highway construction, but the materials to be removed are not suitable for reuse by the utility, or their recovery is not economical, the State shall determine, subject to concurrence by the division engineer, which is the most desirable and economical method of removal to employ, for example, by the utility or its contractor, by the highway contractor, or by a separate clearing contract let by the State.

h. Where, pending their subsequent removal or abandonment, utility lines must be deactivated and rendered harmless as a necessary safety and protective measure to the public or highway project, for example, by capping, plugging, or otherwise altering such lines, Federal funds may participate in payments so made by the State, exclusive of removal costs, provided:

(1) the work is necessitated by the highway project, and

(2) the State has authority to pay such costs, and

(3) the utility is not obligated by law, ordinance, regulation, franchise, written agreement or legal contract to do the work at its own expense, or

(4) the work is a necessary and incidental expense to the costs of relocation and/or removal which are eligible for Federal fund participation under the provision of paragraphs 3 and 11f of the memorandum.

i. The costs of supervision, labor and expenses incurred in the operation and maintenance of the storerooms and material yards, including storage, handling and distribution of materials and supplies, the costs of purchasing, and the costs of testing and inspection, are reimbursable. Costs determined by a rate, or other equitable method of distribution which is representative of the costs to the utility, may be reimbursed.

12. EQUIPMENT

a. Accumulation of Costs: Accounts for transportation and heavy equipment are used for the purpose of accumulating expense and distributing them to the accounts properly chargeable with the services. Among the items of expenses clearing through these accounts are the following: Depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts, heat, light, and power for garage and garage office; insurance (including public liability and property damage insurance) on garage equipment, transportation equipment and heavy work equipment; license fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds.

b. Reimbursement of Equipment Costs: The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

c. Reimbursement will be limited to charges which account for costs to the utility of expenses for equipment used (paragraphs 12a and b). Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

(1) Small Tools: Reimbursement for the use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the utilities clearing accounts, or other equitable and supportable allocation basis; otherwise, it will be limited to actual loss or damage during the period of use. In the latter case, the loss or damage shall be billed in detail and supported to the satisfaction of the State and division engineer.

(2) Rental: Where the utility does not have equipment available of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest qualified bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment.

Existing continuing contracts for rental of transportation and heavy equipment, which the utility determines to be of the most advantage to its operations, may be considered as complying with these requirements. In the event of an emergency, such as a breakdown of the utility equipment or where additional equipment not originally contemplated is needed, and/or compliance with the foregoing requirements would seriously impair the prosecution of the utility work or highway construction, Federal funds may participate in the cost of equipment rental provided the utility can demonstrate to the satisfaction of the State and the division engineer the above circumstances existed, and the rental charges so incurred were reasonable and did not result in an expenditure in excess of that justified by the prevailing conditions.

d. Where the relocation work is to be performed by forces of a utility through the use of its own equipment, the accounting procedures and reimbursement standards established under paragraphs 12a, b and c of this memorandum shall apply except where the accounting system of the utility does not provide for capitalization of items or equipment acquired and recovery of original cost through depreciation, and use rates cannot be readily determined from the records of the utility. Upon determination by the State and the concurrence therein of the division engineer that the utility's accounting system is inadequate in such respects, and that it is not economically feasible to develop such costs under the reimbursement standards set forth in the foregoing mentioned subsections, then eligibility for reimbursement of costs incurred will be dependent upon:

(1) Approval by the state and concurrence therein by the division engineer of a detailed cost estimate submitted by the utility which shall include:

(a) description, rates, hours, compensation and number of units of equipment proposed for use on the relocation,

(b) an adequate explanation of the basis for developing the rates which the utility proposes as compensation.

(2) Incorporation in the State-utility agreement, or by supplemental letter agreement, of the classes and types of equipment and the proposed compensation for each

e. The division engineer may require such verification or further justification as will provide him assurance as to the reasonableness for the compensation to the utility for the use of its equipment.

13. TRANSPORTATION OF EMPLOYEES

a. The cost of essential transportation performed in automobiles or trucks owned by the utility shall be considered to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment."

b. Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its employees for use in connection will its own construction and maintenance projects and operations.

c. Reimbursement may be made for the costs of required commercial transportation by employees of the utility.

14. UTILITY BILLS

a. Periodic progress billings of incurred costs may be made by a utility, if acceptable to the State, and reimbursement may be approved for claims of this type received from a State.

b. One final and complete billing of all cost incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will follow as closely as possible the order of the items in the estimate portion of the agreement between the State and the utility. Except where the estimate and final billing are made pursuant to the requirements of paragraph 7g(2) (a), the statement of final billing shall be itemized to show the totals for labor, overhead construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services. In any case, the billing shall be shown in such a manner as will permit comparison with the approved plans and estimates. Materials are to be itemized, where they represent major components or cost in the relocation, following the pattern set out in the approved estimate as closely as is possible. It is desirable that salvage credits from recovered and replaced permanent and recovered temporary materials be reported in the bill in relative position with the charge for the replacement or the original charge for temporary use. The final billing shall show;

(1) the description and site of the project;

(2) the Federal-aid project number,

(3) the dates on which the State-utility agreement was executed and the first work was performed or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred;

(4) the date on which the last work was performed or the last item of billed expense was incurred; and

(5) the location where the records and accounts billed can be audited

c. The utility shall make adequate reference in the billing to its records, accounts and other relevant documents.

d. All records and accounts are subject to audit by representatives of the State and Federal Government. During the progress of construction and for a period not less than three years from the date final payment has been received by the utility company, the records and the accounts pertaining to the construction of the project, and accounting therefor, will be available for inspection by the representatives of the State and Federal Government.

e. Reimbursement for a final utility billing shall not be approved until and unless the State furnishes evidence that it has paid the utility from its own funds, or funds of a political subdivision, pursuant to State law and subject to paragraphs 3c and 7d of this memorandum and, except for lump sums, following an audit of the costs included in the final billing.

15. ACCOMMODATION AND INSTALLATION

a. Utility facilities which are retained, * installed, adjusted or relocated within the right-of-way of a Federal-aid project are to be accommodated in accordance with the provisions of PPM 30-4.1.

b. In instances where utility facilities * are to use and occupy the right-of-way of a proposed Federal-aid project, on or before the State is authorized to proceed with the physical construction of the highway project, the State is to demonstrate to the satisfaction of the division engineer that:

(1) A satisfactory agreement has been reached between the State and all utility owners or the owners of private lines involved, in accordance with PPM 30-4.1, or arrangements therefor are underway leading to such agreement prior to the final acceptance of the highway construction project by Public Roads, and

(2) the interest acquired by, or vested with, the State in that portion of the highway right-of-way to be vacated, used or occupied

by the utility facilities or private lines is of a nature and extent adequate for the construction, operation and maintenance of the highway project, and

(3) suitable arrangements have been made between such owners and State for accomplishing, scheduling and completing the relocation or adjustment work, for the disposition of facilities to be removed from or abandoned within the highway right-of-way, and for the proper coordination of such activities with the planned highway construction. Such arrangement should be made at the earliest feasible date in advance of the planned highway construction, and

(4) the bid proposals for the highway contract include appropriate notification identifying the utility work which is to be undertaken concurrently with the highway construction, in accordance with paragraph 7b of PPM 21 - 12, and

(5) the plans for the highway project have been prepared in accordance with the provisions of paragraph 4i of PPM 40 - 3.1.

16. ALTERNATE PROCEDURE

a. This paragraph establishes an alternate procedure for processing State-utility relocation agreements, or individual adjustments under a State-utility master agreement, where the total estimated cost to the State of the utility work properly attributable to the highway construction does not exceed $25,000. This may include agreements entered into under paragraphs 3d and 7n. It also applies to State-utility lump sum agreements entered into under paragraph 7g(3) but does alter the $5000 ceiling therefor. Except as provided by paragraphs 16e and k, the State will act in the relative position of the division engineer for reviewing and approving the arrangements, fees, estimates, plans, agreements and other related matters associated with utility relocations required by this memorandum as prerequisites for authorizing the utility to proceed. The alternate procedure may be approved for use in any State desiring to adopt it, when the provisions of paragraphs 16b, c, and d are satisfied.

b. The State is to file a formal application with Public Roads for approval of the alternate procedure for processing Federal-aid State-utility relocation agreements, where the total estimated cost to the State under each relocation agreement, or individual adjustments under a master agreement, does not exceed $25,000, or a lesser ceiling amount established at the election of the State. The application must be accompanied by the following:

(1) The State's written policies and procedures for administering and processing Federal-aid utility adjustments, which must make adequate provisions with respect to the following:

(a) Compliance with the requirements of this memorandum and the provisions of PPM 30-4.1.

(b) Advance utility liaison, planning and coordination measures for providing adequate lead time and early utility relocation to minimize interference with the planned highway construction.

(c) Appropriate administrative, legal and engineering reviews and coordination procedures as necessary to determine the legal basis of the State's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under paragraph 1e; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and provide for uniform treatment of the various utility matters and actions, consistent with sound management practices.

(d) Documentation in the State files of actions taken in compliance with State policies and the provisions of this memorandum.

(2) A statement signed by the chief administrative officer of the State highway department certifying that:

(a) Federal-aid utility relocations will be processed in accordance with the applicable provisions of PPM 30-4 and the State's utility policies and procedures submitted under paragraph 16b(1),

(b) the State's administration of utility relocation matters will be directed toward obtaining the most feasible and economical utility relocation solutions available, giving due consideration to safety, appearance and other highway objectives, and

(c) reimbursement will be requested in only those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this memorandum, as determined after appropriate audit by or for the State.

c. Upon receipt of the formal application by the State for approval of the alternate procedure, the division engineer will review the State's submission, utility organization and staffing and evaluate the State's practices and procedures thereunder. Where available, he may use his current evaluation of the State's utility practices and procedures for this purpose. A report of the division engineer's findings and recommendations on the adequacy of the State's policies, procedures, practices, and organization is to be submitted to the Regional Administrator along with the State's formal application.

d. When the Regional Administrator is satisfied that the State's alternate procedure and policies and practices the reunder form a suitable basis for approving reimbursement with Federal-aid highway funds, he will approve the alternate procedure and authorize the division engineer to process Federal-aid State utility relocation agreements and related matters under the alternate procedure A copy of the reports, approved alternate procedures and related actions taken pursuant to paragraphs 16c, d, h, i, and j shall be furnished to the Office of Right-of-Way and Location.

e. When the alternate procedure has been approved for use in a State, the division engineer may authorize the State to proceed with utility relocations in accordance with the certification previously furnished under paragraph 16b(2), provided:

(1) The utility work has been included in an approved program.

(2) The State has requested in writing the specific authorizations and approvals desired,
including a general description, location and estimated cost of the facilities to be adjusted or relocated under each agreement involved.

(3) The total estimated cost to the State of the utility work under each relocation agreement, or individual adjustment under a master agreement, attributable to the highway construction, does not exceed the ceiling amount established under the provisions of paragraph 16b.

f. The requests and authorizations prescribed under paragraph 16e should be made at the earliest feasible date in advance of the planned highway construction and, preferably, where sufficient information is available, on a project-wide basis. The purpose is to provide adequate lead time for planning, scheduling and accomplish-
ing the utility relocation work with minimum interference to the planned highway construction and to reduce the number of such requests and authorizations on each project to the minimum needed for this purpose. Authorization may be given to the State at the time of program approval or later, provided the conditions under paragraph 16e have been satisfied. Such authorizations may be combined with the authorizations issued under paragraph 7m, with the understanding that later referral of the State-utility agreements, supporting plans and cost estimates to the division engineer for review and approval will not be required for relocations authorized pursuant to paragraph 6e.

g. Modification of the State-utility relocation agreement, or change or extra work rders prescribed by paragraph 7f need not be ubmitted to the division engineer for approval under the alternate procedure, unless the revised total estimated cost to the State under each agreement exceeds either of the following:

(1) 25% of the agreement amount initially authorization under paragraph 16e, or

(2) 10% of the ceiling amount established under paragraph 16b.

h. At least once a year a representative sample of agreements processed under the alternate procedure shall be selected and reviewed by the division engineer and reported to the Regional Administrator.

i. Any changes, additions or deletions the State proposes to the alternate procedure approved by the Regional Administrative pursuant to this paragraph are to be submitted by the State to the division engineer for his review, recommendations and referral to the Regional Administrator for approval prior to implementing the proposed modifications. Such requests by the State, must be accompanied by a statement signed by the chief administrative officer of the State highway department, verifying the certification made under paragraph 16b(2) and its application to the proposed modifications. The division engineer may continue to approve utility work under the previously approved alternate procedure, pending approval of the proposed modifications.

j. The Regional Administrator may suspend approval of the certified procedure and direct the division engineer to resume approval of all utility relocations, where Public Roads utility reviews disclose instances of noncompliance with the terms of the State's certification. Federal-aid funds will not be eligible to participate in utility relocation costs incurred by the State that do not qualify under the terms of the certification made pursuant to paragraphs 16b(2) and i.

k. Should significant or unusual engineering problems be encountered or questions arise on the extent of Federal participation under utility agreements processed under the alternate procedure, the State should request the review and advice of the division engineer before proceeding with the utility work. Proposed State-utility agreements involving a basis of reimbursement under paragraph 3b, not previously established to the satisfaction of Public Roads, and relocations falling within

the scope of paragraph 7p must be submitted to Public Roads for approval prior to proceeding with the utility relocations. Proposed use and occupancy agreements, described under paragraph 7f of PPM 30-4.1, must be submitted to Public Roads for prior concurrence regardless of the cost of the utility relocation or installation and regardless of who bears the cost.

F. C. Turner
Director of Public Roads

Attachment

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CERTIFICATION OF CONSULTANT

I hereby certify that I am the _____(title)_____ and duly authorized representative of the firm of _____, whose address is _____, and

That, except as expressly stated and described herein, neither I nor the firm of _____ has, in connection with its contract with _____(name of utility)_____ , entered into pursuant to provisions of an agreement between the aforementioned utility and the State of _____ ,as a part of Federal-aid project_____,

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract, or

(b) agreed, as an express or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person in connection with the carrying out of the contract, or

(c) paid, or agreed to pay, to any firm, company, organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

(Statement and explanation of exceptions, if any):

I acknowledge that this certificate is to be furnished to the State highway department and the Bureau of Public Roads, U.S. Department of Commerce, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

_____ (Date)

_____ Signature

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20001

UTILITY-HIGHWAY
BRIEFING SESSION NOTES
PUBLIC ROADS UTILITY POLICIES

(PPM 30-4.1, ACCOMMODATION OF UTILITIES, DATED NOVEMBER 29, 1968, AND PPM 30-4, UTILITY RELOCATIONS AND ADJUSTMENTS, DATED FEBRUARY 14. 1969).

THESE NOTES AND A LIST OF QUESTIONS AND ANSWERS HAVE EVEN PREPARED AS AN AID FOR CONDUCTING BRIEFING SESSIONS AT THE DATES AND LOCATIONS DESCRIBED BELOW. COPIES OF EACH ARE PLANNED FOR DISTRIBUTION TO PARTICIPANTS FOR THEIR INFORMATION, GUIDANCE AND CONVENIENCE. THEY ARE NOT OFFICIAL POLICY STATEMENTS OF THE BUREAU OF PUBLIC ROADS.

LOCATIONS AND DATES

(1) APRIL 1, 2 AND 3 AT THE BELLERIVE HOTEL, 214 E ARMOUR BOULEVARD AT WARWICK BOULEVARD, KANSAS CITY, MISSOURI 64111.

(2) APRIL 9, 10 AND 11 AT MARYLAND STATE ROADS COMMISSION (AUDITORIUM), 300 W PRESTON STREET, BALTIMORE, MARYLAND 21201.

(3) APRIL 15, 16 AND 17 AT CALIFORNIA STATE OFFICE BUILDING, ROOM 1194, 455 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA 94102. (THE BUILDING IS LOCATED ACROSS THE STREET FROM THE FEDERAL OFFICE BUILDING IN DOWNTOWN SAN FRANCISCO.)

(4) APRIL 22, 23 AND 24 AT GEORGIA STATE HIGHWAY DEPARTMENT (AUDITORIUM), NO. 2 CAPITOL SQUARE, ATLANTA, GEORGIA 30334.

(5) APRIL 29, 30 AND MAY 1 AT ILLINOIS DIVISION OF HIGHWAYS (AUDITORIUM), 2300 SOUTH 31st STREET, SPRINGFIELD, ILLINOIS 62706.

(PRESIDING AT SESSIONS (1), (2), AND (4) - MESSRS. J. E. KIRK AND L. M. BOLON, UTILITIES STAFF, WASHINGTON, D. C., OFFICE; AT SESSIONS (3) AND (5) - MESSRS. J. E. KIRK, CHIEF, UTILITIES STAFF, AND C. H. SNOW, REGION 8 UTILITIES ENGINEER.)

I. AGENDA

FIRST DAY SESSION (State, BPR and FHWA Representatives)

8:00 TO 8:20 A.M. (OPERATING REMARKS - WELCOME - ANNOUNCEMENTS BY HOSTING REGIONAL OFFICE AND STATE)
8:20 TO NOON (BRIEFING ON PARAGRAPHS 1 THROUGH 4 OF PPM 30-4.1)
1:00 TO 5:00 P.M. (BRIEFING ON PARAGRAPHS 5 THROUGH 7 OF PPM 30-4.1)

SECOND DAY SESSION (State, BPR and FHWA Representatives)

8:00 TO 10:00 A.M. (BRIEFING ON PARAGRAPHS 8 AND 9 Of PPM 30-4.1)
10:00 TO NOON (OPEN DISCUSSION OF PPM 30-4.1 - QUESTION AND ANSWERS)
1:00 TO 5:00 P.M. (REVISIONS TO PPM 30-4 BRIEFING AND DISCUSSION)

THIRD DAY SESSION (Utility Representatives)*

8:00 TO 8:20 A.M. (OPENING REMARKS - WELCOME - ANNOUNCEMENTS BY HOSTING REGIONAL OFFICE AND STATE)
8:20 TO NOON (BRIEFING ON PPM 30-4.1)
1:00 TO 3.00 P.M. (BRIEFING ON PPM 30-4.1)
3:00 TO 4:00 P.M. (BRIEFING On PPM 30-4)
4:00 TO 5:00 P.M. (OPEN DISCUSSION)

(MID-MORNING AND MID-AFTERNOON COFFEE BREAKS AND LUNCH HOUR MAY BE ADJUSTED AS CONVENIENT.)

* State representatives invited to attend Third Day Session.

UTILITY-HIGHWAY
BRIEFING SESSION NOTES
ON
REVISED PPM 30-4

I INTRODUCTION

REVISED PPM 30-4 WAS PUBLISHED ON FEBRUARY 14, 1969. THERE WERE SEVERAL REASONS FOR REVISING IT. TWO MAJOR REASONS STEMMED FROM (1) TRANSFERRING THE ACCOMMODATION REQUIREMENTS OF PARAGRAPH 15 TO NEW PPM 30-4.1 and (2) ADDING AN ALTERNATE METHOD FOR PROCESSING AND APPROVING MINOR COST UTILITY RELOCATION AGREEMENTS (THOSE COSTING $25,000 OR LESS). OTHER REASONS WERE TO CORRECT REFERENCES TO CURRENT RIGHT-OF-WAY PPM'S, TO ADD A FEW CLARIFYING STATEMENTS AND TO TRANSFER NUMBERED PARAGRAPH (4) OF IM 30-6-67 (ON UTILITIES-SCENIC ENHANCEMENT) TO PPM 30-4.

THE ALTERNATE PROCEDURE, UNDER NEW PARAGRAPH 16, STREAMLINES FEDERAL APPROVAL ACTIONS AND REDUCES PROCESSING DELAYS. ANOTHER OBJECTIVE IS TO PROVIDE MORE TIME FOR ENGINEERS TO WORK ON OTHER AREAS OF THE HIGHWAY PROGRAM. THE ADOPTION OF THESE PROCEDURES TO THE MAXIMUM EXTENT FEASIBLE SHOULD NOT ONLY FURTHER THE FEDERAL OBJECTIVES, BUT ALSO BENEFIT THE STATES AND UTILITIES BY INCREASING LEAD TIME, REDUCING THE CORRESPONDENCE LOAD, AND IMPROVING RELATIONS WITH UTILITY COMPANIES THROUGH THE MORE EXPEDITIOUS HANDLING OF UTILITY AGREEMENTS AND PAYMENT OF UTILITY CLAIMS.

BEFORE GETTING INTO A DETAILED DISCUSSION OF THE NEW PROVISIONS YOUR ATTENTION IS CALLED TO THE NOTE AT THE BOTTOM OF THE TRANSMITTAL MEMORANDUM. THE OCTOBER 15, 1966, ISSUE OF PPM 30-4 WILL BE IN USE UNTIL THE PROVISIONS OF PPM 30-4.1 HAVE BEEN FULLY IMPLEMENTED. DO NOT MAKE THE MISTAKE OF DISCARDING IT PREMATURELY.

II PARAGRAPH BY PARAGRAPH BRIEFING ON REVISIONS TO PPM 30-4

1b. NEW PPM 30-4 IS A COMPANION POLICY TO PPM 30-4-1. THE FORMER NO LONGER CONTAINS DETAILED ACCOMMODATION PROCEDURE REQUIREMENTS. THEREFORE, UNTIL THE PROVISIONS OF PPM 30-4.1 HAVE BEEN IMPLEMENTED IT WILL BE NECESSARY TO FOLLOW THE REQUIREMENTS OF PARAGRAPH 15 OF THE OCTOBER 15, 1966, ISSUE OF PPM 30-4. OTHERWISE THE PPM IS EFFECTIVE UPON ITS DATE OF ISSUANCE (FEBRUARY 14, 1969).

1c. THIS PARAGRAPH AND SEVERAL OTHERS IN THE PPM HAVE BEEN UPDATED TO MAKE REFERENCE TO OUR CURRENT RIGHT-OF-WAY POLICIES AS APPROPRIATE. SINCE THE REFERENCES ARE BROAD IN NATURE WE HAVE GENERALLY REFERRED TO THE PPM 80-SERIES.

IT HAS BEEN A LONGSTANDING PRACTICE TO APPLY THE PRINCIPLES OF PPM 30-4 TO COST-TO-CURE SITUATIONS. THESE SITUATIONS HAVE GENERALLY INVOLVED PRIVATE LINES AS DEFINED IN PPM 30-4.1, THAT IS, THEY CONVEY OR TRANSMIT UTILITY COMMODITIES BUT ARE NOT PUBLIC UTILITIES. HOWEVER, THE PRINCIPLES OUTLINED IN PPM 30-4 ARE SUITABLE FOR APPLICATION TO MANY CASES WHERE A COST-TO-CURE OFFERS THE MOST ECONOMICAL SOLUTION: FOR EXAMPLE, AN INDUSTRIAL PIPELINE SYSTEM OR A FARMERS WATER SYSTEM. PARAGRAPH 1C NOW OFFICIALLY RECOGNIZES THE APPLICATION OF THE PRINCIPLES OF PPM 30-4 TO SUCH CASES.

1D. THIS PARAGRAPH HAS BEEN REVISED TO PROVIDE APPROPRIATE REFERENCE TO PPM 80-3.

2c. THE TERM "DIVISION ENGINEER" HAS BEEN REVISED TO MAKE APPROPRIATE REFERENCE TO THE FEDERAL HIGHWAY ADMINISTRATION.

2q. A NEW DEFINITION HAS BEEN ADDED WHICH DEFINES "DIRECTOR" AS THE DIRECTOR OF THE BUREAU OF PUBLIC ROADS, FEDERAL HIGHWAY ADMINISTRATION.

4c. THE LAST TWO SENTENCES OF THIS PARAGRAPH ARE NEW. THIS PARAGRAPH FORMERELY REQUIRED (AND STILL REQUIRES) ADEQUATE AND FORMAL APPRAISAL OF RECORD WHERE THE COST OF ANY REPLACEMENT RIGHT-OF-WAY TRACT IS MORE THAN $500. THIS PROVISION HAS BEEN BROADENED TO BE CONSISTENT WITH CURRENTLY ACCEPTED APPRAISAL PRACTICES TO PERMIT ADEQUATELY SUPPORTED, ABBREVIATED APPRAISAL REPORTS TO BE USED IN DETERMINING THE MARKET VALUE OF UNCOMPLICATED TAKINGS WHERE THE VALUE ESTIMATE IS LESS THAN $2500. EXAMPLES OF UNCOMPLICATED TAKINGS ARE PROVIDED IN THE PPM.

4d and 4e. CHANGES HAVE BEEN MADE IN THESE PARAGRAPHS ONLY TO MAKE REFERENCE TO THE PPM 80-SERIES.

4f. THIS PARAGRAPH IS TO BE APPLIED WHENEVER IT IS PROPOSED TO RELOCATE UTILITY FACILITIES OR TO ACQUIRE UTILITY PROPERTY INTERESTS TO PROTECT AND PRESERVE SCENIC AREAS OR STRIPS. THE STATE MUST DETERMINE WHAT STEPS WILL BE NECESSARY TO INSURE PROTECTION AND PRESERVATION AND WHETHER THE BENEFITS OR ESTHETIC VALUES TO BE RECEIVED WILL OUTWEIGH THE INVESTMENT OR COST OF ACQUISITION AND/OR COST-TO-CURE. THIS PROVISION WAS PREVIOUSLY CONTAINED IN NUMBERED PARAGRAPH (4) OF IM 30-6-67 AND HAS BEN INCLUDED HERE WITH ONLY MINOR CHANGES IN THE WORDING. THE REMAINDER OF IM 30-6-67 HAS BEEN REWRITTEN AND TRANSFERRED TO PARAGRAPH 6g OF PPM 30-4.1.

7a(5) THIS IS A NEW PARAGRAPH WHICH REQUIRES THAT EACH REIMBURSEMENT AGREEMENT FOR A UTILITY RELOCATION CONTAIN A PROVISION, OR BY SUPPLEMENT THERETO, THAT WHERE FACILITIES ARE TO BE RELOCATED TO A POSITION WITHIN THE HIGHWAY RIGHT-OF-WAY, THEY WILL BE ACCOMMODATED IN ACCORDANCE WITH THE PROVISIONS OF PPM 30-4-1. THIS REPLACES THE REQUIREMENT OF THE SECOND PART OF FORMER PARAGRAPH 7k(3) WHICH REQUIRED THAT THE DIVISION ENGINEER BE FURNISHED A COPY OF THE UTILITY USE AND OCCUPANCY AGREEMENT PRIOR TO AUTHORIZING THE STATE TO PROCEED WITH THE PHYSICAL ADJUSTMENT. A MINOR

CHANGE OF WORDING HAS BEEN INCLUDED IN REVISED PARAGRAPH 7k(3).

A MINOR CHANGE HAS BEEN MADE TO PARAGRAPH 7P TO DESIGNATE THE DIRECTOR OF THE BUREAU OF PUBLIC ROADS RATHER THAN THE FEDERAL HIGHWAY ADMINISTRATOR AS THE PERSON WHO CAN APPROVE SPECIAL PROCEDURES OR EXCEPTIONS TO THE PPM REQUIREMENTS.

15a. THIS PARAGRAPH REPLACES THE DETAILED OCCUPANCY REQUIREMENTS OF OLD PARAGRAPH 15, EXCLUDING PARAGRAPH 15d, AND IDENTIFIES PPM 30-4.1 AS THE DOCUMENT WHICH NOW PRESCRIBES OCCUPANCY REQUIREMENTS FOR UTILITIES LOCATED WITHIN THE RIGHTS-OF-WAY OF FEDERAL-AID HIGHWAY PROJECTS.

15b. FORMER PARAGRAPH 15d HAS BEEN REWRITTEN AND RETAINED AS NEW PARAGRAPH 15b DUE TO THE TRANSFER OF OTHER REQUIREMENTS TO PPM 30-4.1. THESE PROVISIONS CONTAIN PREREQUISITES FOR THE DIVISION ENGINEER'S AUTHORIZATION OF THE PHYSICAL CONSTRUCTION OF A HIGHWAY PROJECT. PROVISIONS (2), (3), and (5) PERTAINING TO ACQUISITION OF SUFFICIENT INTEREST IN THE RIGHT-OF-WAY, AGREEMENT REGARDING WORK ARRANGEMENTS AND TIMING, AND PREPARATION OF HIGHWAY PLANS REMAIN UNCHANGED FROM THE OCTOBER 15, 1966, ISSUE OF THE PPM. PROVISION (1) ALLOWS MORE TIME FOR THE STATE AND UTILITY TO ENTER INTO AGREEMENT (PRIOR TO FINAL ACCEPTANCE OF THE HIGHWAY PROJECT) AND PROVISION (4) CALLS ATTENTION TO A REQUIREMENT OF PPM 21-12, PARAGRAPH 7b, THAT PROSPECTIVE BIDDERS BE NOTIFIED OF UTILITY CONFLICTS AND THE NEED FOR COORDINATION OF WORK BY AN APPROPRIATE NOTATION IN THE BID PROPOSAL.

16. ALTERNATE PROCEDURE

a. PURPOSE - TO PROVIDE A MEANS FOR UTILITY RELOCATION AGREEMENTS, INCLUDING INDIVIDUAL TRANSACTIONS UNDER A MASTER AGREEMENT TO BE PROCESSED WITHOUT THE NEED FOR REVIEW OF THE DETAILED AGREEMENT, SUPPORTING PLANS, ESTIMATES, AND OTHER RELATED ITEMS BY THE DIVISION ENGINEER.

(1) SCOPE - AGREEMENTS AMOUNTING TO $25,000 OR LESS, INCLUDING LUMP-SUM AGREEMENTS NOT EXCEEDING $5000 IN COST, CAN BE PROCESSED UNDER THIS PROCEDURE UPON APPLICATION BY THE STATE AND APPROVAL OF THE PROCEDURE BY THE REGIONAL FEDERAL HIGHWAY ADMINISTRATOR. THE $25,000 CEILING AMOUNT IS THE COST TO THE STATE. FOR EXAMPLE, IN CASES WHERE THE LINES TO BE ADJUSTED ARE LOCATED ON AND OFF THE PUBLIC RIGHT-OF-WAY AND THE STATE IS RESPONSIBLE FOR ONLY THAT PORTION LOCATED OFF THE PUBLIC RIGHT-OF-WAY, THE $25,000 LIMITATION WOULD APPLY TO THE STATE'S SHARE ONLY. ON THE OTHER HAND, A COSTLY ADJUSTMENT, SAY ONE COSTING $100,000, SHOULD NOT BE ARBITRARILY SUBDIVIDED INTO SEVERAL SEPARATE AGREEMENTS MERELY TO QUALIFY UNDER THE $25,000 CEILING. THIS WOULD ALSO APPLY TO CASES WHERE PORTIONS OF AN ADJUSTMENT WERE DELIBERATELY MADE NON-PARTICIPATING FOR THE EXPRESS PURPOSE OF AVOIDING THE REQUIREMENTS OF THE PPM. IN SUMMARY, THE PROVISIONS OF THIS PARAGRAPH APPLY TO CASES WHERE THE STATE'S SHARE OF THE COST OF RELOCATION FOR ADJUSTING THE FACILITIES OF A COMPANY UNDER ONE AGREEMENT IS ESTIMATED To BE $25,000 OR LESS. WE RECOGNIZE THERE WILL BE CASES WHERE THE STATE AND A PARTICULAR UTILITY COMPANY MAY ENTER INTO MORE THAN ONE AGREEMENT WITHIN THE LIMITS OF A HIGHWAY PROJECT. WHERE THERE IS GOOD REASON FOR THIS, SUCH AS ISOLATED CROSSINGS OF THE HIGHWAY AT VARIOUS POINTS THROUGHOUT A PROJECT, SAY WHERE THERE IS STAGE CONSTRUCTION, WE WOULD NOT QUESTION THE USE OF SEPARATE AGREEMENTS.

(2) STATE WILL ACT IN THE POSITION OF THE DIVISION ENGINEER IN REVIEWING AND APPROVING:

(a) ARRANGEMENTS

(b) FEES*

(c) PLANS

(d) ESTIMATES

(e) AGREEMENTS

*UNDER THE ALTERNATE PROCEDURE IT IS EXPECTED THAT THE STATE WOULD, AS PART OF ITS APPLICATION, INCLUDE A STATEMENT ON THE PROCEDURES IT WILL FOLLOW WHERE THE UTILITY PROPOSES TO EMPLOY AN ENGINEERING CONSULTANT - SEE PARAGRAPHS 5b (1) AND (2).

b. ANY STATE DESIRING TO OPERATE UNDER THE PROVISIONS OF THIS PARAGRAPH MAY FILE A FORMAL APPLICATION WITH PUBLIC ROADS REQUESTING APPROVAL OF IT'S PROCEDURE. THE APPLICATION MUST DESIGNATE THE CEILING AMOUNT (25,000 OR LESSER CEILING AMOUNT) IN ADDITION TO THE FOLLOWING:

(1) WRITTEN POLICIES AND PROCEDURES TO BE FOLLOWED BY THE STATE IN ADMINISTERING AND PROCESSING FEDERAL-AID UTILITY AGREEMENTS. PROVISIONS MUST BE MADE FOR:

(a) COMPLIANCE WITH PPM 30-4 AND PPM 30.4.1

(b) LIAISON, PLANNING AND COORDINATION

(c) REVIEW AND COORDINATION PROCEDURE; ADMINISTRATIVE, LEGAL AND ENGINEERING

(d) DOCUMENTATION OF ACTIONS TAKEN

(2) STATE'S CERTIFICATION SIGNED BY ITS CHIEF ADMINISTRATIVE OFFICER COMMITTING THE STATE TO THE FOLLOWING:

(a) COMPLIANCE WITH PPM 30-4 AND STATE POLICIES

(b) OBJECTIVES - FEASIBILITY, ECONOMY, SAFETY, APPEARANCE

(c) CLAIMS FOR REIMBURSEMENT - ONLY FOR ELIGIBLE COSTS SUBMITTED AFTER AUDIT.

c. THE DIVISION WILL REVIEW AND EVALUATE THE SUBMISSION AND THE STATE'S POTENTIAL IN RESPECT TO THE FOLLOWING: (1) PROCEDURE (2) CAPABILITY, (3) PERFORMANCE; HE WILL REPORT HIS FINDINGS TO THE REGIONAL ADMINISTRATOR.

d. REVIEW AND APPROVAL OF THE PROCEDURE BY THE REGIONAL ADMINISTRATOR IS REQUIRED BEFORE THE DIVISION ENGINEER CAN AUTHORIZE THE PROCESSING OF

AGREEMENTS UNDER THIS PROCEDURE. COPIES OF ALL PROCEDURES, REPORTS, ETC., ARE TO BE SUBMITTED TO THE OFFICE OF RIGHT-OF-WAY AND LOCATION.

e. THE DIVISION ENGINEER'S AUTHORIZATION MAY BE GIVEN WHEN AND IF:

(1) THE UTILITY WORK IS INCLUDED IN AN APPROVED PROGRAM.

(2) THE STATE REQUESTS APPROVAL OF THE WORK (RELOCATIONS) INVOLVED AND AUTHORIZATION TO PROCEED UNDER THE ALTERNATE PROCEDURE. THE REQUEST INCLUDES A DESCRIPTION OF THE WORK AND THE ESTIMATED COST FOR EACH AGREEMENT. SUCH A DESCRIPTION SHOULD INDICATE THE FOLLOWING:

1. NAME OF UTILITY COMPANY
2. TYPE, SIZE, AND MATERIAL BEING USED E.G., 35 KV ELECTRIC (U.R.D.) POWER CABLE, 50 PAIR (AERIAL) TELEPHONE (COPPER) CABLE, 12" STEEL GAS, 6"CAST IRON WATER MAIN,24" CONCRETE SEWER, OR OTHER PIPELINES
3. APPROXIMATE LENGTH OF LINES TO BE ADJUSTED AND LOCATION BY HIGHWAY STATIONING
4. OPERATING PRESSURE OF LINES CARRYING HAZARDOUS TRANSMITTANTS
5. ON COMMUNICATION AND ELECTRIC POWER LINES, INDICATE WHETHER OVERHEAD OR UNDERGROUND OR A CONVERSION
6. BRIDGE ATTACHMENTS
7. HIGHWAY CROSSINGS OR LONGITUDINAL OCCUPANCY

RELATING THIS TO A HYPOTHETICAL TYPICAL CASE WOULD RESULT IN THE FOLLOWING NARRATIVE DESCRIPTION:

NEWTON GAS COMPANY- 300 FT. OF 6-INCH (STEEL) GAS PIPELINE (60 P.S.I.) CROSSING AT HIGHWAY STATION 40+20 (BRIDGE ATTACHMENT) AT ESTIMATED COST OF $24,000.

f. IT WAS STATED EARLIER THAT ONE OF THE PURPOSES OF ADOPTING PARAGRAPH 16 WAS TO STREAMLINE PROCEDURES AND REDUCE PROCESSING DELAYS. IF THIS TIME

SAVINGS IS TO BE OF BENEFIT IT CANNOT BE WASTED AWAY. IT IS ESSENTIAL FOR ADVANCE AUTHORIZATION PROCEDURES TO BE USED TO GET THE MAXIMUM BENEFIT FROM THIS TIME SAVINGS. IF CONSTRUCTION COSTS AND DELAYS CAN BE REDUCED, THE ALTERNATE PROCEDURE WILL HAVE ACHIEVED ONE OF ITS OBJECTIVES. ON THE OTHER HAND, IF NO BENEFITS ARE REALIZED, WE MAY BE CRITICIZED FOR NOT RETAINING A GREATER DEGREE OF CONTROL OVER THE UTILITY AGREEMENT PROCESS.

IN KEEPING WITH OUR DESIRE TO SIMPLIFY THE PAPERWORK OPERATIONS WE HAVE INDICATED THAT ALL ADVANCE AUTHORIZATIONS (UNDER BOTH REGULAR AND ALTERNATE PROCEDURES) CAN BE REQUESTED AND AUTHORIZED CONCURRENTLY.

g. TO MAINTAIN A DEGREE OF CONTROL OVER AGREEMENTS PROCESSED UNDER THE ALTERNATE PROCEDURE, IT IS NECESSARY THAT SOME LIMITS BE ESTABLISHED ON THE EXTENT TO WHICH AN AGREEMENT CAN BE MODIFIED WITHOUT REFERRAL TO THE DIVISION ENGINEER. HOWEVER, IT WOULD BE CONTRARY TO THE PURPOSE OF THE PROCEDURE TO LIMIT THE STATE STRICTLY TO THE ORIGINALLY APPROVED TRANSACTION. THE RANGE OF MODIFICATION PERMITTED BY PARAGRAPHS 16g(1) AND (2) WITHOUT THE NEED FOR REFERRAL TO THE DIVISION ENGINEER IS CONSIDERED REASONABLE.

REFERRAL TO DIVISION ENGINEER IS REQUIRED IF:

(1) REVISED TOTAL COST EXCEEDS THE ORIGINALLY APPROVED ESTIMATED COST BY MORE THAN 25%.

(2) REVISED TOTAL ESTIMATED COST EXCEED THE APPROVED CEILING AMOUNT BY MORE THAN 10%.

h. THE DIVISION ENGINEER IS REQUIRED TO REVIEW A REPRESENTATIVE SAMPLE OF THE AGREEMENTS PROCESSED UNDER PARAGRAPH 16 AT LEAST ONCE A YEAR AND TO REPORT HIS FINDING TO THE REGIONAL ADMINISTRATOR. THE REPRESENTATIVE SAMPLE

SHOULD INCLUDE ALL TYPES OF WORK APPROVED DURING THE PERIOD (REFER TO LIST ON CHART).

i. ANY CHANGES, ADDITIONS, OR DELETIONS IN THE APPROVED PROCEDURE WHICH MAY BE PROPOSED BY THE STATE ARE TO BE PROCESSED IN THE SAME MANNER AS THE ORIGINAL APPLICATION AND SUBMITTED TO THE REGIONAL ADMINISTRATOR FOR HIS REVIEW AND APPROVAL.

THE CHIEF ADMINISTRATIVE OFFICER OF THE STATE MUST REAFFIRM HIS CERTIFICATION UNDER PARAGRAPH 16b(2) IN A STATEMENT ACCOMPANYING THE APPLICATION.

UTILITY WORK MAY BE AUTHORIZED UNDER THE PREVIOUSLY APPROVED PROCEDURES PENDING THE REGIONAL ADMINISTRATOR'S APPROVAL OF THE PROPOSED MODIFICATIONS.

j. WHERE PUBLIC ROADS REVIEWS DISCLOSE INSTANCES OF NONCOMPLIANCE WITH THE TERMS OF THE STATE'S CERTIFICATION THE REGIONAL ADMINISTRATOR MAY SUSPEND APPROVAL OF THE CERTIFIED PROCEDURE. SUCH ACTION WILL LIKELY BE BASED ON THE DIVISION ENGINEER'S RECOMMENDATION. IT IS NOT ANTICIPATED THAT SUCH ACTION WOULD BE TAKEN FOR ISOLATED DISCLOSURES OF NONCOMPLIANCE BUT ONLY UPON CONFIRMATION THAT OPERATIONS UNDER THE APPROVED PROCEDURES ARE NOT REASONABLY RELIABLE AND EFFECTIVE.

INELIGIBLE COSTS CANNOT, OF COURSE, BE REIMBURSED AND APPROVAL OF THE ALTERNATE PROCEDURE AND THE GENERAL SCOPE OF THE WORK TO BE ACCOMPLISHED IS NOT TO BE CONSTRUED TO CONSTITUTE APPROVAL OF ANY OTHERWISE INELIGIBLE ITEMS OF WORK OR COST.

k. IT IS NOT ANTICIPATED THAT THE STATE'S PROCEDURE CAN BE WRITTEN TO COVER ALL ITEMS WHICH COULD POSSIBLY BE ENCOUNTERED IN PROCESSING UTILITY AGREEMENTS FALLING WITH THE APPROVED CEILING AMOUNT. THE PURPOSE OF THIS PARAGRAPH IS TO ENCOURAGE THE STATE TO SUBMIT FOR PRIOR REVIEW AND ADVICE UNUSUAL OR QUESTIONABLE AGREEMENTS.

PROPOSED UTILITY AGREEMENTS INVOLVING A BASIS OF REIMBURSEMENT NOT PREVIOUSLY ESTABLISHED TO THE SATISFACTION OF PUBLIC ROADS (PARAGRAPH 3b), AND CASES WHERE THE STATE AND UTILITY CANNOT REACH AGREEMENT UNDER THE PROVISIONS OF PARAGRAPH 7p OF PPM 30-4 MUST BE SUBMITTED TO PUBLIC ROADS FOR PRIOR APPROVAL.

IN INSTANCES WHERE THE STATE SEEKS THE DIVISION ENGINEER'S ADVICE, IT IS ESSENTIAL THAT ALL PERTINENT FACTS BE PRESENTED FOR CONSIDERATION.

NOTE: A complete set of these Briefing Session Notes, which also included a discussion of PPM 30-4.1 on "Accommodation of Utilities," may be found in Attachment 26 to Part II of this History.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

POLICY AND PROCEDURE MEMORANDUM

Transmittal 302
June 29, 1973
HNG-14

1. Material Transmitted

PPM 30-4, Utility Relocations and Adjustments

2. Existing Issuances Affected

Supersedes PPM 30-4, Utility Relocations and Adjustments, dated February 14, 1969, IM 20-1-69(1), dated May 27, 1969, and IM 30-4-71, dated July 14, 1971. IM 30-1-70, dated January 6, 1970, is revoked.

Paragraph 15 of PPM 30-4 dated October 15, 1966, remains in effect until such time approval is given to the utility accommodation policies of the State or its political subdivision under paragraph 7c of PPM 30-4.1.

3. Comments

The revised PPM incorporates existing applicable CM's and IM's concerning utility matters. Other revisions simplify current procedures and clarify established policy. Changes are identified as follows:

Reference to Bureau of Public Roads changed throughout.

1a: Application to Secondary Road Plan projects has been deleted in accordance with new PPM 20-5, dated March 30, 1973. Reference to the alternate procedure under paragraph 16 has been added.

1b: Application to Secondary Road Plan projects deleted. Reference to paragraph 3d of PPM 30-4.1 also deleted as unnecessary.

1g: Paragraph modified to reflect that PPM 20-5 and the approved Secondary Road Plan agreement will apply where reimbursement is requested for utility work on Secondary Road Plan projects.

NOTE: A special distribution (to Regions and Divisions for further distribution to the utility industry) will be made approximately three weeks following this basic distribution.

3: This paragraph has been extensively reorganized to clarify FHWA's position on basic eligibility requirements under 23,U.S.C.,123, as follows:

3a(2): This provision has been restated to reflect actual practice over the past several years. The purpose is to clarify and further express FHWA's position in a more affirmative manner. It does not change the meaning or intent of the existing provisions.

3a(3): Former paragraphs 3a(3) and 3b have been combined to clarify and simplify the basic eligibility requirements with respect to "municipally" or other "publicly" owned utilities. Like 3a(2) above, it does not change the meaning or intent of the existing provisions.

3b: This is a new paragraph incorporating the applicable provisions of the December 28, 1967, Circular Memorandum from Mr. J. A. Swanson on "Enactment of New Utility Relocation Statutes." It also adds appropriate cross reference to 3a(2) above and 3a(3) above.

3d: This replaces portions of old paragraph 7l. It also eliminates the necessity for the State to submit to the division engineer, evidence of a utility's real property interest except only those instances where the utility to be relocated occupies federally owned lands. However, the State is still required to document its files with evidence of a real property interest, as appropriate, in all cases of this nature.

4c: That portion of former paragraph 4c dealing with the type of appraisals required has been deleted as unnecessary.

6g: "Construction Manual for Highway Construction" has been substituted for "An Informational Guide on Project Procedures" which is no longer applicable.

7e: New paragraph. Incorporates provisions of IM 30-4-71, "Federal-Aid Participation - Utility Installations Serving a Highway Purpose." Former paragraphs 7e through 7l are renumbered 7f through 7m, respectively.

7h(3): (Former paragraph 7g(3)) Ceiling on lump-sum agreements has been increased from the previous $5,000 to $10,000.

- **more** -

7l: (Former paragraph 7k) New subparagraph added for conformity with the provisions of PPM 20-8. New 7l(2) requires public hearing be held or location and design approval given for the highway project before authorizing physical adjustment or relocation of utility facilities. Former 7k(2) through 7k(4) renumbered 7l(3) through 7l(5) respectively.

7m: (Former paragraph 7l) Paragraph revised. The certification statement pursuant to relocations involving conditions covered under paragraph 3a(1) is no longer required. Exception is made where Federal lands are involved, in which case a statement is to be furnished to the division engineer. Former paragraph 7m renumbered 7o.

7n: New paragraph. Incorporates the provisions of IM 20-1-69(1) which allows the division engineer to authorize certain utility relocations prior to the public hearing or location and design approval. Former paragraph 7n through 7p are renumbered 7p through 7r, respectively.

16: Paragraph 16 has been extensively revised. The previous $25,000 ceiling for minor cost utility relocations handled under the alternate procedure has been eliminated. Except for major transfer, production, and storage facilities and certain cases falling under the provisions of paragraph 7, all utility relocations and adjustments may be processed under the new alternate procedure. The requirements for authorizing work on individual projects have been modified. A detailed submission for each utility relocation is no longer required prior to authorization by the division engineer. The intent is to authorize all utility work on a project-wide basis wherever practical. The yearly review of sample agreements required previously has been dropped. Instead, a complete review and evaluation of the State's operations under the approved alternate procedure shall be conducted by the division office at least once every three years. A statement has been added to indicate that certain FHWA approval actions required under PPM 30-4 and 30-4.1 are not altered by the provisions of paragraph 16.

Norbert T. Tiemann
Federal Highway Administrator

Distribution:
Basic plus special

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REMOVE		INSERT
Page(s)	Date	Page(s)
1 thru 17	February 14, 1969	1 thru 17
Attachment 1 1	February 14, 1969	Attachment 1 1
Appendix A		Appendix A
A–1 and A–2	February 14, 1969	A–1 and A–2

POLICY AND PROCEDURE MEMORANDUM

Transmittal 302

30-4

June 29, 1973

UTILITY RELOCATIONS AND ADJUSTMENTS

Par.
1. Purpose and Application
2. Definitions
3. Eligibility
4. Rights-of-Way
5. Preliminary Engineering and Engineering Services
6. Construction
7. Agreements and Authorizations
4. Recording of Costs
9. Reimbursement Basis
10. Labor Costs
11. Materials and Supplies
12. Equipment
13. Transportation of Employees
14. Utility Bills
15. Accommodation and Installation
16. Alternate Procedure

Appendix A - Index

1. PURPOSE AND APPLICATION

a. To prescribe the policies and procedures for the adjustment and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration (FHWA), except Secondary Road Plan projects. It also prescribes the extent to which Federal funds may be applied to the costs incurred by or on behalf of utilities in the adjustment or relocation of their facilities required by the construction of such projects. At the election of the State, an alternate procedure for simplifying the processing of utility relocations and adjustments to provided under paragraph 16.

b. The provisions of this memorandum apply to reimbursement claimed by the State for costs incurred under all State or political subdivision -utility agreements, and for payment of costs incurred under all FHWA-utility agreements, which are entered into after the date of issuance.

c. Where the lines or facilities to be relocated or adjusted by reason of the highway construction are privately owned, located on the owners' land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the PPM 80-Series apply. Where applicable, under the foregoing conditions the provisions of this memorandum may be used as a guide to establish a cost-to-cure.

d. Where the utility holds a compensable interest in the land occupied by its facilities, and the relocation involves all or a substantial portion of, or extensive damage to, the utility's physical plant or operating facilities, an analysis shall be made by the State, subject to concurrence by the division engineer, to demonstrate whether the cost of relocation determined under the provisions of this memorandum will exceed the market value of the utility's real property determined by appraisals under PPM 80-3. Any proposed settlement above the amount established by the appraisal process shall require justification as being the most feasible and economical solution available consistent with the public interest, welfare and good.

e. Where State law or regulation provides payment standards more liberal than those established by this memorandum the provisions of this memorandum shall govern FHWA's reimbursement to the State. Conversely, where State law or regulation provides more restrictive payment standards the State standards shall govern such reimbursement. A determination shall be made by the State subject to the concurrence of the division engineer as to which standards will govern, and the record documented accordingly, for each relocation encountered. In making the determination as to which standard is the most restrictive, the net cost of relocation, excluding any cost sharing arrangement between the State and the utility, shall be computed by obtaining the reimbursable amount under each of the following: (1) the State's standards and (2) the standards provided for by this memorandum. Any cost sharing arrangement required by law or agreement between the State and the utility shall be applied to the lesser of the two sums so obtained to establish the amount eligible for Federal fund participation.

f. Where the highway construction which requires the utility relocation is under the direct supervision of FHWA, all references herein to the State are inapplicable. Under such circumstances, it is intended that FHWA be considered in the relative position of the State.

g. On Secondary Road Plan projects where Federal-aid participation is requested in the costs of utility relocations, the provisions of PPM 20-5 and the approved Secondary Road Plan agreement will apply.

2. DEFINITIONS

For the purpose of this memorandum, the following definitions shall apply:

a. "Utility" shall mean and include all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems, which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary.

b. The terms "reimburse" and "participate", or their derivatives, shall mean that Federal funds may be used to reimburse the State on Federal-aid projects, or to make payments to the utility on projects under the direct supervision of FHWA to the extent provided by applicable law.

c. "Division Engineer" shall mean the division engineer of the FHWA.

d. "Replacement Rights-of-Way" shall mean the land and interests in land acquired for or by the utility as necessitated by the highway construction.

e. "Preliminary Engineering" shall mean locating, making of surveys, preparation of plans specifications and estimates and other related preparatory work in advance of construction operations.

f. "Construction" shall mean the actual building and all related work including utility relocation or adjustments, incidental to the construction or reconstruction of a highway project, except for preliminary engineering or right-of-way work which is programed and authorized as a separate phase of work.

g. "Salvage Value" is the amount received for utility property removed, if sold; or if retained for reuse, the amount at which the material recovered is charged to the utility's accounts.

h. "Work Order System" is a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

i. "Program Approval" shall mean approval by FHWA of programs of projects proposed by the State. Projects involve preliminary engineering, rights-of-way acquisition or construction at specific locations.

j. "Authorization" shall mean authorization to the State by the division engineer to proceed with any phase of a project previously or concurrently given program approval. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

k. "Relocation" shall mean the adjustment of utility facilities required by the highway project, such as removing and reinstalling the facility, including necessary rights-of-way, on new location, moving or rearranging existing facilities or changing the type of facility, including any necessary safety and protective measures. It shall also mean constructing a replacement facility functionally equal to the existing facility, where necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

l. "Cost of Removal" to the cost of demolishing, dismantling, removing, or otherwise disposing of utility property and cleaning up required to leave the site in a neat and presentable condition.

m. "Cost of Salvage" is the amount expended to restore salvaged utility property to usable condition after its removal.

n. "Overhead Costs" shall mean those costs not chargeable directly to accounts pertaining to the relocation which are determined on the basis of a rate or percentum factor supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific relocation jobs. Such costs may include expenses for general engineering and supervision, general office services, legal services, insurance, relief, pensions, taxes and construction engineering and supervision by other than the accounting utility.

o. "Betterments" shall mean and include any upgrading to the facility being relocated made solely for the benefit of and at the election of the utility, not attributable to the highway construction.

p. "The cost of any improvements necessitated by or in accommodation of the highway construction" shall mean the cost of providing improvements in the relocated or adjusted facility that are needed to protect or accommodate the highway and its safe operation.

q. "Administrator" shall mean the Federal Highway Administrator.

3. ELIGIBILITY

a. Federal funds may participate, at the pro rata share applicable, in an amount actually paid by a State, or a political subdivision thereof, for the costs of utility relocations under one or more of the following conditions:

(1) Where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which as compensable in eminent domain subject to the provisions of paragraph 3d below.

(2) Where the utility occupies either publicly or privately owned land or public right-of-way, and the State's payment of the costs of relocation is made pursuant to State law and does not violate a legal contract between the utility and the State, provided an affirmative finding has been made by FHWA that such a law forms a suitable basis for Federal-aid fund participation under the provisions of 23 U.S. C. 123.

(3) Where the utility which occupies publicly owned lands or public right-of-way is owned by an agency or political subdivision of a State, and said agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense, provided the State has furnished a statement to the division engineer establishing and/or citing its legal authority or obligation to make such payments, and an affirmative finding has been made by FHWA that such a statement forms a suitable basis for Federal-aid fund participation under the provisions of 23 U. S.C. 123. This statement should reflect the basis of the State's payment Statewide except where conditions otherwise limit its application to political subdivisions, projects or individual relocations.

b. Where a State enacts a new utility relocation statute or amends an existing statute and requests reimbursement pursuant to the provisions of paragraph 3a(2) or (3) above, the State shall furnish the division engineer copies of the statute, along with a statement reflecting the difference, if any, between the utility relocation payment standards under State law and those established by this in memorandum. Before reimbursement is approved, two copies of the statute and statement shall be submitted through the Regional Federal Highway Administrator, along with appropriate comments to the Office of Engineering for review and referral to the Chief Counsel. While such reviews are underway, the division engineer may conditionally authorize utility relocations subject to an affirmative finding by FHWA that the State's submission forms a suitable basis for reimbursement under 23 U. S. C. 123. Should at any time the utility relocation statute become a matter of litigation, the State shall so inform the FHWA.

c. Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities where State law prohibits a State from making payment for relocation of utility facilities.

d. Where the basis of the State's payment of the cost of relocation is made pursuant to the conditions under paragraph 3a(l), the State shall obtain and have on record suitable evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record an affirmative finding by the State's legal counsel of the utility's compensable interest shall be incorporated as part of the State's records. Cases involving the relocation of utilities occupying Federal lands are to be submitted to FHWA for review in accordance with the provisions of paragraph 7m.

e. Where the advance installation of new utility facilities, crossing or otherwise occupying the proposed right-of-way of a future planned highway project, is either underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the State, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the future planned highway project. Federal funds are eligible to participate in the additional costs incurred by the utility that are attributable to and in accommodation of the planned highway project, provided such costs are incurred subsequent to authorization of the work by the division engineer. For example, such additional costs may include the cost of providing higher poles or longer spans, encasement of cable or pipes, additional length of facilities and the like, that a re needed to protect the planned highway and its safe operation, and which otherwise would not be required by the utility for its own operation. Subject to the other provisions of this memorandum, reimbursement may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest, and the adjustment of the facility is necessary by reason of the actual construction of the planned highway project. Emergency situations may be processed in the manner prescribed by paragraph 7p.

4. RIGHTS-OF-WAY

a. Replacement right-of-way to be acquired by or on behalf of a utility shall be programed and authorized either as an

expense incidental to the cost of relocation, or as part of the right-of-way acquisition phase of either the highway project as a whole, or a separate utility relocation project. Reimbursement may be approved for the cost of replacement right-of-way incurred after the date any of the foregoing phases of work are included in an approved program and replacement right-of-way for utilities is authorized by the division engineer, provided:

(1) the State's payment does not violate the law of the State or violate a legal contract between the utility and State, and

(2) there will be no charge to the project for that portion of the utility's exist - ing right-of-way being transferred to the State for highway purposes, and

(3) the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project.

b. Expenses incurred by the utility incident to the acquisition of replacement rights-of-way may be reimbursed. These expenses may include such items as: salaries and expenses of utility employees while engaged in the appraisal of and negotiation for such right-of-way, amounts paid independent appraisers for appraisals made of such right-of-way, recording costs, deed fees and similar costs normally paid incident to land acquisition.

c. The utility shall determine and record its valuation of the replacement rights-of-way that it acquires, prior to negotiation for its acquisition. This means the utility should. by its records be in a position to justify amounts paid for such right-of-way. The valuation may consist of appraisals by utility employees or by independent appraisers. Sound valuation and acquisition practices should be followed by the utility.

d. Acquisition of rights-of-way by the State for a utility shall be an accordance with the PPM 80-Series.

e. Where the utility has the right-of-occupancy in its existing location by reason of holding the fee, an easement or other real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking and damage of the utility's real property, including the disposal or removal of such facilities, is a matter for consideration as a right-of-way transaction in accordance with the PPM 80-Series.

f. Where a utility company has a compensable property interest in land to be acquired for a scenic strip, overlook, rest area or recreation area, the State is to take steps necessary to protect and preserve the area or strip being acquired. This will require a determination by the State whether retention of the utility at its existing location, will now or later adversely affect the appearance of the area being acquired, and whether it will be necessary to subordinate or acquire the utility's interests therein, or to rearrange, screen or relocate the utility's facilities thereon, or both. Where the adjustment or relocation of utility facilities is necessary, the provisions of this memorandum apply. In such cases, the State shall determine, subject to concurrence by the division engineer, whether the added cost of acquisition attributable to the utility's property interest or facilities which may be located thereon outweigh the aesthetic values to be received.

5. PRELIMINARY ENGINEERING AND ENGINEERING SERVICES

a. Preliminary engineering work and other related preparatory work undertaken by or under the direction of a utility shall be programed and authorized either as an expense incidental to the cost of relocation, or as part of the preliminary engineering phase of either the highway project as a whole, or a separate utility relocation projetc. Reimbursement may be approved for such costs incurred after the date any of the foregoing phases of work are included in an approved program, and preliminary engineering for utilities is authorized by the division engineer.

b. Where a utility is not adequately staffed to prosecute the relocation, Federal funds may participate in the amounts paid to engineers, architects and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation. Where reimbursement is requested by the State for the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements therefor. Federal-aid funds may participate in the cost of such services performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility in its own work under such contracts at reasonable costs. It to expected the State and utility will, insofar as practicable, adopt and follow the procedures set out in PPM 40-6 and its supplements. The proposed use of such services, fees and arrangements therefor, are subject to prior approval by the division engineer, except as provided below:

(1) Where the proposed utility work is relatively simple, and the fees for the proposed engineering services are less than $5, 000, and the division engineer has previously approved a satisfactory statement of procedures the State uses Statewide for such matters.

(a) The statement of procedures shall establish a ceiling on the fees to be covered, not to exceed $5, 000, and outline the State's practices for reviewing and approving the need for such services, the reasonableness of the fee, the adequacy of the contract document or arrangements, and the qualifications of the individual or firm. The division engineer may approve the State's statement of procedures where he is satisfied that the State's procedures follow sound business practices and are satisfactory to provide adequate control for this type of work. Reimbursement may be approved where the costs incurred are in accordance with the approved statement of the State's procedures.

(2) Where the engineering services are performed under existing written continuing contracts for fees of $5, 000 and less, and it is demonstrated this service is regularly performed for the utility in its own work under such contracts at reasonable costs.

c. All agreements for the engineering services outlined in 5b above, in which Federal-aid funds are to participate, shall include a certificate, as a supplement to said agreement, as shown by Attachment 1 to this memorandum. The certificate shall be executed by the individual so engaged, or by a principal officer of the firm retained.

6. CONSTRUCTION

a. Construction costs incurred by a utility subsequent to the date on which the division engineer authorized the State to proceed with the relocation may be reimbursed. Federal funds will not participate in any utility relocation (1) not necessitated by the construction of the highway project or (2) for changes made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

b. Unless the utility work is made a part of the State's highway construction contract or performed under a separate contract let by the State, as agreed to by the utility and the State with the approval of the division engineer, all utility relocations and all work incidental to such relocation shall be performed by the utility with its own forces, or by a contractor paid under a contract let by the utility, or both. When the contractual method is utilized, pursuant to applicable State law or regulation, Federal funds may participate in the cost of the relocation, where it is demonstrated that the letting of a contract by the State was in the best interest of the State, or that the letting of contract by the utility was necessary because the utility was not adequately staffed or equipped to perform the work with its own forces at the time of relocation.

c. Where reimbursement is to be requested, any contract to perform work in connection with the utility relocation should be under an award to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications for the work to be performed, as set forth in an appropriate solicitation for bids, except as set forth in paragraphs 6d and e. Appropriate solicitation shall be accomplished through open advertising in publications, or by circularizing to a list of prequalified contractors or known qualified contractors. A list of such contractors shall be submitted to the State for informational purposes in advance of the solicitation for bids.

d. Federal funds may participate in the costs of relocation work performed under existing written continuing contracts where it is demonstrated that such work is regularly performed for the utility under such contracts at reasonable costs. This may include existing continuing contracts with another utility. Where such other utility has an ownership interest in the facility to be relocated, Federal funds will not be eligible to participate in intercompany profits.

e. Where the utility proposes to contract outside the requirements under paragraphs 6c and d for work of relatively minor cost or nature, for example, tree trimming and the like, Federal funds may participate in the costs so incurred, provided it is demonstrated that such requirements are impractical and the utility's action did not result in an expenditure in excess of that justified by the prevailing conditions.

f. All labor, materials, equipment and other services furnished by the utility shall be billed by the utility direct to the State. The special provisions of contracts let by the utility or the State shall be explicit in this respect. The costs of force account work performed for the utility by the State and of contract work performed for the utility under a contract let by the State, shall be reported separately from the costs of other force account and contract items on the highway project.

g. Field verification by the State, to justify and support payment for the work done, is necessary to the proper handling of utility relocations and adjustments. A minimum treatment is the procedure outlined under "Utility Adjustments" in the AASHO publication, "Construction Manual for Highway Construction", or any other equally acceptable written procedure mutually agreed upon by a State and the division engineer to accomplish the purpose. The cost of preparing as-built plans, to the extent necessary for the State to verify costs, and/or for highway maintenance purposes, is reimbursable.

7. AGREEMENTS AND AUTHORIZATIONS

a. Except as provided in paragraph 7r, where reimbursement is requested by the State, the utility and the State shall agree in writing on their separate responsibilities in financing and accomplishing the relocation work, either through the use of master agreements for relocation work to be encountered on an area-wide or Statewide basis, or through the use of individual agreements on a case by case or project basis, or both. The form of the written agreement is not prescribed. Said agreement shall incorporate this memorandum and any supplements and revisions thereto by reference, and by inclusion therein or by supplement thereto shall, far each relocation encountered, set forth:

(1) the basis of the State's authority, obligation, or liability to pay for the relocation (reference paragraph 3 of this memorandum).

(2) the scope, description and location of the work to be undertaken.

(3) the method to be used by the utility for developing relocation costs (reference paragraph 7h of this memorandum),

(4) the method to be used for performing the relocation work, either by the utility's forces or by contract, and

(5) that the facilities to be relocated to a position within the highway right-of-way will be accommodated in accordance with the provisions of PPM 30-4. 1.

b. The agreement shall be supported by plans, specifications where required, and estimates of the work agreed upon, which shall be sufficiently informative and complete to provide the State and division engineer with a clear showing of work required in accordance with paragraphs 7i and j of this memorandum.

c. The division engineer shall indicate his approval of the written agreement by endorsement thereon. Any conditions or qualifications attached to his approval shall be set out by letter from the division engineer to the State. Such approval and any conditions or qualifications attached thereto are for the purpose of informing the State the extent that Federal funds are eligible to participate in the costs incurred under the approved agreement, subject to the provisions of this memorandum.

d. Where applicable, the written agreement shall set out by separate clause the terms and amounts of any contribution made or to be made by the utility to the State in connection with payments by the State to the utility under the provisions of paragraph 3. Federal funds are not eligible to participate in any costs for which the utility repays a State or political subdivision for the State's pro rata share, or portions thereof, of the cost of relocation.

e. In cases involving the installation of highway lighting, traffic signal, water, electric power and similar facilities that are to serve a highway purpose, and where under established practice in a locality the ownership of such facilities is to remain with a utility company rather than the State or a political subdivision, Federal-aid highway funds may participate in the cost of constructing such facilities for public highway purposes when found to be in the public interest by the division engineer, provided assurances are made in the State-utility agreement that the utility will:

(1) Adequately maintain such facilities and provide continuous quality service;

(2) Record the cost of such facilities as a contribution by the State and maintain related accounting records in accordance with applicable provisions of the Uniform System of Accounts prescribed by the Federal Power Commission - esp., Account 271 - Contributions in Aid of Construction, its equivalent or its successor;

(3) Eliminate from the rate determination process (a) the original cost to the State of all such facilities and (b) the corresponding current and cumulative depreciation amounts; and

(4) Relinquish ownership and possession of all such facilities to the State should the utility either go out of business or be sold to another company unwilling to abide by the terms of the agreement.

Where a publicly owned utility is involved, (2) and (3) above may be modified as appropriate to reflect current accounting and rate determination practices used by the utility.

f. Where the relocation involves work to be paid by the State and work to be done at the

expense of the utility, and reimbursement is requested by the State, the written agreement shall state the share to be borne by each party; that is, by the State and by the utility. Reimbursement shall follow the basis of cost allocation set out in the agreement, except where adjustment is required by changes between the work planned and accomplished.

g. In the event there are changes in the scope of work, extra work, or major changes in the planned work covered by the approved agreement, plans and estimates, reimbursement therefor shall be limited to costs covered by a modification of the agreement, or a written change or extra work order, approved by the State and the division engineer. Emergency situations may be processed in the manner prescribed by paragraph 7p.

h. Agreements shall set forth the method of developing the relocation costs which shall be one of the following alternatives,

(1) Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and the division engineer. Where such a procedure is proposed by a utility, approval by the division engineer will be limited to an accounting procedure which the utility uses in its regular operations.

(a) The use of unit costs, such as broad gauge units of property, where the utility maintains and regularly uses such unit costs in its own operations will be considered as meeting the requirements under paragraphs 7h(l) and (2) above, provided a determination is made by the State, subject to the concurrence of the division engineer, that such unit costs and supporting records are representative of the actual direct and related indirect costs, accumulated under the accounting procedure prescribed by the regulatory body having jurisdiction over the utility or the accounting procedure approved by the State and division engineer.

(3) An agreed lump sum where the estimated cost to the State of the proposed adjustment does not exceed $10,000 and where the State and the division engineer are satisfied that the utility's cost estimate and method of estimating, including the use of unit costs, such as broad gauge units of property, where used by the utility in its own work, are adequate to support the lump sum method. The

lump sum agreement shall be supported by a plan prepared in accordance with paragraph 7j, specifications where required, and a detailed cost estimate prepared in a manner that will permit comparison with the agreement and supporting plans, which will give the State and division engineer a clear understanding of the work proposed. The agreement shall be subject to the prior approval of the State and the division engineer. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate, equipment charges by type, size, and rate; materials and supplies by items and price; and payroll additives and other overhead factors, with a statement of what is included in each, and the basis for determining the percentage used. Where determining whether the cost of relocation falls within the ceiling for lump sum utility agreements, it is not necessary to reflect the estimated costs of utility work not attributable to the highway construction or not eligible for Federal fund participation.

(4) Where work is to be performed by forces of a utility, the nature of whose regular business is such that its accounting system is not designed or required to classify, record, and otherwise reflect the results of operation on a continuing basis in terms of physical work items, the estimate of cost shall include reference to the support to be (a) presented with the claim for reimbursement, and (b) maintained by the utility for subsequent review. The claim for reimbursement shall be accompanied by a duly certified post-construction compilation of cost, showing such details as man-hours by class and rate, equipment by type, size, and rate; materials and supp lies by items and price. Upon review of claims as herein contemplated and as otherwise required, the State and FHWA shall make such determinations as are appropriate in the circumstances, including any necessity for audit at the site of the utility.

i. The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights-of-way, preliminary engineering, and construction engineering including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide the State and division engineer a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property.

may be used for estimating purposes where the utility uses such units in its own operations.

j. The supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done and shall show:

(1) the location, length, size and/or capacity, type, class, and pertinent operating conditions and design features, of existing, proposed, and temporary facilities, including proposed changes thereto, and disposition thereof all by appropriate nomenclature, symbols, legend, notes, color-coding or the like;

(2) the project number, plan scale and date, the horizontal and, where appropriate, the vertical location of the utility facilities in relation to the highway alignment, geometric features, stationing, grades, structures, and other facilities, proposed and existing right-of-way lines, and where applicable, the access control lines,

(3) where applicable, the limits of right-of-way to be acquired from, by or on behalf of the utility; and

(4) by appropriate notes or symbols, that portion of the work to be accomplished, if any, at the sole expense of the utility.

k. On projects where the State plans to request reimbursement for utility relocation costs, it is necessary to show under the character of work on Form PR-1 that "utility relocations" are included. The utility work may be programed either as part of the right-of-way acquisition phase, or the construction phase of the highway project, or as a separate utility relocation project. Where feasible, arrangements should be made to program all phases of the utility work under a single project.

l. Where reimbursement is requested, except as otherwise provided by paragraphs 7m, n, and o, authorization by the division engineer to the State to proceed with the physical adjustment or relocation of a utility's facilities may be given:

(1) on or after the date the utility relocation is included in an approved program, as part of the right-of-way acquisition phase (program Stage 1 or 2) or construction phase (program Stage 2 only) of a highway project, or as a separate utility adjustment project (program Stage 2 only), and

(2) after the public hearing has been held or location and design approval has been given for the highway project, and

(3) at such time as the division engineer is furnished and reviews plans and estimates reporting adequately the utility work proposed, the location of the highway project and the utility relocation, and

(4) when the division engineer is furnished and reviews the proposed, or executed agreement between the State and the utility, and

(5) when the division engineer is furnished a schedule for accomplishing the utility work based on the best information available at the time authorization is requested.

m. In cases where the utility to be relocated occupies Federal lands, the division engineer shall not issue authorization to proceed until the State has submitted a statement signed by a responsible highway official citing the legal basis which establishes the utility's compensable property interest in such lands. In exceptional circumstances, and for good cause shown by the State, the division engineer may, at his discretion, waive the requirement of submittal of the above statement as a condition precedent to authorization to proceed. Such submittal, however, shall in all instances be a condition precedent to Federal reimbursement.

n. The division engineer may authorize the physical relocation or adjustment of utility facilities before a public hearing or location and design approval, under the following conditions:

(1) Where the utility facilities to be relocated or adjusted occupy, in part or in whole, any rights-of-way authorized by the division engineer prior to a public hearing or location/design approval, pursuant to PPM 20-8.

(2) Any relocation or adjustment of utility facilities meeting the requirements of paragraph 3e.

o. Where mutually agreed to by the State and division engineer, arrangements may be made for advance conditional authorization of utility relocation work. Either at the time of program approval or later, the division engineer may issue a letter of authorization to the State, on a selected construction location, to proceed with any or all necessary utility relocation work within a project, including preliminary engineering, related preparatory work and replacement right-of-way acquisition, but with the understanding that the actual physical adjustment or relocation of any utility facilities will not be undertaken until, and

unless, the division engineer is furnished and approves for each relocation, the proposed or executed agreement between the State and the utility, including the supporting plans and estimates therefor. The cost of replacement right-of-way so acquired and actually incorporated in the finally approved utility relocation will be eligible for Federal participation.

p. Where unforeseen circumstances during construction of the highway project necessitate adjustment or relocation of utility facilities, arrangements therefor can, and should, be made promptly by the State, and may be confirmed by telephone with the division engineer. Where necessary to prevent undue delay or interference with the highway construction, the division engineer may establish a date of eligibility for such work and authorize the State to proceed subject to his subsequent review and approval of a satisfactory State-utility agreement therefor. Any oral arrangements so made shall be confirmed in writing, to the State, by the division engineer.

q. Federal funds may not reimburse the State for costs of utility relocations:

(1) until and unless the division engineer approves the executed agreement between the State and the utility (except as provided in paragraph 7r), and

(2) until and unless a project agreement which includes the work is executed, and

(3) which are not required by the finally approved project location and highway construction plans.

r. Where all efforts of the State and the utility fail to bring about written agreement of their separate responsibilities under the provisions of this memorandum, the State shall submit its proposal and a full report of the circumstances to the division engineer.

(1) The division engineer shall make appropriate investigation and submit his report and recommendations through the Regional Administrator to the Administrator. Conditional authorization for the work to proceed may be given to the State, with the understanding that Federal funds will not be paid for work done by the utility until the Administrator has given his approval to the State's proposal.

(2) The Administrator will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives, and accelerate the advancement of the construction and completion of projects.

8. RECORDING OF COSTS

a. All utility relocations will be recorded by means of work orders or job orders, except as otherwise approved under paragraphs 7h(2), (3) and (4).

b. Where the relocation costs are to be developed pursuant to the methods outlined in paragraphs 7h(1) or (2), the individual and total costs properly reported and recorded in the utility's accounts, in accordance with the approved method for developing such costs, shall constitute the maximum amount on which Federal fund participation may be based for the work performed under the approved utility agreement. Separate work orders may be issued for additions and retirements, or the retirements may be included with the construction work order, provided, however, that all items relating to retirements shall be kept distinctly separate from those relating to construction.

c. Each utility shall keep its work order system in such manner as to show the nature of each addition to, or retirement from a facility, the total cost thereof, and the source or sources of cost.

d. The provisions of paragraphs 10, 11, 12 and 13 are intended for use as general guidelines in the development of reimbursable costs. It is further intended that cost development under prescribed or approved systems of accounts shall be the general controlling factor.

9. REIMBURSEMENT BASIS

a. Where payment by the State for the costs of relocation is made pursuant to the provisions of paragraph 3 of this memorandum, and such payment is for the entire amount paid by, or on behalf of, the utility properly attributable to the relocation, after deducting therefrom any increase in the value of the new facility, and any salvage value derived from the old facility, reimbursement of such costs may be approved, subject to the following understandings:

(1) "The entire amount paid by or on behalf of the utility properly attributable to the relocation" shall mean tile cost of adjusting or rearranging the existing facility, or providing a replacement facility functionally equal to the facility, or portion thereof, being replaced, including the cost of any additions, improvements, removals, or replacement right-of-way necessitated by, or in accommodation of, the highway project.

(2) The deduction for "any increase in value of the new facility" shall include a credit to the project for the cost of:

(a) any betterments in the facility being replaced or adjusted, and

(b) where appropriate, any increase in value attributable to the substitution of a replacement facility for an existing facility, as determined in accordance with the provisions of paragraph 9b.

(3) The deduction for "any salvage value derived from the old facility" shall include a credit to the highway project for the value of the materials removed, as determined in accordance with the provisions of paragraphs 11b and c of this memorandum.

b. In any instance where the relocation involves the substitution of a replacement facility for an existing facility, a determination shall be made whether a credit is due to the project for the value of the expired service life of the facility being replaced, except as provided in paragraph 9b(1). Such credit shall take into account the effect of such factors as wear and tear, action of the elements, and functional or economic obsolescence of the existing facility, not restored by maintenance during the years prior to the relocation.

(1) A credit to the project for the value of the expired service life of the facility being replaced will not be required where such facility involves only:

(a) utility line crossings of the highway, or

(b) segments of a utility line, other than utility line crossings of the highway, less than one mile in length, provided the replacement facility for such a segment is not of greater functional capacity or capability than the one it replaces, and includes no betterments.

(2) The following shall constitute prima facie evidence that a credit is due to the project for the value of the expired service life of the facility being replaced:

(a) Where the replacement facility is functionally equal to the existing facility which it replaces, and such existing facility involves a segment of a utility line one mile or more in length.

(b) Where the replacement facility is other than a segment of the utility's service, distribution or transmission lines, such as a building, pumping station, filtration plant, power plant or substation, production, or transfer or storage facilities, and any other similar operating units of a utility's physical plant or operating facilities.

(c) Where the replacement facility involves betterments, or is of greater functional capacity or capability than the one it replaces, except for utility line crossings of the highway as provided in paragraph 9b(l)(a).

(3) Where an affirmative finding is made that a credit for the value of expired service life is due to the project, the credit to be given shall be in an amount bearing the same proportion to the original cost of the facility being replaced as its existing age bears to its estimated total life expectancy.

(4) "The estimated total life expectancy" is the sum of the period of actual use and the period of expectant remaining service life. The period of expectant remaining life may be taken from the utility's records, established through the use of age-life curves, or determined by the interested parties through field inspections, giving due consideration to the quality and frequency of maintenance.

(5) Where original costs are not ascertainable from the utility's accounts and records, they may be estimated by trending back present day costs.

(6) The burden of proof of any exceptions to the foregoing requirements lies with the utility company and will require written explanation to demonstrate that the replacement facility will not remain in useful service for a longer period than the existing facility would have remained in service, had the replacement not been made, and the reasons therefor.

(7) Exceptions claimed on the basis of predicted functional obsolescence of the replacement facility must be substantiated by formal and planned utility work programs, schedules, or equally suitable documentation, and the utility must satisfactorily demonstrate and justify the reasons why the planned replacement and expansion cannot be accomplished at the time of the highway-utility relocation. Exceptions claimed on the basis of predicted economic obsolescence of the replacement facility must also be substantiated by suitable documentation. Where such exceptions are substantiated and demonstrated to the satisfaction of the State and division engineer, an analysis shall be made to determine any increase in value to the utility resulting from the predicted early retirement and salvage of the replacement facility.

(8) The credit to be obtained for expired service life shall be determined jointly by the utility company and the State, subject to concurrence by the division engineer, and shall be set forth in the detailed estimate supporting the agreement between the utility and the State.

c. Additional costs incurred by a utility resulting from complying with governmental or industry codes, or current design practices regularly followed by the utility in its own work may be reimbursed provided either of the following conditions are satisfied, as determined by the State with the concurrence of the division engineer:

(1) There is a direct benefit to the highway project, for example, improved appearance, increased highway safety, or added protection.

(2) Compliance with such codes or practices is required under Federal, State or local governing laws and ordinances.

d. Except as provided for under paragraph 9c of this memorandum, where the utility elects to install, or it is current practice in the utility's own operations to install, facilities of a type different than the facilities being replaced, for example, the substitution of ACSR for copper conductors, underground cables for aerial lines and the like, reimbursement shall be limited to the cost of providing the most economical replacement facility, or restoration of service, functionally equal to the one being replaced.

e. Where an addition to an existing facility is required by the highway construction, such as an increase in the length of a relocated utility line, the actual costs of the addition are reimbursable to the extent the materials in the addition are not of a type or a class superior to the materials in the facility to which the addition is extended, except that the cost of any improvement in type or class which is required in connection with the construction of the project is reimbursable.

f. Where necessitated by the highway project, Federal funds are eligible to participate in the costs incurred for rehabilitating, moving, or replacing buildings of a utility company, including the equipment and operating facilities therein, which are used for the production, transmission, or distribution of the utility's products. Except where it is demonstrated that the existing building and/or facilities are required to remain in place and in service until a (new) replacement building and/or facilities are

constructed and in service at a new location, an analysis shall be made by the State to determine the cost and feasibility of each of the following:

(1) to rehabilitate the building at its existing location,

(2) to move it as a unit intact to its new location,

(3) to dismantle it and reassemble or reconstruct it at its new location, or

(4) to replace it with a new building at the new location.

Reimbursement may be approved for the costs incurred under the most feasible and economical solution available, less appropriate credits for salvage and betterments, as determined by the State, subject to concurrence by the division engineer. Where a (new) replacement building and/or (new) equipment or facilities therein are constructed, credit will also be given to the project in accordance with paragraph 9b.

g. In no event will the total of all credits required under the provisions of this memorandum exceed the total costs of adjustment. exclusive of the cost of improvements necessitated by the highway construction.

10. LABOR COSTS

a. Salaries and wages billed at actual rates or at average rates accounting for productive labor hours, retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are engaged in the utility relocations are reimbursable when supported by adequate records, except for engineering or inspection charges which are being reimbursed under the utility's construction overhead account. Costs to the utility of vacation, holiday pay, company sponsored benefits, and similar costs incident to labor employment, will be reimbursed when supported by adequate records. These may include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and in the actual preparation of the plans and estimates of the relocation.

b. Overhead Construction Costs:

(1) So that each relocation shall bear its equitable proportion of such costs, all overhead construction costs not chargeable directly to work order or construction accounts such as, general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, legal expense, insurance, relief and pensions and taxes shall be charged to the relocation on the basis of the amount of such overhead costs reasonably applicable thereto. The instructions contained herein shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as accepting assignment to the relocation of actual and reasonable overhead costs.

(2) The cost of advertising and sales promotion, interest on borrowed funds or charges for the utility's own funds when so used, resource planning and research programs, stock and stockholder's expenses and similar costs are not considered as necessary and incident to the performance of the relocation and are not eligible for Federal participation.

(3) Premiums paid to an insurance company for Workmen's Compensation. Public Liability and Property Damage Insurance will be reimbursed where, and to the extent, it is determined that, the amounts of the premiums, are the products of the proper rates applied to the amounts of paid salaries and wages, exclusive of vacation pay or allowances, and are acceptable to the State and division engineer.

(4) Where it has been the policy of the utility to self insure against public liability and property damage claims, reimbursement will be at the rate developed by the utility, or in the absence thereof, at a rate not in excess of one percent of salaries and wages charged to the job.

(5) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate, and allocation basis of each additive, and be subject to audit by representatives of the State and Federal Government.

11. MATERIALS AND SUPPLIES

a. Costs: Materials and supplies shall be billed at inventory prices when furnished from the utility's stocks, and at actual cost to the utility when the materials and supplies are not available from the utility stocks and must be purchased for the relocation. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and any charge for general overhead expense are provided for under paragraph 11i. When not so allocated in the utility's overhead accounts, they may be included in the computation of the prices of materials or supplies. The computation of costs of materials and supplies shall include the deduction of all offered discounts, rebates, allowances and intercompany profits. In those instances where the book value does not represent the true value of used materials, they shall be charged to the project at the same rate used by the utility in its own work, but in no event shall they be charged at more than the value determined in accordance with the foregoing provisions of this paragraph.

b. Materials Recovered From Permanent Facility:

(1) Materials recovered in suitable condition for reuse by the utility, in connection with construction or retirement of property, shall be credited to the cost of the project at current stock prices; or it a utility charges recovered material to the material and supply account at original cost or a percentum of current price new, and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

(2) The State and the division engineer shall have the right to inspect recovered materials prior to disposal by sale or scrap. This requirement will be satisfied by the utility giving written notice, or oral notice with later written confirmation, to the State of the time and place the materials will be available for inspection. This notice is the responsibility of the utility, and it may be held accountable for full value of materials disposed of without notice.

(3) If recovered materials are not suitable for reuse by the utility, they shall be disposed of as outlined in paragraph 11c(2).

(4) Where the (new) replacement facility includes materials of a type different than the materials being replaced, for example, aluminum for copper and the like, the credit for the materials recovered from the existing facility shall not exceed whenever is the greater of the following amounts: (1) the original cost of the existing material, or (2) the current cost of the replacement materials.

c. Materials Recovered from Temporary Use:

(1) Materials recovered from temporary use in connection with a highway project, which are in suitable condition for reuse by the utility, shall be credited to the cost of the project at stock prices charged to the job, less ten (10%) percent for loss in service life. The State and division engineer shall have the right to inspect all recovered materials not reusable by the utility. Notice shall be given as provided by paragraph 11b(2).

(2) Items of materials recovered from temporary use which are unsuitable for reuse by the utility, and which have been determined to have a sale value, shall either be sold, following an appropriate solicitation for bids, to the highest bidder, or if the utility regularly practices a system of disposal by sale which has been determined to be the most advantageous to the utility, credit shall be at the going prices for such used or scrap material as are supported by the records of the utility. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the utility or at its request, by the State. In no event shall the State or the company be considered as an acceptable bidder for such material.

d. The cost of salvage shall not exceed the value of the recovered material, which value shall be determined as provided in paragraphs 11b and c.

e. The cost of moving recovered materials from the job site to stores or storage point nearest the job will be reimbursed, subject to the provisions of paragraph 11f.

f. Reimbursement of removal costs, as reduced by the salvage value of materials removed, may be approved subject to the following conditions:

(1) Where the existing facilities are being replaced by reason of the highway construction, provided:

(a) such removal is necessary to accommodate the highway project, or

(b) the existing facilities cannot be abandoned in place, or

(c) where it is demonstrated that the estimated salvage value of the materials to be removed will equal, or exceed, the total cost of removal, taking into account all related charges for reconditioning, handling, and transporting the materials to be removed.

(2) Except as otherwise provided under paragraph 4e, where the existing facilities are not being replaced by reason of the highway construction, provided:

(a) removal is necessary to accommodate the highway project,

(b) the State has authority to pay the removal costs,

(c) the utility is not obligated by law, ordinance, regulation, franchise, written agreement or legal contract to remove its facilities at its own expense, and

(d) a credit is given to the project for the salvage value of the materials removed, not to exceed the cost of removal and related charges.

g. Where removal of the existing facilities is necessary by reason of the highway construction, but the materials to be removed are not suitable for reuse by the utility, or their recovery is not economical, the State shall determine, subject to concurrence by the division engineer, which is the most desirable and economical method of removal to employ, for example, by the utility or its contractor, by the highway contractor, or by a separate clearing contract let by the State.

h. Where, pending their subsequent removal or abandonment, utility lines must be deactivated and rendered harmless as a necessary safety and protective measure to the public or highway project, for example, by capping, plugging, or otherwise altering such lines, Federal funds may participate in payments so made by the State, exclusive of removal costs, provided:

(1) the work is necessitated by the highway project, and

(2) the State has authority to pay such costs, and

(3) the utility is not obligated by law, ordinance, regulation, franchise, written agreement or legal contract to do the work at its own expense, or

(4) the work is a necessary and incidental expense to the costs of relocation and/or removal which are eligible for Federal fund participation under the provisions of paragraphs 3 and 11f of this memorandum.

i. The costs of supervision, labor, and expenses incurred in the operation and maintenance of the storerooms and material yards, including storage, handling and distribution of materials and supplies, the costs of purchasing, and the costs of testing and inspection, are reimbursable. Costs determined by a rate, or other equitable method of distribution which is representative of the costs to the utility, may be reimbursed.

12. EQUIPMENT

a. Accumulation of Costs: Accounts for transportation and heavy equipment are used for the purpose of accumulating expense and distributing them to the accounts properly chargeable with the services. Among the items of expense clearing through these accounts are the following: depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts, heat, light, and power for garage and garage office; insurance including public liability and property damage insurance) on garage equipment, transportation equipment and heavy work equipment; license fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds.

b. Reimbursement of Equipment Costs: The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

c. Reimbursement will be limited to charges which account for costs to the utility of expenses for equipment used (paragraphs 12a and b). Arbitrary or otherwise unsupported equipment use charges will not be reimbursed.

(1) Small Tools: Reimbursement for the use of small tools on a project will be made on the basis of tool expenses accumulated in and distributed through the utilities clearing accounts, or other equitable and supportable allocation basis; otherwise, it will be limited to actual loss or damage during the period of use. In the latter case, the loss or damage shall be billed in detail and supported to the satisfaction of the State and division engineer.

(2) Rental: Where the utility does not have equipment available of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest qualified bidder following an appropriate solicitation for quotations from owners of the required kind or type of equipment. Existing continuing contracts for rental of transportation and heavy equipment, which the utility determines to be of the most advantage to its operations, may be considered as complying with these requirements. In the event of an emergency, such as a breakdown of the utility equipment or where additional equipment not originally contemplated is needed and/or compliance with the foregoing requirements would seriously impair the prosecution of the utility work or highway construction, Federal funds may participate in the cost of equipment rental provided the utility can demonstrate to the satisfaction of the State and the division engineer the above circumstances existed, and the rental charges so incurred were reasonable and did not result in an expenditure in excess of that justified by the prevailing conditions.

d. Where the relocation work is to be performed by forces of a utility through the use of its own equipment, the accounting procedures and reimbursement standards established under paragraphs 12a, b and c of this memorandum shall apply except where the accounting system of the utility does not provide for capitalization of items or equipment acquired and recovery of original cost through depreciation, and use rates cannot be readily determined from the records of the utility. Upon determination by the State and the concurrence therein of the division engineer that the utility's accounting system is inadequate in such respects, and that it is not economically feasible to develop such costs under the reimbursement standards set forth in the foregoing mentioned subsections, then eligibility for reimbursement of costs incurred will be dependent upon:

(1) Approval by the State and concurrence therein by the division engineer of a detailed cost estimate submitted by the utility which shall include:

(a) description, rates, hours, compensation and number of units of equipment proposed for use on the relocation,

(b) an adequate explanation of the basis for developing the rates which the utility proposes an compensation.

(2) Incorporation in the State-utility agreement, or by supplemental letter agreement, of the classes and types of equipment and the proposed compensation for each.

e. The division engineer may require such verification or further justification as will provide him assurance as to the resonableness for the compensation to the utility for the use of its equipment.

13. TRANSPORTATION OF EMPLOYEES

a. The cost of essential transportation performed in automobiles or trucks owned by the utility shall be considered to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment".

b. Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its employees for use in connection with its own construction and maintenance projects and operations.

c. Reimbursement may be made for the cost of required commercial transportation by employees of the utility.

14. UTILITY BILLS

a. Periodic progress billings of incurred costs may be made by a utility, if acceptable to the State, and reimbursement may be approved for claims of this type received from a State.

b. One final and complete billing of all costs incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will follow as closely as possible the order of the items in the estimate portion of the agreement between the State and the utility. Except where the estimate and final billing are made pursuant to the requirements of paragraph 7h(2) (a), the statement of final billing shall be itemized to show the totals for labor, overhead construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services. In any case, the billing shall be shown in such a manner as will permit comparison with the approved plans and estimates. Materials are to be itemized, where they represent major components or cost in the relocation, following the pattern set out in the approved estimate as closely as is possible It is desirable that salvage credits from recovered and replaced permanent and recovered temporary materials be reported in the bill in relative position with the charge for the replacement or the original charge for temporary use. The final billing shall show:

(1) the description and site of the project;

(2) the Federal-aid project number;

(3) the dates on which the State-utility agreement was executed and the first work was performed or, if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred;

(4) the date on which the last work was performed or the last item of billed expense was incurred; and

(5) the location where the records and accounts billed can be audited.

c. The utility shall make adequate reference in the billing to its records accounts and other relevant documents,

d. All records and accounts are subject to audit by representatives of the State and Federal Government. During the progress of construction and for a period not less than three years from the date final payment has been received by the utility company, the records and the accounts pertaining to the construction of the project, and accounting therefor, will be available for inspection by the representatives of the State and Federal Government.

e. Reimbursement for a final utility billing shall not be approved until and unless the State furnishes evidence that it has paid the utility from its own funds, or funds of a political subdivision, pursuant to State law and subject to paragraphs 3c and 7d of this memorandum and, except for lump sums, following an audit of the costs included in the final billing.

15. ACCOMMODATION AND INSTALLATION

a. Utility facilities which are retained, installed, adjusted or relocated within the right-of-way of a Federal-aid project are to be accommodated in accordance with the provisions of PPM 30-4.1.

b. In instances where utility facilities are to use and occupy the right-of-way of a proposed Federal-aid project, on or before the State is authorized to proceed with the physical construction of the highway project, the State is to demonstrate to the satisfaction of the division engineer that:

(1) A satisfactory agreement has been reached between the State and all utility owners or the owners of private lines involved, in accordance with PPM 30-4.1, or arrangements therefor are underway leading to such agreement prior to the final acceptance of the highway construction project by FHWA and

(2) the interest acquired by, or vested with, the State in that portion of the highway right-of-way to be vacated, used. or occupied by the utility facilities or private lines is of a nature and extent adequate for the construction, operation and maintenance of the highway project, and

(3) suitable arrangements have been made between such owners and State for accomplishing, scheduling and completing the relocation or adjustment work, for the disposition of facilities to be removed from or abandoned within the highway right-of-way, and for the proper coordination of such activities with the planned highway construction. Such arrangement should be made at the earliest feasible date in advance of the planned highway construction, and

(4) the bid proposals for the highway contract include appropriate notification identifying the utility work which is to be

undertaken concurrently with the highway construction, in accordance with paragraph 5b of PPM 21-12, and

(5) the plans for the highway project have been prepared in accordance with the provisions of paragraph 4i of PPM 40-3.1.

16. ALTERNATE PROCEDURE

a. At the election of the State, an alternate procedure may be approved for simplifying the processing of utility relocations or adjustments under the provisions of this memorandum. Except as otherwise provided by paragraph 16b, the State will act in the relative position of the division engineer for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this memorandum as prerequisities for authorizing the utility to proceed with and complete the work.

b. The scope of the State's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this memorandum except in the following instances which are to be reviewed and approved in the normal manner on a case by case basis by the division engineer, as prescribed elsewhere in this memorandum:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations. reservoirs and the like.

(2) Utility relocations and adjustments falling within the scope of paragraphs 7m, 7n, or 7r.

c. Any State wishing to adopt the alternate procedure may file a formal application for approval by FHWA. The application must include the following:

(1) The State's written policies and procedures for administering and processing Federal-aid utility adjustments, which must make adequate provisions with respect to the following:

(a) Compliance with the requirements of this memorandum and the provisions of PPM 30-4.1 and PPM 30-11.

(b) Advance utility liaison, planning and coordination measures for providing adequate lead time and early utility relocation to minimize interference with the planned highway construction.

(c) Appropriate administrative, legal and engineering reviews and coordination procedures as necessary to determine the legal basis of the State's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under paragraph 1e; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and provide for uniform treatment of the various utility matters and actions, consistent with sound management practices.

(d) Documentation in the State files of actions taken in compliance with State policies and the provisions of this memorandum.

(2) A statement signed by the chief administrative officer of the State highway department certifying that:

(a) Federal-aid utility relocations will be processed in accordance with the applicable provisions of PPM 30-4 and the State's utility policies and procedures submitted under paragraph 16c(1),

(b) reimbursement will be requested in only those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this memorandum, as determined after appropriate audit by or for the State.

d. Upon receipt of the formal application by the State for approval of the alternate procedure, the division engineer will review the State's submission, utility organization and staffing and evaluate the State's practices and procedures thereunder. Where available, he may use his current evaluation of the State's utility practices and procedures for this purpose. A report of the division engineer's findings and recommendations on the adequacy of the State's policies, procedures, practices, and organization is to be submitted to the Regional Administrator along with the State's formal application.

e. When the Regional Administrator is satisfied that the State's alternate procedure and policies and practices thereunder form a suitable basis for approving reimbursement with Federal-aid highway funds, he will approve the alternate procedure and authorize the division engineer to process Federal-aid State-utility relocation agreements and related matters under the alternate procedure.

f. When the alternate procedure has been approved for use in a State, the division engineer may authorize the State to proceed with utility relocations on a project in

accordance with the certification previously furnished under paragraph 16c(2), subject to the following conditions:

(1) The utility work has been included in an approved program, as prescribed under paragraph 71(1) of this memorandum.

(2) The State submits in writing a request for such authorization which shall include a list of the utility relocations on the project which are to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

g. The requests and authorization prescribed under paragraph l6f should be made at the earliest feasible date in advance of the planned highway construction. Authorization by the division engineer for the work described under paragraph 16b(1) and (2) may be combined with the authorizations issued pursuant to paragraph 16f with the understanding that later referral of the State-utility agreements, supporting plans and cost estimates to the division engineer for review and approval will be required pursuant to paragraph 7o.

h. If, due to unforeseen circumstances, the State later finds that additional utilities must be relocated on a project, they shall so inform the division engineer of the additional work to be processed under the alternate procedure and request separate authorization thereof in accordance with the manner prescribed in paragraph l6f. Emergency situations may be handled by advance oral arrangement and later confirmed in writing to the State by the division engineer.

i. At least once every three years the division engineer shall make a comprehensive review and evaluation of all phases of the State's procedures and practices for relocating, adjusting, and accommodating utilities under the approved alternate procedure. Such review and evaluation may be made as a single effort during a one year period or conducted in phases over a three year period. A written report on the review and evaluation, including appropriate recommendations, discussions with the State, and any subsequent actions taken shall be submitted to the Regional Administrator.

j. Any changes, additions or deletions the State proposes to the alternate procedure approved by the Regional Administrator pursuant to this paragraph are to be submitted by the State to the division engineer for his review, recommendations and referral to the Regional Administrator for approval prior to implementing the proposed modifications. Such requests by the State, must be accompanied by a statement signed by the chief administrative officer of the State highway department, verifying the certification made under paragraph 16c(2) and its application to the proposed modifications. The division engineer may continue to approve utility work under the previously approved alternate procedure, pending approval of the proposed modifications.

k. The Regional Administrator may suspend approval of the certified procedure and direct the division engineer to resume approval of all utility relocations, where FHWA utility reviews disclose instances of noncompliance with the terms of the State's certification. Federal-aid funds will not be eligible to participate in utility relocation costs incurred by the State that do not qualify under the terms of the certification made pursuant to paragraphs 16c(2) and j.

l. The provisions of paragraph 16 do not alter the FHWA approval actions required by paragraphs 3a(2), 3a(3), 14e and 15b of this memorandum and paragraph 7f of PPM 30-4.1.

m. A copy of the reports, approved alternate procedures and related actions taken pursuant to paragraphs 16c, d, i, j, and k shall be furnished to the Office of Engineering.

Norbert T. Tiemann
Federal Highway Administrator

Attachment

A-67

CERTIFICATION OF CONSULTANT

I hereby certify that I am the _____(title)_____and duly authorized representative of the firm of_____, whose address is_____,and

That, except as expressly stated and described herein, neither I nor the firm of _____has, in connection with its contract with_____(name of utility)_____, entered into pursuant to provisions of an agreement between the aforementioned utility and the State of_____, as a part of Federal -aid project_____,

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract, or

(b) agreed, as an express or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person to connection with the carrying out of the contract, or

(c) paid, or agreed to pay, to any farm, company, organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

(Statement and explanation of exceptions, if any):

I acknowledge that this certificate is to be furnished to the State highway department and the Federal Highway Administration, U.S. Department of Transportation, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

_____ (Date)

_____ (Signature)

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U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C

INSTRUCTIONAL MEMORANDUM 4-1-59 November 20, 1959
(Expiration, November 20, 1960)

Subject: Reimbursement for Utility Work

Consideration has been given to development over the past few years of the Bureau's requirements and the effect of the changing conditions upon certain segments of the highway program activities. Particular attention is now considered to be necessary in connection with the processing of State's claims for reimbursement of costs incurred under superseded policy and procedure instructions for utility relocations. The evolution of our requirements in this area has had the affect of creating undue burdens upon both the Bureau and the States in the determinations of eligibility of such costs.

Accordingly, it has been decided that with respect to the processing of utility relocation claims under projects where such work was undertaken prior to the issuance of PPM 30-4 dated December 31, 1957, the determination of sufficiency of evidence of approvals and authorizations pursuant to the then existing requirements should be made with a greater degree of latitude than would be expected in the light or the Bureau's present requirements. The fact of compliance with the pertinent provisions of law, regulations and implementing requirements must continue to be clearly established for each relocation affected. The exercise of discretion for these earlier actions is only to provide for acceptance of evidence of compliance which otherwise might be questionable on the basis of the present requirements for documentation and clarity of the record.

To provide assurance of adherence to the intent of the above decision and to obtain consistent Bureau-wide treatment of the above described outstanding utility claims; i.e., where the date of authorization of such utility work, as determined in accordance with the provisions of this memorandum, is prior to December 31, 1957, the following general rules are adopted for application in the determination of acceptability of costs insofar as Bureau approvals and authorizations are concerned:

1. The costs of any utility relocation work performed prior to Bureau of Public Roads program approval of the project are not eligible for Federal participation. Therefore, evidence must be developed: (a) to support the intent of the State to finance the relocation with participating project funds; and (b) to establish that the Division Engineer had knowledge of the State's intent as above, and was satisfied that the need for such work existed.

2. Evidence of authorization by the Division Engineer to proceed with the work must be established notwithstanding failure to properly document the action. In the absence of a properly documented authorization, such evidence must be authentic clearly revealing an obvious intent to authorize the action.

3. The date of execution of the project agreement and date of Public Roads' approval of the State-utility agreement are pertinent only as conditions precedent to payment by Public Roads of a State's claims. The controlling dates involved in determining eligibility are: (a) the date of program approval of the project; and (b) the date the Division Engineer authorized the State to proceed with the work. If approval of the State-utility agreement is construed to also represent authorization to proceed, then, of course, such date would be a factor in determining eligibility of costs.

4. In those cases where the authorization to proceed was specifically withheld pending approval of the State-utility agreement, satisfaction of the condition may be as of the date of receipt of such agreement provided, that in due course, it was approved.

Based on the foregoing, it should be understood that the fundamental objective is to determine legal sufficiency of the actions taken. Thus, evidence of compliance with governing legislation must be established, although the quality of such evidence is not necessarily in exact conformity with the Bureau's present requirements.

It is to be recognized that conditions, methods and procedures may vary from State to State. Supplementary rules should thus be formulated wherever deemed necessary, consistent with the general rules set forth above and mutually agreed to by the Bureau and the State. Two copies thereof should be furnished to the Washington office for informational purposes, one each to the Offices of Administration and Engineering.

The actions taken hereunder must be fully documented including a statement of justification respecting each case where heretofore the validity of evidence used had been in question or otherwise obscured.

ELLIS L. ARMSTRONG
Commissioner of Public Roads

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

INSTRUCTIONAL MEMORANDUM 30-3-61 May 8, 1961
(May 8, 1962, expiration)

Subject: Reimbursement for Utility Work

Since the issuance of PPM 30-4, dated December 31, 1957, conflicting interpretations of several of its provisions have been repeatedly encountered, namely, on matters concerning (1) Definitions, (2) Rights-of-Way, (3) Preliminary Engineering, (4) Utility Construction Contracts, (5) Credit for Extended Service Life, (6) Authorization to Proceed with the Physical Adjustment or Relocation of Utility Facilities, (7) Approval of Utility PS&E, (8) Reimbursement Basis, and (9) the Use of Equipment Owned by Utilities.

Due to the immediate need to clarify the governing procedures and in the interests of providing sufficient time to permit a progressive application of these instructions under the variable conditions and operations to be encountered in the several States, the effective date for applying such instructions shall be either on or no later then thirty days after the date of issuance of this memorandum, as determined by the division engineer. These instructions will subsequently be included in revised PPM 30-4 and other related procedures. The instructions set forth herein shall apply to reimbursement claimed for costs incurred under all State-utility and Public Roads-utility agreements: (1) Entered into and governing work performed on or after the effective date of this memorandum, and (2) entered into prior to the effective date of this memorandum where requests are received that such agreements be modified to include appropriate reference to these instructions provided that the utility company's final claim has not been approved for reimbursement.

1. DEFINITIONS

In lieu of the definition of net replacement cost under Section 2 of PPM 30-4, it to necessary to define the following:

"Total cost of the relocation," for the purposes of this memorandum, shall mean all current charges attributable to the relocation and shall include, among others, (a) the cost of betterments whether or not necessitated by the highway construction, (b) the cost of removal, and (c) the cost of salvage work. Such cost shall be determined without giving consideration to the credit value of material salvaged or scrapped.

"Replacement Cost" shall mean that remaining portion of the total cost of the relocation of the facility after deducting therefrom: (a) cost of betterments whether or not necessitated by the highway construction, (b) cost of removal, and (c) cost of salvage work. The term "Replacement Cost" shall be substituted for the term "Net Replacement Cost" wherever used in PPM 30-4.

"Total estimated service life of replaced facility" is the sum of the period of actual use plus the period of expectant remaining life. In instances where such a facility is still in operation but fully depreciated on the utility company's accounts, there shall be a mutual determination by the interested parties to re-establish the expectant remaining life of the replaced facility.

2. RIGHT-OF-WAY

In lieu of Subsection 4a of PPM 30-4, the following conditions will apply:

a. Costs of rights-of-way that are acquired by or on behalf of a utility company that are located outside of either publicly owned lands or highway rights-of-way, may be reimbursed provided such costs are incurred subsequent to the date on which that phase of the work is included in an approved program as an item of right-of-way acquisition and authorized by the division engineer.

3. PRELIMINARY ENGINEERING

In lieu of the existing provisions of Section 5 of PPM 30-4, the following conditions are provided herewith:

a. Under the provisions of Section 101 of Title 23 U. S. Code, the expenses incurred by or under the direction of a utility company for preparatory work such as preliminary studies, surveys, preparation of plans, specifications, estimates, and other related work may be considered to be either as a part of the "expenses incidental to the construction or reconstruction of a highway," or as a part of "locating, surveying, and mapping." Accordingly, it is appropriate that such expenses be allocated and recorded in the project documents either as an item of preliminary engineering or as incidental to the right-of-way or construction under which the utility relocation is programmed. Therefore, such preparatory work for utility relocations to be undertaken by or under the direction of a utility company shall be programmed and accomplished either as an item of preliminary engineering or as an expense incidental to right-of-way acquisition or construction, as may be appropriate in accordance with State practices.

b. The authorization by the division engineer to proceed with the preparatory work for utility relocations, excluding the physical construction thereof, shall be issued either for the entire project or for one or more of the utility relocations within that project. If such work is to be accomplished:

(1) as an item of preliminary engineering, the authorization by the division engineer to proceed with the preliminary engineering for the entire project or for one or more utility relocations within a project is considered to include the proper and necessary participating preparatory work for such utility relocations for that project incurred by or on behalf of a utility company, or

(2) as an incidental expense to right-of-way acquisition, the authorization by the division engineer to proceed with the preparatory work for utility relocations may be issued separately or combined with the authorization for preliminary right-of-way studies or right-of-way acquisition, whichever is appropriate, or

(3) as an incidental expense to construction, the foregoing authorization shall be issued separately as early as possible in advance of the authority to proceed with the physical construction phase of the utility relocation.

c. Federal funds may participate in the costs of preparatory and other related preliminary work for utility relocations incurred on or after the date of any one of the foregoing authorizations.

4. UTILITY CONSTRUCTION CONTRACTS

Under Subsection 6b of PPM 30-4 the State and the division engineer are required to give prior approval to a utility company's request to perform work by the contract method. The prior approval of the division engineer of a specific contract, as may be awarded by the utility after the contract method of performance has been approved, is not required. The prior approval of such specific contracts by the State to subject to State laws and regulations.

5. CREDIT FOR EXTENDED SERVICE LIFE

The following conditions will be considered in determining the increase of value of a new facility on account of extended service life, in lieu of Subsection 7f of PPM 30-4:

a. When the utility demonstrates the need to retain the existing facility in operation until a replacement facility is functioning, a determination must be made as to whether the replacement (new) facility will remain in useful service beyond the time when the overall (old) utility facility of which it is a part, would have remained in useful service or would be replaced. For the purpose of this section, such an overall (old) utility facility may be any operational unit of the entire utility system, as illustrated by such examples as a building, structure, pumping station, substation, filtration plant, a segment of overhead or underground utility lines serving a designated area, or any similar unit of the entire utility system. The foregoing need shall be demonstrated on the basis that the construction of the replacement facility is required

for either the maintenance of the utility service, overall project economy, or sequence of construction.

Any increases in the functional capacity of or service improvements in the replacement facility, either through the use of materials, techniques or methods, will be considered a betterment. Except where such increases or improvements are mule necessary by the highway construction, they shall constitute prima-facie evidence that the service life of the replaced facility has been extended. With respect to prima-facie evidence the burden of proof of a showing to the contrary lies with the utility company.

b. The determination to be made under paragraph (a) shall be the joint responsibility of the utility company and the State and subject to the concurrence of the division engineer. Should the finding under said determination be in the affirmative, a credit will be required against the cost of the project and set forth in the detailed estimate supporting the agreement between the utility and the State.

c. The minimum credit acceptable will be determined by use of the following formula.

$$\frac{\text{Expired Service Life of Replaced Facility}}{\text{Total Estimated Service Life of Replaced Facility}} \times \text{Replacement Cost} = \text{Credit}$$

d. Whenever the utility company elects to construct an entirely new facility and retire the existing facility, credit shall be given as provided for in paragraph ©).

6. AUTHORIZATION TO PROCEED WITH THE PHYSICAL ADJUSTMENT OR RELOCATION OF UTILITY FACILITIES

Under Subsection 7j of PPM 30-4, one of the several related provisions that must be satisfied prior to granting authority to a State to proceed with a utility relocation, is that the utility relocation be included in an approved program as an item of right-of-way acquisition or construction. In the interests of establishing a uniformity in the application of this particular requirement the following clarification is provided:

a. For each project, it is necessary to show under the character of work on Form PR-1 that "utility relocations" are included as part of the programmed item for right-of-way or construction in accordance with State practices, but in any case all of the provisions of this memorandum and PPM 30-4 shall apply, and

b. When and if the utility relocation is included in an approved program, the authorization to proceed may be given while in either an approved Stage 1 or Stage 2 program status except on projects where the utility relocation is to be part of the contract for the actual physical construction of the highway, in which case authorization shall not be given until and unless the project is advanced to and approved in a Stage 2 program.

7. APPROVAL OF UTILITY PLANS AND ESTIMATES

While the present procedures under Subsection 7j of PPM 30-4 require the division engineer to review the supporting plans and estimates for utility relocations prior to authorizing the State to proceed with such relocations, it is intended that

a. the State will examine, review, and approve such plans and estimates prior to formal submission to the division engineer, and

b. the division engineer will approve such plans and estimates at the earliest possible date but not later than the date of approval of the associated agreement between the utility and the State.

8. REIMBURSEMENT BASIS

In addition to the provisions relating to credit as set forth under the governing procedures, in no event will the total of all credits required under the provisions of PPM 30-4 exceed the total costs of relocation exclusive of the cost of betterments necessitated by the highway construction.

9. EQUIPMENT

Where the relocation work is to be performed by forces of a utility through the use of its own equipment, the accounting procedures and reimbursement standards established under Subsections 12a, b, and c of PPM 30-4 shall apply except where the accounting system of the utility does not provide for capitalization of items of equipment acquired and recovery of original cost through depreciation, and use rates cannot be readily determined from the records of the utility. Upon determination by the State and the concurrence therein of the division engineer that the utility's accounting system is inadequate in such respects, and that it is not economically feasible to develop such costs under the reimbursement standards set forth in the foregoing mentioned subsections, then eligibility for reimbursement of costs incurred will be dependent upon:

a. approval by the division engineer of a detailed cost estimate submitted by the utility to the State which shall include

(1) description and number of units of equipment proposed for use on the relocation,

(2) an adequate explanation of the basis for developing the rate which the utility proposes as compensation, and

(3) the estimated equipment hours required; accompanied by the State's analysis and recommendations;

b. incorporation in the State-utility agreement of the specific classes and types of equipment and the proposed compensation for each. The division engineer may require such verification or further justification as will provide him assurance as to the reasonableness for the compensation to the utility for the use of its equipment.

The eligibility of costs of additional types and classes of equipment will be dependent upon the approval procedures set forth herein except that such additions may be accomplished by letter agreement in lieu of a formal modification of the State-utility agreement.

F. C. Turner
Deputy Commissioner
and Chief Engineer

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C

November 13, 1961
(November 13, 1962,expiration)

INSTRUCTIONAL MEMORANDUM 30-7-61

24-22

SUBJECT: Alternative method of supporting certain utility adjustment claims

The provisions of Section 8.a., PPM 30-4, shall not apply where work is authorized to be performed by forces of a utility, the nature of whose regular business is such that its accounting system is not designed or required to classify, record, and otherwise reflect the results of operations on a continuing basis in terms of physical work items, and provided that such accounting system is not readily adaptable to the inclusion of a work order method of conventional form and quality, subject to the following conditions:

1. The State-utility agreement shall recognize the absence of a conventional cost accounting feature, or any regulatory requirement for same, in the established record-keeping system of the agency and shall specify, in addition to the estimated cost of the adjustment, the support that shall be (a) presented with the claim for reimbursement and (b) maintained by the utility for subsequent review.

2. The claim for reimbursement shall be accompanied by a duly certified post-construction compilation of cost, classifying all major elements separately, including as a minimum: (a) hours and rates of direct labor; (b) quantities and unit prices of direct materials; (c) time and rental rates of utility-owned equipment; (d) amount of overhead and basis upon which derived; and (e) purpose, payee, and amount claimed for any contractual services engaged (section 3).

3. The claim shall be further supported and accompanied by a certified copy of each invoice from any contractor (or the equivalent) to whom an amount aggregating $100 or more will have been paid and included in the claim. When an amount so included represents an allocated portion of a cost of outside services, the method of allocation shall be stated.

(more)

Claim hereafter submitted, subject to conditions stated above and set forth in State-utility agreements entered into on and after this date, shall be reviewed by the division engineer of Public Roads in light of other established requirements for eligibility and further evaluated in terms of: (a) compliance with the foregoing conditions and (b) comparability with prior cost estimate, as it might be duly modified, by engineering determination of work actually accomplished.

With respect to agreements heretofore executed incident to which claims for reimbursement are pending or may hereafter be presented to Public Roads, which would have otherwise qualified under the provisions of this memorandum, the State's claims may be evaluated in light of requirements herein stipulated to the extent that they can qualify, i.e., notwithstanding the absence of an appropriate provision in the agreements already in existence.

Upon review of claims as herein contemplated and as otherwise required, the division engineer or his designee shall make such determinations as are appropriate in the circumstances, including any necessity for audit at the site of the utility.

F. C. Turner
Deputy Commissioner and
Chief Engineer

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C 20235

July 19, 1963

INDUSTRIAL MEMORANDUM 21-6-63
39-30

SUBJECT: Removal of Utility Facilities Where Replacement or Relocation is Not Required

Several inquiries have been received from Regional Engineers regarding situations involving the removal of utility facilities where replacement of the facilities is not needed and whether the utility should be required to give appropriate credit to the project for the salvage value, if any, of the materials recovered. As our present procedures do not provide specific instructions for these matters, the following instructions are adopted for application wherever these situations are encountered:

Where these situations occur, there is not a relocation of the utility's facilities as contemplated under the pertinent provision of law. Consequently, this becomes a matter or right-of-way clearance and the provisions of Section 123, of Title 23, USC are not for application.

Under these circumstances the procedures to be followed should take into account whether the utility company has a compensable interest in the lands which are occupied by its facilities and being acquired for highway purposes, and if not, whether the utility company is obligated to remove its facilities to accommodate the highway construction. These determinations are necessary in order to establish whether and to what extent Federal highway funds may participate in the costs incurred. Any questions that arise regarding the legality of these features should be submitted to the General Counsel for advice prior to the approval of the State's request.

In the event it is found that the utility company has not compensable interest in the lands which are occupied by its facilities and needed for highway purposes, the State should determine to what extent, if any, the utility company is obligated to remove its facilities to accommodate construction of the highway project. Eligibility of removal costs where no compensable property rights are involved, is dependent upon further consideration as follows:

1. When the owning is utility obligated to remove its facilities to accommodate highway construction, the State should enforce said obligation, or otherwise proceed to cause timely removal of the facility at the owner's account. Costs of removal and salvage values of recovered material under these circumstances would not be for Federal fund participation.

2. Where it has been established that the utility company is not obligated to remove its facilities, removal costs are reimbursable only to the extent required by construction of the highway project and further, as reduced by the recovered value of materials removed. Where the owning utility expresses no interest in recovery of materials, removal may be accomplished as a participating clearing item, with disposal of materials and credits therefor, if any, being governed by contract specifications.

F. C. Turner

F. C. Turner
Assistant Federal Highway Administrator
and Chief Engineer

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C 20235

September 14, 1964

INDUSTRIAL MEMORANDUM 21-4-64
39-30

SUBJECT: PPM 30-4 (6) Numbered Paragraph 3

Paragraph 3 of PPM 30-4(6) provides in part that "when utility relocations are relatively simple, prior approval by the division engineer of the minor engineering fees involved for each relocation is not necessary where he has previously approved a statement of procedures the State uses State-wide for these matters and he it satisfied that the State's procedures and practices thereunder follow sound business practices in contracting with consultants."

We wish to be kept informed as to which of the divisions in your region have approved such statements and request that a copy of any approved statements be furnished this office. Please furnish this information prior to the Utility Seminar, October 12-16, 1964, and make further submissions as necessary to keep our files current.

This will be incorporated into PPM 30-4 when revised.

E. H. Swick

E. H. SWICK
Director of Right-of-Way and Location

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 20235, D.C

December 24, 1964

INDUSTRIAL MEMORANDUM 30-6-64
39-30

SUBJECT: Use of Consultants by Utility or Railroad Companies

All agreements for engineering services between utilities, or railroads, and consultants in which Federal-aid Funds are to participate shall include a certificate, as shown by the enclosure hereto, as a supplement to said agreement. The term "utility" as used on the enclosed certificate should be changed to "railroad" where appropriate. The certificate shall be executed by a principal officer of the consultant firm retained.

This requirement will be incorporated into PPM's 30-3 and 30-4 when revised. This certificate is basically the same as that required for consultants on engineering work by PPM 40-6, and for contractors on planning and research work by PPM 50-1.2.

Effective date of this memorandum is January 15, 1965.

Rex M. Whitton
Federal Highway Administrator

Enclosure

CERTIFICATION OF CONSULTANT

I hereby certify that I am the _____(title)_____ and duly authorized representative of the firm of _____, whose address is _____, and

That, except an expressly stated and described herein, neither I nor the firm of _____ has, in connection with its contract with _____(name of utility)_____, entered into pursuant to provisions of an agreement between the aforementioned utility and the State of _____, as a part of Federal-aid project _____,

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bona fide employee working solely for me or the aforementioned firm, to solicit or secure the contract, or

(b) agreed, as an express or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person in connection with the carrying out of the contract, or

(c) paid, or agreed to pay, to any firm, company, organization, or person, other than a bona fide employee working solely for me or the aforementioned firm, any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

(Statement and explanation of exceptions, if any):

I acknowledge that this certificate is to be furnished to the State highway department and the Bureau of Public Roads, U.S. Department of Commerce, in connection with the aforementioned project involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

_____ (Date)

_____ (Signature)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON , D.C. 20235

February 24, 1966

INSTRUCTIONAL MEMORANDUM 30-2-66
39-30

SUBJECT: Utility Relocations - Eligibility - Paragraph 3a(1) of PPM 30-4 (Supersedes all previous instructions issued on this topic)

Paragraph 3a(1) of PPM 30-4 provides that Federal funds may participate in an amount paid for the costs of utility relocations where the utility has the right of occupancy in its existing location by reason of holding the fee, an easement or other property interest.

The division engineer shall not issue authorization to proceed with a utility relocation under paragraph 3a(1) until the State has submitted to the division engineer a statement signed by the Highway Administrative officer having final authority over utility adjustments, certifying the following:

1. That the utility has a real property interest in the facilities, the damaging or taking of which is compensable in eminent domain.

2. That it has on file, evidence of the utility's title to a compensable real property interest. Where the utility's property interest is not a matter of public or private record, such evidence shall be supported by an opinion of the State's legal counsel.

In exceptional circumstances, and for good cause shown by the State, the division engineer may, in his discretion, waive the requirement of submittal of the above certification as a condition precedent to authorization to proceed. Such certification, however, shall in all instances be a condition precedent to Federal reimbursement.

State practices and supporting documentation shall be reviewed periodically by the division right-of-way staff to assure compliance with the above conditions.

E. H. Swick
E. H. Swick
Director of Right-of-Way and Location

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

May 2, 1967

INSTRUCTIONAL MEMORANDUM 30-6-67
39-30

SUBJECT: Utilities - Scenic Enhancement

The manner and extent to which utility facilities are permitted to use scenic strips, overlooks, rest areas, landscaped areas and other areas of roadside development or particular scenic enhancement is of increasing concern to Public Roads. Since such use by utilities can materially detract from the appearance of these and adjacent areas and diminish the value of the investment of public funds for highway beautification and scenic enhancement, the need for control is evident. For these reasons, the following policy statement is adopted for immediate use and application on all projects involving the expenditure of Federal-aid funds or funds provided by Section 319(b) of Title 23, U.S.C., for beautification purposes.

(1) The interests in land to be acquired for a scenic strip, overlook, rest area or recreation area shall be of such nature and extent as are adequate to control and regulate the use of those strips and areas by utilities. Utility installations shall not be permitted within such strips or areas, except where it is demonstrated to the satisfaction of the division engineer that the installations will not now or later adversely affect or otherwise mar the appearance of the area being traversed.

(2) Where Federal-aid funds have been or are to be expended for the costs of landscaping or roadside development of areas within the right-of-way limits of a Federal-aid project, utility installations will not be permitted within such landscaped or enhanced areas or other areas of significant natural beauty or view within the highway right-of-way, except as provided for by paragraph (1) above and as further provided by other pertinent requirements for accommodating utilities within the right-of-way of Federal-aid projects.

(3) Underground utility installations are preferred where utility services are to be provided to serve rest or recreational areas. Aerial installations may be approved where it is determined they will not adversely affect or otherwise mar the appearance of the highway or the area being served and provided they qualify under the clear roadside provisions of IM 21-6-66.

- more -

(4) Where a utility company has a real property interest in the area or strip to be acquired for the purposes described in paragraph (1) above, the State shall take whatever steps are necessary to protect and preserve the area or strip being acquired. This will require a determination by the State as to whether retention of the utility at its existing location, will now or later adversely affect the appearance of the area being acquired, and whether it will be necessary to extinguish, subordinate or acquire the utility's interests therein, or to rearrange, screen or relocate the utility's facilities thereon, or both. Where the adjustment or relocation of utility facilities are necessary, the provisions of PPM 30-4 are to be applied. In such cases, the State shall determine, subject to concurrence by the division engineer, whether the added cost of acquisition attributable to the utility's property interest and/or facilities which may be located thereon outweigh the aesthetic values to be received.

(5) Highway Beautification Act funds or Federal-aid funds should not be used to relocate, adjust, rearrange or convert (aerial lines) existing utility facilities for the sole purpose of enhancing the area of highway right-of-way being traversed unless it represents a minor part of an effort to preserve a scenic or landscaped area.

It is not the intent of this policy statement to impose restrictions on future installations of utility crossings of Federal-aid highways to the extent that would obstruct the development of expanding areas adjacent thereto. It is the intent that due consideration be given by appropriate authorities to the location and manner in which such crossings are made. It is also the intent to protect and preserve the appearance of enhanced sections of the highway and adjacent areas of scenic beauty and the investment of public funds.

F. C. Turner

F. C. Turner
Director of Public Roads

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

May 27, 1969

INSTRUCTIONAL MEMORANDUM 20-1-69 (1)
34-30

SUBJECT: Interim Criteria Promulgated under Paragraph 10e, PPM 20-8, Public Hearings and Location Approval, Relating to Utility Relocations

This supplements the provisions of IM 20-1-69 dated April 8, 1969, as follows:

The division engineer may authorize the relocation or adjustment of utility facilities before a design hearing under the following conditions:

(1) Where the utility facilities to be adjusted or relocated occupy, in part or in whole, any rights-of-way authorized pursuant to IM 20-1-69, dated April 8, 1969, and

(2) Any relocation or adjustment of facilities under the provisions of paragraph 3d of PPM 30-4 dated February 14, 1969.

R. R. Bartelsmeyer
Director of Public Roads

F. C. Turner
Federal Highway Administrator

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

January 6, 1970

INSTRUCTIONAL MEMORANDUM 30-1-70
34-30

SUBJECT: Adjustment of Gas Pipelines

Queries have recently been received on the eligibility of Federal participation in certain costs associated with the adjustment or relocation of gas transmission or distribution pipelines on Federal-aid highway projects. Such costs have been described by the owners as being necessary to meet the standards prescribed by State public service commissions or other State regulatory bodies having jurisdiction over the installation of natural gas pipelines. These are the standards which have recently been accepted by DOT as interim Federal safety standards pursuant to the Natural Gas Pipeline Safety Act of 1968. In most instances, the standards adopted by the States for this purpose are the American National Standards Institute (ANSI) B31.8 Code for Gas Transmission and Distribution Piping Systems.

We are not aware of the frequency and extent to which such cases are being encountered at the local level. In the few instances that have been called to our attention, we have noted that they involve added costs which the owner contends are attributable to meeting the foregoing described standards, code or law. Further, in each instance, such added costs depart from the reimbursement standards and practices normally followed by the State highway department and Public Roads under PPM 30-4 during the past several years.

Paragraph 9c of PPM 30-4 provides that additional costs incurred by a utility resulting from complying with governmental or industry codes may be reimbursed provided there is a direct benefit to the highway project, say improved appearance, increased highway safety, or added protection, or that compliance with such codes is required under Federal, State or local law.

Until more information is available and further study is made on the nature, extent, and frequency of the requests so received along the lines described above, such cases are to be processed under the provisions of paragraph 3b of PPM 30-4. This will require submission of the matter to this office for referral to the Chief Counsel on a case by case basis. Conditional authorization to proceed with such cases may be given with the understanding that the eligibility of Federal participation in the amounts at issue will be subject to further review and study by Public Roads.

R. R. Bartelsmeyer
Director of Public Roads

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20591

July 14, 1971

INSTRUCTIONAL MEMORANDUM 30-4-71
EN-14

Federal-Aid Participation - Utility Installations Serving a Highway Purpose

The provisions of this memorandum apply to cases involving the installation of highway lighting, traffic signal, water, electric power and similar facilities that are to serve a highway purpose, where under established practice in a locality, the ownership of such facilities is to remain with a privately owned public utility company rather than the State or a political subdivision. In these cases, when found to be in the public interest by the division engineer, Federal-aid highway funds may participate in the cost of constructing such facilities for public highway purposes provided assurances are made in the State-utility agreement that the utility company agrees to:

1. Adequately maintain such facilities and provide continuous quality service;

2. Record the cost of such facilities as a contribution by the State and maintain related accounting records in accordance with applicable provisions of the Uniform System of Accounts prescribed by the Federal Power Commission - esp., Account 271 - Contributions in Aid of Construction, its equivalent or its successor;

3. Eliminate from the rate determination process (a) the original cost to the State of all such facilities and (b) the corresponding current and cumulative depreciation amounts; and

4. Relinquish ownership and possession of all such facilities to the State should the public utility either go out of business or be sold to another company unwilling to abide by the terms of the agreement.

In similar cases involving publicly owned utility companies, the utility agreement shall provide like assurances. Items 2 and 3 above may, however, be changed as appropriate to reflect current accounting and rate determination practices.

It is planned to incorporate the foregoing provisions in the next revision of PPM 30-4.

M. F. Maloney
Acting Associate Administrator for
Engineering and Traffic Operations

37123

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

40-00 May 9, 1956

CIRCULAR MEMORANDUM TO: Deputy Commissioners and Division Engineers

FROM: A. C. Clark, Deputy Commissioner

SUBJECT: Construction Delays Caused by Delays in Effecting Public Utility Adjustments

The progress of construction on Federal-aid highway projects has been reported to be considerably delayed at times because of public utility adjustments not being completed sufficiently in advance of the construction contractor's operations. Not only do delays result, but if such situations occur frequently they are undoubtedly reflected in higher bid prices.

GAM 68 provides that "In no case will an award be authorized until the District Engineer is advised that all necessary right-of-way has been acquired or legally placed at the disposal of the State for occupancy and use." Under a strict interpretation, this requirement could be considered as having been met as soon as the State has acquired the legal right for the engineering and construction forces to enter upon the right-of-way and proceed with the work. In reality, however, the contractor is frequently not in a position to proceed with the construction without interference until extensive adjustments, permanent or temporary in nature, have been made in the facilities of public utility companies.

Withholding concurrence in award of contract until the utility adjustment work has been accomplished might tend to expedite corrective measures, but would not correct the basic causes of the trouble, which appear to be lack of adequate planning and scheduling of the work, and lack of adequate liaison in the preliminary stages with the utility companies, who should be given notice of contemplated highway construction several weeks or months in advance of award of the contract in order that they can schedule their operations.

It is requested that an investigation be made of the situation in each State of your division to ascertain whether there are avoidable delays and costs in making public utility adjustments or in the highway construction work as a result thereof, and whether there is adequate liaison and coordination between the State or local highway departments and the public utility companies. Please submit a report or your findings at an early date together with a description of corrective measures that we recommended to be taken.

AMERICAN ASSOCIATION OF STATE HIGHWAY OFFICIALS

COMMITTEE CORRESPONDENCE

Address Reply to

James E. Kirk, Secretary
AASHO/ARWA Highway-Utility
Joint Liaison Committee
Federal Highway Administration
Washington, D. C. 20590

Members
AASHO/ARWA Highway-Utility Joint Liaison Committee

Subject: Program for the AASHO/ARWA Highway-Utility Joint Liaison Committee Meeting at the 59th Annual Meeting of AASHO, Hilton Hotel, Los Angeles, California (November 14, 1973)

For the personal attention of:

Mr.

As authorized by the Co Chairman of the AASHO/ARWA Highway-Utility Joint Liaison Committee, the following program has been arranged for the November 14, 1973, meeting (2:00 p.m. to 5:00 p.m.) Board Room, Hilton Hotel, Los Angeles, California.

Following opening remarks by Co-Chairmen C. E. Shumate (AASHO-Colorado) and A. R. Heidecke (ARWA-Commonwealth Edison Co., Chicago, Ill.) five presentations are scheduled allowing about ½-hour for each including about 5 to 10 minutes for discussion from the floor, as follows:

"The Joint Committee - An Overview and A Look Ahead"
Karl E. Baetzner, Washington Gas Light Company,
Washington, D. C.

"Planning the Telephone Highways" - John M. Peacock,
Engineering Manager, American Telephone and Telegraph Co.,
New York, New York.

"Uncased Pipeline Crossings Under Transportation Arteries"
J. E. White and W. F. Saylors, Evaluation Engineers,
Colonial Pipeline Company, Atlanta, Georgia.

"Underground Electrical Transmission - Where We Stand Today - Where We Are Going Tomorrow" - A. Zanona, Chief Design Engineer, Underground Transmission Department, Commonwealth Edison Company, Chicago, Illinois.

"Accommodating Utilities on Urban Roads and Streets"
Harold T. Harris, Permit Systems Engineer, Department of Public Works, Los Angeles, California.

The foregoing should prove to be an interesting and informative program. Please plan to attend.

Sincerely,

J. E. Kirk, Secretary

cc: Mr. H. E. Stafseth
Mr. C. E. Shumate
Mr. A. R. Heidecke

THE JOINT COMMITTEE
AN OVERVIEW AND A LOOK AHEAD

by

Karl E. Baetzner
Past National President
American Right of Way Association
Washington Gas Light Company, Washington, D.C.

Presented at

Joint AASHO/ARWA Liaison Committee Meeting
59th Annual Meeting of AASHO
Los Angeles, California

November 14, 1973

As we begin this 12th Annual American Association of State Highway Officials/American Right of Way Association Highway-Utility Joint Liaison Committee Meeting, it might be of interest to review some of the early phases and beginnings of this Joint Committee. The meetings, unfortunately, have not been consecutive, but they have always been held in conjunction with the Annual Meetings of AASHO. There were three years in which no meetings were held, namely, 1966, 1967 and last year, 1972. Principle reasons for omitting these meetings were that no time or space was available during these years.

The first meeting occurred at the 45th Annual Meeting of the American Association of State Highway Officials held in Boston, Massachusetts on October 13, 1959. This overview of past events is most significant inasmuch as there is only one member of the present ARWA committee, besides the writer, who was present at that meeting. This man is Harold Waddell. The only member of the present AASHO Committee, who was also a member of the original committee is David Levin.

The concept and idea of a Liaison Committee within ARWA was conceived by Sam Houston, now retired and living in Virginia Beach, Virginia, who at that time was an attorney for the Chesapeake and Potomac Telephone Company in Washington, D. C., and a charter member of Potomac Chapter #14.

The Board of Directors of the American Right of Way Association in its Annual Meeting in May 1958 approved the following resolution "Now Therefore Be It Resolved, That the Board of Directors of the American Right of Way Association hereby pledges that the wholehearted efforts of this Association shall be directed toward the cooperation with any and all other like-minded organizations to the end that encouragement, assistance and promulgation of practical liaison as between highways, utilities, and other affected agencies based upon the principles of advanced planning, coordination and cooperation, including the concept of friendly mutual cooperation from the planning state through design and construction of highways and right way of utilities and other affected agencies, shall be effectuated whenever and wherever possible on a

local, state, and national level as between men of good will and as a service to the community, state, and nation". Sam Houston in 1958 was National Chairman of the American Right of Way Association and appointed a Liaison Committee and named Dick Taylor of Michigan as Chairman. As stated in the resolution, the Committee fostered liaison and cooperation between highways, utilities and other affected agencies based upon the principles of advance planning, coordination and cooperation.

One of the first national organizations to lend interest and encouragement to the liaison proposal was the American Association of State Highway Officials through several of its committees. AASHO has for 60 years fostered the development, operation and maintenance of a nationwide intregrated system of highways to adequately serve the transportation needs of our Country. They recognized that one of the problems in connection with highway transport was the accommodation of utilities on these highways.

Pursuant to a cordial invitation extended to the American Right of Way Association by the Right of Way and Legal Affairs Committees of the American Association of State Highway Officials to present the merits of its liaison program to them, the National Chairman of the American Right of Way Association made such a presentation during a joint session of the above committees at the 44th Annual Meeting of AASHO held at San Francisco, California, December 1958. These two committees of AASHO approved by joint resolution, the adoption and principles of the following liaison proposals and recommended it to the Executive Committee of AASHO on December 2, 1958. Briefly, it was recommended that the need for a joint Liaison Committee of highway and utility representatives was clearly apparent; that such a Joint Committee be created by the Executive Committee of AASHO with the assistance of the American Right of Way Association; and further, in view of the complexity of the problems involved that the liaison committee be directed to sponsor, at the earliest possible time after its formation, a study that would assemble and evaluate present administrative practices now current, both on the highway and utility side, with respect to dealing with highway improvement involving utility relocation and other matters of mutual interest, and to make recommendations concerning the improvement of existing practices on such matters. This resolution is of such Interest that it is reproduced in its entirety and presented herewith. The Executive Committee of AASHO subsequently approved this joint resolution with the condition that there would be no discussion concerning (1) the geometric design of highways (2) reimbursement to utilities for relocation costs. The encouraging action on the part of the American Association of State Highway Officials represented a great step forward to eliminate the barriers of misunderstanding and frustration that existed for so long. It presented a clear, concise program to assist in solving the many problems and complexities that existed in the long marriage of highways and utilities.

On April 14, 1959, the Executive Secretary of the American Association of State Highway Officials, Mr. A. E. Johnson, acting on instructions from Mr. R. R. Bartelsmeyer, appointed a liaison committee which was to meet with the National Liaison Committee of the American Right of Way Association. The Chairman of the Committee was D. C. Greer, State Highway Engineer and also included many old friends of ARWA who were interested in the liaison movement. These were Dave Levin, presently Director, Office of Right of Way, Cliff Enfield, at that time General Counsel for the Bureau of Public Roads, W. A. Bugge, then Director of Highways, Washington State, and Joe Barnett, then Engineer for the Bureau of Public Roads.

The first meeting of the Joint Committee was held in Boston on October 13, 1959. As an attendant at the first meeting, I think I would be reporting accurately, if I stated that although the meeting was most amicable and that progressive development was accomplished, there was a certain air of suspicion and possible distrust of the ARWA side by the AASHO side of the Joint Committee. There was some feeling throughout AASHO, not necessarily by members of the Committee, that the ARWA side of the Committee was made up of a group of utility men seeking reimbursement for work performed in adjusting their facilities on highways. It was at this point in time that the American Association of State Highway Officials was developing its "Policy on Accommodation of Utilities on the National System of Interstate and Defense Highways ". The American Right of Way Association, through its National Liaison Committee, offered its services to the Policy and Design Committee of AASHO to review and comment upon this proposed policy. The serious concern of the national utility industries concerning this policy was made known and AASHO arranged a series of individual conferences with the national industry associations and groups to discuss the Policy. The American Right of Way Association offered whatever assistance it could and much of the misunderstanding and distrust between the two groups was lessened and a real understanding of mutual cooperation started from this series of events. It was agreed that both sides would stimulate liaison procedures among State Highway Departments, as well as in the local chapters of the American Right of Way Association. This meeting was adjourned with the agreement that the Joint Committee would meet again at the next annual meeting of the American Association of State Highway Officials.

Meetings were held for the next three years with Messrs. Houston and Greer acting as Co-Chairmen. In 1963, 1964 and 1965, Mr. Jasper Womack of California was appointed Co-Chairman together with Sam Houston. In 1966 and 1967, there were no meetings of the Joint Committee. In 1968, the Co-Chairman for AASHO was Mr. E. M. Johnson of Mississippi and the writer representing ARWA. In 1969, 1970, 1971 and, of course, at the present time, the Co-Chairman for AASHO was our good friend, Charlie Shumate of Colorado, with the writer, Burr Towl of New York, Harold Waddell of Indiana and Al Heidecke of Illinois serving for ARWA. Due to a misunderstanding of time and space requirements, no meeting was held last year, 1972, at Phoenix.

These subsequent meetings proved without a doubt the sincerity of purpose on both sides and the importance of maintaining constant liaison between highways, utilities and like-minded organizations.

After many years of joint meetings, most of which were quite successful and produced tangible results, certain deficiencies and changes manifested themselves and in looking ahead, a few suggestions are made that in my opinion would greatly enhance the operation and effectiveness of the Joint Committee. The Joint Committee, meeting as it has at the Annual Meetings of AASHO, offers an excellent platform for the exchange of information that could contribute toward the solving of problems and avoidance of conflicts between highway and utilities. With the upcoming emphasis on urban highways in the future and the limitation of space for both highways and utilities, it becomes increasingly important to maintain close communication and coordination of activities. The state of the art in both utilities and highway construction is constantly being upgraded, and it is important that both sides be kept informed of these latest developments.

In addition to the presentation of the latest methods which are of interest to all members of the American Association of State Highway Officials,

as well as to the public in general, this Joint Committee should meet in executive session so as to formulate and recommend policies to be followed by all concerned. This, of course, could not be accomplished in a very effective manner with a large group of individuals. The American Right of Way Association section of the Joint Committee has always consisted of approximately 30 members, and the American Association of State Highway Officials section has had approximately 9 to 10 members. There are five major utilities in this Country and a single representative for each industry could be found among the membership of the National Liaison Committee. It is suggested that one person representing the following utilities be appointed for this purpose by the Co-Chairman of the Committee of ARWA. Electric, Gas, Communication (2), Pipelines and Sewer and Water. In addition, Utility Engineers from two state highway departments would complete the ARWA segment of the Joint Committee. Through observation and through participation in every one of the joint meetings in the past, I would like to make a suggestion as to the AASHO side of the Joint Committee. When one considers that the major problem areas concerning utility and highways are;

1. The scheduling and coordination of construction activitives by each party.
2. Traffic interference caused by utility work.
3. Highway maintenance where utilities are in place.

it, therefore, follows that it would be desirable, if possible, that the American Association of State Highway Officials membership be chosen from representatives of the Operating Sub-Committees of Construction, Maintenance, Traffic Engineering; the Administrative Sub-Committees on Legal Affairs and Right of Way, and the Standing Committee on Engineering Policies. It would also be advantageous to choose these individuals so that each AASHO region would be represented. If the Joint Committee could be reorganized along these lines with a maximum of eight persons on each side, specific recommendations and procedures could be promulgated in an Executive Session which should not consume more than one hour duration as part of the annual meeting of the Joint Committee. The majority of the time should be spent in presenting latest developments and accomplishments in both highway and utility fields. These matters should be presented to as large an audience as possible, chosen from both organizations. All members of the National Liaison Committee of the American Right of Way Association should attend these meetings and should encourage the attendance of local committees and interested persons. By the same token, the American Association of State Highway Officials should encourage the attendance of as many members of the committees mentioned above, namely, Engineering Policies, Construction, Maintenance, Traffic Engineering, Legal Affairs and Right of Way, to attend the meeting of the Joint Committee. The state of the art is changing rapidly on both sides and this is the opportunity to get this important message to as many people as possible.

The name of the committee should be changed to reflect the fact that it is a joint highway-utility liaison committee of both organizations. If this were done and the composition of the committee changed and the objectives achieved as suggested above, a real service could be rendered to the public in general who are taxpayer and rate payer alike.

RESOLUTION

WHEREAS, the American Right of Way Association, in the desire to assist in carrying out the national highway construction program, has proposed that a joint committee of representatives of AASHO and representatives of the various utility classes be established to explore the means of expediting highway improvement involving utility relocations by a practical liaison between the highway departments and utility companies; and

WHEREAS, the American Right of Way Association has offered its services as a coordinator to secure the appointment of utility members upon such joint committee; and

WHEREAS, the Executive Committee, through its Secretary, requested that the Committee on Right of Way explore the feasibility of and need for such a committee, at its annual meeting, and to report its recommendations to the Executive Committee; and

WHEREAS, the Right of Way and Legal Affairs Committees have held extensive discussions on these matters at this San Francisco meeting of the AASHO:

NOW, THEREFORE BE IT RESOLVED, By the Right Of Way and Legal Affairs Committees, in joint assembly, that the need for a Joint Liaison Committee of highway and utility representatives is clearly apparent, to seek the ways and means to expedite highway improvement projects involving utility relocation and other matters of mutual interest ; and

BE IT FURTHER RESOLVED, That the Right of Way and Legal Affair Committees recommend that such a joint committee be created by the Executive Committee with the assistance of the American Right of Way Association; and

FURTHER BE IT RESOLVED, That in view of the complexity of the problems involved, that the liaison committee be directed to sponsor, at the earliest possible time after its formation, a study that would assemble and evaluate present administrative practices now current, both on the highway and the utility side, with respect to dealing with highway improvement involving utility relocation and other matters of mutual interest, and to make recommendations concerning the improvement of existing practices on such matters.

/s/ Charles M. Noble
Chairman, Right of Way Committee

The above resolution adopted this 2nd day of December, 1958, at San Francisco, California

/s/ Robert E. Reed
Chairman, Legal Affairs Committee

/s/ David R. Levin
Secretary, Right of Way Committee

/s/ C. W. Enfield
Secretary, Legal Affairs Committee

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

30-03 July 26, 1956

CIRCULAR MEMORANDUM TO: Division Engineers

FROM : S. K. Booth, Acting Solicitor

SUBJECT: Comptroller General's Opinion on Public Utilities

There is attached a copy of an opinion of the Comptroller General, No. B-13533, dated July 11, 1956, concerning Federal participation in the cost of adjusting utility lines located on unreserved public lands of the United States.

Attachment

COMM-DC 10112

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

B-13533 July 11, 1956

Dear Mr. Secretary:

Reference is made to the letter of November 22, 1955, and enclosures, from the Assistant Secretary of Commerce, requesting a decision as to whether Federal participation is authorized under the Federal Highway Act, 42 Stat. 212, 23 U.S.C. 1, and following sections, in the cost of moving utility facilities located on unreserved public lands of the United States when such relocation is required in the construction of a Federal-aid highway project. It is stated that the matter involves our decision of January 18, 1941, B-13533 (20 Comp. Gen. 379).

The decision of January 18, 1941, was rendered over 15 years ago on a statement of facts which the administrative agency then concerned declared to be substantially correct. No question has been raised as to the correctness thereof prior to the receipt of the letter from the Assistant Secretary. In such case, we may not undertake to review the action taken by our predecessor. However, as it is stated in the letter that the determination of the question will affect the procedures of the Bureau of Public Roads in any State in which a Federal-aid highway project necessitates adjustment of utility facilities located on the public domain, the matter will be considered on the problem presently before the Bureau, the facts of which are set out in the enclosures of the letter.

On August 8, 1930, the Bell Telephone Company of Nevada filed with the Department of the Interior pursuant to the act of March 4, 1911, 36 Stat. 1253, an application for an easement for rights of way over, across, and upon Federal lands in the counties of Elke and White Pine, State of Nevada. As part of the application the Company agreed to construct, maintain, and operate its lines in accordance with the terms and conditions set forth in Regulation 6 of the Regulations of the Department of the Interior dated January 6, 1913, (41 L.D. 456), as amended by Circular No. 275½, approved October 25, 1913 (42 L.D. 466). By the terms of these regulations the telephone company agreed to maintain the line, or lines, in such a manner as not to menace life or property and to interfere as little as possible with the use and development by subsequent entrymen and patentees of the lands traversed by the lines, with the understanding that less than 20 feet on either side of the center line would be covered by the easement wherever such diminished right of way is adequate for a proper use and enjoyment thereof. The regulation further provided that the application, together with the approval thereof by the Secretary of the Interior, would constitute the grant and express the terms and conditions thereof. Maps showing the proposed route of the lines in question and field notes of

the survey upon which the maps were based were attached to the application; these maps and notes define and describe the specific location of the easement applied for over and across the public lands in question.

On July 14, 1931, the Department of the Interior granted the application by placing the following indorsement on Sheet 1 of the maps attached to the application:

"DEPARTMENT OF THE INTERIOR

July 14, 1931

"Pursuant to the provisions of the act of March 4, 1911 (36 Stat. 1253), and the regulations thereunder, this map in three parts, of which this is sheet 1, is approved subject to all valid existing rights, but reserving rights of way for canals or ditches constructed by the authority of the United States--the easement hereby granted being limited to a period of fifty (50) years.

/s/ Jas. M. Dixon
FIRST ASSISTANT SECRETARY"

Proof of construction of telephone lines on the easement was accepted and approved by the Department of the Interior on August 27, 1932.

On November 5, 1954, the State of Nevada filed with the United States Land Office an application for a right of way for highway purposes crossing the telephone company's easement in White Pine County, Nevada. Prior to November 5, 1954, there was no highway in existence at that point and the State of Nevada had not filed an application or otherwise attempted to reserve any portion of the land in question for highway purposes. Incident to the construction of the highway, the State of Nevada requested the telephone company to relocate certain of its poles on said easement in order that the State could construct the highway over the applied-for right of way. The telephone company agreed to relocate the concerned facilities reserving its right to payment for the costs of relocation.

The act of March 4, 1911, 36 Stat. 1253, provides, in part, as follows:

"That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights of way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purpose:, to the extent

of twenty feet on each side of the center line of such electrical, telephone, and telegraph lines and poles to any citizen, association, or corporation of the United States ***."

As indicated above, there was granted to the Company an easement for a right of way over a definitely specified portion of the public domain. Furthermore, Regulation 6, under which the easement was granted, specifically provided that the application, together with the approval thereof by the Secretary of the Interior, would constitute the grant and express the terms and conditions thereof. As shown by the approval indorsed on the application, except for existing rights, the only rights reserved in the grant were future rights for canals and ditches constructed by the authority of the United States. These reservations indicate no intent to reserve rights incidental to the subsequent construction of a highway over the land covered by the grant. In light of the specific language of the regulations, no such reservation may be implied.

It is well established that the grantor of an easement cannot change the location of the easement without the consent of the grantee and the same principle is applicable to easements granted by a governmental body. Commonwealth v. Means and Russell Iron Co., 185 S.W. 2d 960. The United States, as grantor of the easement, thus appears to have possessed no right to compel the company to accept some other location for the poles. Moreover, the State of Nevada by the grant from the United States of its application for a right of way for highway purposes manifestly could not obtain such right, since the United States had none.

The United States, however, under the Federal Highway Act, is only authorized to reimburse the States for a specific percentage of the necessary costs of the project and any expenditures the State is not required to make cannot be regarded as a necessary item of cost. 20 Comp. Gen. 387. The mere fact that the United States may contribute to the States under the Federal Highway Act and legislation in the building of roads does not take from or limit the States in the exercise of their police power or right to control and regulate the use of their roads. Southern Bell Tel. and Tel. Company v. Commonwealth, 266 S.W. 2d 308.

An easement for a right of way, however, is a property right in the specific location covered by the grant and ordinarily the taking of such by State authority is inhibited by the 14th Amendment to the Constitution. Panhandle Eastern Pipe Line Company v. State Highway Commission, 294 U.S. 613.

In this respect an easement for a right of way over a specific location where there is no preexisting highway differs from a franchise to lay and maintain rails, pipes, and wires and other structures in an existing puulic highway. Such grant is given upon an implied condition that the structures laid by virtue of its authority shall not at any time interfere with any other public use to which the State may see fit to devote the highway and, consequently, a utility maintaining such structures is not entitled to compensation where the distrubance or an alteration in the location of such structures is made necessary by highway changes. Commonwealth v. Neons and Russell Iron Co., supra.

While the action of State authorities in compelling railroads to alter at their own expense facilities at grade crossings in order to prevent a hazard to public travel has been held not to be a taking of property in the constitutional sense, even where the railroad occupied the space prior to the laying out of the highway (Chicago, B&Q RR. Co. v. Chicago, 166 U. S. 266), this principle is strictly limited to the traffic hazard created by a railroad's use of its tracks and is not to be extended to cases involving utilities whose facilities do not create such a hazard. The courts have not sanctioned extension of the rule to wholly dissimilar circumstances; it does not apply to structures which are unattended by serious danger to the public. Panhandle Eastern Pipe Line Co. v. State Highway Commission , supra. In the present case, the record fails to disclose that the Company's structures were the cause of serious danger to the public. Whatever obstruction they may present to the construction of a highway across the easement is not comparable to the hazard incident to the operation of a railroad train. Like any other lawful structures, the poles may have presented obstacles to construction of the highway, but this might have been overcome by condemnation proceedings and the payment of just compensation.

In the light of the foregoing, we would not be required to object to the participation of the United States in the costs of the relocation of the facilities as a necessary expense of the highway project under the Federal Highway Act,

Sincerely yours,

/s/ Frank H. Weitzel
Assistant Comptroller General
of the United States

The Honorable
The Secretary of Commerce

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

40-70 January 3, 1957

CIRCULAR MEMORANDUM TO: Division Engineers and District Engineers

FROM: A. C. CLARK, Deputy Commissioner

SUBJECT: Public Utility Adjustments

Our memorandum of May 9, 1956, to division engineers requested reports regarding the situation in each State with respect to delays to highway construction caused by failure to effect adjustments in utilities in time to avoid interference with construction operations. The situation disclosed by the reports received is discussed below.

The reports indicate that in approximately one-third of the States highway construction progress is often seriously impeded by delay in effecting utility adjustments. In another third the work is occasionally so impeded, while in the remainder, delays seldom occur.

The reasons given for delays we summarized as follows:

1. Lack of adequate advance planning and investigation.
2. Lack of adequate liaison between highway agencies and utility companies.
3. Lack of early firm commitments by a highway agency is scheduling projects for advancement to construction.
4. Failure to complete plans and acquire rights-of-way sufficiently in advance of construction.
5. Lack of adequate funds, personnel and equipment on part of utility companies.
6. Lack of sufficient knowledge regarding location and nature of underground facilities.
7. Lack of adequate coordination between highway construction and utility adjustment operations.
8. Lack of legal authority to require prompt adjustments of utilities.

The first two reasons listed are the chief causes of trouble and are closely related. To a large extent, with the exception of reason 5, they encompass the other reasons, and are within the control of the highway agency.

The principal difficulty in a number of States is that apparently insufficient attention is given, in the preliminary engineering stages, (1) to determine what utility adjustments will be required, and (2) to notifying the utility companies and developing their cooperation in accomplishing the adjustments at a time and in a manner to minimize interference with the highway construction operations.

Continued

Experience in States where such difficulties have been largely overcome clearly indicates that determination of the problems involved and initiation of action towards their solution must generally begin many months, or even years, before a project is advanced to the construction stage. In the case of one project in California, for example, action toward solving utility relocation problems was initiated about four years prior to undertaking construction.

One of the most important and effective steps consistently taken in those States that have successfully solved the problem of utility adjustments is to arrange for conferences with representatives of the utility companies as soon as the location and plans for a highway project have been developed sufficiently to indicate approximately what utility adjustments will be required. As a result of such conferences, the utility companies are able to make detailed studies of the extent, nature and cost of the work to be done, to budget and allot funds for the work, to acquire any additional rights-of-way required to obtain the necessary materials, and to schedule the operations of its crews to perform the work at the time it should be done to fit highway construction needs. A series of conferences may be desirable in some cases, but in any event, adequate liaison should be maintained throughout the planning and preliminary engineering stages to keep both the State and the utility companies fully informed of subsequent developments and or progress being made.

Some State highway departments have found it advantageous to designate a staff engineer in the central office and/or in each suboffice whose sole or primary function is to handle liaison and coordination with the utility companies from the program stage to the final settlement stage.

In cases where municipalities, Federal agencies, local cooperatives or special commissions own or operate public utilities, similar conferences should be held and liaison maintained between their representatives and the State highway departments.

If the adjustments of the utility company's facilities involve relocating them elsewhere on new highway right-of-way or performing work on such new highway right-of-way, the utility company is, of course, not in a position to start work on the adjustment until the new highway right-of-way is available to it. The new highway right-of-way should therefore be made available as far in advance of the time construction work is scheduled to begin as conditions will permit. This problem is one that should be given full consideration in the advance planning stage and in the scheduling of the construction project.

A difficulty in arranging for utility adjustments in almost all States is that some of the public utilities affected are owned or operated by small private companies or by cooperative organizations that do not have the funds, personnel or equipment to make the adjustments in their facilities. When the difficulty is lack of personnel or equipment, it might be feasible in some cases for the State or local highway agency to have the work done for the utility on a reimbursable basis, or to negotiate with the utility for the highway construction contractor to perform part or all of the construction work either (1) under an agreement directly with the owner, (2) under the highway contract with the State as a bid item, (3) as extra work on a force account basis. When the question is lack of funds, there is no apparent easy answer, unless means can be found to provide legal authority to expend public funds for the purpose on either a grant or loan basis in hardship cases.

Continued

To assist in solving the problems of determining the existence, locations and nature of underground utilities, the District of Columbia Department of Highways has established within its organization an "Underground Unit" with which all utility companies must file plans showing the location and elevation of all underground facilities. Arrangements for any facility adjustments required in connection with highway construction are greatly facilitated by this procedure.

It is not always essential that all utility adjustments be completed before the highway construction begins. In some cases it may be neither practical nor reasonably possible to do so. Examples would be when the existence or exact location of underground facilities in not known until they are encountered in the construction or when the existing facilities or their new locations are not reasonably accessible in advance of certain construction operations. In other instances when these conditions do not exist, it may be wholly objectionable from the standpoint of disrupting the movement of traffic over the road or for other public interest reasons to commence utility adjustments much in advance of the highway construction. When this situation arises, adequate provision should be made in the utility company agreement and in the highway contract for full cooperation between the utility company forces and those of the highway contractor, in which case the State highway department should arrange a meeting with the contractor's representative, the public utilities concerned and the project resident engineer. During this meeting the contractor should provide information on his schedule of operations and the utilities should explain their schedule for adjusting their lines toward agreement on an acceptable plan of operation.

The suggestion has been made that when Federal-aid projects are involved, the Public Roads district engineer should withhold concurrence in award of the highway contract until all utility adjustments have been completed. Such practice would be objectionable for two reasons; (1) it may be either impractical or undesirable to complete the adjustments in advance, and (2) action should be taken at a much earlier stage to plan and arrange for the adjustments to be accomplished at the most advantageous time. Instead, when circumstances justify, authorization to advance the project to the construction stage may be withheld until evidence is given that adequate arrangements have been made for the timely and satisfactory performance of the utility adjustment work.

Statutes in 20 States specifically provide that designated public utilities occupying the public highway right-of-way must be moved at the expense of the utilities when necessitated by highway betterments. The statutes of 5 other States require all of the specified utilities to move their facilities incident to a highway improvement but make no reference as to who is to pay the costs. The courts, however, have uniformly held that the State can require utilities to relocate, at their own expense, any facilities located within the existing right-of-way.

Shere there is lack of legal authority to require utility companies to make prompt adjustments of their facilities a possible solution might be to include in the agreement with the utility company a provision that upon its failure to act promptly, the highway agency may either collect liquidated damages or perform the work otherwise and collect the cost from the company.

Continued

The State of California has a very concise and complete law pertaining to relocation required by highway improvements. Louisiana, Mississippi, New Mexico, Ohio and Washington among others, also have adequate laws covering similar conditions.

New York State by law pays for relocations of municipally-owned utilities required by State highway improvements. The State also may perform such relocation work by contract, by force account, or by any combination thereof. In Missouri, according to State law, relocation costs are borne by the utility, occupying public right-of-way, unless otherwise determined by the State highway department. In Connecticut, whereas the law provides for equitable sharing of costs, the State's Attorney General has ruled that the highway department must, in effect, pay 100 percent of all public utility adjustment costs on all State trunk-line highways except for that portion of the cost providing a betterment. This ruling, of course, eliminates most disputes which would tend to delay construction. In Hawaii, the utility pays the cost up to $3,000 plus 1/2 of the cost in excess of $3,000; Territorial government pays the remainder. The State of California may, by law, advance funds to perform the utility relocations on the basis of reimbursement in 10 years. While this provision is seldom used in California, it might be quite advantageous in some other areas.

Section 111 of the Federal-Aid Highway Act of 1956 makes provision for reimbursement to the State for the cost of the relocation of utility facilities necessitated by construction of Federal-aid highway projects provided the State is legally obligated to pay, in the same proportion that Federal funds may be eligible on the various systems. Generally the cost is interpreted to mean the entire amount paid or expended by a utility for such adjustments or relocations of its facilities as are attributable to the highway construction, excluding betterments to the utility facility and salvage values recovered from the existing facilities; and provided that the terms of the State utility agreement and payment conditions are in keeping with State law.

The foregoing discussion of utility adjustment problems and their probable solutions in transmitted with the idea that it may be helpful in overcoming the problems in States where difficulty has been encountered in accomplishing utility adjustments with sufficient promptness. Copies of this memorandum are enclosed for transmittal to the district offices and State highway departments, and it is suggested that the contents and the over-all problem of utility adjustments be discussed with them.

We shall appreciate receiving comments regarding the material presented herein, and it is requested that we be kept informed relative to any helpful ideas that may be developed and of any actions that are taken to solve the utility adjustments problems. You undoubtedly appreciate that if the expanded highway construction program is to be translated into completed highway improvements with all possible speed, means must be found to eliminate such obstacles to progress as delays in accomplishing utility adjustments.

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

24-20

CIRCULAR MEMORANDUM TO: Assistant Commissioners and
Regional Engineers

FROM: J. C. Allen, Assistant Commissioner for Administration

SUBJECT: Reimbursement for Utility Changes

Copies of working draft of Policy and Procedure Memorandum 30-4 are being forwarded under separate cover.

Please have this studied draft circulated to your interested staff officials, the district engineers, administrative managers, auditors and to the State highway departments for their review and comments. We are transmitting copies direct to the utility companies. A copy of our transmittal letter, which outlines the changes we have incorporated in the preliminary draft of the memorandum, is attached for your information.

We desire to have the consolidated reply for your region and recommendations of the States in Washington by April 15, 1957, in order that any suggestions may receive proper consideration prior to submitting a recommended draft of the memorandum to the Federal Highway Administrator for his consideration.

Attachments

DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25

IN YOUR REPLY PLEASE
REFER TO FILE NO._____

Enclosed is a studied draft of Policy and Procedure Memorandum 30-4 which will when approved supersede General Administrative Memorandum No. 300 relating to reimbursement for utility work. We are submitting this draft to utility companies and utility associations, State highway departments and State and Federal regulatory bodies for their comments prior to submitting recommended draft to the Federal Highway Administrator for his consideration.

We will appreciate your critical review of this memorandum and your comments thereon by April 15, 1957.

In preparing the working draft, consideration was given to the accounting systems of utilities and their internal methods of applying charges, to the elimination of some details of billing, and to the simplification of instructions.

Several changes in the provisions of the preliminary memorandum from that of GAM 300, and other significant features of the draft are described below:

a. Since Federal and State regulatory bodies prescribe in systems of uniform accounting a means of accumulating job costs through work order accounting procedures, reimbursement will be made on the basis of costs properly reported and recorded in the work order accounts.

b. Utilities may be reimbursed for minor relocation by lump sum based on a preliminary detailed estimate of the actual costs that will be incurred.

c. No significant change has been made in allowing payment for actual salaries, wages and expenses paid to employees engaged on a job.

d. All overhead construction costs, not chargeable directly to construction accounts, will be reimbursed on the basis of rate or percentum factors supported by overhead clearing accounts, or such other means as will provide an equitable allocation of actual and reasonable overhead costs to specific jobs. Costs which way be included would cover general engineering and supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, law expenses, insurance, relief, pensions, and taxes. Reimbursement will not be made for interest during construction nor on account of arbitrary rates, percentages or amounts to cover assumed overhead costs.

e. Charges will be accepted for new items at actual cost to the utility. Where inventory or stock records of new materials are averaged under a consistent pricing practice, such records will be accepted as price support. Charges will be allowed for used materials at prices maintained by the utility in its stores records and charged in accordance with the utility's practice on its own work.

f. Credits will be accepted for materials recovered in suitable condition for reuse from the original facility at the price chargeable to the material and supplies account. This means that if the utility's accounting procedure requires a credit to the materials and supply account at current price new, the work order account would receive credit accordingly. Likewise, if the material may be credited to the materials and supply account at original cost or a percentum of current price new and the utility follows a consistent practice in this regard, the work order would receive credit accordingly.

g. A flat rental of 10 percent of billed price will be accepted for materials recovered from temporary use and returned to stores in fit condition for reuse.

h. Reimbursement for use of equipment will be made on the basis of actual costs of operation, repairs and depreciation distributed through the utilities' clearing accounts or an equitable and supported allocation basis. Where equipment costs are not carried through a central account reimbursement may be made on the basis of cost as supported by records reporting actual costs of operation, repairs and a rate for depreciation. Arbitrary rental rates which cannot be supported by company records of cost and use will not be allowed.

Your comments concerning this preliminary draft will be appreciated and will be considered prior to submitting a recommended draft of the Policy and Procedure Memorandum to the Federal Highway Administrator.

Sincerely yours,

J C Allen

J. C. Allen
Assistant Commissioner
for Administration

Enclosure

U. S. DEPARTMENT OF COMMERCE
Bureau of Public Roads
Washington 25, D. C.

STUDIED DRAFT OF POLICY AND PROCEDURE MEMORANDUM 30-4
REIMBURSEMENT FOR UTILITY WORK
(Will when approved supersede GAM No. 300)

Offered for comment and suggestions prior to submitting recommendations to Federal Highway Administrator.

1. PURPOSE AND APPLICATION

a. The purpose of this memorandum is to prescribe the extent to which Federal funds may be applied to costs incurred by or on behalf of utilities in the adjustment of their facilities required by the construction of highway projects under the supervision of a State highway department or of the Bureau of Public Roads.

b. Such policies and procedures shall apply except as provided under subsection c, (1) to reimbursement claimed for costs incurred under all State-utility and under all Bureau-utility agreements entered into subsequent to the effective date hereof, and (2) at the election of the utility, and where not in conflict with existing agreements, to reimbursement claimed for costs incurred under State-utility or Bureau-utility agreements entered into prior to the effective date. Except at the election of the State, the policies and procedures prescribed herein shall not apply to claims for reimbursement of costs for work performed under State-utility agreements now or hereafter entered into on projects under the 1954 Secondary Road Plan.

c. Where State laws or regulations issued pursuant thereto prescribe the division of costs of utility adjustments required by the public interest,

the provisions of this memorandum shall establish (1) minimum standards with respect to contract matters (Sections 2, 3, 4, 5, 6, and 7) and (2) maximum standards of payment (Sections 8, 9, 10, 11, 12, 13, and 14).

1. All provisions of this memorandum shall be applicable to utility adjustments required by highway construction upon determination by the district engineer that State laws or regulations do not prescribe contract and payment standards.

2. DEFINITIONS

a. Utility shall mean and include all privately, publicly or cooperatively-owned telephone lines and facilities, any systems, lines and facilities for the distribution and transmission of electrical energy, oil, gas, water and steam and other pipe lines; including any wholly owned subsidiary thereof.

b. The terms "reimburse" and "participate," or their derivatives, shall mean that Federal funds may be used to reimburse the State or the utility to the extent provided by the law which authorized the expenditure on a particular project.

c. "Bureau" shall mean the Bureau of Public Roads.

d. "District Engineer" shall mean the district engineer of the Bureau of Public Roads.

e. "Costs of Rights-of-Way" shall mean the costs of land and costs incident to the acquisition of land or interest in land.

f. "Preliminary Engineering" shall mean and include locating, making of surveys, and the preparation of plans, specifications and estimates in advance of construction operations.

g. "Construction" shall mean the actual building and all related work incidental to the construction or reconstruction of a highway project except preliminary engineering, right-of-way and engineering or inspection charges included in the utility's construction overhead account.

h. Credit for "Salvage Value" is the amount received for property retired, if sold, or if retained for reuse, the amount at which the material recovered is credited to the material and supplies account.

i. "Work Order System" is a procedure for accumulating and recording all costs in connection with any change in a utility's system or plant into separate accounts.

3. FINDING OF OBLIGATION

a. Where a utility occupies public rights-of-way or public lands, the State or district engineer if the construction is under Bureau supervision shall made a formal finding as to the extent that such utility is obligated or is relieved of the obligation, by law or otherwise, to move or to change its facilities at its own expense.

b. Where a utility occupies a public right-of-way under a grant or otherwise from a municipality or other subdivision of a State which obligates the utility, or pursuant to which the utility may be required to move or to change its facilities at its own expense, approval of the

project will be contingent upon the municipality or other subdivision of the State exercising its right to require removal of or change to the facilities at the expense of the utility.

c. If the State should determine in conformity herewith that a utility is not under obligation and may not be required to move or to change its facilities at its own expense, reimbursement may be made in an amount not to exceed the regular Federal pro rata share applicable in such State for the cost of such work actually paid by the State or its subdivision.

4. RIGHTS-OF-WAY

a. The costs of rights-of-way incurred subsequent to the date on which the program which includes the project is approved or accepted may be reimbursed.

b. The incidental costs may be reimbursed. The independent finding(s) of a qualified appraiser(s) shall be attached to and be a part of the statement to support the acquisition. Any considerable difference between the costs of rights-of-way and the amount of the appraisal shall be fully and satisfactorily documented. The salaries, wages and expenses paid to employees of a utility, who are real estate or land appraisers, may be included as participating costs for the periods of time they are engaged in connection with the acquisition of the required rights-of-way. Upon the request of the utility, advance approval, comment pertinent to the consideration and other provisions of option agreements any be secured from the district engineer through the State or directly from the district engineer where the Bureau is supervising the construction.

5. PRELIMINARY ENGINEERING

The costs of preliminary engineering incurred subsequent to the date on which the program which includes the project is approved or accepted may be reimbursed.

6. CONSTRUCTION

a. Construction costs incurred by a utility subsequent to the date on which the district engineer authorized the State to proceed with the adjustment of the utilities may be reimbursed. Federal funds will not participate in any utility adjustments not necessitated by the construction of the highway project.

b. Except where the utility work is made a part of the highway construction contract as agreed to by the State with the approval of the district engineer all required changes to the properties of a utility and all work incident to such changes shall be performed by the utility with its own forces or by a contractor paid under a contract let by the utility. If reimbursement is to be requested, no contract to perform any work in connection with such required changes to the properties of the utility shall be entered into unless the contract is awarded to the lowest qualified bidder who submitted a proposal in conformity with the requirements and specifications of the work to be performed following a request for bids by appropriate solicitation. Appropriate solicitation shall mean either open advertising in publications or by circularizing solicitation to a list of prequalified contractors or to known qualified contractors. If a utility prequalifies its bidders, a list of such shall be submitted for information purposes to the State or the district engineer for his

approval if the work is under Bureau supervision before the utility work is authorized. Should a utility elect to award a contract to other than to the lowest qualified bidder, reimbursement will be limited to the amount produced by the unit prices submitted by the low qualified bidder. No contract shall be entered into except when a clear showing has been made that it is in the best interests of the project or that the utility is not adequately staffed or equipped to perform the work with its own forces, nor without the prior approval of the State and the district engineer. Subject to the prior approval of the State and of the district engineer, existing continuing contracts under which certain work is regularly performed for the utility and under which the lowest available costs are developed will be considered to conform to the above requirements. All labor, materials, equipment and other services furnished by the utility in connection with the work performed under a contract let by the utility or the State shall be billed by the utility direct to the State, as provided herein, and shall not be billed to the contractor. The special provisions of such contract shall be explicit in this respect.

c. No reimbursement will be made for the cost of any change in any property of a utility other then those shown on the plans for the construction of the project, if such changes are made for the benefit or convenience of a utility, its contractor or a highway contractor.

7. AUTHORIZATIONS AND AGREEMENTS

a. (1) Authorization to the State by the district engineer to proceed with the adjustment of the facilities of a utility may be given when the review of the proposed agreement between the State and a utility, together

with the plans, specifications and estimates for that portion of a highway project relating to the utility work, has been completed. (2) It is understood that Federal funds are not obligated until and unless the entire project has been authorized. (3) The form of the written agreement is not prescribed. The written agreement which has been entered into by the State or the Bureau if the work is under the direct supervision of Public Roads and the utility shall be supported by a detailed estimate and shall incorporate this memorandum by reference. The estimate shall be set forth the items of cost to be incurred such as labor, construction overhead, materials and supplies, handling charges, transportation and equipment usage, right-of-way and preliminary engineering. The factors that will be included in the utility's construction overhead account shall be set forth. Units of materials estimated to cost in excess of $25.00 are to be itemized. The written agreement shall, where applicable, set out by separate clause, the terms and amounts concerning any contribution made or to be made by the utility in costs which have been determined to be the obligation of the State. See Section 3a.

b. The plans or sketch shall show existing facilities, temporary and permanent changes to be made therein and the stages by which these changes are to be accomplished.

c. On those projects where a portion of the total work involved is subject to reimbursement, the agreement shall state the proportionate share to be borne by each party; that is, by the State or by the Bureau if the work is under its direct supervision and by the utility. Reimbursement will be in the ratio that the eligible units of work bear to the entire adjustments.

d. The district engineer's approval shall be indicated in the following form on the page of the agreement on which the other signatures appear:

"Examined and approved: _____
Date

_____
District Engineer"

e. Any estimates of the total cost of the project which is received without the supporting utility agreement may be approved at the election of the district engineer as to the total project, but approval of the work contemplated to be performed by the utility shall not be construed as having been given until the required agreement has been received and approved.

f. In the event it is determined that a substantial change from the statement of work contained in the agreement is required, reimbursement therefor shall be limited to costs covered by a written change or extra order approved by the district engineer.

g. Agreements shall provide that reimbursement for the costs incurred in connection with the adjustment of the facilities of the utility will be based upon one of the following alternative methods:

(1) Actual costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(2) Actual costs accumulated in accordance with an established accounting procedure developed by the utility and approved by the State and the district engineer. Where such a procedure is proposed by a utility, approval by the district engineer will be limited to an accounting procedure which the utility used in its regular operations.

(3) An agreed lump sum where the estimated cost of the proposed adjustment does not exceed $2,500.00. This estimate shall be representative of the estimated actual cost. The lump sum agreement shall be supported by an analysis of the estimated cost of the proposed adjustment and shall be subject to the prior approval of the district engineer. This analysis shall show details such as man hours by class and rate, equipment by type, size and rate, materials and supplies by items and price. Also payroll additives and other overhead factors shall be shown individually with statement of what is included in each.

h. Increase in value of new facility on account of extended service life. In any instance where it is necessary to retain the old facility in service until a replacement facility is constructed and such facility is a major and independent segment of the utility's system, as determined by the State with the concurrence of the district engineer, credit will be required, in addition to other credits set forth in section 11b(1), for the value of the accrued depreciation of the old facility. The accrued depreciation shall be based on reproduction cost of the old facility and the estimated allowance therefor shall be set forth in a lump sum amount in the agreement between the utility and the State, which amount will be subject to any necessary adjustment and audit at the final billing stage. The estimate of cost which is a part of the agreement shall set forth the foregoing amount, together with other proposed credits.

In many instances the adjustment or relocation of utility facilities on account of highway construction will not affect major or independent segments of the utility's system. Therefore, a statement in the State-utility

agreement to the effect that the adjustment covers a relatively minor segment of the utility's system will, under such conditions, be considered as satisfying the requirements of the preceding paragraph.

Whenever a utility elects to construct an entirely new facility and retire the existing facility instead of relocating the existing facility, credits will be required as provided above.

8. MAINTENANCE OF PROJECT COSTS

a. All changes in the facilities of a utility necessitated by a highway project will be recorded by means of work orders or job orders, except as provided in paragraph 7g(2) and (3).

b. The individual and total costs properly reported and recorded in the work order account shall constitute the maximum amount on which Federal participation may be based on account of the work performed under the utility agreement. Separate work orders may be opened for additions and retirements, or the retirements may be included with the construction work order, provided, however, that all items relating to retirements shall be kept distinctly separate from those relating to construction.

c. Each utility shall keep its work order system in such manner as to show the nature of each addition to or retirement from a facility, the total cost thereof and the source or sources of cost.

9. REIMBURSEMENT BASIS

a. General: Where a utility is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs except as hereinafter provided, of labor, materials, equipment and other services incurred by or for the utility in adjustments to its facilities required in connection with construction of a highway project. Except to the extent that a betterment in the utility's facility or component part thereof is necessitated by the requirements of the project, the cost of a betterment in said facility or component part thereof being relocated, reconstructed or replaced will not be reimbursed.

b. Addition: Where an addition to an existing facility is required, such as an increase in the length of a relocated pole line, the actual costs of the items of materials in the addition are reimbursable to the extent the materials in the addition are not superior to the materials in the facility to which the addition is extended. The cost of any improvement in type or size which is required in connection with the construction of the project is reimbursable.

c. Building and Other Similar Structures: (1) The cost of the required relocation of buildings and other structures of a utility which are used primarily for the production, transmission or distribution of the utility's products is reimbursable. Where it is determined to be impracticable to move a building or other structure as a unit intact, the relocation may be affected by dismantling the building or structure at its original site and reassembling or reconstructing it at the new location. The reimbursable costs of relocation may include those of new foundations

of a type equal to those formerly in place at the original site and of the adjustment of utilities without betterment. The costs of the items of materials used in the reassembling of reconstruction of buildings and other structures in new locations which are required to replace items of like materials deteriorated in place below a condition suitable for reuse shall be borne by the utility.

(2) Credit is required when a building or other structure is required to remain in place and in service until the building or structure which replaces it in new location is in service, or when the building or other structure which is required to be relocated cannot either be moved as a unit intact or it is determined to be impracticable to effect the relocation by dismantling the existing building or other structure at its original site and by reconstructing it at the new location for reasons other than that of the condition of deterioration of the incorporated materials in place. The credit to be given to the cost of the project shall be (1) the amount of depreciation accrued against the building or other structure being replaced based on the ratio of the period of actual use to the period of expectant use applied to the recorded capital cost of valuation, plus the values of the materials as recovered from the building or other structure when removed as appraised and recorded by representatives of the State and the utility. Such appraised values will be subject to the review and approval of the district engineer. In no event shall the reimbursable cost of salvaging materials after removal from the retired building or other structure exceed the appraised value of the materials as recovered.

d. Taxes on materials and supplies levied by State and/or local governments, and which are paid by a utility are reimbursable.

10. LABOR COSTS

a. General: (1) The actual salaries, wages, including retroactive pay adjustments, and expenses paid by a utility to individuals during the periods of time they are directly engaged in making, and incident to making, the changes to its facilities and properties, which changes are required in connection with the construction of a highway project, are reimbursable when supported by adequate job time records. This may include individuals who are engaged in the direct and immediate supervision of the work at the site of the project and those who are directly engaged in essential engineering at the site of the project and in the actual preparation of the plans and estimates of the work in connection with the changes required by the construction of a highway project.

(2) Where a utility is not adequately staffed to prosecute the work to be performed in connection with the making of the change to its properties which are required by the construction of a highway project, the amounts paid to engineers, architects and others for required technical services which are approved in advance by the State and by the district engineer will be reimbursed. Approval shall not be given to fees for such technical services which are determined on the basis of a percentage of the total actual cost of making the required changes to the properties of the company.

b. Overhead Construction Costs: (1) So that each job or unit shall bear its equitable proportion of such costs all overhead construction costs, not chargeable directly to construction accounts, as such as general engineering and supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility,

legal expenses, insurance, relief and pensions and taxes shall be charged to particular jobs or units on the basis of the amount of such overheads reasonably applicable thereto.

(2) Insurance: Unless it has been the policy of the utility to carry Workmen's Compensation, Public Liability and Property Damage Insurance regularly with an insurance company on its own construction and maintenance projects and operations, insurance premiums paid to an insurance company for protection incident to the employment of labor engaged in making changes required in connection with the construction of a highway project will not be reimbursed except where the specific approval of the State and the district engineer for the purchase of such protection is given prior to the date on which the forces of the utility began work on the project. When purchased insurance is approved the amount of insurance premiums paid to an insurance company for insurance is reimbursable to the extent it is determined that the amounts of the premiums are the products of the proper rates applied to the amounts of paid salaries and wages exclusive of vacation pay or allowances.

(3) The instructions contained herein shall not be interpreted as permitting the addition to utility accounts of arbitrary percentages or amounts to cover assumed overhead costs, but as requiring the assignment to particular jobs and accounts of actual and reasonable overhead costs.

(4) The records supporting the entries for overhead costs shall be so kept as to show the total amount, rate and allocation basis of each additive and be subject to audit by representatives of the State and/or the Bureau of Public Roads.

11. MATERIALS AND SUPPLIES

a. Costs: (1) Items of new materials and supplies shall be billed at actual costs to the utility. Average of actual unit costs of materials and supplies furnished from the utility's stocks are reimbursable. The costs of handling at stores or at material yards, the costs of purchasing, the costs of inspection and testing, and any charge for general overhead expense are provided for under paragraph 11(c) and shall not be included in the computation of the prices of materials or supplies. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates and allowances.

(2) In those instances where the book value does not represent the true value of used materials they shall be charged to the project at the same rate used by the utility in their own work but in no event shall they be charged at more than actual value.

b. Materials Recovered: (1) From Permanent Facility: Materials recovered in suitable condition for return to stock in connection with construction or retirement of property shall be credited to the cost of the project at current stock prices, or if a utility charges recovered material to the material and supply account at original cost or a percentum of current price new and the utility follows a consistent practice in this regard, the work order shall receive credit accordingly. The credits allowed for materials recovered shall be subject to the review and approval of the State and the district engineer. The foregoing shall not preclude any additional credits when such credits are required by State law or regulations.

The State and the district engineer shall have the right to inspect recovered materials.

If recovered materials are not usable they shall be disposed of as outlined in paragraph 11.b (2) (b).

(2) From Temporary Use: (a) Materials recovered from temporary use in connection with the construction of a highway project which are in suitable condition for return to stock shall be credited to the cost of the project at stock prices charged to the job less ten (10%) percent for loss in service life. The State and/or district engineer shall have the right to inspect all recovered materials.

(b) Items of materials recovered from temporary use in a condition or length unsuited for acceptance by the utility, which have been determined to have a sale value, shall be sold following an appropriate solicitation for bids to the highest bidder. The proceeds of the sale shall be credited to the cost of the project. The sale shall be conducted by the State, or at the request of the State, by the utility. In no event shall the State or the company be considered as an acceptable bidder for such material.

(3) The cost of salvage shall not exceed the value of the recovered material.

c. Handling Costs: The costs of supervision, labor, and expenses incurred in the operation and maintenance of the storerooms and material yards including storage, handling and distribution of materials and supplies are reimbursable. A rate or other equitable method of distribution which is representative of the ratio of such costs to stores issues and recoveries will be reimbursed.

12. EQUIPMENT

a. Accumulation of Costs: Accounts for transportation and heavy equipment are used for the purpose of accumulating expenses and distributing them to the accounts properly chargeable with the services. Among the items of expense clearing through these accounts are the following: depreciation; fuel and lubricants for vehicles (including sales and excise taxes thereon); freight and express on fuel and repair parts; heat, light, and power for garage and garage office; insurance (including public liability and property damage insurance) on garage equipment, transportation equipment and heavy work equipment; license fees for vehicles and drivers; maintenance of transportation and garage equipment, operation of garages; and rent of garage buildings and grounds. Operators' salaries are not charged to this account.

b. Reimbursement of Equipment Costs: (1) The equipment expenses may include the cost of supervision, labor, and expenses incurred in the operation and maintenance of the transportation equipment and heavy equipment of the utility, including direct taxes and depreciation.

(2) Small Tools: Reimbursement for the use of small tools on a project will be limited to reasonable loss or damage during the period of use, when such loss, or damage is not due to negligence. Claims for such loss or damage should be billed in detail.

(3) Rental: Where the utility does not own available equipment of the kind or type required, reimbursement will be limited to the amount of rental paid to the lowest bidder following an appropriate solicitation for

quotations from owners of the required kind or type of equipment, or in the event of an emergency, such as breakdown of utility equipment, reimbursement will be allowed for rental of equipment at the lowest rate available.

(4) A utility shall make use of its available equipment without a charge for general overhead expense.

13. TRANSPORTATION

a. Employees: (1) The cost of essential transportation performed in automobiles or trucks owned by the utility shall be held to have been reimbursed in the payment of the operating costs of the conveyance equipment or of the rates representative of the equipment operating expenses as provided herein under "Equipment."

(2) Reimbursement for the required use of automobiles which are privately owned by employees of the utility will be limited to the established rates at which the utility reimburses its employees for each mile of use in connection with its own construction and maintenance projects and operations.

14. UTILITY BILLS

a. Monthly progress billings of incurred costs may be made by a utility, if acceptable to the State.

b. One final and complete billing of all costs incurred shall be made by the utility at the earliest practicable date after completion of the work. The statement of final billing will be by phases of the work performed, and be in the order of the items in the estimate portion of the agreement between the State and the utility. The totals for labor, overhead

construction costs, travel expense, transportation, equipment, material and supplies, handling costs, and other services shall be shown separately by phases of work. Units of materials costing in excess of $25.00 each are to be itemized. Rights-of-way and preliminary engineering costs need not be reported in the utility bill by construction phases of work. Salvage credits from permanent and temporary usage shall be separate items within the work phase involved. The final billing shall show the description and the site of the project, the Federal-aid project number, the date on which the first work was performed or if preliminary engineering or right-of-way items are involved, the date on which the earliest item of billed expense was incurred, and the date on which the last work was performed or the last item of billed expense was incurred, and the location where the records and accounts of the costs billed can be audited. The utility shall make adequate reference in the billing to its records, accounts and other relevant documents.

c. Before final reimbursements may be made to a State for the cost of the work performed by a utility, the cost records and accounts are subject to audit by a representative of the Bureau of Public Roads. During the progress of construction and until the audit of the utility records has been completed, the records and the accounts pertaining to the construction of the project and accounting therefor will be available for inspection by the representatives, of the State and the district engineer.

d. During the audit of the records and accounts which support the billed costs, the representatives of the Bureau of Public Roads will discuss with the representatives of the utility all items of costs to which

exceptions may be taken or on which comments may be made. The district engineer will refer one copy of the exceptions taken and of the comments made direct to the utility and one copy to the State. To permit consideration of the utility's statement of explanation or rebuttal in reference to the audit exceptions and comments, one copy of such statement shall be transmitted by the utility direct to the district engineer within thirty days following the receipt of the audit exceptions and comments, or advice in writing should be made as to the date on which the utility's statement will be transmitted. One copy of the utility's statement or advice in writing shall be transmitted to the State. When the State expresses its desire to refer the exceptions to the utility and to receive the utility's comments relative thereto, the district engineer will refer two copies of the exception to the State with request that reply will be furnished promptly.

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DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington, D. C.

24-20 December 18, 1957

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: C. F. Barker, Chief Accountant

SUBJECT: Policy and Procedure Memorandum 30-4

The subject memorandum which will become effective on or about January 1, 1958, permits reimbursement with Federal funds of utility company costs accumulated an a work-order basis prescribed by the applicable governmental regulatory bodies.

To assist you in carrying out the intent of the memorandum there are being forwarded under separate cover direct to the regional and division offices one copy each of the following documents relating to utility company accounting systems:

Part 31 Uniform System of Accounts for Class A and B Telephone Companies by Federal Communications Commission (January 1957, edition)

Part 35 Uniform System of Accounts for Wire-Telegraph and Ocean Cable Carriers by Federal Communications Commission

REA-Bulletin 181-1 Uniform System or Accounts for Rural Electric Cooperatives

REA-Bulletin 181-2 Standard List of Retirement Units for Rural Electric Cooperatives

REA-Bulletin 184-2 Work Order Procedure for Rural Electric Cooperatives

REA-Bulletin 184-3 Continuing Project Records for Rural Electric Cooperatives

Additional copies of these my be obtained from the Government Printing Office.

FPC-A-5 Uniform System of Accounts
Public Utilities and Licenses

FPC-A-12 Uniform System of Accounts
Natural Gas Companies

Additional copies of these may be obtained from Federal Power Commission, Office at Public References, Washington 25, D. C.

It is requested that the above mentioned documents be retained in a place readily available to the auditors who will be responsible for the examination of the basic records maintained by utility companies.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

24-21 September 17, 1958

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: C. F. Barker, Chief, Finance Division

SUBJECT: Relocation of Utilities from or within Publicly Owned Lands

Quoted for your information is a memorandum to a regional engineer in reply to questions relative to the above subject:

"Please refer to your memorandum of September 5 which points out variations in interpretations of "publicly owned lands" within the division offices of your region. "Publicly owned lands" are considered to be those held by any governmental unit, whether Federal, State, or political subdivision thereof.

As you know, section 111 of the 1956 Federal-aid Highway Act provided for Federal participation in costs of utility relocations in those instances where the State payment was not in violation of State law or of a contract between the State and the utility company. The contract referred to in the Act has been interpreted to include franchises and other types of occupancy permits granted by the public to public utility companies. This legislation permitted participation in utility relocation costs where publicly as well as privately acquired interests in land were involved. Subsequent to the enactment of the 1956 Federal-aid Highway Act, a number of the States enacted legislation which authorized payment for utility relocations without regard to existing contracts or occupancy permits. Subsequently, there was raised serious question of propriety of Federal fund participation in expenses incurred under the authority of these recent legislative actions of the States.

In view of the question noted above, this office agreed with the Office of the General Counsel that no payment would be made on account of a utility relocation from or within publicly owned lands until or unless the constitutional authority of the State to incur the expenses was established. The discussions between you and representatives of this office were brought about by this agreement.

In order to reaffirm the request made by Mr. J. J. Hanagan, it is our intent to refer to the General Counsel any proposed utility relocation or settlement thereunder where the State' s authority to pay under current State law has not been affirmatively established to the satisfaction of the Bureau. In any case arising in a State where such authority has not been previously established, particularly a State which has enacted legislation on the subject since enactment of the Federal-aid Highway Act of 1956, the question is to be submitted to the General Counsel. The submission should be accompanied by citations to the State statutes relied upon by the State and pertinent court decisions, and copies of any State Attorney General opinions on the subject."

U. S. DEPARTMENT OF COMMERCE
Bureau of Public Roads
Washington 25, D. C.

24-21 February 10, 1959

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: C. E. Fincher, Jr., Chief, Finance Division

SUBJECT: External Audit of Public Utility Relocation Claims
(Section 123, Title 23, U. S. Code)

Section 111 of the Federal-aid Highway Act of 1956 provided for reimbursement with Federal funds "whenever a State shall pay" for the cost of relocation of utility facilities necessitated by construction of a highway project. Section 1.10(j) of the Regulations for the Administration of Federal-aid for Highways effective February 21, 1957, provided for reimbursement of the Federal pro rata share of the cost of such work "actually paid by the State or its political subdivisions."

It has come to our attention that these provisions, as well as Section 123 of Title 23, United States Code, may not have been uniformly interpreted and applied. Title 23 is explicit and mandatory with respect to "Federal-aid highway projects for which Federal funds are obligated subsequent to April 16, 1958, for work, including relocation of utility facilities." Under an interpretation of Section 106(a) of Title 23, the obligation of Federal funds occurs upon written authorization of the Public Roads division engineer for the State to proceed with any phase of the work. (See paragraph 4.b(2) of Policy and Procedure Memorandum 21-1.)

Section 123 of Title 23 provides "when a State shall pay for the cost of relocation--" and "such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that the State has paid such cost from its own funds--". Satisfactory evidence is construed to consist of audit verication at the site of basic record in offices of the State that disbursement has been effected. Where audit findings show final payment has not been effected by the State citation, to the entire utility claim should be made on Form PR-302, items for Administrative Review, and Bureau audit of the final claim should not be made in offices of the utility.

The determination that actual payment has been made precedes or is in addition to audit verification that payment does or does not violate the laws of the State or violate a legal contract between the utility and the State.

(more)

Section 123 of Title 23 is applicable to Federal-aid primary, secondary, and interstate system projects including extensions thereof in urban areas.

It may be that in a few States agreements with utilities are still being executed with a retent clause which provides for final payment after audit and approval of costs by Public Roads. For utility work authorized subsequent to April 16, 1958, steps should be taken to effect modification of such agreements. Whether or not such agreements are modified, our auditors are charged with the responsibility for citing those cases and conditions which do not comply with the law as indicated in Title 23.

U. S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington, D. C.

CIRCULAR MEMORANDUM TO: Regional and Division Engineers DATE: March 30, 1959

FROM: C. E Fincher, Jr., Chief, Finance Division

SUBJECT: Audit and Reimbursement for Public Utility Relocation Costs

Following the release of the Circular Memorandum of February 10, 1959, SUBJECT: "External Audit of Public Utility Relocation Claims", requests have been received for a procedure that would meet the provisions of Section 123, Title 23 U. S. Code and Policy and Procedure Memorandum 30-4. Such procedures were requested for application where a State desires to retain a percentage of the amount claimed by a utility company or where State law precludes full payment of a utility claim in advance of a determination of eligibility and Federal funds requirements. It is considered that the following procedures will permit compliance with both Federal and State legal authorities.

It being the primary responsibility of a State to make a determination that payment of a utility company's claim may be made with State funds and, further, that such payment does not violate the laws of the State or the terms of a legal contract between the utility company and a State, the State should be prepared to furnish evidence of such a determination at such time as a claim to presented to the Bureau of Public Road. Upon receipt of or knowledge that the State's determination has been made, Public Roads may accept a voucher from the State in which claim is made for the pro rata share of the amount actually paid to the utility. It is presumed that the amount actually paid to the utility company will represent a substantial percentage of a total billing; that is, payment has been made subject to a reasonable retent. The audit of the utility claim may then be made in the usual manner as well as a determination of the amount eligible for Federal participation in the total utility billings. Payment, however, would be limited to the pro rata share of the amount paid or the amount eligible for Federal participation, whichever is the lesser. Such remaining portion of the utility claim as is eligible for Federal funds may be reimbursed subsequent to actual payment thereof by the State to the utility company, with proper cross referencing to the original claim and voucher submission.

This procedure will enable the State to claim reimbursement for its pro rata share of reimbursements currently made to utility companies and will ordinarily eliminate claim for refunds from the utility for items found not eligible for Federal refunds. It will also eliminate the necessity for revising agreements between the States and utility companies that now provide for a retained percentage pending final settlement.

U. S. DEPARTMENT OF COMMERCE
Bureau of Public Roads
Washington 25, D. C.

22-4O March 30, 1959

CIRCULAR MEMORANDUM TO: Regional Engineers

From: G. M. Williams, Assistant Commissioner
By: M. B. Christensen, Chief
Construction and Maintenance Division

Subject: Coordination of utility adjustments with highway construction

Attached is a copy of a paper on the subject "Utility-Highway Department Coordination as it Affects Highway Construction." This paper was prepared by Mr. C. M. Pressey, Utility Engineer, Vermont Department of Highways, and was presented by him at Construction and Maintenance Conference recently held at Albany, New York, for State and Public Roads employees in Region 1.

It is believed the paper contains information and ideas that will be of interest and may be helpful in connection with handling utility adjustment problems in other areas.

Attachment

A-109

UTILITY - HIGHWAY DEPARTMENT COORDINATION

AS IT AFFECTS HIGHWAY DESTRUCTION

In the first place, it seems necessary to state, that to the best of my knowledge no one in the Vermont Department of Highways pretend to have all of the answers to the Highway-Utility Relationship.

The facets of this problem are many and varied end in many instances have no "black is black and white is white", answers. As the heading of this paper suggests whatever I have to say this afternoon will be confined to only one factor of this broad relationship, and I will welcome suggestion from anyone who has an idea on how to improve coordination work toward the relocation of Utility facilities prior to construction conflicts.

Our first approach to the problem in Vermont to by means of what we call the "Series O" letter, which is forwarded to all Utility companies known to operate in the area of a proposed Highway Project. This letter, with its enclosed map showing proposed project terminii, is initiated at the time of programing of the project with the Bureau of Public Roads and thus, ordinarily, affords the Utility company one to two years advance notice of impending construction.

Although the map makes no pretense of showing the proposed center line, it does define the general area and route of the work and thus warns the Utility company of the project in time to allow them to budget funds for extraordinarily expensive relocation work and also warns them that they may well look to their inventories of critical item. For example "Quodded" telephone cable must be manufactured to order and requires four to six months' notice in order to be on hand when it is needed. The same holds true for power transmission line structures, conductor and insulators. No Utility Company could afford to maintain a stockpile of 65-foot to 75-foot poles and the miles of conductor necessary to replace an important transmission line. Twelve-inch water main and fittings likewise are not usually found in the bins of the nearest plumbing shop.

ATTACHMENT 34

Our next contact with the Utility company comes when detailed plans of the project are forwarded, along with an invitation for a meeting at the project site between Utility engineering personnel and myself.

Prior to the above, I have made a personal field check which has several purposes.

1. To note any errors, omissions or necessary changes to Utility topographic features as shown on first stage plans. It is surprising how often future embarrassment and misunderstandings can be avoided by reason of plan corrections which derive from this preliminary check.

2. The preliminary check also affords an opportunity to check the scope of the Utility work and often possible Utility relocation routing suggestions are of value during the joint meeting referred to above.

3. Occasionally this trip will uncover a utility installation not previously known to exist. One or two bitter experiences have taught me that it is better to be surprised at this stage in the game than after the contractor has moved in.

At the joint field meeting such details as the required relocation route are discussed, probable scheduling of the construction work, and payment for such relocation work as can be properly reimbursed under Vermont statutes. Sometimes such problems as "Why the blankety blank blue blazes did Contractor Joe Blow blast my 44.0 KV into the river on his last job?", come in for a certain amount of review. However, it is generally recognized that as Vermont is a small State, the same utility and highway personnel who got sore at each other on six months ago job "A" will be needing help from each other on job "B" six months hence, and therefore everybody concerned keeps personalities to a minimum. Besides we really like each other. Some of these relationships go back over a period of twenty years or so when we both were climbing poles together. We both recognize that certain basic conflicts must be considered and that mutually agreeable solutions to these problems not only make the job easier for everybody; they also take a little pressure off Johnny Q. Public, who in the last analysis picks up the check all the way along the project.

Subsequent to the field meetings, the next contact with the Utility company consists of the mailing of our regular "Notice for Bidders" form which alerts the

Utility organizations to the fact that their survey should be complete, materials on hand and that it is time to schedule the work for construction.

Subsequent to the award of contract, a form letter giving the contractor's address, the name and field location of the Highway Department Resident Engineer and a request to "get the show on the road" is forwarded to Utility personnel.

The above resume' of Highway Department-Utility relationship insofar as form letter contacts are concerned, completes one phase of this discussion. I am not trying to minimize the importance of this documentation when I say that in my opinion the relocation work can either progress from here or fall flat on its face depending upon what sort of relationship the utility engineer can maintain with the men who get the work done. In the last analysis, roads are built and utility facilities are relocated by people, not paper work! I believe it is very important to get to know the man who is in charge of getting the work done. Learn his language and his problem and help him when you can. He will do likewise.

The last phase of this discussion is centered around a recent publication of the Highway Department which is entitled "Regulations and Permit Procedures Governing Specified Obstructions Within a State Highway Right-of-Way" and was adopted by the State Highway Board an May 23, 1958.

Pages 16 through 26 of this manual are devoted to Permit Procedure to be followed in establishing a utility facility within Highway Right-of-Way or when making major repairs to an existing facility; and to the formulation of a set of minimum standards to be followed as regards clearance of such facilities from the highway.

The need for such a directive was triggered primarily from two weak points in our relationship.

(1) We were getting too many lines rebuilt a pole or two at a time along our highways. Because these poles were replaced "in line" and in place of obsolete plant we found that a pole line which had existed for years 3 or 4 feet off the edge of the travelled way would, over a 5 or 6-year period, be completely rebuilt and in the same relative position to the road.

(2) In the absence of a written procedure we found that justifiable criticism from Utility personnel was received, because a certain policy which was acceptable to Highway people in one area was completely unacceptable in another.

This manual was written in an honest attempt to approach the problem from a dispassionate standpoint but also with the objective in mind that present routines of ditch cleaning, power mowing of shoulders and other mechanized maintenance procedures will multiply in future years and obstructions within the highway must be kept to a minimum. We therefore say, for example, that pole lines must be kept back 10.0 feet from the point of shoulder or 4.0 feet back of a maintained ditch line. However, if such clearances would result in forcing a Utility company to occupy private property, the facility my be placed just within the right-of-way boundary line.

Certain constructive measures pertaining to the application for and issuance of permits are also spelled out.

This manual represents our first attempt in the field of minimum standards, etc., and at this date the manual has been in use for only a short time. We fully expect that the future will point out desirable changes and will endeavor to approach these problem in a constructive manner, if and when they develop.

This manual also contains two drawing plates devoted to utility clearance specifications. Whereas time does not permit further quotations from the subject matter, I am sure that we shall be glad to forward copies of the manual to anyone interested in this subject. We also will welcome suggestions for improvement of the manual.

This just about completes what I have to say on the subject of Utility-Highway relationship and I am now glad to turn the meeting back to our moderator, Mr. Snow.

If he so desires, I shall be glad to attempt the answers to any questions which may be forthcoming. Thank you very much for your attention.

December 22, 1958
C. M. Pressey, Utilities Engineer
Vermont Highway Department

U. S. DEPARTMENT OF COMMERCE
Bureau of Public Roads
Washington 25, D. C.

July 31, 1959

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: G. M. Williams, Assistant Commissioner
22-00

SUBJECT: Title 23, U.S.C., Section 112(c) and Contracts for Utility Relocations or Installations

To remove some uncertainties that may exist with regard to the cited subject, the following opinions and comments have been developed.

The Office of the General Counsel, after comprehensive review, has furnished us the statement that "- - -we are of the opinion that construction contracts which are awarded by the owner of a utility, are not subject to the statutory requirement governing the award of highway construction contracts which are set out in 23 U.S.C. Section 112, Letting of Contracts, subsection (c)."

On basis of this opinion, the following comments are pertinent to portions of the following PPM's.

1. PPM 30-4, Section 6. The last sentence of subsection "b" means that the State and the division engineer are to give prior approval to a utility company's request to perform work by the contract method, but it is not meant that the State and the division engineer are to give prior approval to a specific contract as may be awarded by the utility after the contract method of performance has been approved. Subsections "c" and "d" set the controls with regard to assurance that there be appropriate solicitation for bids, or prior approval by the State and the division engineer for performance of work under continuing contracts under which the lowest available costs are developed, and with regard to the limits of Federal-aid reimbursement under contracts entered into by a utility.

2. PPM 21-6.1. Section 2 cites that the provisions of Section 112(c), Title 23, are applicable to "- - -State contracts for which concurrence by the Commissioner of Public Roads is required." Utility contracts are separate and distinct from State contracts, and thus the provisions of PPM 21-6.1 are not applicable to contracts awarded or entered into by a utility company.

- more -

3. PPM 21-6.2. Section 5-a contains the administrative determination that it is in the public interest to perform by force account the installation or adjustment of utilities. If, in accordance with PPM 30-4, it is found to be in the public interest to permit a utility company to have work performed by contract, then the conditions of that PPM and the comments of paragraph "1" of this memorandum control.

4. PPM 21-6.3. Section 2 cites that the conditions apply to all Federal-aid highway projects, except those constructed under the 1954 Secondary Road Plan. While utility adjustment work may be a part of a Federal-aid highway project, if the utility work is performed under a contract awarded by the utility company, such contract is subject to the conditions of PPM 30-4 and of paragraph "1" of this memorandum. If the utility adjustment work is performed under a contract awarded by the State which is subject to prior approval of the Bureau, such contract is subject to all conditions applicable to a Federal-aid contract for a highway project.

5. PPM 21-12. Section 6, sentence three, refers to approval of "---performance arrangements---." In case of a utility adjustment or installation, the performance arrangement might be either by force account or by contract. Regardless of what performance arrangement is approved, there is to be issuance by the Bureau of authorization for the utility work to proceed, the same as is done for work directly undertaken by a State for a Federal-aid contract for a highway project.

The General Counsel has called attention to the situation which may occur wherein a utility company perform work as an agent for a State, which work, if performed by the State, would be subject to the requirements applicable to State operations. In case a utility company is actually performing the work for the State as its agent, the work by the utility company should be performed in accordance with the requirements that would be applicable if the State was having the work performed by a State contract with any private contractor.

U. S. DEPARTMENT OF COMMERCE
Bureau of Public Roads
Washington 25, D. C.

September 12, 1960

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: C. E. Fincher, Jr., Chief, Finance Division
24-20

SUBJECT: Audit Consideration of Overhead Costs Presented by Utility Companies

Analysis of a number of audit reports prepared under auditors' interpretation of PPM 30-4 and Transmittal 40, Appendix 1 of Chapter VII, Volume 28 of the Administrative Manual, issued April 22, 1960, indicates some misunderstanding of these instructions. This memorandum is therefore issued to bring about uniformity of auditor interpretations of the governing memorandums as they apply to the subject matter.

Reference is made to the definition of "overhead costs" set forth in PPM 30-4 and Section 7.e. thereof which set forth general rules under which accounting systems of the utility companies are prescribed, or may be approved upon appropriate action of the division engineer. It appears that the interpretations of these provisions have brought about audit citations of overhead costs on the simple premise that the utility company does not normally distribute its overhead costs on a work-order basis. The provisions of these sections of the governing memorandum should be considered jointly with Section 10.b. (1) of PPM 30-4 and a finding of arbitrary or unreasonable basis of allocation should be considered as immediate casue for citing the amounts claimed. More specifically, where the provisions of Section 7.e. (1) of PPM 30-4 do not apply, the accounting systems should be considered for approval under the provisions of Section 7.e. (2). Reasonable application of the provisions of this later section will permit consideration of overhead costs accumulated in and identified under separate accounts regularly maintained by the utility company. It merely remains for the auditor to analyze these accounts and the method of charging the project to (1) make certain that non-compensable overhead items such as those set forth in Transmittal 40 are not considered in the computation and (2) that the method or basis of distribution thereof to the project results in an equitable and reasonable charge for the indirect expenses.

An illustration of an accounting operation which will be uniformly found to require consideration of Section 7.e. (2) of PPM 30-4 are the accounts maintained by companies regulated by the Interstate Commerce Commission; such as, pipeline transportation companies. With

this knowledge, it would be appropriate for future State-utility agreements involving such utility companies to report the company's method of accumulating such cost and the method of allocation thereof proposed by the company. A letter description of the company's proposal attached to the agreements would generally suffice. This does not contemplate that existing agreements will be amended to accomplish this purpose. It is contemplated that the principles outlined above will be applied to utility agreements already in existence and that the auditor will be guided accordingly in the course of audits of claims submitted pursuant to such agreements.

The auditor should bear in mind that the foregoing does not apply to those circumstances where overhead costs are not accumulated and identified in separate accounts as a matter of regular accounting practices of the utility company. The auditor is not to develop overhead accounts but is only to analyze and audit accounts regularly maintained by the utility.

Each region in which the headquarters office of such a utility is located should conduct the primary survey of the overhead accounts and approve the appropriate rates. A copy of the survey and related documents will then be sent to every other region in which the utility operates.

U. S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D. C.

December 2, 1960

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: C. E. Fincher, Jr., Chief, Finance Division
24-20

SUBJECT: Public Utility Relocation Costs

Results of a recent study of audit workload related to production capacity of available staff, indicate a disproportionate share of the Bureau's audit effort is expended on the audit of public utility relocation costs. A relatively low ratio of auditor performance to dollars paid is not unexpected where much of the workload is comprised of relatively minor accounts requiring extensive travel and examination of actual cost records for day labor, materials, equipment, transportation, and indirect-overhead cost items. Nevertheless, we cannot accept the low production ratio as a continuing condition not susceptible to improvement. Rather, more efficient procedures for administering public utility relocations must be developed.

More extensive use of lump sum or fixed price contracts or the use of unit price payment methods for standard work items would, without question, result in savings in the audit of work performed under State-utility agreements. However, since many States have not taken advantage of authority to contract, even for minor public utility relocations, on a lump sum basis, Section 7.e (3), PPM 30-4, it appears that these contract methods are not especially attractive to the States. It follows that the underlying cause of this situation must be identified and eliminated before determination can be made whether any general benefits might accrue from broadened and more extensive use of these methods. It is therefore requested that an analysis be made of past and proposed utility relocations, in your States, giving consideration to the following:

1. Does the State make (a) extensive, (b) limited or (c) no use of the contracting authority of Section 7.e (3), PPM 30-4? Where appropriate, comment upon benefits derived through use of this authority.

2. Where extensive use is made of lump sum contracting methods, what would the State's position be should the limit be increased to (a) $5,000, (b) $7,500, ©) $10,000, or (d) more?

3. Where listed or no use of the lump sum contracting procedures is evident, what is the principal reason(s) for the State's position; including any objections that may originate with the utility companies?

4. Where extensive use of the lump sum contracting method is evident, what practice is the State following in providing for adjustments in costs arising from changes in plans?

5. Should the limiting amount on lump sum contracts be increased, at what point would you consider the complexities of the work to require additional engineering effort; e.g., analysis of plans and estimates, to the degree that any potential savings in audit effort would be offset?

6. To what extent, if any, are specifications, either standard or special, available for work performed in the relocation of utility facilities? If very limited in coverage, do you believe it feasible and desirable to consider development of specifications for standard work items, which in turn may be susceptible to unit price compensation?

We would appreciate receipt of your comments in response to this memorandum within a period of 30 days after the date of its issuance.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

December 6, 1960

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: C. E. Fincher, Chief, Finance Division
24-21

SUBJECT: Separability of States' Claims for Prompt Payment

It has come to the attention of this office that in some cases unpaid final vouchers consisting primarily of audited construction and engineering costs are being held in division offices pending an audit of a relatively small percentage of the amount claimed consisting of unaudited railroad and/or utility bills. Under such circumstances, when it is administratively determined that the audit of the railroad and/or utility bills cannot be accomplished within 30 days after the receipt of the voucher, consideration should be given to withholding payment of amounts due on account of the audited amount so that the audited and approved portion of the claim may be processed for payment.

This procedure will require the division office to cross out the word "Final" on the voucher and prepare a memorandum to accompany the voucher. The memorandum should include the usual information relative to the project identification and amounts involved, and should also include a notation similar to the following under the "Items Eliminated" section; "Payment of the amount claimed for railroad and/or utility work (as the case may be) has been withheld pending completion of a review by Public Roads of the amount withheld." The amount involved should be shown in the usual manner.

After completing the audit of the amount withheld, a "Final" voucher should be prepared in the division office with appropriate project identification and cost data shown on the face of the voucher. Since the State's certification of the costs involved was made on the previous voucher, the signature of the authorized State official is not required. The following notation, however, should be shown in the space reserved for the signature, "For Authorization see Bureau Schedule (No. And Date)." The signature of the Public Roads Representative should appear in the space provided therefor. The cost details of the project need not be repeated on the reverse of the voucher. A reference to the schedule No. and date where this data is available will suffice.

Form PR-37 -"Final Voucher as paid"- should not be submitted until the withheld items are processed.

In order to minimize the additional work placed on the Bureau by such operations, the States should be urged to encourage railroad and utility companies to submit their bills as soon as possible after completion of the work required by or in connection with a highway project so that the States can include such costs in a progress voucher. In cases where the preparation and submission of a final voucher by a State is delayed by reason of their not having received a railroad and/or utility bill related to a project, the State might desire to submit a semi-final voucher covering all the applicable engineering and construction costs in appropriate detail. The final voucher should then include the previously paid costs and the formerly outstanding railroad and/or utility bills with appropriate details as required by governing memoranda.

In cases where no substantial payment will be due to the State on a final voucher if the amount claimed for railroad and/or utility work is suspended as indicated above, the voucher should be held until the audit is completed. Under such circumstances, Form PR-328 "Status of Audit Workload" should reflect only the unaudited amount of the voucher as indicated on Form PR-187 "Audit Record Card," in accordance with applicable procedures.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington 25, D.C.

February 20, 1961

CIRCULAR MEMORANDUM TO: Regional Engineers (Except Region 15) and Division Engineers

FROM: G. M. Williams, Assistant Commissioner
22-53 Washington, D. C.

GMW

SUBJECT: The Uniform Application of Utility Procedures and Field Reporting Instructions

The Utility Seminar held in Washington, November 14-18, 1960 which was attended by utility engineers and/or representatives from Regions 1 through 10, resulted in substantial progress toward achieving a nationwide uniformity in the application of the Bureau's policies and procedures governing utility matters. Subsequent to the Seminar, reports have been received from these regions expressing views as to the principal points which need emphasis to improve and strengthen the Bureau's operations in such matters. We have received and analyzed the various suggestions and recommendations received and have prepared a summary of those comments which warrant your special attention and consideration.

The following summary covers three general areas of consideration for utility matters, namely;1. The Principal Objectives and Activities of the Regional Utility Engineers and/or Representatives, 2. The Role and Responsibility or Division Office Personnel, and 3. Field Reporting Procedures.

1. Principal Objectives and Activities of Regional Utility Engineers and/or Representatives.

a. Working through the division engineer, promote the establishment of adequate utility sections within State highway organizations as indicated in 2g below.

b. Orient, indoctrinate and provide technical counsel for regional and division personnel.

c. Correlate and amplify Washington procedures and instructions relating to utility matters with the action to be carried out by the field personnel.

d. Keep abreast of all legislative actions and court decisions affecting utilities and their relations with the highway program.

e. Have a thorough knowledge of the relationship that exists between utility matters and those of other functions which may be affected by them, such as right-of-way, construction, geometrics and design.

f. Have a periodic post review of utility PS&E and related documents as may be appropriate to effect improvement and strengthen operational activities when and where needed.

g. Review encroachment permits for adequacy of protection to the highway, its structures, and operation and where appropriate strive to strengthen and improve the State's procedures governing such matters.

h. Distribute equitable time between field and office as is necessary in the implementation of the various duties of the regional utility engineer or representative.

2. The Role and Responsibility of Division Office Personnel

It is recognized that full responsibility for implementing utility matters at the division level rests with the division engineer but the details are delegated to various division engineering and administrative personnel.

a. Much of the utility workload falls naturally on the area engineer in connection with his reviews of PS&E and inspections of construction. Likewise other duties relating to utilities may involve other engineers, the appraiser, and the administrative manager. The separate responsibilities for such personnel may be generally summarized as follows: (1) reimbursement and audit matters for the administrative manager and auditor; (2) right-of-way matters for the appraiser; and (3) matters pertaining to PS&E review, field inspection, and related engineering determinations for the engineer.

b. Experience indicates that when each area engineer is assigned the full engineering responsibility of utility matters for his area, with little or no coordination provided except on fiscal matters there is apt to be lack of uniform application of the Bureau's procedures on a State-wide basis. As utility relocations are considered to be primarily an engineering function, it is desirable, but not mandatory, that the correlation of these matters be assigned to an engineer. In many division offices this correlation has been effectively accomplished by the office engineer.

c. Although such correlation may be more effective when assigned to one individual, the major responsibility and burden of workloads for individual utility relocations associated with each project should rest with the area engineer. This is particularly true of engineering reviews of State-utility agreements, plans, cost estimates and related field inspections. In other words, the individual designated to be responsible

for the overall coordination of such matters should not be expected to assume all of the detailed duties of review and approval actions but only to spot check to see that uniformity is maintained and adequate reviews are being made prior to approval. In carrying out these duties, the area engineer should realize that his recommendation for approval of a specific utility agreement by the division engineer is, in effect, proposing that the Bureau, in principle, shall be committed to all of the agreement's provisions, except where there may be a direct conflict with law.

d. In reviewing a utility PS&E, the area engineer should be assured that adequate protection is being provided for the highway and that the utility's function is being restored to a like condition before the highway construction, as opposed to reproducing a replica utility facility. The administrative manager should review audit procedures and related matters of reimbursement and the appraiser should give consideration to matters of right-of-way. Certain elements such as salvage credits, final quantities, hours and rates can only be estimated at the PS&E stage and therefore may be resolved at a later stage. However, there are many elements which should be decided upon before the PS&E is approved. These include such matters as the general scope of the work, credit for extended service life, overhead versus underground design, the economics of the proposed adjustment, the need for spare conduit or duct, size and thickness of casings and pipes, height of poles and overhead clearances, and similar engineering items.

e. As time permits, it is desirable that area engineers accompany State personnel on preliminary field inspections of utility relocations. Where possible this should be done in conjunction with plans-in-hand or location inspections. Where appropriate, Bureau representation should also be provided at meetings between the utility and the State, particularly when major relocations are involved. The area engineer should also arrange to inspect the utility construction during his field inspection of projects, giving particular attention to whether the State is providing adequate supervision and inspection of such work.

f. There is a tendency to advocate development by the Bureau of rules or formulas that could be applied nationwide to each and every design and type of utility regardless of the variable conditions found on each project. Experience indicates that such formulas cannot replace the engineering judgement of someone who is familiar with local conditions and facts, like the area engineer.

g. In the interests of lessening the increasing burden of utility workloads on the area engineer and other division personnel, the State should be encouraged to take appropriate action, where needed, to provide,

(1) a utility section within the State highway organization with an adequate staff and ample authority along with full responsibility for such matters,

(2) written procedures and instructions governing the same,

(3) early notification to utility companies that highway construction is contemplated,

(4) adequate supervision and inspection of physical adjustment work, and

(5) standards for the preparation of utility agreements, permits and plans that are readily understandable by highway engineers.

3. Field Reporting Procedures

It was the consensus of those in attendance at the Seminar, that considerable benefit was gained through the interchange and discussion of utility practices and policies between the regional and Washington office personnel. From the favorable comments, plans are now being made to schedule a similar meeting in Washington during the latter part of 1961.

In addition, there was open discussion at the Seminar for the need of establishing adequate communications between the several regions and the Washington office regarding the progress being made and the manner of accomplishment in the achievement of the general objectives outlined under 1 and 2 above. It was agreed that this could be most effectively accomplished through the preparation of a quarterly narrative report on utility matters prior to the 15th of the month following the end of each calender quarter, beginning March 31, 1961. In turn, the highlights of such reports will be consolidated by the Right-of-Way Division and issued to all field offices. Such a procedure should greatly assist in developing a uniformity in nationwide application of utility procedures, and provide a means of promptly informing all Bureau personnel of new developments in utility-highway matters.

These reports should be prepared by the regional utility engineer and/or representative and a copy transmitted to the Right-of-Way Division, Office of Engineering, by the regional engineer with amplifying remarks as may be appropriate. The following are items of interest to the field and Washington offices and should be included in the reports when appropriate for the particular period. It is not anticipated that all of these items will be included in each report or that the report will be limited to these items, but only that they be commented upon if pertinent to utility activities in the States of the region.

a. Actions taken during the quarter in regard to reviewing State compliance with the State and Bureau utility procedures and regulations.

b. Actions taken to improve the utility operations of the State.

c. Adequacy of and changes in the State's organization to more effectively handle utility matters.

d. Effectiveness of State's utility methods and practices to develop adequate lead time.

e. Modification of existing State legislation or enactment of new legislation that pertains to utility adjustment matters.

f. Matters of controversy which may have developed between utilities, State and Bureau along with appropriate recommendations.

g. Dollar savings to State and Federal funds resulting from utility adjustments or relocation.

h. Irregularities discovered in connection with utility adjustments and action taken.

I. Unusual utility problems and solutions developed.

j. Improvements in State's utility field inspection activities.

k. Public relations concerning utility matters.

l. Supplementary utility material such as news items, publications, photographs, and other related material.

The quarterly narrative report should not be used as a medium for transmitting procedural matters for approval or for requesting actions on specific problems. It is hoped that such a quarterly regionwide reporting procedure, rather than a monthly Statewide report on utility matters, will prove satisfactory, less time consuming, and more informative.

SEP 19 1961

Mr. Rex S. Anderson
Regional Engineer, Atlanta, Georgia

David S. Black

David S. Black, General Counsel, Washington, D. C.

26-10

Reimbursement for costs of relocating utility facilities - Tennessee

Reference is made to previous correspondence concerning the above subject.

You will recall that in 1957 the Tennessee Legislature enacted a statute which purported to authorize the State to reimburse utilities for the cost of relocating their facilities when such relocation was necessitated by Interstate highway construction. This statute was held to be unconstitutional and invalid under section 31 of the State Constitution, which prohibits the lending or giving of the credit of the State in aid of any person, association, company, corporation or municipality.

Subsequently, in an apparent effort to circumvent the State constitutional provision referred to above and still obtain Federal reimbursement of the cost of relocating utility facilities, the State Legislature enacted Chapter 317 of Public Acts of 1961. Reduced to its basic elements, this statute requires municipalities and other subdivisions of the State to pay initially the cost of relocating utility facilities which they own or for which they are responsible, when such relocation is necessitated by Interstate projects. Thereafter, the State Highway Department is to apply for reimbursement from Federal funds, and pay the amount of such reimbursement to the municipality or political subdivision involved. Pursuant to our memorandum of April 26 to you, an opinion of the State Attorney General was obtained as to the validity of Chapter 317, Tennessee public Acts of 1961.

We have devoted extensive study and analysis to this matter. Based upon the terms of the Tennessee law referred to above, the interpretation thereof by the State Attorney General, and the terms and intent of the applicable Federal laws, we must advise you that Federal-aid funds cannot lawfully be used to pay the cost of relocating utility facilities in the State of Tennessee.

The controlling factor is the provision of section 123 of title 23, United States Code, which permits the use of Federal funds to reimburse a State when the State has paid for the cost of relocating utility facilities.

This section of Federal law provides that "Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to him substantiating the fact that State has paid such cost from its own funds * * *."

The terms of the Tennessee law make it clear that funds of the State would not be involved. The decision of the Supreme Court of Tennessee in the case of State ex rel. v. Southern Bell Tel. & Tel. Co. et. al. 204 Tenn. 207, indicates that the State law would be unconstitutional if State funds were directly involved. The opinion of the Attorney General supporting the constitutionality of the State law recognizes this by commenting that the proposed procedure "would not, of course, be reimbursement to the State."

The indirect procedures which is necessitated by the State Constitution makes it unlawful for Federal funds to participate in such costs under section 123 of title 23, United States Code, which provides for reimbursement to the State of expenditures made from the State's own funds.

We have given serious consideration to the definition of the term "State funds" set forth in section 101 of title 23, United States Code. This section defines the term as including "funds raised under the authority of the States or any political or other subdivision thereof, and made available for expenditure under the direct control of the State highway department." Under this definition, funds contributed by counties or other subdivisions of a State may be used to pay the State's share of the cost of Federal-aid highway projects. However, we are of the opinion that are the quoted definition is not applicable with respect to the instant problem for several reasons.

First, the precise term "State funds" is not used in section 123 of title 23, United States Code. Second, we have some question as to whether the Tennessee law actually involves funds "made available for expenditure under the direct control of the State highway department." Third, and most important; the legislative history of one part of the Federal law makes it clear that the Congress did not intend that Federal funds would participate in a transaction such as that provided for in the Tennessee statute.

The last sentence of subsection (a) of Section 123, title 23, United States Code, roads in part as follows:

> "Such reimbursement shall be made only after evidence satisfactory to the Secretary shall have been presented to his substantiating the fact that the State has paid such cost from its own funds * * *."

The sentence was added to then existing Federal law by section 111 of the Federal-Aid Highway Act of 1958. The Senate Report on the bill (Senate Report 1407, 85th Congress, to accompany S. 3414) contained the following statement with respect to the added sentence:

> "Under this proposed amendment, it was the intent of the committee that reimbursement to the states from Federal funds for utility relocations would be made only on the basis of State funds actually expended for such purposes, and not for funds paid, advanced, donated, or contributed, by or from any other source."

In addition to this, several pertinent statements were made during debate on the floor of the Senate, as follows:

> "Mr. Case of South Dakota. * * * I should like to feel that the State was not entering into some sort of an agreement whereby the State could say to the utility, 'we will pass a law agreeing to recognize this, if the load can be thrown on the Federal Government.'"

> "I should like to see in the law some provision which will insure that the States shall keep an equal eye upon the expenditures, which comes only when the State, out of the State's own funds, pays the other share of the cost. There is no such guarantee under the present situation." (Cong. Record, March 26, 1958, p. 4899.)

> "Mr. Case of South Dakota. * * * but at least we would have the policeman clause, the requirement that the State pay its share out of its own funds, not handling it through some sort of an extra jurisdictional device." (Cong. Record, March 26, 1958, p. 4900.)

> "Mr. Gore. * * * Had this proviso not remained in the bill, there would have been permitted a continuation of a practice by certain States that has bordered upon a sharp practice, by means of which an arrangement between the States and the utilities has operated in such a way that the State funds we not paid out, yet the Federal Government was forced so to pay." (Cong. Record, March 26, 1958, p. 4903.)

It should be noted that the comments quoted above included references to "the utility" and "the utilities." Section 123 of title 23, United States Code, defines the term "utility" as including "publicly, privately, and cooperatively owned utilities." Since the senators who debated this provision did not make any distinction between publicly (or municipally) owned and privately owned utilities, it must be assumed that they were aware of and accepted the definition of the term "utility" set forth in the statute which they were attempting to amend.

I recently met with representatives of several cities of Tennessee to discuss this matter, and am fully aware of the difficulties which may result from denial of Federal participation in the cost of relocating utility facilities. However, under the circumstances outlined above, I have no alternative but to advise you that Federal funds cannot lawfully participate in the cost of relocating utility facilities pursuant to Chapter 317 of Tennessee Public Acts 1961.

One further observation should be made. In the opinion of the State Attorney General it is commented that "if payment which might be made under the provisions of Chapter 317, Public Acts of 1961, should be deducted from the State's apportionment of funds under the provisions of section 104 of Title 23, USCA, as they now exist, this would in my opinion offend Section 31, Article 2 of the Constitution."

As you know, payments which might be made to the State to reimburse it for the cost of relocating utility facilities would definitely be charges against (or deducted from) apportionments of Federal-Aid funds to the State. It thus appears that the opinion of the State Attorney General raises serious doubts as to the validity or constitutionality of the Tennessee law.

This memorandum has explored the problem in considerable detail, but this was believed necessary in view of the complexities of the matter. Among other considerations is the fact that some of the provisions of Policy and Procedure Memorandum 30-4 appear to allow Federal funds to participate in cases such as that provided under Tennessee law. To the extent that Policy and Procedure Memorandum 30-4 may be inconsistent with this opinion it is incorrect, and should be modified accordingly.

ATTACHMENT 41

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

December 12, 1961

CIRCULAR MEMORANDUM TO: Regional Engineers

FROM: F. C. Turner, Deputy Commissioner and Chief Engineer
24-22 Washington, D.C.

SUBJECT: Reimbursement for utility relocations

It has become unduly repetitious when our auditors visit the offices of utility companies, particularly the cooperatives, that they are advised the company has never heard of PPM 30-4 even though their agreement with the State highway department made the PPM a part thereof by reference. I believe many of the disputes we and the States have had and are presently having with the utility companies could be avoided by taking a more aggressive approach in this area of communications. There are several methods that could be employed by the divisions to improve this area. I suggest that action be taken along the following lines where appropriate:

1. Concurrently with program approval for a project known to include participating utility adjustments or as soon as the need for such adjustments is known, the State should be requested to furnish the company a copy of PPM 30-4 and amendments thereto, including available highway plans or sketches, with a letter pointing out the pertinent provisions regarding eligibility of costs, recording of costs and basis of reimbursement.

2. Instruct auditors, area engineers and utility engineers or their representatives, accompanied by appropriate representatives of the State, to visit utility companies during the progress of the work to advise them on record keeping, eligible items of costs and preparation of invoices. Encourage State to do likewise.

3. Arrange for representation by engineers and auditors at area or Statewide meetings of utilities to discuss with them utility adjustments in connection with highway construction.

Please advise me or any other suggestions you may have or any other actions you have placed in effect that have helped to keep these controversial questions of reimbursement to a minimum.

ATTACHMENT 42

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

December 22, 1961

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: F. C. Turner, Assistant Federal Highway Administrator
24-22 and Chief Engineer

SUBJECT: Reimbursement to States for audits performed by State personnel

Policy and Procedure Memorandum 30-2.3 prescribes policies and procedures covering reimbursement to the States for state audits of costs incurred on Federal-aid and other highway projects undertaken cooperatively with the Bureau of Public Roads.

Performance of audit work by State forces would be of mutual benefit to both the State and Public Roads. State audits would serve to expedite payment of vouchers submitted by the State, with resulting savings to the State in funding or borrowing. There would be fewer exceptions taken in connection with claims by railroads and utilities, with a resulting reduction in costs now being borne by the State. There would be substantial reductions in Public Roads audit workload.

In the event a State audit function has not yet been established the statements prescribed by section 6 of the PPM should be prepared on a projected basis including estimates as to when they may be expected to become effective.

Advice of the results of actions taken in response to the policy and procedure memorandum as well as any questions concerning its scope or intent that may arise in the implementation of its provisions should be submitted to the Office of Administration.

USCOMM-PR-DC

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

January 4, 1962

CIRCULAR MEMORANDUM TO: Regional Engineers

FROM : G. M. Williams, Director of Engineering,
22-53 Washington, D. C.

SUBJECT: Reimbursement for Utility Work - Extended Service Life Credit

The regional utility engineers and representatives who attended the October 16-20, 1961, Utility Seminar in Washington, D. C., suggested that it would be extremely helpful to them to be familiar with the individual opinions rendered by the Washington office on specific utility cases, particularly if such opinions involved interpretations of utility policies or procedures. Such an opinion was recently furnished to a regional engineer in response to his inquiry whether credit for extended service life should be considered in every case where a utility receives a new facility for an old one. As it is likely that this question may arise in any of the several States, our reply to the regional engineer is included below for your information and guidance.

"The answer to your question is No for it most be borne in mind that the governing policy on this matter is premised on the concept that the use of new materials does not alone create an increase in value but only where the new materials have extended the life of the replaced facility to the extent that it can continue to operate for a longer period than the overall facility, of which it is a part. For example, in cases involving a utility's transmission or distribution lines, an increase in value is recognized only under conditions where the replacement (new) lines can be expected to remain in useful service beyond the time of replacement or the ends to which they are tied. Thus, such increases in value should rarely occur in connection with routine crossings of the highway or minor longitudinal relocations of utility lines, except under unusual circumstances where a utility would voluntarily elect to install additional or improved facilities not required by the highway construction.

"The situation referred to in your memorandum involves the substitution or a new transite pipe for an existing wood stave water main. You have indicated the reason for abandonment of the old facility and substitution of the new higher type facility is for project economy and not at the utility's election. If the pipe is to cross under the highway, such a substitution may also be warranted as a protective measure to the highway; in fact, from an engineering standpoint, it would be considered as a requirement of the project.

- More -

"Under the foregoing circumstances or similar situations, the inclusion at betterments made necessary by the highway construction does not in itself alone constitute evidence that the service life of a replaced facility has been extended. Such an extension in life is recognized only under the conditions outlined above and as described in Section 5 of IM 30-3-61."

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

March 2, 1962

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM : G. M. Williams, Director of Engineering
32-46 Washington, D. C.

SUBJECT: Review of Utility Agreements

We recently received copies of an exchange of correspondence between a region and a division office on the subject matter. Both the Offices of Engineering and Administration are fully in accord with the views expressed in the region's reply to the division on this matter and firmly believe these principles warrant application to any similar situations that may exist in the several States. Accordingly, pertinent portions of this exchange of correspondence, with minor editing to permit a general application, are included below for your information and guidance.

The division advised the region along the following lines:

It appears on the surface that the review of utility agreements remain a problem in that the time being spent on such reviews is sometimes more costly than the results obtained. It to very difficult to gauge the benefits of these review for it is true that settlement of problems at the agreement stage eliminates much confusion and disagreement at the reimbursement stage. It appears that the State is reluctant to settle the problems and any questions encountered without the prior agreement of the Bureau. Whether this is due to the State's failure to accept its responsibility or to its lack of understanding is not known. However, this practice continues to place an extra burden on Bureau personnel requiring them to work out and resolve many problems without proper support from the State. It appears the situation can only be improved by continuing to remind the State that agreements are between it and the utility and it is to the best interests of the State to accept their responsibility in utility matters as set forth in paragraph 7 of PPM 30-4.

In turn, the region advised the division substantially as follows:

With reference to your foregoing comments, we realize that you are very much aware of the excessive time being expended by both our engineers and auditors in reviewing utility agreements.

(more)

Admittedly, it is a requisite that effective reviews be conducted of agreements prior to your approval since such approval in principle commits the Federal Government to reimburse the State on a pro rata basis for all items in the State-utility agreement except as may be in direct conflict with laws. Likewise the execution of the agree ment by the highway department commits the State Government, except on a much broader basis, by virtue of the agreements being between the State and the utilities.

From a management viewpoint, it therefore would appear to be incumbent upon the State highway officials to exercise the same policy discretion in negotiating and documenting utility agreements as they do in con tracting for construction and materials or services procured in connection with the other aspects of the highway program and/or the operations of the highway department as a whole. It is only through the application of sound contracting practices and proper assumption of responsibilities by the State that we will be relieved of lengthy reviews and discussions which the Bureau is now encountering under the existing conditions.

We therefore, strongly urge that you take appropriate action to encourage the proper highway officials to assume their responsibilities for the negotiation and development of definitive agreements, with Bureau relationship being that of providing guidance only where there is question of policy interpretation with respect to design and Federal participation. In any event the State should exercise precaution to the extent of assuring that the agreements adequately meet the criteria of State laws concerning commitment of entrusted public funds and are in proper order prior to the submission thereof for Bureau review and approval.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

March 6, 1963

CIRCULAR MEMORANDUM TO: Regional Engineers

FROM : E. H. Swick, Director of Right-of-Way and Location
39-30 Washington, D. C.

SUBJECT: Program For Division Office Review of a State's Procedures and Practices Relating to Highway-Utility Matters

The subject Program has been modified in line with suggestions received from the field and other offices and copies of the approved Program are enclosed for general use. Sufficient copies are enclosed for distribution to division engineers.

Each regional engineer in requested to develop realistic schedules with his division engineers so that the reviews may be completed in all division offices as rapidly as available manpower and current workloads permit. However, it is not intended that the accomplishment of this objective take precedence over the normal day to day functions of a division office at the risk or retarding progress of the State's overall highway program. It is hoped that all division offices can complete the initial review within a year. It is expected that these initial review will cover the operations of the State's central office and as many district offices as are considered necessary to accomplish the objectives of the Program.

The overall review in each division may be conducted on the basis of one continuous operation or on the basis of one or more Sections of the Program, as deemed appropriate. It my be scheduled in conjunction with the inspections-in-depth that are to be made for right-of-way and construction operations. In the interest of expediting completion of the reviews and in order to avoid excessive workloads on individual personnel, it would be desirable to assign one member each from the division office Right-of-Way, Engineering, Administrative, and Audit staffs to make the study Statewide as a team. Assistance and participation by regional office personnel should be utilized where possible.

Where feasible, arrangements may be made for the review of the Section on Law to be scheduled and conducted in conjunction with right-of-way inspections-in-depth of Phase J, "Condemnation", that are now or later planned for participation by an attorney from the General Counsel's office. If these arrangements are not feasible, the data under the Section on law may be collected by the division office team or be obtained in writing from the State's legal officer or both, as deemed appropriate by the division engineer. Any legal questions that arise shall be submitted, along with appropriate comments and recommendations, to the General Counsel for review, including a copy thereof to this Office.

- more -

Once the initial reviews are completed, it to expected that each division engineer will periodically, say once a year, make further comprehensive reviews of Pre-Construction, Construction, and Post-Construction, to the extent necessary to maintain adequate controls over the utility-highway program, including current and well documented supporting records. Further detailed reviews on Law, Policy and Organization should be made as may be warranted by changes in the area of the State's operations.

Additional assistance will be provided by this office upon request. Meanwhile, please keep us advised of arrangements and progress being made regarding the foregoing matters.

An appendix of pertinent directives relating to utility matters is attached to the approved program to serve as a ready reference to the review team.

Enclosures

37123PROGRAM FOR DIVISION OFFICE REVIEW OF A
STATE'S PROCEDURES AND PRACTICES RELATING TO HIGHWAY-UTILITY MATTERS

Statement of Purpose

The Division Engineer is charged with the execution of Federal-aid requirements imposed upon the State's administration of the Federal-aid highway program. To assist in the discharge of his assignment he is provided with certain internal instructions and guides pertinent to the division's several functional and program areas. It is the purpose of this document to give the Division Engineer added means to establish and maintain control over the utility-highway programs including those relocations where total costs are borne by utility companies.

This program in not intended for application to utility-highway activities under the Secondary Road Plan, but it may be used as a guide in connection with reviews made thereof.

Statement of Objectives

It is the primary objective of studies and reviews conducted pursuant to this program to:

1. Assure that the Division Engineer has full knowledge and record of a State's basic policies, procedures, and practices including those of its political subdivisions when acting on behalf of the State, in its administration and coordination of programs involving utility and highway interests.

2. Provide a means of measuring the total effectiveness of the State's administration of these programs.

3. Where indicated, provide a basis for negotiations directed toward improvements in the State's execution of these programs.

4. Provide a basis for continuing evaluation of the general propriety, adequacy, and effectiveness of Public Roads and States' policies in utility-highway matters.

Program Outline

To simplify the conduct of the review, the overall operation has been segmented into the following major sections which are treated in detail separately: STATE LAW AND POLICY, ORGANIZATION, PRE-CONSTRUCTION, CONSTRUCTION, POST-CONSTRUCTION, REPORTS AND IMPLEMENTATION.

STATE LAW AND POLICY

The purposes of this section are first, to ascertain the legal basis for the utility-highway relationship, with particular emphasis upon the State's powers to require utility adjustments to accommodate highway construction, and its

obligation and authority to compensates utilities affected by highway construction. The other purpose of this section is to determine to what extent the laws and practices in the State conform to national policy in utility-highway matters. It is believed that there are important areas in the utility laws of many States which are unsettled and that there possibly may be substantial variance between established law and actual practice, or at best, uncertain legal basis for some policies. Citations of applicable State statutes, ordinances, regulations, case law, constitutional provisions, and opinions of the State Attorney General may be obtained from the State's legal representative to accomplish the legal phase of this review and for subsequent review by the General Counsel. There follows an outline or pertinent matters to be considered or determined in accomplishing the stated purposes.

I Law

A. The nature of the legal rights by virtue of which utilities occupy public highways.

1. How does a utility obtain the right to occupy highways- by franchise, statute, constitutional provisions, licence, etc?

2. Procure samples of typical franchise agreements, licenses and other instruments granting utilities rights in public highways.

3. Determine the sources of utility rights in highways, i.e., public service commission, State highway department, county, municipality, etc.

B. Determine under what circumstances a utility's right to occupy a public highway is an interest, the taking of or damage to which, may be compensable in eminent domain.

C. Determine the measure of damages to a utility's facility (if compensable) under the following circumstances:

1. Relocation (vertical or horizontal) is within the highway.

2. Relocation to a location outside the highway.

3. Retirement without relocation

a. Where no physical property belonging to the utility is taken.
b. Where physical property belonging to the utility is taken.

D. Determine if the laws pertaining to eminent domain are applied uniformly to different classes of utilities, and if distinctions made between publicly, privately and cooperatively owned utilities.

E. Determine what liabilities, if any, are assumed by the State where the utility does not have an interest or right compensable in eminent domain.

F. Determine the adequacy of State law to require prompt adjustment of utility facilities to accommodate highway construction.

G. Determine the laws under which the State furnishes or acquires replacement rights-of-way for utility.

H. Determine whether the State has legislation, the validity of which has been established to the satisfaction of the General Counsel, which authorizes payment of utility relocation costs regardless of compensability in eminent domain.

II Policy

A. Determine the degree to which the State has formally implemented "A Policy on the Accommodation of Utilities on the National System of Interstate and Defense Highways - AASHO."

B. Determine the extent to which the State has accepted and is promoting the practices and procedures set forth in "An Informational Guide on Project Procedures - AASHO" for utility adjustments.

C. Evaluate the State's general attitude or the climate for promoting adopted policies and regulations and pursuing its responsibilities for enforcement, including the statements of its operations under paragraph 4a(31) of PPM 21-4.1.

D. Determine whether State's reimbursement standards are more liberal or more restrictive than those provided by PPM 30-4.

ORGANIZATION

The purpose of this section is to develop data reflecting the organizational and functional structure of the State highway department, including local political subdivisions when acting on behalf of the State, in carrying out the State's responsibilities for utility matters. Review of the organization charts, functional statements, etc. is a logical first step in this undertaking. The information to be developed herein is intended to provide a means for evaluating the effectiveness of the State utility organization. The following elements are indicative of those matters which should be considered in developing this information.

I Adequacy of Amount of Positions provided
Duties, Responsibilities, and Delegation of Authority

A. Central office.
B. Sub-offices.
C. Project level.

II Qualification Requirements of Personnel

A. Central office.
B. Sub-offices.
C. Project level.

III Manuals or Written Instructions

IV Training Activities

PRE-CONSTRUCTION

"Pre-Construction" encompasses all of the actions required to be taken prior to the physical adjustment of the utility facilities.

The purpose of this section is to provide information as to the State's practices and procedures used to accomplish timely planning, scheduling, preparation of utility proposals, coordination, and any other preparatory work. The following items are among those which should be considered or determined to accomplish the stated purpose.

I Planning

A. Means used to identify utility facilities that may conflict with the proposed highway project.

B. Time of initial notice to utility owners of proposed highway location, including method used, information furnished, and information requested.

C. Means of contacting utility owners for preliminary determination of the size, type, and extent of facility involved, and the utility's plans, if any, for future expansion or use.

D. Determination of responsibility for adjustment costs involved.

E. Internal coordination of State highway department units involved such as location, right-of-way, design, etc,

F. Utilization of long-range planning and scheduling of highway programs reflecting immediate and future highway construction needs such an the programing of separate utility projects without regard to limits of immediate highway projects.

G. Determine to what extent the State has estimated its future utility workload and the means used to make this projection.

H. Coordination between various utilities involved on projects.

II Utility Proposals

A. Preparation

1. Determine what and when information is furnished the utility, including:

   a. Plan of proposed highway facilities and applicable standards.
   b. Guidelines as to:
      (1) Utility plan and estimate requirements.
      (2) Reimbursement policies and requirements.

2. Determine State's practices in authorizing utility to proceed with preparation of plans and estimates.

3. Determine State's practices in arranging and participating in joint inspections and meetings prior to or during preparation of proposals, including the record made of actions taken.

4. Determine what consideration is given by the State to economics of highway location or design adjustments versus utility adjustments to assure most satisfactory overall solution.

5. Comment on adequacy of these procedures and leadtime accorded these activities.

B. Review

1. Determine procedures followed by the State in reviewing proposals as to:

   a. Conformance with highway design requirements and compatibility with other utility installations.
   b. Economy of installation.
   c. Adequacy of drawings re:
      (1) Existing, temporary, and proposed facilities including size or capacity.
      (2) Location of nonparticipating adjustments.
   d. Detailed statement of work involved.
   e. Estimate prepared to coordinate with plans, statement of work, and required breakdown.
   f. Eligibility for reimbursement (participating and nonparticipating items).
   g. Identification of betterments and salvable materials.
   h. Documentation or any engineering decisions that may be required to support the utility adjustments.
   i. Coordination of review within the highway department.

2. Comment on adequacy of State's review on:

   a. Completeness of submission to BPR.
   b. Leadtime accorded preparation of proposal, review by BPR division office, and later physical construction work. Work-flow chart depicting the above would be helpful.

C. Approval

Following the preparation and review of the State-Utility agreement, plans, and estimate, determine the approval procedures and practices followed by the State in regard to:

Engineering approval
Administrative approval
Legal approval

D. Determine the State's procedures and practices with respect to authorizing the physical adjustments including the adequacy of State's practices in accomplishing physical adjustment, of facilities, where feasible, prior to award of associated highway contract.

CONSTRUCTION

The purpose of this section is to identify the controls which the State has established through directives, assignment of responsibilities, designation of staff, and prescribed practices and procedures for the physical adjustment of the utility facility.

I Assignment of Field Personnel

A. Determine the State's practices in assigning personnel to the type or class of work to be undertaken.

1. The considerations attached to this determination are qualifications, experience, and training.

2. Evaluate the adequacy in numbers of personnel assigned to utility inspection duties.

II Assignment of Work and Responsibilities

A. Determine whether the responsible field personnel have been furnished with the general directives, operating manuals, and instruction material relating to the type of utility work involved. Comment on the apparent understanding and application of these instructions.

B. Determine what material is furnished to the responsible project personnel related to the specific adjustments (plans, estimates, and agreements). This material should be clear and adequate as a basis for determining the work to be done.

III Construction Conferences

A. Determine to what degree the State provides opportunity for liaison between the contractor and utility companies to plan and coordinate construction activities prior to and during the highway construction. Comment on the adequacy of the reporting for these conferences.

IV Inspection

A. Determine whether the work is inspected with sufficient thoroughness to assure that the work is commenced and advanced to completion in accordance with:

1. Agreed schedules.

2. Approved plans, specifications, and estimate.

3. Approved State-Utility agreement.

B. Record of Inspection

1. Determine what field inspection records are maintained, such as diaries, and evaluate them as a basis for acceptance of the work and payment for the adjustment.

2. Comment on established controls for approving changes from the original plans.

V As-Built Plans and Close Out - Determine whether "as-built" plans are prepared by the State and that they reflect all changes.

POST-CONSTRUCTION

The purpose of this section is to determine the controls and checks established by the State to verify that the final estimate (billing) accurately reflects items of work shown by the project inspectors' records as having been accomplished in accordance with the plans, estimate, and State-Utility agreement.

I Flow of Billing Documents

A. Determine whether the State has provided a uniform manner of processing billings to and through the several segments of its organization concerned with acting on the bill. A billing flow chart would be helpful in depicting the above transactions.

B. Report the State's practice in processing progress estimates where it varies from the procedures established for final billings.

C. Determine what controls, if any, have been established by the State to assure prompt submission of utility bills.

II Engineering - Determine to what extent the engineering personnel, central and field offices, consider the inspection records and "as-built" plans in conjunction with the review of utility bills, and what positive record is made of this action.

III Fiscal - Determine the State's practice in performing fiscal reviews, office and on-the-site, precedent to payment, including adequacy of:

A. Information and instructions furnished to State auditors.

B. Evidence presented to substantiate that State has paid utilities from its own funds.

REPORTS AND IMPLEMENTATION

I Report

The written report should be in narrative form and addressed to the Division Engineer. All factual matter contained therein should be properly cross referenced and supported by work papers such as tabulations, reports of interview, reproduced copies of letter, and memoranda from the State files, etc. It should also include a summary of significant findings and recommendations. The report should be classified as "administratively restricted." After review by the Division Engineer it may be declassified and transmitted to the State in whole or part an deemed appropriate.

A. Format

The strongest presentation is a showing of facts followed by an analysis of facts to show trends, conclusions, and recommendations. The narrative written report should include the factual data developed on each section of the review program in regard to the following items:

1. Comparison of the actual State practices as developed by the review with those stated in their policies and procedures. Such affirmative documentation as well as documentation on any procedural noncompliance will serve as a basis for subsequent reviews.

2. Items of noncompliance with Federal and State laws and Bureau of Public Roads regulations and directives.

3. Other findings and recommendations not specifically covered above.

4. Recommendations for corrective action by Division Engineer.

5. Evaluation of the effectiveness of the State in the utility-highway operations covered by the review. This evaluation should include both strong points and weaknesses developed by the factual data. These strong points are useful for comparison in impressing the need for any corrective action.

B. Preparation and Distribution

Sufficient copies of all reports of a review should be prepared. The original together with work papers to be retained in the division office files and one copy each to the regional and Washington offices. An extra copy of the report of the Section on Law should be included in the Washington office submission for referral to the General Counsel. Work papers need not be submitted unless specifically requested.

When forwarded to region the report should be accompanied by the Division Engineer's comments on the soundness of the findings and recommendations, corrective action taken or proposed, and the State's reaction to the review. Copies sent to Washington office should include same along with appropriate comments of regional engineer.

II Implementation

A. Initial Conference

An initial conference should be held by the Division Engineer with appropriate division and regional office personnel to be involved. The purpose is to explain the review program and to discuss methods of accomplishing its objectives.

A similar conference will be held with key State officials to explain the purpose of the review program and the mutual benefits which will be derived therefrom. It should also be explained to the State that findings and recommendations made as a result of the review will be presented by the Division Engineer. Emphasis should be placed on the fact that the review will include interviews of State employees and other interested parties involved. It should also be emphasized that this is a survey of facts and a review of procedures and practices, and not an investigation.

B. Progress Reports

During the course of the review periodic informal reports will be made to the Division Engineer. Items of noncompliance so serious as to require immediate correction will be reported to the Division Engineer without delay, so as to effect immediate corrective measures.

C. Final Conference

A conference should be held with the Division Engineer to discuss results and recommendations; also the most effective way to present these recommendations to the State. It is usually desirable for the Division Engineer to present the recommendations to key State officials and their staff in a final conference so that there can be mutual understanding of the necessary corrective measures. Where feasible Division Engineers should arrange for regional participation in these conferences.

D. Supplemental Reports

The first review of the State's action to effect desired improvements shall be made as soon as practicable after the final conference. Supplemental reports of this and subsequent follow-ups shall be made to Region and Washington.

APPENDIX
UTILITY INDEX

Policy and Procedure Memorandums

Number	Date	Subject
PPM 20-8	8-10-56	Public Hearings, Federal-aid Projects
Amendment 1	6-16-59	
PPM 20-11.1	10-10-58	Construction Planning
PPM 21-1	4-15-58	Federal-aid Programs
Amendment 1	7-17-59	
Amendment 2	10-12-59	
Amendment 3	8-12-60	
Amendment 4	11-22-61	
Amendment 5	2-2-62	
Amendment 6	2-9-62	
Amendment 7	10-31-62	
PPM 21-4.1	12-30-60	Right-of-Way Procedures (State-Federal-aid)
PPM 21-5	10-12-58	Plans, Specifications and Estimates
Amendment 1	11-13-59	
Amendment 2	1-8-60	
Amendment 3	5-31-60	
PPM 21-6.2	11-23-60	Contract and Force Account (Justification
Amendment 1	12-20-61	Required for Force Account work)
PPM 21-6.3	1-16-61	Contract and Force Account (General
Amendment 1	12-12-61	Procedures)
Amendment 2	2-23-62	
Amendment 3	3-22-62	
Amendment 4	10-12-62	
PPM 21-6.4	11-26-57	Contract and Force Acount (Federal-aid Construction in Alaska)
PPM 21-12	10-10-58	Construction Authorization
PPM 30-4	12-31-57	Reimbursement for Utility Work
Amendment 1	4-3-61	
Amendment 2	9-15-61	
Amendment 3	1-25-62	
PPM 40-2	1-26-61	Design Standards for Federal-aid Projects
PPM 40-3.1	10-1-59	Plans and Specifications for Federal-aid
Amendment 1	5-16-60	Projects (Standards for Preparation)
PPM 40-3.2	10-2-59	Plans and Specifications for Federal-aid Projects (Approval for use as Standards)

Administrative Memorandums

AM 1-10-2	3-9-60	Delegations of Authority (Federal-aid and other State-Supervised Cooperative Work)
AM 1-16	11-8-62	Office of Right-of-Way and Location

Instructional Memorandums

IM 2-2-62	2-16-62	Reports on legislative activities, (utilities)
IM 4-1-59	11-15-61	Reimbursement for Utility Work
IM 4-5-61	7-3-61	Minor Audit Exceptions
IM 20-3-60	2-16-60	Control of Access - Interstate System
IM 30-3-61	5-8-61	Reimbursement for Utility Work
IM 30-7-61	11-13-61	Alternative method of supporting certain utility adjustment claims

Circular Memorandums

BCM	5-9-56	Construction Delays Caused by Delays in Effecting Public Utility Adjustments
BCM	7-20-56	Comptroller General's opinion on public utilities
WCM	1-3-57	Public Utility Adjustments
BCM	3-14-57	Utility Relocation
BCM	9-6-57	Installation of Utilities on Rights-of-Way of Interstate System Highways
BCM	10-25-57	Access to Interstate highways from Police and Maintenance facilities
BCM	12-18-57	Policy and Procedure Memorandum 30-4 (utility company accounting systems)
BCM	4-11-58	Showing of control or access on plans for Interstate System Projects and other Federal-aid Projects for which access rights have been acquired
BCM	6-17-58	American Telephone and Telegraph company Accounting
BCM	9-17-58	Relocation of Utilities from or within Publicly owned lands
BCM	10-13-58	Utilities on Interstate Highways
WCM	10-16-58	Federal-aid Highways and Public Utilities, ASCE - Mr. G. M. Williams' Speech
WCM	2-10-59	External Audit of Public Utility Relocation Claims (Section 123, Title 23, U.S. Code)
WCM	2-25-59	Future Utility Installations on Interstate Right-of-Way
WCM *	3-30-59	Coordination of Utility Adjustments with highway construction
WCM	3-31-59	Future Utility Installation on Interstate Right-of-Way (Supplement to CM dated February 25, 1959)
WCM	7-31-59	Title 23, U.S.C., Section 112(C) and Contracts for Utility Relocations or Installations
WCM	9-30-59	The Accommodation of Utilities on Interstate Highways (PPM 40-2; AM 1-10.2; CM 2-25-59 and 3-31-59)
WCM	6-13-60	Proposed Instructional (Preliminary Draft) Memorandum on Subject: Reimbursement for Utilities
BCM	6-14-60	Crossings of Interstate Highways by Utility Service Connections
BCM	8-4-60	Encasement of Underground Pipelines Crossing Interstate Projects
BCM	8-15-60	Conversion of Overhead Utility Lines to Underground Installations and Provisions for Expansion of any underground utility crossings of Interstate Highways
BCM	8-19-60	Right-of-Way Plans Requirement (PPM 40-3.1)
BCM	9-12-60	Audit Consideration of Overhead Costs Presented by Utilities Companies
BCM	10-1-460	AASHO Policy Publication (Utility)
BCM	10-14-60	Pipeline Crossings of Interstate Grade Separation Structures
BCM	12-2-60	Public Utility Relocation Costs
BCM	12-6-60	Separability of States Claim for Prompt Payment
BCM	1-17-61	An Informational Guide on Project Procedure
BCM	2-20-61	The Uniform Application of Utility Procedures and Field Reporting Instructions
BCM	9-5-61	Minor Audit Exceptions - TM 4-5-61

*BCM 3-30-59 Audit and Reimbursement for Public Utility Relocation Costs

BCM	12-12-61	Reimbursement for Utility Relocations
WCM	12-22-61	Reimbursement to States for Audits performed by State personnel
BCM	1-4-62	Reimbursement for Utility Work - ESLC
BCM	3-2-62	Report on joint session of the AASHO/ARQA Highway-Utility Liaison Committees, October 11, 1961, Denver, Colorado
WCM	3-2-62	Review of Utility Agreements
BCM	4-27-62	Roadside telephones and emergency communication devices for motorists on Interstate freeways
WCM	7-30-62	AT&T Co. construction overhead and intercompany profit between Western Electric Co. and the Bell System
WCM	8-16-62	Review of construction type code

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25. D.C.

March 27, 1963

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM : E. H. Swick, Director of Right-of-Way and Location
39-30 Washington, D. C.

SUBJECT: Utility Seminar - 1963

During the Utility Seminar held in Washington, D. C. February 4-8, 1963, and at the request of those in attendance, this office agreed to issue a statement in the interest of clarifying several of the items discussed during the week-long session. Our comments on these items follow:

(1) Participation of Bureau Field Personnel in the Activities of the American Right-of-Way Association Chapter Liaison Committees

The Bureau's official position regarding this matter, as presented in a statement to the Utilities Section pre-seminar meeting of the American Right-of-Way Association Educational Seminar on May 23, 1960, by Mr. G. M. Williams, holds that it is not appropriate for Bureau field personnel to become members of, nor to be named as official Bureau representatives on, the American Right-of-Way Association Chapter Liaison Committees. This position remains unchanged; however, it is recognized there are mutual benefits to be derived by the participation of all organizations concerned with the activities of these Committees. This is amplified by Mr. Turner's December 12, 1961 circular memorandum which calls attention to the need for an aggressive approach in the area of communications between the Bureau, State, and Utility organizations. Therefore, when invited, Bureau personnel should be encouraged to meet with these Committees as observers to provide assistance on any matters pertaining to the principles of mutual advanced planning, cooperation, and coordination of utility-highway programs, to explain the procedure for advancing Federal-aid highway projects and the bases therefor, and to consider suggestions for improvement in any phase of the overall operation.

(2) Field Reporting Procedures

As a result of the discussions undertaken at the Seminar, it was recommended by all those in attendance that the existing requirement for the quarterly narrative reporting of utility matters be discontinued. In lieu of this requirement it was agreed by all field representatives that they would continue to keep this office informed of major utility activities by forwarding copies of field trip reports and correspondence dealing with such matters as attendance at meetings or conferences, unusual utility problems or policy matters and other similar actions of special interest. This office

- more -

concurs in the foregoing recommendation and rescinds the requirement outlined in Section 3, Field Reporting Procedures of the February 20, 1961 circular memorandum from Mr. G. M. Williams on "The Uniform Application of Utility Procedures and Field Reporting Instructions."

(3) Use of Consultants

The procedures governing the use of consulting engineers, architects, and others by a utility company to perform required technical services are as covered by paragraph 10a(2) of PPM 30-4 and not by PPM 40-6. The governing procedures provide, in substance, that Federal funds may participate in amounts paid for such technical services if approved in advance by the State and by the division engineer, except that Federal funds will not participate in any fees paid that are determined on the basis of a percentage of the total actual cost of the relocation.

Where utility relocations are relatively simple, prior approval by the division engineer of the minor engineering fees involved for each individual relocation is not necessary where he has previously approved a statement of procedures the State uses Statewide for these matters and he is satisfied that the State's procedures and practices thereunder follow sound business practices in contracting with consultants. On the other hand, where individual relocations are complex and require alternate engineering studies or involve considerable engineering work of a highly technical nature, in each instance it is expected the State and the utility will, insofar as practicable, adopt and follow the procedures set out in PPM 40-6 and its supplements. Likewise, in these latter cases, the qualifications of the consultant, the adequacy of the contract provisions, and the amount of the fees to be paid are subject to prior approval by the division engineer.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON 25, D.C.

June 4, 1963

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: David S. Black
36-32 General Counsel

SUBJECT: Labor Compliance Manuals - Applicability of Federal minimum wage rates to employees of contractors and subcontractors of railroad and public utility companies

Pending a review and resolution of problems which have arisen relative to applicability of Federal minimum wage rates to employees of contractors and subcontractors of railroad and public utility companies, you are advised to suspend enforcement of the Federal minimum wage requirements pursuant to Sections D-2-III.9 and D-2-III.10 of the Labor Compliance Manual, Federal-Aid Construction, and Section D-1-III.9 of the Labor Compliance Manual, Direct Federal Construction.

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-149833 January 2, 1964

Dear Mr. Secretary:

Our review of the Federal-aid highway program in the State of California, as administered by the Bureau of Public Roads, disclosed that Bureau policy governing the extent of Federal participation in the cost of relocation of utility facilities necessitated by the construction of Federal-aid highway projects has not been applied on a basis consistent with the controlling provisions of Federal-aid highway legislation. This matter was discussed in detail on pages 44 to 49 of a draft report by this Office on our review of selected activities of the Federal-aid highway program in California, transmitted to the Federal Highway Administrator on March 13, 1963.

Section 123 of title 23, United States Code, which was derived from section 111 of the Federal-Aid Highway Act of 1956, 70 Stat. 383, as amended by section 11 of the Federal-Aid Highway Act of 1958, 72 Stat. 94, provides:

> "(a) When a State shall pay for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary or secondary systems or on the Interstate System, including extensions thereof within urban areas, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are expended on the project. Federal funds shall not be used to reimburse the State under this Section when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. * * *
>
> "(b) The term 'utility', for the purposes of this section, shall include publicly, privately, and cooperatively owned utilities.
>
> "(c) The term 'cost of relocation', for the purposes of this section, shall include the entire amount paid by such utility properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility."

Section 123 speaks of utility relocation costs an a project basis and sets forth the criteria for reimbursing costs related to individual utility relocations. Two limitations on the extent of participation in relocation costs are established: Reimbursement for utility relocation costs cannot be made where the payment of such costs violated State law or a legal contract between the utility and the State, and reimbursement cannot be made for costs in excess of the "cost of relocation" as defined in the statute.

Bureau policy statements implementing the provisions of section 123 prescribe in some detail the principles and procedures to be followed in determining the "cost of relocation", as defined by the statute, which will be eligible for Federal participation. However, Bureau policy provides also in paragraph 1(c), of the Bureau of Public Roads' Policy and Procedure Memorandum 30-4 that:

> "Where State law or regulation provides agreement and payment standards more liberal than those established by the provisions of this memorandum, the provisions of this memorandum shall govern. Conversely, where State law or regulation provides more restrictive agreement and payment standards, the State standards shall govern. The division engineer shall determine which procedures will govern and will notify the State accordingly."

In the application of this provision, the determination by the Bureau's division engineer in each State is made on a State-wide rather than on a project basis, the test being which agreement and payment standards-those provided by State law or regulation or those provided by Bureau policy-can be expected to produce, in the aggregate, the lesser amount of participating utility relocation costs. As a result, in those States in which it has been determined that State payment standards govern, Federal funds participate in all utility relocation costs paid by the State, irrespective of the fact that on specific Federal-aid projects, the amount paid may exceed the " cost of relocation" as defined in the statute and Bureau policy implementing the statute. The effect of the application of Bureau policy in this respect is illustrated by information disclosed by our review in California.

The Bureau division engineer for the State of California determined, in August 1958, that the agreement and payment provisions provided by State law and regulation were more restrictive than those provided by Bureau policy and accordingly advised the State that the State's procedures would govern the extent of Federal participation in utility relocation costs. One of the primary considerations in the division engineer's determination was the fact that California law requires that in any case where the State is

required to pay the cost of a utility relocation necessitated by highway construction, and where a new facility is constructed to accomplish the relocation, the State shall receive a credit in an amount bearing the same proportion to the original cost of the displaced facility as its age bears to its normal expected life. The corresponding provision of Bureau policy requires that in instances where the replacement (new) facility will remain in useful service beyond the time when the overall (old) facility, of which it is a part, would have remained in useful service or would have been replaced, a credit be given against project costs for the increase in value due to the extension of service life. The credit for extension of service life is to be in an amount which bears the same proportion to the replacement cost of the facility as the age of the replaced facility bears to its total estimated service life. The policy statement clearly establishes that where an extension of useful service life occurs, the proper measure of the resulting increase in value, which must be given consideration to comply with section 123(c) of title 23, is to be made by reference to the replacement cost of the facility, rather than to the historical or original cost of the facility.

In making the required determination, the Bureau division engineer concluded that since the credit prescribed by State law, although calculated by reference to original cost, was required in every instance where the relocation involved the construction of a new facility or portion thereof, and the credit prescribed by the Bureau was applicable only where such replacement extended the useful life of the facility, the standard provided by State law would generally result in the lesser participating costs.

As shown above all utility relocations in the State of California are lumped together under one determination as to which method shall be used rather than making separate determinations for each relocation. This practice recognizes only the first of the above-stated limitations in that Federal reimbursement of State payments is limited only by State law without concern as to whether a portion of the increase in value of the new facility has been deducted to arrive at "cost of relocation" as defined in the statute and Bureau of Public Roads implementation thereof. In short, the definition of "cost of relocation" has been in part, read out of section 123 so far as concerns utility relocations in California. We find no basis for such an interpretation.

This matter was specifically brought to the attention of the Federal Highway Administrator in Office letter dated July 2, 1963, copy enclosed,

the advice that our Office will be required to state exceptions in the accounts of the certifying officers involved for any reimbursements, past and future, for utility relocations which we find are in excess of the amount allowed by section 123, as construed therein. The conclusion stated in that letter, and in the draft of the report forwarded to the Federal Highway Administrator, was challenged by the General Counsel of the Commerce Department in letter dated October 1, 1963, to the General Counsel of this Office. It is the view of your General Counsel that our Office has raised an administrative rather than a legal question. We have fully considered the contentions set forth in his letter in support of this view, and while it may well be that the Bureau of Public Roads could have adopted other procedures for the implementation of the statute such fact does not alter the present situation nor justify a departure from the clear indication in section 123 that the "cost of relocation" is to be determined on the basis of a specific project as distinguished from a State-wide determination. It is a well-established rule that the power of an administrative office to administer a Federal statute and to prescribe rules and regulations to that end is not the power to make law--the regulation must be in harmony with the statute. Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U. S. 129. It is not the contention of our Office that paragraph 1(c), of Bureau of Public Roads' Policy and Procedure Memorandum 30-4 is not in harmony with section 123. However, when such policy is applied, as in the case of California, on a State-wide basis, there is no assurance that the statutory provision limiting Federal participation to the "cost of relocation" will be given effect with respect to specific highway projects. The conclusion that the Bureau of Public Roads policy governing the extent of Federal participation in the cost of relocation of utility facilities necessitated by the construction of Federal-aid highway projects has not been applied in the State of California on a basis consistent with the controlling provisions of Federal-aid highway legislation is therefore affirmed.

Sincerely yours,

Comptroller General
of the United States

Enclosure

The Honorable
The Secretary of Commerce

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
Washington, D. C. 20235

January 13, 1964

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM : E. H. Swick, Director of Right-of-Way and Location
39-30 Washington, D. C.

SUBJECT: Program for Division Office Review of a State's Procedures and Practices Relating to Highway-Utility Matters

Reports covering the Law Section of the Program which have been submitted in accordance with our March 6 and September 13, 1963, blue circular memorandums indicate the need for additional comments to clarify our intent. The submission on Law should be prepared by the State's legal counsel. This was not indicated in our March 6 circular memorandum, however, it to necessary so these submissions properly reflect the State's views and opinions regarding its own Law. In some instances the items under the Law outline have been misinterpreted and in others the response has not given a complete answer to the situations involved.

The submissions which have not already been forwarded to this office should be reviewed by the division and region to see that the points noted below, are covered prior to being forwarded to this office. No action is necessary on submissions already forwarded.

Item A.1 - The response to this item should indicate not only how the utility obtains the right to occupy State highways, but also county or township roads and city streets.

Item A.2 - Samples of typical franchise agreements, licenses etc. should include those issued by cities and counties as well as those issued by the State.

Item A.3 - The response should include the source of utility rights in county roads, township roads and city streets as well as State highways.

Item B - The intent of this item was to clearly identify, with adequate legal documentation, those cases where a State pays for the cost of relocation or removal of utilities occupying city streets, county or township roads, or State highways under the conditions of paragraph 3a(1) of PPM 30-4.

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Items C.1 and C.2 request information regarding the measure of damages under State law in certain circumstances. To adequately answer these items the response should cover all situations involving privately, publicly, and cooperatively owned utilities originally located on public as well as private right-of-way. Further clarification may be necessary if State law provides different reimbursement standards for different highway systems.

Item C.3a and b - The response should indicate State policy and the legality of such policy under the conditions stated in the outline. Physical property was intended to include land, facilities such as poles or lines, and also meters or service connections. Also refer to the comments on these items, included in our September 13, 1963, circular memorandum.

Item D - The response should indicate the application of eminent domain laws by the State, not the utilities' power of eminent domain.

Item E - The intent of this item was to clearly define, with adequate legal documentation, those situations where a State pays for the cost of relocation under the conditions of paragraph 3a(2) and (3) of PPM 30-4.

Item F - The response should cite any State laws which require or give the highway department authority to require prompt adjustment of utility facilities to accommodate highway construction. This applies to utilities located either on private or public right-of-way.

Item H - The response should indicate whether the State has legislation which authorizes payment of utility relocation costs under the conditions of paragraph 3a(2) of PPM 30-4 and if action has been taken as outlined in the blue circular memorandum to Regional and Division Engineers dated September 17, 1958, subject: Relocation of Utilities From or within Publicly Owned Lands.

It is suggested that the State be furnished a copy of this memorandum if they have not completed the review or it their original submission did not give complete coverage to the items and will need to be revised or supplemented.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20235

July 24, 1964

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM : E. H. Swick, Director of Right-of-Way and Location
39-30 Washington, D. C.

SUBJECT: Utility Adjustments

The adequacy and effectiveness of the State's practices in the scheduling of utility adjustments is a matter of growing concern. The aim should be to effect these adjustments in advance of the highway construction except where economy, operational problems, or similar considerations dictate otherwise.

Under our present policies, authority to advertise or to concur in award of contract is not to be issued until the utility work is completed or there is adequate evidence that all necessary arrangements have been made for it to be undertaken and completed without delay or restriction to the highway construction. These policies (PPMs 20-11.1, 21-12 and 21-6.3) were not developed or issued until after a considerable period of operating experience indicated the desirability and need for improvements in this area. However, by this date, each State has been afforded adequate time and given reasonable consideration for adapting its operations, if necessary, to comply with the stated policies.

We recognize there are relocations which cannot be undertaken until after the highway construction is underway but, except for these infrequent occasions, most utility adjustments can and should be underway prior to advertising to take bids and completed before the start of the highway construction. However, as evidenced by the utility reviews made in several States, it appears to be common practice to plan the start of utility work shortly before or after the highway construction is underway. When this occurs it is extremely difficult, if not impossible, to avoid some degree of conflict between the operations of utility companies and a highway contractor which result in delay and restriction to the activities of all parties, as well as additional costs to the highway contractor, to the utility companies, and to the project. When this is common practice, it is also likely that highway contractors will take this delaying factor into account when bidding on highway work. This is particularly true on complicated urban projects involving numerous utility companies and different types of facilities, notwithstanding the fact that a State may regularly hold construction conferences between the utilities and contractors to plan and coordinate work. A proper treatment of this aspect would make such conferences unnecessary except for those utility adjustments which must proceed with construction.

In those States where improvements are needed in this area, it is indicated that, in many instances, poor scheduling, an over-extended utility staff, or underestimating the work and time involved in the utility adjustment are major factors contributing to the problem. These deficiencies can be corrected, and prompt and continual follow-up measures should be taken where needed to accomplish it.

Wherever this problem exists, there should be a close examination of the status of future utility adjustments to assure that authorizations for both highway and utility work are made at a time which will result in the least possible conflict between the utility companies and highway contractors. To accomplish this, realistic work schedules should be developed indicating the starting and completion dates for each planned adjustment. In turn, such information should be used in establishing corresponding schedules for planned highway construction so that delays in our issuance of authorizations to advertise or to concur in the awards of highway contracts can be avoided.

In exceptional cases where it is determined that completion of the utility work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there should be appropriate notification provided in the bid proposals identifying those adjustments which are to be underway concurrently with the highway construction.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20235

December 22, 1964

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM : E. H. Swick, Director of Right-of-Way and Location
39-03 Washington, D. C.

SUBJECT: Guide for review of utility proposals

This office has received numerous requests to develop a check list or guide for use by the divisions in the review of utility adjustment proposals. The enclosed guide has been prepared in response to those requests. It was discussed with the regional representatives at the October Utility Seminar. The consensus was that such a guide would be helpful and general agreement was reached at that time as to its coverage. Its use is optional and the procurement of copies for future need is the responsibility of the field offices. Where appropriate, it may be used to supplement existing similar guides now in use at the division level. Where found desirable, it could also be made available for use by State personnel in reviewing utility proposals.

The questions are so worded that a negative response will require additional action or conditional approval of the utility agreement or work to be authorized.

Certain of the questions can best be answered by the area engineer, some by the administrative manager and some by the right-of-way officer. It is suggested that the responsibility for checking each of the items on the list be defined in each division and each responsible individual provide his comments concerning a particular agreement on a form (similar to the one provided under Exhibit A) to be placed in the project file.

If more than one copy of the agreement assembly is available for review in the division office it is possible for a concurrent review by the responsible individuals with the completed forms (Exhibit A) being furnished to the person preparing the answer to the State's request for approval.

Enclosures

GUIDE FOR REVIEW OF UTILITY PROPOSALS

Reference		
PPM 30-4 1.a 6.a(2)	1.a	Is the utility relocation necessary because of the highway project? Yes_____No_____
PPM 30.4(5)	b	Where the State's payment and agreement standards differ from those established by PPM 30-4, has sufficient information been furnished to allow a determination as to which procedures will govern? Yes_____ No_____
	2.a	Where the relocation is being made on the basis of a taking under eminent domain,
PPM 30-4 3. a(1)		(1) Has the State determined that the utility has the right-of-occupancy in its existing location by reason of holding the fee, an easement or other property interest? Yes_____ No_____
Regulation Sec. 1.23		(2) Has the utility relinquished or subordinated sufficient property rights or interests to the State as are necessary for the construction, operation, and maintenance of the highway? Yes_____ No_____
PPM 30-4 3.a(2)	b	Where the relocation is being made under the provisions of a State statute authorizing the payment of relocation costs, has the validity of the State's law and our participation in the costs incurred thereunder been previously established to the satisfaction of our General Counsel? Yes_____ No_____
	c	Where the relocation involves facilities which are owned by an agency or political subdivision of the State and occupy publicly owned land or right-of-way,
PPM 30-4 3. a(3)		(1) Has the State determined that the agency or political subdivision is not required by law or agreement to relocate its facilities at its own expense? Yes_____ No_____
		(2) Has the State's authority to pay for relocation costs under these circumstances been established to the satisfaction is of the General Counsel's office? Yes_____ No_____

3. Where replacement right-of-way is being acquired by or on behalf of a utility,

a. Does the utility have right of occupancy in its existing location by reason of holding the fee, an easement, or other property interest? Yes_____ No_____

b. Does the cost of replacement right-of-way appear to be reasonable? Yes_____ No_____

PPM 30-4 7.j(1)

4. Is the work under the agreement included in an approved program as an item of right-of-way acquisition or construction? Yes_____ No_____

IM 30-3-61 2. 3.

5. If the estimate of relocation costs includes preliminary engineering or right-of-way charges, have these phases been included in the approved program in accordance with the State's practices? Yes_____ No_____

PPM 30-4(6)

6. If the preliminary engineering was performed by a consultant, has his use been approved in accordance with established procedures? Yes_____ No_____

PPM 30-4(6) 1,2 PPM 30-4 6.

7.a. If the force account method of work is not used, has the State determined that the use of contractual forces is in the best interests of the State or the company is not adequately staffed or equipped? Yes_____ No_____

b. If the contract method is used to perform this work, is it in accordance with established procedures? Yes_____ No_____

PPM 30-4 7.a,e,i

8.a. Does the agreement incorporate PPM 30-4 by reference? Yes_____ No_____

IM 30-7-61 1.

b. Does the agreement provide for an acceptable method of developing relocation costs? Yes_____ No_____

c. Is the agreement supported by an estimate of cost, specifications and plan of the work agreed upon which are sufficiently informative and complete to provide a clear showing of the required work? Yes_____ No_____

9.a. Does the proposed highway facility as shown on the utilities plan correspond with the latest project plans approved by the Bureau? Yes_____ No_____

b. On I projects does the proposed plan conform with AASHO policy for the accommodation of utilities? Yes_____ No_____

PPM 30-4 8. thru 13. IM 30-3-61 9.

10.a. Are all participating and nonparticipating items of cost properly identified in the estimate? Yes_____ No_____

b. Does the estimate provide for credit for recovered materials? Yes_____ No_____

11. If the cost of removal and reconditioning of salvage material exceeds salvage credit, is removal necessary? Yes_____ No_____

IM 21-6-63

12.a. Where removal without replacement is involved, has sufficient information been furnished to support reimbursement? Yes_____ No_____

b. Are charges for connecting, disconnecting or removing utility meters and service lines considered proper? Yes_____ No_____

PMM 30-4 9.b

13. Has credit been given for all betterments not necessitated by the requirements of the project? Yes_____ No_____

IM 30-3-61 5.

14. Has extended service life credit been received where there has been an increase in the functional capacity of or service improvement in the replaced facility? Yes_____ No_____

PMM 30-4 7.h

15. Is the estimate supporting the agreement in sufficient detail? Yes_____ No_____

PMM 30-4 7.I

16. Do the plans accompanying the agreement-assembly clearly show existing facilities, temporary and permanent changes to be made therein and the stages by which these changes are to be accomplished? Yes_____ No_____

PMM 30-4 7.c

17.a. Is there sufficient information to support the eligibility ratio? Yes_____ No_____

b. Does the amount and eligibility ratio an shown in the agreement agree with that shown in the estimate? Yes____ No_____

18. Is the estimate in agreement with the plan and statement of work? Yes_____ No_____

19. Is the estimate mathematically correct? Yes_____ No____

20. Have funds been provided for this work in the project estimate? Yes_____ No_____

EXHIBIT A

F. A. Project No. _____ State _____

State Project No. _____ County _____

Utility _____ Agreement No. _____

Review by: Approval Recommended

(Fiscal) _____ Yes _____ No _____

(ROW) _____ Yes _____ No _____

(Engr.) _____ Yes _____ No _____
(name) (date)

Conditions: _____

_____

_____

_____

_____

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20235

August 3, 1965

CIRCULAR MEMORANDUM TO: Regional and Division Engineers

FROM: J. M. O'Connor
31-50 Director of Audits and Investigations

SUBJECT: Title VI of the Civil Rights Act of 1964
Interpretations relative to the applicability
of the Civil Rights Assurances

The following interpretations relative to the applicability of the Civil Rights Assurances and the required provisions set forth in the appendices thereto were developed pursuant to specific State inquiries. They have been coordinated with the Department of Commerce and are being forwarded for your information and guidance under similar circumstances. Interpretations in addition to those contained herein will be issued as particular problem areas arise.

Disposition of Excess Property

Property which is acquired by the State, with Federal participation, for highway purposes but which is later declared no longer required for such purposes (i.e., where the planned highway location is altered so that all or part of the property under consideration is no longer within the right-of-way limits), must be made subject to the Appendix C clauses when disposed of by the State pursuant to a contract of sale executed after the date the Civil Rights Assurances were executed by the State.

Property which is acquired by the State in excess of that required for highway purposes, because it was more economical to purchase the entire parcel, and for which no Federal assistance is requested by the State or is involved, is not subject to the Appendix C clauses when disposed of by the State.

Regardless of the method employed by a State to evaluate property, Federal assistance is only involved in that property acquired for highway purposes. The phrase "severance damages to the remainder", and similar terms, should not be interpreted as constituting Federal participation in the acquisition of property, or rights in property, not required for highway purposes, but rather as the method by which the cost of the property actually acquired for the construction of the highway is determined.

Leases and Property Management Agreements

The Appendix C clauses need not be included in month-to-month leases executed by the state insofar as residential property is involved on which the seller continues occupancy pending use of the property for highway purposes. However, in the event such property is vacated by the seller and is to be leased to another party, the State, in accordance with its obligations under the Civil Rights Assurances, must lease the property without discrimination as to race, color or national origin. If the State month-to-month leases permit subleasing by the tenant, provisions must be included in such leases to prohibit discrimination by the tenant in such subleases.

Property management agreements between the state and private parties involving property acquired by the state with Federal participation, which is leased temporarily after acquisition but prior to construction, must contain the Appendix A clauses. In our opinion, these agreements are analogous to State contracts with fee appraisers. In addition, the Appendix C clauses must be included in such leases under the circumstances set forth in the preceding paragraph.

Agreements with Railroad and Utility Companies

The Appendix A clauses must be included in all relocation agreements with railroad and utility companies, in which Federal assistance is involved, with the proviso to be added in such agreements that such clauses are applicable only in those cases where the railroad or utility company does not perform the relocation work with its own forces, i.e., where the company enters into a contract or agreement with a construction contractor, or similar party, to perform such relocation work. In this event, the railroad or utility

company shall not discriminate in its choice of contractors and shall include the Appendix A clauses in its contracts or agreements, thereby providing that its contractors will not discriminate in their choice of subcontractors, including procurements of materials and leases of equipment.

Permits or licenses issued by the State for the construction of utilities on Federal-aid highway rights-of-way, the cost of which is borne by the utility company without Federal participation, need not include the Appendix A clauses. In our opinion, utility companies utilizing the rights-of-way in this manner are not participating in the Federal-aid highway program and, accordingly, are not subject to Title VI of the Civil Rights Act of 1964.

The Appendix C clauses need not be included in agreements, sometimes referred to as "Joint Use Agreements", whereby a railroad or utility company's presently existing easement within the right-of-way must be relocated within the right-of-way for the accomodation of the Federal-aid highway. However, the Appendix A clauses must be included in such agreements with the proviso as provided above.

Material Suppliers

Appendix A clauses need not be included in royalty agreements with property owners for the obtaining of materials (borrow agreements) pursuant to which the property owner performs no work at the site. In our opinion, such property owner in not a "material supplier" within the contemplation of the Civil Rights Assurances.

Amendment of Contracts

Short term contracts executed subsequent to February 8, 1965, and completed prior to the date the State executed the Civil Rights Assurances need not be amended to include the Appendix A clauses.

Nondiscrimination in Employment Practices

The nondiscrimination referred to in the Appendix A clauses relates to the selection and retention of subcontractors, including procurements of materials and leases of equipment; whereas the nondiscrimination clauses set forth in paragraph 2 of Section II of the Required Contract Provisions for Federal-aid Contracts (see exhibits 1, 2, 3 & 4 to PPM 40-4) relate to a different type of nondiscrimination, as prescribed by Executive Orders Nos. 10925 and 11114, namely, non-discrimination in employment. Therefore, both the Appendix A clauses and those prescribed in the exhibits to PPM 40-4 must be included in Federal-aid construction contracts. In this connection, you will note in the last sentence of Section 8.15(a) of the Department of Commerce Regulations under the Civil Rights Act of 1964, that nothing in the Regulations is deemed to supersede the Executive Orders referred to therein and the regulations issued thereunder.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20236

February 7, 1966

CIRCULAR MEMORANDUM

TO: Regional and Division Engineers

FROM: J. M. O'Connor
31-50 Director of Audits and Investigations

SUBJECT: Title VI of the Civil Rights Act of 1964; Interpretations relative to the applicability of the Civil Rights Assurances

This memorandum is intended to supplement my circular memorandum of August 3, 1965, relative to the same subject. Interpretations in addition to those contained herein will be issued as particular problem areas arise.

One general principle applicable under Title IV to the Federally-assisted highway programs is that the selection and retention of contractors and subcontractors who provide services, equipment and materials for or incidental to the programs should be made without regard to race, color or national origin. With this principle in mind, the following interpretations are set forth with regard to utility relocation problems.

Where a utility enters into an agreement with the State to locate or relocate utility (including railroad) lines and facilities on, over, or under Federally-assisted highways, the covered contractors and subcontractors engaged in the work should be selected and retained without regard to race, color or national origin.

It has, nevertheless, been determined, by way of limitation, not to require the State to obtain assurances to such effect from the utilities in certain situations. They are:

(a) Where the utility or the State performs the work itself without contractors or subcontractors.

(b) Where the relocation is agreed to by way of just compensation for the taking of utility lines or facilities on utility-owned right-of-way.

(c) Where the State provides substitute highway right-of-way of equal or lesser value to the utility to replace that taken by the State for the highway.

(d) Where under State law the utility has a right rather than a privilege to locate on, over or under the highway right-of-way.

If none of the above situations are involved, the State is to obtain the assurances from a utility when the utility is authorized by the State to locate or relocate on, over or under the highway right-of-way as a matter of privilege rather than as of right under State law. This might occur, for instance, where there is an existing highway whose right-of-way the utility may wish to use and the State has discretion whether to permit such use. A condition of the State's permit, license or other agreement for the utility to use the highway would be that the utility must comply with the assurances and it would make no difference if the utility pays for the relocation work. (This interpretation supersedes that contained in the first full paragraph on page 3 of my circular memorandum dated August 3, 1965, beginning with the words "Permits or licenses...".)

With regard to contracts awarded by a utility for relocation work subject to the assurances, it has been determined that where a utility company at present has such a contract which was executed prior to August 3, 1965, with a contractor to perform all future relocation work, the utility company does not have to amend the contract to include the Appendix A clauses.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

December 28, 1967

CIRCULAR MEMORANDUM TO: Regional Federal Highway Administrators
and Division Engineers

FROM: J. A. Swanson, Director of Right-of-Way and Location
39-30 Washington, D. C.

SUBJECT: Enactment of New Utility Relocation Statutes

The instructions outlined in the September 17, 1958, Circular Memorandum to Regional and Division Engineers on the subject "Relocation of Utilities from or within Publicly Owned Lands", are rescinded. On and after the date of this memorandum, where a State enacts a new utility relocation statute or amends an existing one and requests reimbursement of utility relocation costs pursuant thereto, the policy to be followed shall be that outlined in paragraph 3b of PPM 30-4 dated October 15, 1966. When this occurs, the State shall furnish the division engineer copies of the statute, along with a statement reflecting the differences, if any, between the utility relocation payment standards under State law and those established under Section 123, Title 23, U.S.C., by PPM 30-4; along the lines indicated by paragraph 1e of the PPM.

Before reimbursement is approved, two copies of the statute and statement shall be submitted through the Regional Federal Highway Administrator, along with appropriate comments by the division and region, to and for prior review by this office and for referral to the Office of the Chief Counsel. While such reviews are underway, the division engineer may conditionally authorize utility relocations subject to an affirmative finding by Public Roads that the State's submission forms a suitable basis for reimbursement under Section 123, Title 23, U.S.C. Further, this office shall be kept informed should a statute become a matter of litigation either before or after the foregoing finding is made by Public Roads.

This matter has been correlated with the Offices of the Chief Counsel and Administration.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

September 5, 1968

CIRCULAR MEMORANDUM TO: Regional Federal Highway Administrators and Division Engineers

FROM : J. A. Swanson, Director of Right-of-Way and Location
34-30 Washington, D. C.

SUBJECT: Utility Relocations - Evidence of Property Right or Interest - Paragraph 71(2) PPM 30-4.

This concerns cases where a utility occupies private property and the utility's property interest is not a matter of public or private record. On two recent occasions, the Chief Counsel ruled the following circumstance is acceptable as a basis for authorizing Federal-aid participation in the reimbursement of utility relocation costs incurred by the State pursuant to paragraph 3a(1) and 71(2) of PPM 30-4:

> Where the utility company having the power to eminent domain occupies and uses private property without instituting condemnation proceedings, but under such circumstances that the acts of the utility company constitute a de facto taking of the property or rights therein.

Previous to the foregoing rulings, the conditions outlined in the paragraph above were not accepted as a suitable basis for approving Federal participation, pursuant to paragraph 71(2) of PPM 30-4. Should any State wish to request reimbursement for utility relocation costs under the foregoing circumstance, the State must first submit a statement to the division engineer establishing and/or citing its legal authority or obligation to pay for the costs of relocation, along the lines provided for under paragraph 3b of PPM 30-4.

Before reimbursement is approved, two copies of the statement shall be submitted through the Regional Federal Highway Administrator to this office for referral to and prior review by the Office of the Chief Counsel. While such reviews are underway, the division engineer may conditionally authorize such utility relocations subject to an affirmative finding by the Chief Counsel that the State's submission forms a suitable basis for reimbursement under Section 123, Title 23, U.S.C., and with the following understandings:

The State's counsel should review the facts and circumstances of each relocation and submit an opinion to be incorporated into the project file together with the State's utility relocation agreement. Counsel's opinion may incorporate by reference the authorities set forth in the foregoing in addition to the following item:

(more)

1. Citation of the authority of the utility to acquire private property by eminent domain.

2. The date (as best may be determined) the utility originally occupied the property.

3. A statement of the legal basis relied upon to establish the utility's compensable property interest paramount to any right or interest of the public.

This matter has been correlated with the Offices of the Chief Counsel and Administration.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

September 9, 1968

CIRCULAR MEMORANDUM: Regional Federal Highway Administrators
and Division Engineers

FROM: G. M. Williams, Director of Engineering and Operations
32-34

SUBJECT: Time extensions due to utility and right-of-way delays

We believe that during the past several years there has been a reduction in the number of State requests for Public Roads approval of time extensions caused by utility and right-of-way delays. This reduction is no doubt due to the improved adequacy and effectiveness of the States' practices and planning in advance of actual construction and the pertinent requirements of PPM 20-11.1, PPM 21-12, PPM 30-4, and PPM 21-6.3. These requirements are intended to preclude, almost without exception, Public Roads approval of time extensions related to utility and right-of-way delays. However, it is recognized that occasionally very unusual circumstances may justify granting an exception to this rule.

As a minimum, exceptions to the above-stated rule should not be granted unless it can be shown that, (1) the construction work was actually delayed by the right-of-way or utility difficulty, (2) the contractor did everything required of him by the contract to minimize the delay and, (3) the State was unable to exercise effective control of the situation despite its best efforts. Examples of situations wherein Public Roads approval of time extensions can probably be justified are as follows:

1. Delays where the State had an adequate basis for expecting right of occupancy and use prior to construction and the provisions of paragraph 6a of PPM 21-6.3 were not considered applicable.

2. Delays attributable to delivery of critical materials to utility companies when all acceptable alternative sources and designs have been exhausted. Also other delays beyond the control of the utility company such as those resulting from strikes and natural disasters.

3. Delays resulting from the relocation of underground utilities which were not known to exist prior to construction.

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Each case involving a time extension request for an exception to the above-stated rule should be independently evaluated on its merits. Questionable cases should be forwarded to the regional office for advice.

If particular types of right-of-way or utility delays recur because of the State's inability to exercise effective control, consideration should be given to improving the situation through appropriate legislative and/or administrative changes.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS
WASHINGTON, D.C. 20591

September 18, 1968

CIRCULAR MEMORANDUM TO: Regional Federal Highway Administrators and Division Engineers

FROM : J. A. Swanson, Director of Right-of-Way and Location
34-30 Bureau of Public Roads
Washington, D.C.

SUBJECT: Proposed New Management Procedure for Utility Relocations-PPM 30-4
(Reply due by November 1, 1968)

We are enclosing a discussion draft of a proposed policy statement (new paragraph 16, PPM 30-4) which establishes a new management procedure for processing Federal-aid utility relocation agreements costing $25,000 or less, including lump-sum agreements entered into pursuant to paragraph 7g(3) of PPM 30-4.

Under the proposed procedure, the State instead of the Division Engineer will act in reviewing and approving utility relocation agreements costing $25,000 or less. All provisions and requirements of PPM 30-4 will apply to such utility relocations, except that the detailed utility documents, agreements, costs estimates and plans need not be submitted for review and approval by the Division Engineer as a prerequisite for authorizing the utility work to proceed. Such supporting information is to be retained in the State's files and made available for review by Public Roads.

The use of the new procedure will be at the State's option but subject to approval by the Regional Administrator. To qualify, the State must demonstrate that its utility policies and practices adequately meet the requirements outlined in the proposed policy statement. Public Roads management of this program will be accomplished on the basis of existing post-construction audit procedures combined with annual reviews of a representative sample of agreements processed under the alternate procedure, i.e., a management by selection process. A discussion draft of new PPM 30-4.2 and guidelines for conducting annual utility reviews will be furnished to you separately for review and comment at an early date.

We estimate 70 percent or more of the four to six thousand utility relocation agreements processed by division offices each year involve adjustments costing $25,000 or less. Under the alternate procedure, these adjustments would be authorized by an exchange of correspondence between the State and Public Roads, without referral of agreements, plans and estimates to the Division Engineer. The more costly relocations will continue to be approved by the Division Engineer. These latter agreements,

- More -

although smaller in number, represent the more complex adjustments and involve a substantial portion of the total annual utility relocation costs incurred.

Since use of the new procedure is optional, the Division Engineer is to invite the State to comment on the desirability and merit of the proposed management procedure, including any other comments it wishes to offer.

We urge that the discussion draft be given high priority for early review by division and regional staffs. Comments from each division, along with the State's comments, should be referred to the Regional Administrator and his comments, along with those from the divisions and States, referred to this office on or before November 1, 1968.

Enclosure

16. Alternate Procedure

a. This paragraph establishes an alternate procedure for processing utility relocation agreements where the total estimated cost of the utility work properly attributable to the highway construction does not exceed $25,000. It also appliesto lump-sum agreements entered into pursuant to paragraph 7g(3). Except as provided by paragraph 16e, the State will act instead of the Division Engineer in reviewing and approving the arrangements, fees, estimates, plans, agreements and other related matters associated with utility relocations required by this memorandum as prerequisites to authorize the utility to proceed. The alternate procedure may be approved for use in any State when the provisions of paragraphs 16b, c, and d have been satisfied.

b. The State is to file a formal application with Public Roads for approval of the alternate procedure for processing Federal-aid utility relocation agreements, where the total estimated cost of each relocation agreement does not exceed $25,000 or lesser ceiling amount established at the election of the State. The application must be accompanied by the following:

(1) The State's written policies and procedures for administering and processing Federal-aid utility adjustments, which must make adequate provisions with respect to the following:

(a) Compliance with the requirements of this memorandum.

(b) Advance utility liaison, planning and coordination measures for providing adequate lead time and early utility relocation to minimize interference with the planned highway construction.

(c) Appropriate administrative, legal and engineering reviews and coordination procedures as necessary to determine the legal basis of the State's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under paragraph 1e; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and provide for uniform treatment of the various utility matters and actions, consistent with sound management practices.

(d) Documentation in the State files of actions taken in compliance with State policies and the provisions of this memorandum.

(2) A statement signed by the chief administrative officer of the State highway department certifying that:

(a) Federal-aid utility relocations will be processed in accordance with the applicable provisions of PPM 30-4 and the State's utility policies and procedures submitted under paragraph 16b(1),

(b) the State's administration of utility relocation matters will be directed toward obtaining the most feasible and economical utility relocation solutions available, and

(c) reimbursement will be requested in only those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this memorandum, as determined after appropriate audit by or for the State.

c. Upon receipt of the formal application by the State for approval of the alternate procedure, the Division Engineer will review the State's submission, utility organization and staffing, and evaluate the State's practices and procedures thereunder, as provided for by PPM 30-4.2. A report of the Division Engineer's findings and recommendations on the adequacy of the State's policies, procedures, practices and organization is to be submitted to the Regional Administrator along with the State's formal application.

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d. When the Regional Administrator is satisfied that the State's alternate procedure and policies and practices thereunder form a suitable basis for approving reimbursement with Federal-aid highway funds, he may approve the alternate procedure and authorize the Division Engineer to process Federal-aid utility relocation agreements and related matters under the alternate procedure. A copy of the reports, approved alternate procedures and related actions taken pursuant to paragraphs 16c, d, h, and i shall be furnished to the Office of Right-of-Way and Location.

e. When the alternate procedure has been approved for use in a State, the Division Engineer may authorize the State to proceed with utility relocations in accordance with the certification previously furnished under paragraph 16b(2) provided:

(1) The utility work has been included in an approving program.

(2) The State has requested in writing the specific authorizations and approvals desired including a general description, location and estimated cost of the facilities to be adjusted or relocated under each agreement involved.

(3) The total estimated cost of the utility work attributable to the highway construction does not exceed the ceiling amount established under the provisions of paragraph 16b.

f. Modification of the agreement, or change or extra work orders prescribed by paragraph 7f need not be submitted to the Division Engineer

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for approval under the alternate procedure, provided the revised total estimated cost of the agreement does not exceed the ceiling amount established in paragraph 16b by more than 10% and/or the increase in cost is not more than 25% of the agreement amount authorized under paragraph 16e.

g. At least once a year a representative sample of agreements processed under the alternate procedure shall be selected and reviewed by the Division Engineer as apart of the utility review program established by PPM 30-4.2.

h. Any changes, additions or deletions the State proposes to the utility procedure approved by the Regional Administrator pursuant to this paragraph shall be submitted to the Division Engineer for referral to and prior approval by the Regional Administrator. Such requests by the State must be accompanied by a statement verifying the certification made under paragraph 16b(2) and its application to the revised procedure. The Division Engineer may continue to approve utility work under the previously approved procedure, pending approval of the revised State policies.

i. The Regional Administrator may suspend approval of the certified procedure and direct the Division Engineer to resume approval of all utility relocations, where Public Roads utility reviews disclose instances of noncompliance with the terms of the certification. Federal-aid funds will not be eligible to participate in any utility costs incurred by the State that do not qualify under the terms of the State's certification made pursuant to this paragraph.

j. Should significant or unusual engineering problems be encountered or questions arise on the extent of Federal participation under utility agreements processed under the alternate procedure, the State should request

(more)

the review and advice of the Division Engineer before proceeding with the utility work. Proposed agreements involving a basis of reimbursement under paragraph 3b, not previously established to the satisfaction of Public Roads, and relocations falling within the scope of paragraph 7p must be submitted to Public Roads for prior approval.

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

SUBJECT	Utility Index	FHWA NOTICE

October 22, 1970
EN-14

The enclosed Utility Index has been updated to include reference to current PPM's, AM's, IM's, and CM's relating to highway-utility matters. It supersedes the index that was distributed by CM dated May 8, 1963. Previously listed memorandums that are obsolete, superseded, or not closely identified with utility matters have been deleted; pertinent memorandums issued since the last index was published have been added.

The index is provided to serve as a convenient reference for those individuals responsible for the relocation and accommodation of utilities.

M. F. Maloney
Acting Associate Administrator for
Engineering and Traffic Operations

Enclosure

DISTRIBUTION:
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UTILITY INDEX

Administrative Memorandums

Number	Date	Subject
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	10-29-69	Pages 1, 2, 5, and 6
	5-4-70	Pages 3 and 4

Policy and Procedure Memorandums

PPM 20-1	1-19-67	Program and Project Procedures (Type Codes)
PPM 20-5	5-2-61	Secondary Road Plan
	10-18-63	Amendment 2
PPM 20-6.1		Inspection of Construction Projects (Exclusive of Sampling and Testing)
	1-6-69	Pages 1, 2, and 7 thru 12
	6-13-68	Pages 3 thru 6 and 13 thru 16
PPM 20-6.2	11-6-68	Inspection of Construction Projects (Sampling and Testing)
PPM 20-8	1-14-69	Public Hearings and Location Approval – Paragraph 4c
PPM 20-11.1	10-10-58	Construction Planning (Right-of-Way Clearance and Adjustment of Utilities and Railroads)
PPM 21-1	4-15-58	Federal-aid Programs
	7-17-59	Amendment 1
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IM 21-6-68	12-23-68	Safety Provisions for Traffic Signal Supports and Appurtenances
IM 30-6-67	5-2-67	Utilities – Scenic Enhancement (That part under numbered paragraphs (1), (2), (3) superseded by PPM 30-4.1, dated 11-29-68 and paragraph (4) superseded by PPM 30-4, dated 2-14-69
IM 30-1-70	1-6-70	Adjustment of Gas Pipelines
IM 40-2-65	10-1-65	Lighting Controlled Access Highways

AASHO Publications

	8-25-60	A Policy on Access between Adjacent Railroads and Interstate Highways, 1960
	3- -63	An Informational Guide on Project Procedures (Contract Construction, Pavement Type Selection and Right-of-Way Acquisition) Rev. March 1963 (See Utility Adjustments, Pages 25 and 26)
	10- -67	An Informational Guide on Fencing Controlled Access Highways, 1967, (See Section on Gates)
	2-15-69	A Policy on the Accommodation of Utilities on Freeway Rights-of-Way, 1969
	10-25-69	A Guide for Accommodating Utilities on Highway Rights-of-Way, 1969
	10-26-69	Geometric Design Guide for Local Roads and Streets Part 1 - Rural, 1970

Circular Memorandums

WCM	7-26-56	Comptroller General's Opinion on Public Utilities
BCM	12-18-57	Policy and Procedure Memorandum 30-4 (Utility Company Accounting Systems)
BCM	4-11-58	Showing of Control of Access on Plans for Interstate System Projects and Other Federal-Aid Projects for Which Access Rights Have Been Acquired
BCM	6-17-58	American Telephone and Telegraph Company Accounting
WCM	10-16-58	Federal-Aid Highways and Public Utilities, Mr. G. M. Williams' Presentation to ASCE
WCM	2-10-59	External Audit of Public Utility Relocation Claims (Section 123, Title 23, U.S. Code)
WCM	3-30-59	Coordination of Utility Adjustments with Highway Construction
BCM	3-30-59	Audit and Reimbursement for Public Utility Relocation Costs
WCM	7-31-59	Title 23, U.S.C., Section 112(c) and Contracts for Utility Relocations or Installations
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BCM	6-14-60	Crossings of Interstate Highways by Utility Service Connections

BCM	8-4-60	Encasement of Underground Pipelines Crossing Interstate Projects
BCM	8-15-60	Conversion of Overhead Utility Lines to Underground Installations and Provisions for Expansion of Any Underground Utility Crossings of Interstate Highways
BCM	9-12-60	Audit Consideration of Overhead Costs Presented by Utilities Companies
BCM	10-14-60	Pipeline Crossings of Interstate Grade Separation Structures
BCM	1-17-61	An Informational Guide on Project Procedures
BCM	2-20-61	The Uniform Application of Utility Procedures and Field Reporting Instructions
BCM	12-12-61	Reimbursement for Utility Relocations
BCM	1-4-62	Reimbursement for Utility Work - Extended Service Life Credit
BCM	3-2-62	Report on Joint Session of the AASHO/ARWA Highway-Utility Liaison Committees, October 11, 1961, Denver, Colorado
WCM	3-2-62	Review of Utility Agreements
BCM	4-27-62	Roadside Telephones and Emergency Communication Devices for Motorists on Interstate Freeways
BCM	3-6-63	Program for Division Office Review of a State's Procedures and Practices Relating to Highway-Utility Matters
BCM	3-27-63	Utility Seminar - 1963, Use of Consultants
WCM	6-4-63	Labor Compliance Manuals - Applicability of Federal Minimum Wage Rates to Employees of Contractors and Subcontractors of Railroad and Public Utility Companies
BCM	9-13-63	Program for Division Office Review of a State's Procedures and Practices Relating to Highway-Utilities Matters
BCM	10-18-63	Secondary Road Plan
BCM	12-23-63	Secondary Road Plan - PPM 20-5(2), dated October 18, 1963
BCM	1-13-64	Program for Division Office Review of a State's Procedures and Practices Relating to Highway-Utility Matters
WCM	2-7-64	State Highway Department Construction Manuals
BCM	7-20-64	Procedure for Requesting Opinions of State Attorneys General
WCM	7-24-64	Utility Adjustments - Scheduling of Work
BCM	12-22-64	Guide for Review of Utility Proposals

WCM	8-3-65	Title VI of the Civil Rights Act of 1964 – Appendix "A"
BCM	1-17-66	Intercompany Profit – American Telephone and Telegraph and Western Electric Companies
WCM	2-7-66	Title VI of the Civil Rights Act of 1964 – Interpretations relative to the applicability of the Civil Rights Assurances
WCM	3-13-67	Accommodation of Utilities – Paragraph 15 – PPM 30-4
WCM	12-28-67	Enactment of New Utility Relocation Statutes
WCM	9-5-68	Utility Relocations – Evidence of Property Right or Interest Paragraph 7l(2) PPM 30-4
WCM	9-9-68	Time Extensions Due to Utility and Right-of-Way Delays
BCM	10-1-68	Proposed New PPM 30-4.2 – Utility Review Program
BCM	12-20-68	Amendments to States' Secondary Road Plans
WCM	10-1-69	Application of Joint Development and Multiple Use Concepts to Freeways and Utilities
WCM	12-10-69	AASHO Guide, "A Guide for Accommodating Utilities on Highway Rights-of-Way"
WCM	5-21-70	Accommodating Utilities Within Highway Rights-of-Way (Remarks Presented by J. E. Kirk, Chief, Utilities Staff at April 15-17, Engineering Conference of the Missouri Valley Electric Association in Kansas City, Missouri)

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

SUBJECT Highway-Utility Liaison	**FHWA NOTICE**

December 24, 1970

EN-14

The annual meeting of the Joint Liaison Committee of the American Association of State Highway Officials and American Right Of Way Association was held at Houston, Texas on November 12, 1970, in conjunction with the annual convention of AASHO. Four excellent papers on highway-utility relationships of current and future interest to highway and utility officials alike were presented before the committee, as follows.

A. "Urban Transportation Planning - Highways and Utilities," by Mr. Karl E. Baetzner, National President, American Right Of Way Association, Washington Gas Light Company, Washington, D. C. The relationship between utility service and land development patterns is described with emphasis on the importance of these elements in projecting future travel corridors. Active participation of utility companies in urban transportation planning studies is encouraged.

B. "Environmental Quality - Highways and Utilities," by Mr. Henrik E. Stafseth, State Highway Director, Michigan Department of Highways. The growing public concern with matters affecting environmental values is reviewed. The need for utility and highway agencies to develop new techniques that will have minimal impact on the environment in amplified.

C. "Joint Planning of Highways and Electric Transmission Lines," by Mr. Frederick H. Warren, Advisor on Environmental Quality, Federal Power Commission. The necessity of comprehensive planning for highways and electric transmission lines is outlined, together with full consideration for joint planning and use of rights-of-way and appropriate recognition of the impact of such facilities on the environment. The FPC "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities," which were issued on November 27, 1970, are reviewed.

D. "Feasibility of Utility Tunnels in Urban Streets," by Mr. Lloyd A. Dove, Assistant Executive Director, American Public Works Association. Preliminary findings of a research project on current and potential uses of tunnels for

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accommodating utility facilities in high density urban areas are summarized. Advantages and disadvantages of utility tunnels are reviewed. A number of problems which must be resolved before the tunnel concept receives broad acceptance are identified.

Sufficient copies of each paper, including the FPC Guidelines, are attached to provide single copies to each region, division. and State highway department.

M. F. Maloney
Acting Associate Administrator for
Engineering and Traffic Operations

Attachments

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

SUBJECT	Safety and Coordination - Highway Construction and Pipelines	FHWA NOTICE

January 12, 1970

EN-14

Attached are copiesof the National Transportation Safety Board's press release and report on the November 6, 1969, accident involving the natural gas distribution system in Burlington, Iowa, during the construction of a non-participating section of Iowa Project U-534-9(l).

Your attention is directed to the Board's recommendations, particularly the one to the States, District of Columbia, and Puerto Rico, for considering the enactment of legislation and the one to the Iowa State Highway Commission for revising its procedures for coordinating these matters at highway construction sites.

The Board's report includes a number of conclusions, recommendations, and other information of special interest and critical concern to highway and utility officials alike. Several items developed in the report are of particular interest to, and in some instances the responsibility of, State highway departments. They include:

(1) About 35 to 40 percent of all gas pipeline accidents throughout the country are caused by damage to underground gas facilities from earth-moving or other equipment;

(2) Contributing causes to the Burlington accident were; lack of knowledge on the part of construction personnel at the work site of the location of the gas regulator station, failure of the State Highway Commission to provide the utility company with a copy of the revised highway plans showing that the regulator station was to be included in the area to be cleared, and failure of the utility company to keep the regulator site free from overgrowth, stake out or mark the regulator, have inspectors at the scene or take other steps to prevent damage to the regulator;

(3) The numerous meetings conducted by the State Highway Commission to discuss various aspects of the project and problems to be encountered failed to provide the necessary information to the proper parties to avoid the damaging of the regulator by the bulldozer;

(4) The State Highway Commission's procedures for preventing accidents of this type were satisfactory. however, they were not fully implemented;

(5) The contractors failed to heed the notes on the final construction plans, warning that the location of underground facilities shown in the plans were approximate and that it was the contractor's responsibilitv to determine the exact location and avoid any damage;

(6) The control line to the monitoring regulator was buried under only one foot of cover. Had it been broken rather than bent, the overpressure to 7500 customers would have been on the order of 200 times the normal operating pressure instead of the four to five times normal actually encountered. Thus this accident narrowly escaped becoming a catastrophe of very large proportions.

All of the forgoing features and many more are dealt with in greater detail in the report. The Board's recommendations warrant careful study by all State highway departments, together with discussions with utility companies and public service commissions, as may be appropriate to determine whether present legislation, policies, and practices are adequate to safeguard against similar accidents on highway projects. To be fully comprehensive, such study should encompass pipelines conveying any hazardous materials, including cases, liquid petroleum products, and similar commodities.

Division engineers are requested to pursue this matter with the States to the extent they are assured that the States' policies and practices for these matters are satisfactory. Please keep us advised of any developments on these matters, including any legislation that may be enacted by the States.

Sufficient copies of the press release and report are also attached to provide single copies to each region, division, and State highway department.

M. F. Maloney
Acting Associate Administrator for
Engineering and Traffic Operations

Attachment

DISTRIBUTION:

Headquarters
Regions
Divisions

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

SUBJECT	Construction, Maintenance, and Permanent Replacement of Utility Cuts in Highway Pavements	FHWA NOTICE

November 24, 1971

EN-14
HO-30

The adequacy and effectiveness of practices associated with constructing, maintaining, and permanently replacing pavement and base in connection with utility cuts in highways and streets is a matter needing more attention. Improper signing during construction, inadequate barricades and lighting, poor backfilling practices, lack of maintenance of temporary patches, and long delays in making permanent replacements have become problems of major importance which require correction. Proper consideration of the above features is essential for preserving and maintaining the free and safe flow of traffic as well as the riding quality and service life expectancy of pavements. We cannot continue to put large amounts of Federal-aid highway monies into project improvements, only to have these efforts virtually nullified by utility cuts.

The problem seems to be an apparent lack of timely planning and scheduling of new utility installations with highway improvement projects. There have been examples where utility excavations have been made across practically new pavements on recently completed projects. In many of these cases, scheduling of the utility installation with the highway construction could have avoided this situation. Utility companies and municipalities should be strongly encouraged and in some instances required to consider their forseeable long-range needs, say for at least 5 to 10 years, and make adequate provisions for these needs at the construction stage of the highway improvement. In turn, State highway departments are encouraged to establish policies under which no utility cuts will be allowed in new roadways for a certain period of time after construction, say 5 years, except in cases of emergency. Prior to major street improvements, all adjacent property owners, particularly on unimproved land, and utilities should be advised of the of construction so that future utility needs can be arranged and coordinated with the improvement. With the long lead times required for highway projects, the publicity given to them through the public hearing and environmental statement processes, it is inconceivable that any persons in any community do not know long ahead of time what a highway department has planned to do. This is the purpose of such hearings and notices and we must insist that they be so utilized.

- more -

DISTRIBUTION: Headquarters
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PPM 30-4.1 prescribes policies and procedures for accommodating utility facilities on Federal-aid highway projects. It implements the applicable provisions of Sections 1.23 and 1.27 of Title 23, C.F.R., and Section 116 of Title 23, U.S.C., with respect to the States' maintenance obligation thereunder as affected by such accommodation. By this date each State has been afforded adequate time and reasonable consideration to develop and implement procedures necessary for the proper administration and control of utility installations within Federal-aid highway project rights-of-way that will assure the safety of vehicular traffic and retain the permanent structural adequacy of the pavements. In those States where a utility accommodation policy has not yet been approved, appropriate steps are to be taken immediately to complete this task at the earliest possible date. Where such policies have been approved, an evaluation should be made to determine whether operations under the policy are satisfactory.

Please pursue this matter with appropriate State officials and stress the importance and urgency of establishing and maintaining satisfactory operations in the administration, control, and day-to-day inspection of utility cut operations. This would apply to all such Federal-aid work whether the State is directly responsible for maintaining the highway and regulating utilities or whether such maintenance and regulation is by arrangement with cities or others.

Please submit a report as soon as convenient but before February 1, 1972, as to what is underway or what has been accomplished to resolve this matter.

F. C. Turner
Federal Highway Administrator

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
Washington, D.C. 20590

SUBJECT: Relocation of Utilities - Federally Owned Land

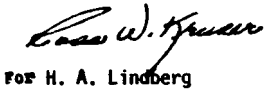
DATE: MAY 23 1974
In reply Refer to: HNG-14

FROM : Associate Administrator for Engineering and Traffic Operations

TO : Regional Federal Highway Administrators
Regions 1 through 10

This concerns cases where federally owned land is transferred to a state for highway purposes and such land is occupied by utility facilities under the terms of a revocable permit issued to the utility by the Federal agency which owns the land. Where it is necessary to relocate such facilities to accommodate the planned highway construction, Federal funds are eligible to participate in the cost of relocation, provided the payment to the utility by the State will not violate State law and will otherwise be in accordance with 23 U.S.C. 123.

This matter has been coordinated with the Chief Counsel's Office. It supersedes the July 29, 1971, memorandum to Regional Administrators (Regions 1 through 9) from Mr. M. F. Maloney on this subject. Appropriate change will be made to PPM 30-4 at its next revision.



For H. A. Lindberg

Attachment

ADDRESSEES:

R. E. Kirby, RFHWA, Region 1, Delmar, New York (01-00)
W. H. White, RFHWA, Region 3, Baltimore, Maryland (03-00)
J. D. Lacy, RFHWA, Region 4, Atlanta, Georgia (04-00)
G. D. Love, RFHWA, Region 5, Homewood, Illinois (05-00)
J. W. White, RFHWA, Region 6, Fort Worth, Texas (06-00)
J. B. Kemp, RFHWA, Region 7, Kansas City, Missouri (07-00)
W. H. Baugh, RFHWA, Region 8, Denver, Colorado (08-00)
F. E. Hawley, RFHWA, Region 9, San Francisco, California (09-00)
L. E. Lybecker, RFHWA, Region 10, Portland, Oregon (10-00)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

Washington, D.C. 200590

SUBJECT: Applicability of the Uniform Act When A Utility Company Acquires Replacement Property

DATE: JUN 24 1974

In reply Refer to: HNG-14

FROM : Associate Administrator for Engineering and Traffic Operations

4 : Regional Federal Highway Administrators
Regions 1, 3, 5, 6, 8, 9, 10

Recent inquiries were received from Regions 4 and 7 concerning the applicability of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" when replacement rights-of-way are acquired by or on behalf of a utility company.

Attached is a copy of our June 12, 1974, memorandum to Mr. J. D. Lacy concerning this subject for your information and use on Federal-aid projects.

H. A. Lindberg

Attachment

ADDRESSEES:

RFHWA R. E. Kirby, Region 1, Delmar, New York (01-00)
RFHWA W. H. White, Region 3, Baltimore, Maryland (03-00)
RFHWA G. D. Love, Region 5, Homewood Illinois (05-00)
RFHWA J. W. White, Region 6, Fort Worth, Texas (06-00)
RFHWA W. H. Baugh, Region 8, Denver, Colorado (08-00)
RFHWA F. E. Hawley, Region 9, San Francisco, California (09-00)
RFHWA L. E. Lybecker, Region 10, Portland, Oregon (10-00)

Washington D.C. 20590

JUN 12 1974

North Carolina - Applicability of the Uniform Act When A Utility Company Acquires Replacement Property

HNG-14

Associate Administrator for Engineering and Traffic Operations

Mr. J. D. Lacy
Regional Federal Highway Administrator
Atlanta, Georgia 30309

This concerns your office memorandum of February 14, 1974, and other related correspondence to Mr. J. H. O'Connor on the subject matter. They have recently been referred to the Office of Engineering for reply.

It is our position that the Uniform Act is applicable to cases involving the relocation of utilities on Federal-aid highway projects where each of the following conditions prevail:

(1) Federal funds are participating in the cost of utility relocation, and the relocation involves the acquisition of replacement land for the utility being relocated, and

(2) such acquisition is performed by the State, or its political subdivision, on behalf of the utility.

Conversely, the Uniform Act would not be for application to such cases where either of the following conditions prevail:

(1) the utility relocation does not involve Federal fund participation, or

(2) the relocation involves the acquisition of replacement land for the utility, but such acquisition is performed by the utility, (or its agent), rather than by the State or its political subdivision.

The forgoing has been coordinated with the Offices of Right-of-Way and the Chief Counsel.

H. A. Lindberg

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

Washington, D.C. 20590

DATE: SEP 29 1976

In reply Refer to: HNG-14

SUBJECT: Proposed Updating, Utility-Highway Directives (PPM 30-4 and PPM 30-4.1) (Due November 1, 1976)

FROM : Director
Officer of Engineering

TO : Regional 1 and 3 - 10

All States, divisions, and regions are invited to submit any comments they wish to offer with respect to our proposed routine updating of the subject directives and along the lines provided for by the Advance Notice of Proposed Rulemaking (copy attached). Please forward the information to the divisions and States. Comments should be referenced to the existing directives and should be submitted through channels to the Office of Engineering (HNG-14) on or before November 1, 1976, as per the attached Notice.

Also attached for your information is a copy of AASHTO Committee Correspondence dated September 27, 1976, concerning the establishment of an Ad Hoc Task Force of the Join AASHTO/ARWA Highway-Utility Liaison Committee for reviewing the proposed updated directives.

Joseph W. Burdell, Jr.
for W. J. Wilkes

2 Attachments

A-160

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

COMMITTEE CORRESPONDENCE

September 27, 1976

Address Reply to

James E. Kirk, Secretary
Joint AASHTO/ARWA Highway-
Utility Liaison Committee
Office of Engineering (HNC-1
Federal Highway Administrati
Washington, D.C. 20590

TO: Members
Ad Hoc Task Force of Joint AASHTO/ARWA Highway-
Utility Liaison Committee (See attached membership list)

SUBJECT: Proposed Updating of FHWA's Directive on Utility Relocations and Adjustments (PPM 30-4) and on the Accommodation of Utilities (PPM 30-4.1)

As authorized by Co-Chairmen T. B. Webb, Jr., (AASHTO-Florida) and A. F. Laube (ARWA-Virginia), six members of the Joint Committee have been designated to serve on an Ad Hoc Task Force (see attached membership list). The purpose is to review and comment an FHWA's proposed updating of its current directives for Utility Relocations and Adjustments (PPM 30-4, dated June 29, 1973) and the Accommodation of Utilities PPM 30-4.1, dated November 29, 1972).

The proposed updating of PPM 30-4 essentially involves two different tasks. The first is to convert the existing directive into two separate directives using the new format prescribed by the Federal-Aid Highway Program Manual (FHPM). One directive will contain reimbursement provisions alone, while the other will contain administrative and operational policy. The second task is to streamline and simplify both new directives with a goal of attaining at least a 10 percent reduction in the content of the existing directive. No major or significant policy changes are contemplated at this time.

The recently modernized versions of FHWA's railroad highway directives (FHPM 1-4-3, Reimbursement for Railroad Work, and FHPM 6-6-2-1, Railroad-Highway Projects, both dated April 25, 1975) have been used as models for pursuing both of these tasks.

The proposed updating of PPM 30-4.1 is essentially editorial in nature along with some pruning, as indicated above for PPM 30-4. No major or significant policy changes are contemplated at this time.

Drafts of the proposed new directives are attached for your review and comment. For your convenience and as assistance, all of the existing provisions of PPM 30-4 have been included in the new draft of Utility Relocations and Adjustments, FHPM 6-6-3-1, with notes along margins showing what provisions are to be transferred to the new reimbursement directive (FHPM 1-4-4), what provisions are to be deleted, and what changes are proposed. Similar notes have been included along margins of the drafts of the proposed new directive on Reimbursement of Utility Work, FHPM 1-4-4, and Accommodation of Utilities, FHPM 6-6-3-2.

A briefing session will be held on the matter for those members of the task force, or their representatives, attending the September 29, 1976, meeting of the Joint Committee at Lake Buena Vista, Florida. Those members not attending or represented at the September 29 meeting will be furnished drafts of the proposed new directives by mail immediately following the September 29 meeting.

Any comments or suggestions you wish to offer should be made available to me, as Secretary of the Joint Committee, on or before November 1, 1976. Thank you for your cooperation.

Sincerely yours,

James E. Kirk
Secretary

Enclosures

NOTE: An Advanced Notice of Proposed Rulemaking in planned prior to the meeting of the task force in Florida on September 29, 1976. (Copy enclosed)

cc:
Mr. H. E. Stafseth
Executive Director, AASHTO

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Part 645]

[FHWA Docket No. 76-16]

UTILITIES

Advance Notice of Proposed Rulemaking

The Federal Highway Administration is now considering a routine updating of its existing administrative requirements concerning utility relocation and adjustments (23 CFR Part 645 subpart A) and accommodation of utilities (23 CFR Part 645 subpart B). No significant changes to the existing utility-highway requirements are contemplated at this time.

Interested persons are invited to submit any views or comments they may desire with respect to updating the requirements of 23 CFR Part 645, on Utilities. Any communication should be identified by Docket No. 76-16 and be submitted to the Federal Highway Administration, Room 4230, Docket No. 76-16, 400 7th Street, S.W., Washington, D.C. 20590. All communications should be received no later than November 1, 1976.

This advance notice of proposed rulemaking is issued under the authority of 23 U.S.C. 315 and 49 CFR 1.48(b).

Issued on: SEP 22 1976

Federal Highway Administrator

[4910-22-M]
DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Part 645]

[FHWA Docket No. 78-8]

UTILITY ADVANCE RELOCATION AND ADJUSTMENTS

Advance notice of Proposed Rulemaking

AGENCY: Federal Highway Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this advance notice to solicit comments in anticipation of a future revision of its regulations concerning utility relocations and adjustments associated with Federal-aid highway construction.

DATES: Written comments must be received by April 30, 1979. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written comments (preferably to triplicate) to Federal Highway Administation. FHWA Docket No.79-8, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTRACT:

James A. Carney, Office of Engineering, 202-426-0104: or Stephen C. Rhudy, Office of the Chief Counsel, 202-426-0800. Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A previous issued advance notice of proposed rulemakimg, 41 FR 42220, FHWA Docket No. 76-16, discussed a proposed updating of FHWA's regulations dealing with utility relocations and adjustments (23 CFR Part 645, Subpart A).

There are approximately 30,000 utility companies in the United States. Potentially, The facilities of the majority of these utility companies may at some time have to be altered due to conflicts with Federal-aid highway construction projects. States who pay the costs of utility relocations may be eligible for proportional reimbursement by the FHWA under 23 U.S.C. 123.

FHWA has developed policies and procedures in its regulations that prescribe the extent to which Federal funds may be applied to the costs incurred by States for the relocation or adjustment of utility facilities required by construction of Federal-aid highway projects.

The FHWA has recently decided to rewrite and update its regulations dealing with utility relocations and adjustments. The primary purpose in rewriting the regulations will be to simplify them and eliminate unnecessary requirements in accordance with FHWA's emphasis on reducing red tape. Only those requirements considered essential to satisfying the provisions of Title 23, United States Code, or maintaining orderly and uniform administration of FHWA's program will be retained.

Interested persons are invited to comment specifically in regard to the following areas:

1. What requirements of the existing regulations (23 CFR Part 645, Subpart A) should be retained or modified as appropriate for assuring compliance with the provisions of law as set forth in 23 U.S.C. 123?

2. What requirements of the existing regulations should be retained or modified to assure fair, reasonable and uniform administration of the relocation and adjustment of utilities under the Federal-aid highway program?

3. What requirements of the existing regulations are considered not to be essential for compliance with 23 U.S.C. 123 or uniform and reasonable program administration?

4. What additional requirements should be included in the regulations that would result in a more efficient and effective management of the utility relocation and ajustment program?

Those desiring to comment on this advance notice of proposed rulemaking are asked to submit their viewS in writing. Comments will be available for public inspection both before and after the closing date at the above address. All comments received in response to this advance notice will be considered before further rulemaking action is undertaken.

NOTE – The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

(23 U.S.C 123, 315 and 49 CFR 1.48(b))

Issued on February 27, 1979.

Karl S. Bowers.
Federal Highway Administrator.
[FR Doc. 79-6491 Filed 3-5-79; 8:45 am]

SUBJECT: Consultant's Report on Contract for Updating FHWA's Regulations and Procedures on Utility-Highway Requirements (Order No. 9-1-0312 dated February 7, 1979)

FROM: James E. Kirk, Consultant
7910 Kentbury Drive
Bethesda, Maryland 20014
Telephone: (301) 656-9272

TO: James A. Carney (Contract Manager)
Chief, Railroads and Utilities Branch, HNG-14
Federal-Aid Division, Office of Engineering
Federal Highway Administration
400 Seventh Street, SW.
Washington, D.C. 20590

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1. INTRODUCTION
2. OBJECTIVE
3. NEED
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7. PPM 30-4, UTILITY RELOCATION AND ADJUSTMENTS
8. PPM 30-4.1, ACCOMMODATION OF UTILITIES
9. SEPARATE CONTRACT - RAILROAD DIRECTIVES
10. OPTIONS
11. ADDITIONAL BACKGROUND INFORMATION

Attachments -

Stage Development, Additional Background Information (List)

Drafts of New Directives:
FHPM 6-6-3-1 and Appendix dated July 19, 1979
FHPM 1-4-4 and Appendix dated July 19, 1979
FHPM 6-6-3-2 dated July 25, 1979

Statement of Work

Advance Notice of Proposed Rulemaking

Public Law 95-599 -- November 6, 1978
Section 113, 23 U.S.C. 109(l) and Proposed Technical Amendment

PPM 30-4, dated June 29, 1973

PPM 30-4.1 dated November 29, 1972

1. INTRODUCTION

The subject contract calls for the preparation of a set of written recommendations for updating current FHWA regulations and procedures on utility-highway requirements. Current regulations for these matters are contained in 23 CFR-645, Subparts A and B. Current procedures are in FHPM 1-4-4, Utility Relocations and Adjustments and FHPM 6-6-3-2, Accommodation of Utilities. Both of these directives are now in the old format for Policy and Procedure Memorandums (PPM's); one as PPM 30-4, Utility Relocations and Adjustments, dated June 29, 1973, and the other as PPM 30-4.1, Accommodation of Utilities, dated November 29, 1972. (Copies of both PPM's are attached.)

2. OBJECTIVE

The objective is to update and simplify existing utility-highway regulations and procedures. The purpose is to reduce and eliminate unnecessary and burdensome requirements.

3. NEED

The need for doing this work stems from the longstanding government-wide effort at the Federal level to cut red-tape and simplify Federal programs. As far as can be determined, day to day operations under the current regulations and procedures are reasonably satisfactory and relatively free from major problems and complaints. For this reason, it may be difficult for FHWA to convince some State highway agencies and utility companies on the need and merit for undertaking this task at this time. Nevertheless, it will be shown here that the existing regulations and procedures can be substantially reduced and simplified with corresponding benefits to all parties of interest.

4. RECOMMENDATIONS

a. It is recommended that FHWA accept the attached drafts of the three proposed new directives, namely FHPM 1-4-4, Reimbursement for Utility Work, dated July 19, 1979; FHPM 6-6-3-1, Utility Relocations and Adjustments, dated July 19, 1979; and FHPM 6-6-3-2, Accommodation of Utilities, dated July 25, 1979, as a suitable basis for updating and revising current FHWA utility-highway regulations and procedures, but with the following suggestions:

(1) FHWA will temporarily defer using the attached drafts on FHPM 1-4-4 and FHPM 6-6-3-1 as Notices of Proposed Rulemaking until the work under the terms of a separate contract with the Office of Engineering (Order No. 9-1-0348, dated August 31, 1979) can fully explore the feasibility and merit for combining selected portions of the utility-highway directives system with corresponding portions of the railroad-highway directive system (more information on this follows at the end of this report).

(2) FHWA will temporarily defer using the attached draft on FHPM 6-6-3-2 as a Notice of Proposed Rulemaking until the Congress approves FHWA's request for approval of a proposed technical amendment to 23 U.S.C. 109(l) (a copy of the proposed technical amendment and law is attached).

b. It is recommended that FHWA obtain additional information from the States for supporting the proposed change to the provisions of PPM 30-4 which use expired service life to measure an increase in value. Under the proposed new directive (FHPM 6-6-3-1, paragraph 9b) a credit for expired service life would not be required on the replacement of segments (regardless of length) of a utility's service, distribution, or transmission lines. Conversely, under the proposed new directive, a credit for accrued depreciation would be required, but only in cases involving the replacement of major and costly plant facilities that are used for the production, transfer, or storage of the utility's products. It is suggested that FHWA's Technical Advisory Panel for Updating Utility Directives be requested to obtain such supporting information as available from the States in their Regions (1, 3, 4, 6, and 8 -- For more information on this topic see paragraphs 7c and 10d of this report.).

c. Following approval by the Congress of the proposed technical amendment to 23 U.S.C. 109(l), and in the interest of complying with the provisions of said Section 109(l), especially those requirements relating to safety, it is recommended that,

(1) FHWA request AASHTO to review and update the AASHTO publications, A Guide for Accommodating Utilities on Highway Rights-of-Way, dated October 25, 1969, and A Policy on the Accommodation of Utilities on Freeway Rights-of-Way, dated February 15, 1969, as deemed appropriate, desirable or necessary, and

(2) FHWA make suitable arrangements with the States for reviewing and updating State Utility Accommodation Policies and related actions under paragraphs 10a(1) and (2) and 8 of the proposed new directive, FHPM 6-6-3-2 on Accommodation of Utilities. (see attached draft.)

d. It is recommended that FHWA establish a suspense date for States to submit updated State utility accommodation policies within 1 year after the date of issuance of the new directive, FHPM 6-6-3-2, Accommodation of Utilities (see paragraph 10a(1) of the attached draft).

e. It is recommended that paragraph 3e(7) of FHPM 6-2-1-1, Design Standards for Highways, dated April 7, 1968, be revised from its current nonregulatory (nonitalicized) to regulatory (italicized) language and to read as follows: "A Guide for Accommodating Utilities on Highway Rights-of-way, AASHTO, 1969. The FHWA shall use this guide to evaluate the adequacy of State utility accommodation policies in making the determinations required under paragraph 10a(2) of FHPM 6-6-3-2. Accommodation of Utilities." (See attached draft and paragraph 8 of the same.)

f. It is recommended that paragraph 7e of existing PPM 30-4 be transferred to an appropriate directive in Chapter 8 -- Traffic Operations of the FHPM. This was informally discussed with a representative of the Office of Traffic Operations who suggested the matter be included in a memorandum from the Office of Engineering to the Office of Traffic Operations at an early date.

PROGRESS

a. Work got underway on March 5, 1979, and has now advanced to the point where all tasks have been completed (see attached Statement of Work) except for subtask 1 (Historical Background) under the Report Requirements for this contract. The contract completion date is September 30, 1979. and subtask 1 should be done by that time.

b. An Advance Notice of Proposed Rulemaking announcing a proposed updating of 23 CFR 645, Subpart A - PPM 30-4, Utility Relocations and Adjustments, dated June 29, 1973, was published in the Federal Register, Vol. 44, No. 45, Tuesday, March 6, 1979 (copy attached). Public Notice of Rulemaking on

23 CFR 645, Subpart B - PPM 30-4.1, Accommodation of Utilities, dated November 29, 1972, has been deferred by FHWA until the Congress approves FHWA's proposed technical amendment to 23 U.S.C. 109(l).

6. FORMAT

Following early informal discussions with representatives from the several offices within FHWA's Washington Headquarters having an interest in utility-highway matters, a decision was made to use Appendixes to house nonregulatory material. With minor exception this basic rule was followed and two of the three proposed new directives developed under this contract have such Appendixes. All material contained in each Appendix is presented in the form of nonregulatory guidelines for use by the FHWA field offices, State highway agencies, utility companies and others as background information for expediting the advancement of utility relocations and for minimizing delays to associated highway construction projects. The reason for using the Appendix was twofold. First, it permits the regulatory requirements to be physically separated from the nonregulatory guidelines. This separation seems especially helpful for emphasizing the distinction between regulatory and nonregulatory material. Second, and most important, it assures that both regulatory and nonregulatory material will be housed in one document within the FHPM and will routinely reach all parties of interest, especially State highway and utility company personnel who are engaged in day to day operations under utility/highway programs. Some of these advantages would likely be diminished if the nonregulatory material was housed in another document, say as a Technical Advisory Memorandum and issued separately from the FHPM material. In this respect, it is important to keep in mind the longstanding special arrangements between FHWA and the States for supplying several thousand additional copies of utility-highway directives for distribution to utility companies on the States' mailing lists. This practice was established years ago by Mr. F. C. Turner in the interest of assuring that utility companies would be continuously kept informed of any changes to or modifications of FHWA's utility-highway requirements.

7. PPM 30-4, UTILITY RELOCATIONS AND ADJUSTMENTS, dated June 29, 1973 (23 CFR 645 Subpart A)

a. Conversion

At the onset it was decided to convert the current (1973) issue of PPM 30-4 (and 23 CFR 645, Subpart A) into two separate directives; one on Reimbursement for Utility Work as FHPM 1-4-4

and the other on Utility Relocations and Adjustments as FHPM 6-6-3-1. The current directives on Reimbursement for Railroad Work, FHPM 1-4-3 and on Railroad-Highway Projects, FHPM 6-6-2-1, were used as models for making the proposed conversion. This is in keeping with the fact that old PPM 30-3 and PPM 30-4 were for many years companion policy memorandums for third party railroad and utility work under the Federal-aid highway program. Also, such an arrangement offers the potential for combining selected portions of the railroad and utility directive systems into combined single, rather than separate directives in the FHPM, thus completely eliminating one or more directives or portions thereof. For example, a combined single directive entitled, Reimbursement for Utility and Railroad Work, would result in the complete elimination of one directive.

b. Reduction

Much of the regulatory material in current PPM 30-4 was also revised and converted to nonregulatory guidelines and included in an appendix to each of the proposed new directives (FHPM 1-4-4 and FHPM 6-6-3-1). Several provisions of the current PPM have been entirely deleted while another has been recommended for transfer to another directive in the FHPM. In terms of reducing and eliminating unnecessary and burdensome procedures and simplifying the regulatory and review process for advancing Federal-aid highway projects, it is estimated that the regulatory language has nearly been cut in half, from about 11,600 words in the current regulations (23 CFR 645, Subpart A) to about 6,500 regulatory words in the two proposed new directives (FHPM 1-4-4 and FHPM 6-6-3-1). About 3,500 words have been converted and retained in appendixes as nonregulatory guidelines. Another 2,600 have been completely eliminated from the old PPM, which contains an estimated total of about 12,600 regulatory and nonregulatory words. While the basic principles of FHWA's existing procedures have been left intact, the regulatory material has been substantially reduced.

c. Expired Service Life

With one exception, all of the above mentioned reduction, revision, and conversion has been accomplished with only minor change to the existing provisions for establishing the eligibility of Federal fund participation. The exception involves a proposed change in the provisions which use expired service life as a measurement for an increase in value. (See paragraph 9. Reimbursement Basis of PPM 30-4 and paragraph 9. Credits and Betterments of proposed new FHPM 6-6-3-1) Briefly, the new directive proposes to

require a credit for accrued depreciation on only those cases involving the replacement of major facilities which are used for the production, transfer, or storage of the utility's products such as buildings, pumping stations, filtration plants, power plants and substations and other similar facilities. Such credit would no longer be required on cases involving the replacement of segments (regardless of length) of a utility's service, distribution, or transmission lines. The basis for making this change steins from reports from the field offices and States that the cost of administering the present policy for obtaining credit on expired service life frequently exceeds the amount of credit obtained. Also that the present policy, in many instances, discourages utility companies from voluntarily installing replacement facilities of greater functional capacity than the ones being replaced so as to avoid paying both the cost of betterments plus a credit for expired service life. In any instance where the utility's replacement facility is located within the highway right-of-way it is usually advantageous to the highway for the utility to install replacement facilities of a greater functional capacity at the time of the relocation rather than at a later date. Please note that the proposed change does not eliminate the requirement for credit, it merely confines it to situations involving major and costly plant relocations somewhat like the former policy adopted in 1957 for major and independent segments under paragraph 7f of the first issue of PPM 30-4, dated December 31, 1957. It also is consistent with the policy followed for obtaining credit for accrued depreciation in cases involving the replacement of buildings and other depreciable structures of a railroad on railroad-highway projects (see paragraph 9c(2) of FHPM 6-6-2-1, on Railroad-Highway Projects, dated April 25, 1975). As such it offers the potential for combining still another portion of the utility and railroad directives systems (CREDITS and BETTERMENTS) as part of a combined single directive rather than as separate directives in the FHPM.

d. Lump Sums and Preliminary Engineering

In addition to the above, minor changes are proposed for raising the ceiling on lump sum utility agreements from $10,000 to $25,000 (paragraph 7g of FHPM 6-6-3-1) and for raising the amount that permits the Division Administrator to forego preaward review and/or approval of consultant contracts from $5,000 to $10,000, unless the State specifically requests preaward assistance (paragraph 5b of FHPM 6-6-3-1).

8. PPM 30-4.1, ACCOMMODATION OF UTILITIES, dated November 29, 1972 (23 CFR 645, Subpart B)

a. 23 U.S.C. 109(l)

The most difficult problem to resolve in updating PPM 30-4.1 stems from the requirements in 23 U.S.C. 109(l). The consultant was authorized to proceed under two assumptions. One was that the Congress will eventually approve FHWA's request for a proposed technical amendment to 23 U.S.C. 109(l)(1)(A). The other was that FHWA would continue its longstanding application of national policy to highway projects, not highway systems, as mentioned in 23 U.S.C. 109(l)(1)(A). (A copy of the proposed technical amendment and the law is attached.)

In the interest of implementing the (to be) amended law several new provisions have been included in the proposed new directive on Accommodation of Utilities. These provisions include: appropriate reference to 23 U.S.C. 109 has been added throughout the new directive; a new paragraph 3a has been added to give additional emphasis to safety as being of paramount (but not sole) importance; the requirements imposed by 23 U.S.C. 109(l)(1)(B) and (C) as relate to agricultural land have been added to the list of other requirements under the standards for State utility accommodation policies, as new paragraph 8c(5). Under this arrangement, the State would be making the determinations required by 23 U.S.C. 109(l), for or on behalf of the Secretary, but pursuant to State policy. In turn, if the State proposes to permit an installation not in accordance with its own policy, the matter would be submitted to the FHWA for prior concurrence under paragraph 10a(5)(a) of the proposed new directive, FHPM 6-6-3-2.

b. Scenic Enhancement and Natural Beauty

The special provision under existing paragraph 6g requires that hardship cases involving new utility installations within areas of scenic enhancement and natural beauty be submitted to Washington Headquarters for concurrence by the Administrator. As this provision has rarely been invoked (none within the last 3 years) it has been simplified and the approval authority recommended for transfer from the Administrator to the Division Administrator (see new paragraph 6e of FHPM 6-6-3-2).

c. State Utility Accommodation Policies

Instructions for FHWA's review of State accommodation policies have been added to new paragraph 8, State Accommodation Policies which, in turn, should increase the importance and use of the criteria contained in the AASHTO publication, A Guide for Accommodating Utilities on Highway Rights-of-Way, dated October 25, 1969. As such, it seems highly desirable for FHWA to request AASHTO to review and update the Guide at an early date so that it would be available for use in reviewing the adequacy of State utility accommodation policies, especially from the standpoint of safety. It should also be available for use by the States in updating and strengthening their existing policies. Along these same lines, and for similar reasons, it would also seem highly desirable for FHWA to request AASHTO to review its publication, A Policy on the Accommodation of Utilities on Freeway Rights-of-Way, adopted February 15, 1969, and accepted under FHPM 6-6-1-1, Design Standards for Highways. As an alternate consideration to the above, FHWA may wish to explore the feasibility and merit for upgrading and converting the AASHTO Guide to an AASHTO policy. Since the Congress has evidently considered the matter of accommodating or installing utilities within highway rights-of-way important enough from the standpoint of safety to warrant inclusion under 23 U.S.C. 109 Standards, it would also seem important enough for FHWA and AASHTO to treat utility accommodation as a policy matter on all highways, not just freeways.

There are two loopholes in the existing provisions of PPM 30-4.1 that need to be closed. One is the need for a suspense date for all States to submit or resubmit the statement, updated policies and other information required under paragraph 10a(1) of the proposed new directive, FHPM 6-6-3-2. For example, 10 years after all the States were first requested to submit this information under paragraph 7a of PPM 30-4.1, dated October 1, 1969, there are still five States that have not yet done so (Virginia, Mississippi, Michigan, Alaska, and Montana). Several other States delayed this action for years after first being asked to do so. It is strongly recommended that a suspense date of 1 year after the date of issuance of the proposed new directive be adopted (see new paragraph 10a(1)). The other loophole concerns the lack of any officially designated criteria or format for the States to follow and use in preparing a policy and for FHWA to use in reviewing a State's policy. Where the States voluntarily used the AASHTO Guide for Accommodating Utilities on Highway Rights-of-Way, there was no problem. When they choose to

ignore the Guide, FHWA had a difficult, if not impossible task to get a satisfactory policy. Recommendations on this have been made elsewhere in this report (see above and paragraphs 4c and e of this report).

d. Highlights of Other Proposed Changes

With respect to the list of conditions that must be met for establishing a utility strip on and along the outer border of existing freeways, a new condition has been added as paragraph 7e(13) of the proposed new directive to account for cases qualifying under 23 U.S.C. 109(l)(1)(B) and (c).

The existing provisions in Appendix A for establishing utility strips on and along the outer border of freeways (and other provisions in Appendix B and C as proposed in preliminary drafts of the proposed new directive) have all been moved to several new paragraphs within the proposed new directive (FHPM 6-6-3-2) so that the need for any Appendix has been completely eliminated.

Additional instructions have been provided in new paragraph 10b (Interim Approvals) on what steps need to be taken on projects until approval is made by FHWA to the utility accommodation policies of the State or its political subdivision.

The amount of material previously required to be furnished to the Office of Engineering has been substantially reduced to include only a copy of the approved utility accommodation policy from each State (see new paragraph 10a(6)).

A requirement for traffic control plans and devices to be in conformance with MUTCD has been added as new paragraphs 6g and 10b(3)(e).

A few minor provisions have been deleted from existing PPM 30-4.1 that are no longer considered necessary, routine housekeeping changes have been made throughout, and most approval actions have been assigned to FHWA so that the persons responsible for making approvals can be designated under delegations of authority rather than in the regulations.

9. SEPARATE CONTRACT FOR UPDATING RAILROAD-HIGHWAY REQUIREMENTS

Under the terms of a separate contract with the Office of Engineering (Order No. 9-1-0348, dated August 31, 1979) the consultant, James E. Kirk, is to prepare a set of written recommendations for updating current FHWA regulations and

procedures on railroad-highway requirements. The work is to include recommendations, as deemed appropriate, on which requirements in the utility-highway directive system can be combined with corresponding requirements in the railroad-highway directive system and included under one or more combined directives. In this light, the consultant now plans to fully explore the feasibility and merit of combining several portions of the two directive systems. As a first step, it is planned to put together a new draft entitled, Reimbursement for Railroad and Utility Work. Next it is planned to combine several provisions of both directive systems into a single directive entitled, General Procedures for Railroad and Utility Work. At this point, it is expected that such topics as Preliminary Engineering, Rights-of-way, Agreements and Authorizations, Credits and Betterments, Construction Procedures, and Alternate Procedures can be combined in the proposed new directive on General Procedures for Railroad and Utility Work. It is envisioned that the remaining portions of the two directive systems can then be reorganized and retained as separate directives, one on Railroad-Highway Projects and the other on Utility Relocations and Adjustments.

It seems that this approach offers the best solution for attaining maximum reduction and elimination of regulations and procedures in both utility-highway and railroad-highway requirements. As such, it is strongly recommended that FHWA temporarily defer using the proposed new drafts (attached) of FHPM 1-4-4, Reimbursement for Utility Work, and FHPM 6-6-3-1, Utility Relocations and Adjustments as Notices of Proposed Rulemaking until this approach has been fully explored and evaluated. It is estimated that the above mentioned first step of preparing a new draft on Reimbursement for Utility and Railroad Work can be ready for review sometime next month, say by key personnel from Washington Headquarters and members of the Technical Advisory Panel for Updating Utility Directives (see March 29, 1979, memorandum from Mr. R. D. Morgan to Regional Federal Highway Administrators, Regions 1, 3, 4, 6, and 8 for establishment of Advisory Panel).

10. OPTIONS

a. Should the Congress fail to approve FHWA's proposed technical amendment of 23 U.S . C. 109(l)(1)(A), it may be necessary for FHWA to issue entirely new regulations for accommodating utilities rather than attempting to update PPM 30-4.1. It is not likely that many situations will be encountered where utilities can, in fact, be installed within the highway rights-of-way "without adversely affecting any aspect of safety."

b. Should FHWA decide that it does not wish to combine portions of the utility-highway and railroad-highway directive systems as previously discussed in paragraph 9 of this report, the attached final drafts on FHPM 1-4-4 and FHPM 6-6-3-1 are considered suitable for use as Notices of Proposed Rulemaking, subject to any modifications FHWA wishes to make.

c. Should FHWA prefer not to include the nonregulatory material in Appendizes to FHPM 1-4-4 and FHPM 6-6-3-1 as recommended by this report, the nonregulatory guidelines can be issued separately under a Technical Advisory Memorandum. To dispose of these guidelines entirely would not be in the best interest of FHWA, the State highway agencies or utility industry.

d. Should FHWA prefer not to relax its present requirements for making determinations on whether a credit is due to a project for expired service life to the extent recommended by this report (see paragraph 7c), FHWA may wish to consider a more modest approach by deleting the phrase (less than 1 mile in length) from existing paragraph 9b(l)(b) of PPM 30-4 and by deleting all of existing paragraph 9b(2)(a). This change would eliminate the present requirements for making determinations on whether a credit is due to a project on segments of lines of more than 1 mile in length involving only a replacement-in-kind but would retain the present requirements for credit on segments of lines, regardless of length, that are of greater functional capacity or capability and include betterments, excluding any crossings of the highway. This change would represent a modest improvement over the present procedures for this matter but would fall far short of the reduction in red-tape and simplification to be attained under the changes recommended by paragraph 7c of this report.

11. ADDITIONAL BACKGROUND INFORMATION

A packet of background information reflecting the chronological steps taken at each stage of development leading to the final drafts of the attached proposed new directives (FHPM 1-4-4 and Appendix on Reimbursement of Utility Work, FHPM 6-6-3-1 and appendix on Utility Relocations and Adjustments, both dated July 19, 1979, and FHPM 6-6-3-2, Accommodation of Utilities, dated July 25, 1979) has been compiled and is available in the files of FHWA's Railroads and Utilities Branch, Office of Engineering. A list of this material entitled Stage Development is attached to this report.

STAGE DEVELOPMENT

ADDITIONAL BACKGROUND INFORMATION

The following list shows the chronological steps taken at each stage of development leading to the final drafts of the proposed new directives (FHPM 1-4-4 and Appendix on Reimbursement for Utility Work, FHPM 6-6-3-1 and Appendix on Utility Relocations and Adjustments, both dated July 19, 1979, and FHPM 6-6-3-2 on Accommodation of Utilities, dated July 25, 1979).

1. Advance Notice of Proposed Rulemaking on proposed updating of 23 CFR 645, Subpart A (PPM 30-4).

2. Tabulation, dated March 12, 1979, Classification of PPM 30-4. This classifys each provision of PPM 30-4 with respect to the source, need and impact of each requirement, and makes appropriate recommendations for deletions, revisions, and retentions, either in regulatory form or as nonregulatory guidelines.

3. Working draft of proposed new directive on Utility Relocations and Adjustments, FHPM 6-6-3-1 and Appendix, dated April 10, 1979.

4. Working draft of proposed new directive on Reimbursement for Utility Work, FHPM 1-4-4 dated April 16, 1979, and Appendix dated April 18, 1979.

5. Typed preliminary draft of FHPM 6-6-3-1 and Appendix on Utility Relocations and Adjustments, dated April 30, 1979.

6. Typed preliminary draft of FHPM 1-4-4 and Appendix on Reimbursement for Utility Work, dated April 30, 1979.

7. May 8, 1979, Memorandum from J. E. Kirk to Addressees which distributed copies of above material for review and comment by various offices of FHWA's Washington, D. C., Headquarters.

8. Handwritten notes on the preliminary drafts listed in 5 and 6 above reflecting the review process from the May 8, 1979, memorandum at Washington, D. C., Headquarters.

9. Tabulation, dated June 4, 1979, Classification of PPM 30-4.1. This classifys each provision of PPM 30-4.1 with respect to the source, need, and impact of each requirement and makes appropriate recommendations for deletions, revisions, and retentions, either in regulatory form or as nonregulatory guidelines.

10. Working draft of proposed new directive on Accommodation of Utilities, FHPM 6-6-3-2 and Appendixes, dated June 4, 1979.

11. Types preliminary draft of FHPM 6-6-3-2 and Appendixes on Accommodation of Utilities, dated June 4, 1979.

12. June 4, 1979 Memorandum from J. E. Kirk to Addressees which distributed copies of the material in 9, 10, and 11 above for review and comment by various offices of FHWA's Washington, D. C., Headquarters.

13. Handwritten notes on the preliminary draft listed in 11 above reflecting the review process from the June 4, 1979, memorandum at Washington, D. C., Headquarters.