Overview of the Rights and Obligations of Utilities within State Highway Right-of-Way

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ACCOMODATION

- State and Federal Regulations (17NYCRR Part 131 and 23CFR645, respectively) recognize that it is in the public interest to accommodate utilities with highway rights of way. [Note: FHWA has oversight authority on most state highways.]

- NYS Transportation Corporations Law – In general, privately owned utilities that serve the general public (e.g., Verizon, National Grid) have the legislated grant to occupy certain types of state highways.
  - Only if the occupancy does not interfere with the free and safe flow of traffic.
  - Applies to non-controlled access highways but not to controlled access highways (freeways).
  - Occupation is at no cost to the utility.
  - NYSDOT can dictate where within its ROW the utility can exist.

- NYSDOT Policy – Municipally owned utilities do not have a legislated grant to occupy highway ROW, but have traditionally been given the same privileges as Transportation Corporations.

OBLIGATIONS

- NYS General Obligations Law Section 11-102 -- No utility shall interfere with or delay the progress of work under any contract with NYSDOT. Official order must be issued to contractor after contract award.

- NYS Highway Law Section 52 – Utility must comply with requirements set forth in its Highway Work Permit.

- 17NYCRR Part 131 – NYSDOT has the right to construct, repair and maintain its highways without interference from utility facilities.

WHAT NYSDOT CAN PAY FOR

- NYSDOT authorized to pay the cost of relocating any municipally owned utility facilities if the relocation is necessitated by highway improvements (in-kind replacement). Also, authorized to acquire additional property as necessary to accommodate relocated -- Highway Law Section 10-24

- NYSDOT authorized to pay the cost of relocating privately owned public utilities located on private property (excludes other state, federal or locally owned property). No authorization to acquire additional property for utilities in these instances -- Highway Law Section 10-24b.
UNDERGROUNDING OF UTILITIES

17NYCRR Part 131.15
(a) The Department may preclude or require the relocation or undergrounding of new or existing utility facilities based upon environmental, scenic appearance or historical concerns;
   (i) in order to ensure compliance with any federal or state statute, regulation, Executive order or similar mandate, or
   (ii) when the Department, in its sole discretion, determines that preclusion, undergrounding, or relocation is required as a condition to the Department obtaining or utilizing any Federal or State funds, or
   (iii) when the Department, in its sole discretion, determines that preclusion, undergrounding or relocation is required to comply with, or participate in, any program or action under Federal or State Law.

(b) Various federal and state laws, regulations, Executive Orders or other mandates contain provisions recognizing and extending protections to scenic and historical places. Included among such provisions which may relate to highway rights-of-way are the landscape and scenic enhancement provisions in Section 319 of Title 23 of the U.S. Code; “transportation enhancement activities” as defined in Section 101 of Title 23 of the U.S. Code; Parts 645 and 752 of Title 23 of the Code of Federal Regulations; Sections 20 through 22 and Article X 11-C of the Highway Law; Article 27 of the State Executive Law, Parts 570 through 586 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York and Executive Order 150 relating to the Adirondack Park; Section 106 of the National Historic Preservation Act of 1966; Section 14.09 of the State Parks, Recreation and Historic Preservation Law; Sections 65, 66 91 and 94 of the Public Service Law; and related regulations in Parts 98, 99 and 608 of Title 16 of the Official Compilation of Codes, Rules and Regulations of the State of New York; Title 27 of Article 15 of the State Environmental Conservation Law, (Wild, Scenic and Recreation Rivers System); Article 49 of the State Environmental Conservation Law, (Protection of Natural and Man-Made Beauty); Article 24 of the State Environmental Conservation Law (Freshwater Wetlands); Article 42 of the State Executive Law (Waterfront Revitalization and Coastal Resources); and Federal Executive Order No. 11990 (Protection of Wetlands).

The above is not a complete recitation of all applicable provisions.