APPENDIX 13E
TIME SCHEDULES FOR RELOCATING UTILITY FACILITIES AFFECTED BY DEPARTMENT CONSTRUCTION CONTRACTS

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13E.1 GENERAL OBLIGATIONS LAW, SECTION 11-102

Legislation signed by the Governor and taking effect 9/1/79 (Chapter 717, Laws of 1979) included not only the amending of Highway Law Section 10, Subdivision 24-b and identification of utility and facility adjustments qualifying for reimbursement, but the addition of a new section 11-102 to the General Obligations Law which reads as follows:

“11-102. Liability of utilities for compensation for damages caused by interfering with, or delaying the progress of work under state public construction contracts.

1. No utility shall interfere with, or delay the progress of work under any contract with the state department, agency, division or board, for the construction, reconstruction or improvement of any highway, street, road, railroad grade crossing, bridge, tunnel, underpass, overpass or other state contract work by failing to remove or relocate its poles, wires, cables, conduits, pipes or any other facilities or structures within the time schedule therefor by an agreement or under the terms of an agreement between the department, agency, division or board and the utility, or if no time is fixed by such an agreement or under the terms of such an agreement, within the time fixed by the department, agency, division or board, by notice served upon such utility by such state department, agency, division or board.

2. If such notice is utilized, it shall describe the public improvement and the geographical location thereof, the date of commencement and the date of completion, if any, provided for by the contract, the contractor’s name and address, the manner in which and the extent to which the facilities and structures of the utility obstruct or prevent the contractor from progressing or performing the work comprehended by the contract, and shall fix the date or time within such utility is required to remove or relocate its facilities or structures, specifying the same, in order to provide the contractor with the site when required by the contractor for progressing or performing the work pursuant to such state contract. Such notice shall be in writing and shall be served upon such utility either personally or by certified mail at its principal office or place of business in the county where the work under such contract is to be performed, or if there be no such principal office or place of business in such county, at the nearest principal office or place of business of such utility, outside of such county.
In the event the utility to whom the aforesaid notice was directed is for any reason unable, within the prescribed period, to remove or relocate said facilities or structures specified in the notice, said utility shall immediately advise said department, agency, division or board and the contractor, in writing, of such inability, and in the same communication so advise said department, agency, division or board, and the contractor of the approximate date that such removal or relocation of facilities or structures could be effected; and shall further state the basis for the inability of said utility to remove or relocate said facilities or structures within the time specified by the notice served thereon by said department, agency, division or board. The department, agency, division or board, after examining and considering the utility’s basis for establishing a different schedule for such removal or relocation, shall, if such basis is reasonable, establish and notify the utility of a revised schedule for completing such removal or relocation.

3. In cases where the utility has been reimbursed for removal, relocation, replacement or reconstruction pursuant to Section 10, Subdivision 24-b of the Highway Law, a utility failing to complete the removal or relocation of such structures or facilities within a period of thirty days beyond the time fixed therefor by the latest time schedule established in accordance with this section, shall be liable and responsible to any such contractor for any damages, direct or consequential, sustained by any such contractor as the result thereof, in an action to be brought by such contractor against such utility in a court of competent jurisdiction within two years from the time fixed for the removal or relocation of such structures or facilities. If an action is commenced against a utility, as heretofore provided, said utility may interpose in its answer in such action any defense available under the provisions of civil practice law and rules. The unreasonableness of the time schedule imposed by the state department, agency, division or board shall be an absolute defense by the utility to any such action by the contractor. If, in any such action, the utility is found to owe nothing to the contractor, or if an offer of settlement is made by the utility which is not accepted by the contractor and the resulting verdict against the utility is less than the offer of settlement, then in either such event the total cost of the utility of litigation, including reasonable attorney’s fees, shall be paid to the utility by the contractor.”
A Synopsis of Section 11-102 of the General Obligations Law is as follows:

Section 11-102 of the General Obligations Law says that:

IF the Department provides NOTICE to a Utility that a Department project requires the removal or relocation of the Utility’s facilities, and

IF the NOTICE provides a reasonable date by which time the removal or relocation must be accomplished,

THEN the Utility will be held liable to the State for damages caused by unreasonable delays in removing or relocating its facilities.

Say, for example, that a Utility is notified of a reasonable date by which it must relocate its facilities, and it neglects to do so in accordance with that date. Assume, also, that the Utility’s failure to meet the deadline in a timely fashion delays the contractor and the contractor incurs additional costs related to that delay. If the Department must, as a result, pay the contractor more than the contract price, the Department can seek reimbursement from the Utility. Another example would be where the Utility fails to remove or relocate its facilities altogether. If, as a result, the Federal government will not accept the project and withholds final payment, the Department can seek reimbursement from the Utility for damages.

To trigger Section 11-102, the NOTICE to the Utility must be in writing and either personally served upon the Utility or sent by certified mail. Should the Region, for whatever reason, prefer to hand deliver the NOTICE initially, it is advisable to follow it up by sending a copy by certified mail. Whether the NOTICE is hand delivered or mailed, it should be directed to the Utility’s principal office or place of business in the county where the Department’s project is located. If the project spans more than one county, more than one NOTICE must be sent out. If the Utility does not have any office in the county of the project, the NOTICE should be sent to the Utility’s principal office or place of business nearest the project.

The NOTICE must:

1. Describe the public improvement.
2. Describe the geographical location of the public improvement.
3. Provide the date of commencement and date of completion, if any provided by the contract.
4. Provide the contractor’s name and address.
5. Identify the structures or facilities that must be removed or relocated.
6. Specify the manner in which and the extent to which the facilities and structures of the Utility:

   a. Obstruct or prevent the contractor from progressing, or performing the work comprehended by the contract, or

   b. Conflict with the clear roadside policy of the State (provided in Chapter 10 of the Highway Design Manual), or

   c. Do not conform with any other State or Federal policy, rule, or regulation, or

   d. Will interfere with the safe operation of the highway or the safety of the traveling public either during or after the Department’s project.

7. Fix the date or time within which the Utility is required to remove or relocate its facilities or structures.

The time set forth in the NOTICE as the period within which the removal or relocation must take place should be established mutually by the Department and the Utility. If the Department and Utility are unable to reach an agreement, the Department shall unilaterally establish a reasonable deadline date.

Once the Utility gets the NOTICE, it may determine that it is unable to remove or relocate the facilities specified in the NOTICE within the prescribed period. For example, the occurrence of an emergency may require the Utility to devote all available manpower to the correction of the emergency. When this happens, the Utility must immediately advise the Department and the Department’s contractor, in writing, of its inability to act in accordance with the NOTICE, and at the same time must provide an explanation for its inability and advise the Department and contractor of the date by which it feels that the removal or relocation can be accomplished. This correspondence from the Utility to the Department and contractor does not, in and of itself, postpone the deadline date. The only entity that may revise the schedule is this Department. If, after reviewing the Utility’s correspondence the Department determines that the Utility’s basis for requesting a different schedule is reasonable, then the Department shall establish and notify the Utility of the revised schedule for completing such removal and relocation. The revised deadline date does not necessarily have to be the same date that the Utility recommended, but it should be a reasonable date under the circumstances. If the Department determines that the Utility’s basis for requesting a different schedule is unreasonable, then the Department should notify the Utility of that determination.
It is very important that the deadline date established by the Department be reasonable. If the date set is not reasonable, a court will not hold the Utility liable for damages incurred as a result of the delay in its removal or relocation of the facilities or structures. Hence, the Department might be put in the unpleasant predicament of being held liable to the contractor for damages incurred by the contractor, but not be entitled to reimbursement from the Utility.

In addition, Section 11-102 enables the Department’s contractor to bring a direct suit against a Utility, in certain instances, to recover damages caused by the Utility’s untimely removal or relocation of its facilities. However, the only time that the contractor can directly sue a Utility pursuant to Section 11-102 is when the Utility has been reimbursed by this Department, pursuant to Section 10, Subdivision 24-b, for relocating or removing its facilities. In those situations, the contractor may still sue the State.
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13E.2 SPECIAL NOTE - Coordination with the Utility Schedule

EXAMPLE SPECIAL NOTE

COORDINATION WITH THE UTILITY SCHEDULE

The Contractor must coordinate his schedule of operations with the various Utility owners involved with the project and shall verify utility information found in the contract documents. Utility facility adjustments and/or relocations required by the various Utility owners in connection with this project include:

Mohawk-Hudson Electric and Gas Corporation

115KV Aerial Transmission line relocation is shown on the plans. The existing towers and lines are in conflict with the proposed work. Tower relocations are presently underway and are scheduled to be completed within 6 months after contract award.

Aerial Electric Distribution Line relocation is shown on the plans and consists of poles in conflict with the proposed work. Pole relocations are scheduled to be completed within 3 months after contract award.

6 NPS Dia. HP Gas Main relocation is shown on the plans. The existing gas main is to be abandoned and purged before the Contractor proceeds with demolition of the structure; in accordance with company policy, the gas main will not be removed from service between 1 October and 1 May. Gas main relocation is scheduled to be completed within four months after contract award.

Verizon

Utility Pole relocations are shown on the plans. They consist of poles in conflict with the proposed work. Pole relocations are scheduled to be completed within 10 weeks after written notification by the contractor that clearing and grubbing has been completed, control lines have been laid out, and access to all new pole sites is provided.

Buried Phone Cable is shown on the plans and will be in conflict with the proposed work. Replacement of buried cable is scheduled to begin 4 months after award, or upon completion of clearing and grubbing by the Contractor (whichever occurs later) and is scheduled to be completed within 2 months thereafter.

Time Warner Cable

Aerial cable line relocation will be combined with Verizon’s work and schedule to be concurrent.
EXAMPLE SPECIAL NOTE

COORDINATION WITH THE UTILITY SCHEDULE (continued)

Texas Eastern Gas Corporation

This 24" HP Gas Transmission Line relocation is shown on the plans and will be installed after the Contractor excavates the roadway to subgrade at the gas line crossing. This installation will require 2 months and can begin no sooner than 8 months after the award of the contract because of time constraints on the Utility. Tie-in of the replacement line with the existing line will require two weeks duration and cannot take place between 1 October and 1 May. Therefore, this relocation is scheduled to be completed no earlier than 21 May 20__. The Contractor is to coordinate directly with the Utility owner before crossing this gas line with any equipment prior to its relocation.

Fairfield County Water Authority

The 16" and 20" Water Lines relocations are shown on the plans. Relocation of the 16" line is presently underway with Authority forces and is scheduled to be completed within 3 months after award. Relocation of the 20" line is scheduled to be let to contract by the owner coincidentally with the award of the State contract scheduled to be completed within 4 months.

In addition to the above itemized revisions, other relocations may become necessary during the construction phase as a result of more precise location data or other changes that might develop. Theses relocations are to be performed by the Utility owners with coordination by the Contractor.
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13E.3 PRELETTING NOTICE TO UTILITY TO REMOVE OR RELOCATE ITS FACILITIES

13E.3.1 Example Notice

The following pages provide an illustration of the preletting notice to a utility to remove or relocate its facilities. Directions for completing the pre-letting notice are provided in Section 13D.3.2.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REGIONAL OFFICE #
PRELETTING
NOTICE TO UTILITY TO REMOVE OR RELOCATE ITS FACILITIES

Date:

PROJECT: Project Identification No.: Federal Aid Project No.: County:

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Name and Address of Utility

The New York State Department of Transportation hereby advises you that your facilities or structures, as specified in Appendix A (attached), will have to be removed or relocated within __ days from the date of the award of the contract for the subject project to provide the Department's contractor with a clear site for progressing or performing work comprehended by the contract and/or to conform to State or Federal policy, rule or regulation concerning the safe operation of the highway and the safety of the traveling public. The contract is expected to be let on (provide date), and will be awarded within forty-five (45) days of that date.
Once the contract has been awarded, the New York State Department of Transportation will notify you of the exact date by which your facilities or structures must be removed or relocated, as well as the name and address of the contractor to whom the award was made.

Description of Public Improvement:

Geographical Location of Public Improvement:

Manner in which and extent to which the facilities and structures identified in Appendix A (attached) conflict with construction or the clear roadside policy of the State, or in any other way interfere with the safe operation of the highway or the safety of the traveling public (describe):

In the event that you are unable, within the prescribed period, to remove and relocate the facilities or structures identified in Appendix A (attached), you must immediately advise the New York State Department of Transportation, in writing, of such inability and, in the same communication, you must provide the approximate date that such removal or relocation of facilities or structures could be effected, and the basis for your inability to remove or relocate the identified facilities or structures within the time specified above. The Department will examine and consider your basis for establishing a different schedule for the removal or relocation and, if the basis is reasonable, will establish and notify you in writing of a revised schedule for completing the removal or relocation. However, until such time as you receive notification from the Department advising you that the schedule is revised, the above-provided schedule is in effect.
If your failure to remove or relocate your facilities or structures within the latest time schedule established by the Department delays the completion of the project by interfering with the contractor’s timely progress under the subject contract or preventing final approval by the Federal Highway Administration, you shall be liable under Section 11-102 of the General Obligations Law, for any damages, direct or consequential, resulting therefrom in addition to any liability that may be imposed under common law and the laws of the State of New York.

Furthermore, if you are eligible for reimbursement pursuant to subdivision 24-b of Section 10 of the Highway Law for the removal or relocation of your facilities in connection with this project, the contractor may commence a direct action against you, in accordance with the time limitations established in Section 11-102 for damages incurred as a result of the delay.

Please refer any inquiries, and direct any written correspondence on this matter to (provide name of contact) at:

(Provide address and telephone number of Regional Contact)

Very truly yours

Director, Region#
New York State Department of Transportation
Identification of facilities and structures that must be removed or relocated:
13E.3.2 Directions For Completing “Notice to Utility to Remove or Relocate Its Facilities”

The following directions are provided, in a question and answer format, to assist in completing the “Notice to Utility to Remove or Relocate Its Facilities”.

1. When should the “Notice” be used?

   The “Notice” should be used whenever the Department has determined in accordance with this chapter that it is necessary for a Utility to remove, relocate or replace its facilities in connection with a Department project.

2. When is the “Notice” to be sent?

   The “Notice” should be sent to the Utility as soon as you can determine the date on which the contract is expected to be let. It cannot be any earlier since you must provide this date in the “Notice”. Once you know the letting date, the sooner you send out the “Notice”, the better.

3. To whom is the “Notice” to be sent?

   The “Notice” is to be sent to any Utility, public or private, whose facilities or structures (either on or off the right of way) must be removed, relocated, or replaced, for whatever reason, in connection with a Department project. The removal, relocation, or replacement of the utility facilities may, for example, be necessary to:

   a. Provide the Department’s contractor with site to perform work under a Department contract.

   b. Eliminate a conflict, that would otherwise exist upon completion of a Department project, with the clear roadside policy of the State (provided in Chapter 10 of this manual).

   c. Prevent any other interference with the safe operation of the highway or the safety of the traveling public either during or after the Department’s project.

4. How is the “Notice” to be sent?

   The “Notice” should be sent by certified mail and the return receipt should be kept in the project files. In the event that there is litigation regarding this matter, the receipt will serve as proof that the Utility did actually receive the “Notice”.

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5. Where should the “Notice” be sent?

The “Notice” should be sent to the Utility at its principal office or place of business in the county where the work under the subject contract is to be performed. If there is no such principal office or place of business in that county, the “Notice” should be sent to the nearest principal office or place of business of the Utility outside the county.

Note: If the work is to be performed in more than one county, more than one “Notice” may have to be sent.

6. How is the date or time within which the Utility must remove or relocate its facility to be fixed?

If the Department has a General Operating Agreement with the Utility, the time schedule is to be established in accordance with the procedure provided therein. To date, the Department has such an agreement with only three companies: NYS Electric & Gas Corp., Niagara Mohawk, and Verizon.

If there is no General Operating Agreement, the Department may fix the schedule unilaterally, but it would be preferable for the Region to establish a deadline after first consulting with the Utility.

Note: The purpose of the “Notice is twofold. First, it serves to put the Utility on notice of the time within which it will be expected to adjust its facilities. Second, it documents the Department’s efforts to seek a timely removal, relocation, or replacement of the utility facilities. Consequently, it should be sent out whether or not the Department and the Utility are in full agreement about whether the relocation is necessary.
13E.4 POST-AWARD NOTICE PURSUANT TO SECTION 11-102 OF THE GENERAL OBLIGATIONS LAW AND PART 131 OF TITLE 17 OF THE NEW YORK STATE CODE, RULES AND REGULATIONS

13E.4.1 Example Notice

The following pages provide an illustration of the post-award notice to utility to remove or relocate its facilities. Directions for completing the post-award notice are provided in Section 13E.4.2.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REGIONAL OFFICE #

POST AWARD
NOTICE PURSUANT TO SECTION 11-102 OF THE GENERAL OBLIGATIONS LAW AND PART 131 OF TITLE 17 OF THE NEW YORK STATE CODE, RULES AND REGULATIONS

Date:

PROJECT: Project Identification No.:
Federal Aid Project No.:
County:

Name and Address of Utility

Pursuant to Section 11-102 of the General Obligations Law and Part 131 of Title 17 of the New York State Code, Rules and Regulations, the New York State Department of Transportation hereby formally advises you that your facilities or structures, as specified in Appendix A (attached), must be removed or relocated by (provide date), to provide the Department’s contractor with a clear site for progressing or performing work comprehended by the contract and/or to conform to State or Federal policy, rule or regulation concerning the safe operation of the highway and the safety of the traveling public.
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NOTICE

Description of Public Improvement:

Geographical Location of Public Improvement:

Date of commencement and date of completion of the subject contract:

The Contractor has been directed to commence work by (provide date).

The date of completion of the work, as provided in the subject contract, is (provide date).

Contractor’s name and address (provide):

Manner in which and extent to which the facilities and structures identified in Appendix A (attached) conflict with construction or the clear roadside policy of the State, or in any other way interfere with the safe operation of the highway or the safety of the traveling public (describe):

In the event that you are unable, within the prescribed period, to remove and relocate the facilities or structures identified in Appendix A (attached), you must immediately advise both the New York State Department of Transportation, in writing, of such inability and, in the same communication, you must provide the approximate date that such removal or relocation of facilities or structures could be effected, and the basis for your inability to remove or relocate the identified facilities or structures within the time specified above. The Department will examine and consider your basis for establishing a different schedule for the removal or relocation and, if the basis is reasonable, will establish and notify you in writing of a revised schedule for completing the removal or relocation. However, until such time as you receive notification from the Department advising you that the schedule is revised, the above-provided schedule is in effect.
NOTICE

If your failure to remove or relocate your facilities or structures within the latest time schedule established by the Department delays the completion of the project by interfering with the contractor’s timely progress under the subject contract or preventing final approval by the Federal Highway Administration, you shall be liable under Section 11-102 of the General Obligations Law, for any damages, direct or consequential, resulting therefrom in addition to any liability that may be imposed under common law and the laws of the State of New York.

Furthermore, if you are eligible for reimbursement pursuant to subdivision 24-b of Section 10 of the Highway Law for the removal or relocation of your facilities in connection with this project, the contractor may commence a direct action against you, in accordance with the time limitations established in Section 11-102 for damages incurred as a result of the delay.

Please refer any inquiries, and direct any written correspondence on this matter to (provide name of contact) at:

(Provide address and telephone number of Regional Contact)

Very truly yours

Director, Region#
New York State Department of Transportation
Identification of facilities and structures that must be removed or relocated:
13E.4.2 Directions For Completing “Notice Pursuant to Section 11-102 of the General Obligations Law and Part 131 of Title 17 of the New York State Code, Rules and Regulations”

The following directions are provided, in a question and answer format, to assist in completing the subject notice.

1. When should the “Notice” be used?

   The “Notice” should be used whenever the Department has determined in accordance with this chapter that it is necessary for a Utility to remove, relocate or replace its facilities in connection with a Department project.

2. When is the “Notice” to be sent?

   The “Notice” should be sent to the Utility immediately upon award of the contract. It cannot be any earlier since you must include, among other things, the contractor’s name and address. However, the sooner that you can send it after the award, the better.

3. To whom is the “Notice” to be sent?

   The “Notice” is to be sent to any Utility, public or private, whose facilities or structures (either on or off the right of way) must be removed, relocated or replaced, for whatever reason, in connection with a Department project. The removal, relocation, or replacement of the utility facilities may, for example, be necessary to:

   a. Provide the Department’s contractor with site to perform work under a Department contract.

   b. Eliminate a conflict, that would otherwise exist upon completion of a Department project, with the clear roadside policy of the State (provided in Chapter 10 of this manual).

   c. Prevent any other interference with the safe operation of the highway or the safety of the traveling public either during or after the Department’s project.

4. How is the “Notice” to be sent?

   The “Notice” should be sent by certified mail and the return receipt should be kept in the project files. In the event that there is litigation regarding this matter, the receipt will serve as proof that the Utility did actually receive the “Notice”.

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5. Where should the “Notice” be sent?

The “Notice” should be sent to the Utility at its principal office or place of business in the county where the work under the subject contract is to be performed. If there is no such principal office or place of business in that county, the “Notice” should be sent to the nearest principal office or place of business of the Utility outside the county.

Note: If the work is to be performed in more than one county, more than one “Notice” may have to be sent.

6. How is the date or time within which the Utility must remove or relocate its facility to be fixed?

If the Department has a General Operating Agreement with the Utility, the time schedule is to be established in accordance with the procedure provided therein. To date, the Department has such an agreement with only three companies: NYS Electric & Gas Corp., Niagara Mohawk Power Corp., and the New York Telephone Company.

If there is no General Operating Agreement, the Department may fix the schedule unilaterally, but it would be preferable for the Region to establish a deadline after first consulting with the Utility.

In any case, the date provided in the “Notice” should be consistent with any date that may have been stipulated in the HC 140.

Note: The purpose of the “Notice” is to trigger the liability provisions of 11-102 of the General Obligations Law which make a Utility responsible for damages that result from the untimely removal, relocation, or replacement of its facilities. It should, by no means, be your first transmittal to the affected Utility. By the time the “Notice” goes out, you should have already had any necessary meetings with the Utility, ironed out any difficulties or differences of opinion, and advised the Utility of the date by which its facilities must be relocated. The “Notice” is simply a final and formal step in the process. Note, also, that this “Notice” is to be sent out whether or not the Department and the Utility are in full agreement about whether the relocation is necessary.
13E.5 FOLLOW-UP LETTER TO UTILITY

13E.5.1 Example Follow-up Letter to Utility

The following pages provide an illustration of a letter to a Utility which is to be used when the Department has reason to anticipate that the Utility will not meet the deadline date provided in the “Post-Award Notice”. The sample letter can be modified for use where the deadline date has actually passed. Directions for completing the letter are provided in Section 13D.5.2.

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REGIONAL OFFICE #

Date:

Project: Project Identification No.:
Contract Number:
FA Project Number:
County:

______________________________
______________________________
______________________________
(Name and address of Utility)

In accordance with Section 11-102 of the General Obligations Law, the New York State Department of Transportation advised you, by Notice dated ____, 20__, that facilities or structures specified in Appendix A therein would have to be removed or relocated by ____, 20__, to provide the Department’s contractor with a clear site for progressing or performing work under the subject contract and/or to conform to State or Federal Policy, rule or regulation concerning the safe operation of the highway and the safety of the traveling public.
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As of the date of this letter, the removal or relocation of the facilities or structure identified in the enclosed Appendix A has not commenced (use original Appendix A and simply cross out those facilities that have already been relocated). Furthermore, we have reason to believe (state as applicable - based on the latest possible starting date provided by you, or based on statements made by date provided by you, or based on statements made by in conversation of , 20 with , or based on statements made by in letter dated , 20 , directed to) that the removal or relocation of the facilities or structures identified herein (state will not, or can no longer) be accomplished in a timely fashion.

As you have not provided us (state either - with any basis, or with a reasonable basis) for establishing a later schedule for the necessary removal or relocation, you will be held liable for damages, direct and consequential, resulting from your inaction.

By copy of this letter we are requesting our Office of Legal Affairs to take appropriate action, including seek a court order if necessary, directing you to (state either - remove, or relocate) your facilities or structures forthwith.

Any written correspondence on this matter should be directed to:

   Assistant Commissioner  
   Office of Legal Affairs  
   State Campus, Bldg. 5, Rm. 509  
   Albany, New York 12208  
   Telephone: 518-457-2411

with a copy to my attention.

Sincerely,

Regional Director  
cc: Assistant Counsel

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13E.5.2 Directions For Completing “Follow-up Letter to Utility”

The following directions are provided, in a question and answer format, to assist in completing the subject notice.

1. When should the “Letter” be used?

   This “Letter” should be used whenever the Department has determined that it appears the Utility has failed or does not intend to take the necessary action so that utility facilities will be removed or relocated within the time schedule established for that action as included in the “Post-Award Notice” previously sent to the Utility.

2. When is the “Letter” to be sent?

   The “Letter” should be sent to the Utility immediately after the starting date for removing or relocating its utility facilities passes without work having begun, or at such time as the Department has good reason to suspect that the Utility does not intend to act in a timely fashion.

4. How is the “Letter” to be sent?

   The “Letter” should be sent by certified mail and the return receipt should be kept in the project files. In the event that there is litigation regarding this matter, the receipt will serve as proof that the Utility did actually receive the “Letter”.

5. Where should the “Letter” be sent?

   The “Letter” should be sent to the Utility at its principal office or place of business in the county where the work under the subject contract is to be performed. If there is no such principal office or place of business in that county, the “Letter” should be sent to the nearest principal office or place of business of the Utility outside the county.

   Note: If the work is to be performed in more than one county, more than one “Letter” may have to be sent.
6. How is the issuance of the “Letter” triggered?

The Regional Utilities Engineer (RUE), through appropriate and timely input from the Engineer-In-Charge, should be responsible for monitoring the action (or lack of action) being taken by the Utility to comply with the Department’s Time Schedule Notice. The RUE should be familiar with the minimum period of time it will take the Utility to accomplish the necessary work (e.g., information to be provided by the Utility), and with that information in hand, the Department will be able to establish the latest date by which the Utility could feasibly begin to proceed with the work and still finish it according to schedule. Note that the responsibility of day-to-day schedule coordination continues to rest with the Utility and Contractor.

At the time the Region sends the “Letter” to the Utility, the Region should immediately forward to the Office of Legal Affairs:

a. Copies of all correspondence with the Utility.

b. The “Preletting Notice”.

c. A right of way map showing the location of the utility facilities, the existing highway boundary, and right of way limits. If the project involves acquisition of Utility property rights, these limits must be shown.

d. The subject follow-up “Letter”.

The Office of Legal Affairs would then be in a position to request the Attorney General to take appropriate action through the courts.
13E.6 SPECIAL NOTE - Coordination With the Utility Schedule “No Anticipated Involvement”

EXAMPLE SPECIAL NOTE

COORDINATION WITH THE UTILITY SCHEDULE - NO ANTICIPATED INVOLVEMENT

P.I.N.

Utility facility adjustments and/or relocations are not anticipated for this project. If the Department determines that utility facility adjustments and/or relocations will be necessary, the provisions of Section 102-09 Other Contracts, Coordination and Access will apply.

Any such adjustments and/or relocations will be performed by the Utility owners and/or the state contractor upon direction by the State Engineer-In-Charge.

Suitable time frames for these additions shall be coordinated between the State, the Contractor, and the affected Utility.

The contractor is governed by and must adhere to the provisions of 16 NYCRR Part 753 (Protection of Underground Facilities).