ARTICLE 13. UTILITY FACILITY RELOCATIONS ON CONSTRUCTION CONTRACTS

Rule 1. General Provisions

105 IAC 13-1-1 Purpose of this article
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-1-26

Sec. 1. (a) The department is authorized to manage the right-of-way of the state highway system. The purpose of this article is to establish a formal procedure for highway improvement projects that involve the relocation of utility facilities by providing for the exchange of information and the implementation of their respective responsibilities among the department, utilities, and the contractor.

(b) This article is not intended to modify the provisions of IC 8-1-26. *(Indiana Department of Transportation; 105 IAC 13-1-1; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-1-2 Applicability
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-2

Sec. 2. (a) This article applies to improvement projects, as defined in 105 IAC 13-2-10, when the:
(1) department begins the work described in 105 IAC 13-3-1(b) after June 20, 2008; or
(2) design survey was completed before June 20, 2008, if the affected utility was provided:
(A) response times; and
(B) notices;
that were in substantial compliance with this article.

(b) The department may require a utility to comply with a reasonable shortened process or expedited schedule when an emergency exists that could affect:
(1) public safety; or
(2) the structural or functional integrity of the highway.

(c) When this article requires information, documents, or other notices to be delivered or provided to the department, it shall mean to the chief engineer or the chief engineer's designee unless the department has directed the utility in writing to a specific representative or office. *(Indiana Department of Transportation; 105 IAC 13-1-2; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

Rule 2. Definitions

105 IAC 13-2-1 Applicability
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Department of Transportation; 105 IAC 13-2-1; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-2 "Authorized representative" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 2. "Authorized representative" means the person named by the utility as its designated contact person. *(Indiana Department of Transportation; 105 IAC 13-2-2; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-3 "Compensable work" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 3. "Compensable work" means facility relocation for which the department will reimburse the utility under Indiana law. *(Indiana Department of Transportation; 105 IAC 13-2-3; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-4 "Contractor" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 4. "Contractor" means the person or entity that enters into a contract with the department for an improvement project. *(Indiana Department of Transportation; 105 IAC 13-2-4; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-5 "Day" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 5. "Day" means any calendar day of the year. If more than one (1) day, the term includes any consecutive day or days of any year or years. *(Indiana Department of Transportation; 105 IAC 13-2-5; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-6 "Department" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 6. "Department" means the Indiana department of transportation (INDOT) or any agent that:
(1) INDOT has authorized through written or electronic communication; and
(2) is acting on behalf of the department.
(Indiana Department of Transportation; 105 IAC 13-2-6; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-7 "Facility" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 7. "Facility" shall include all privately, municipally, publicly, or cooperatively owned systems for supplying:
(1) communications;
(2) power;
(3) light;
(4) heat;
(5) electricity;
(6) gas;
(7) water;
(8) pipeline;
(9) sewer;
(10) sewage disposal;
(11) drain; or
(12) like;
service, directly or indirectly, to the public. The term includes cable television systems. *(Indiana Department of Transportation; 105 IAC 13-2-7; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-8 "Facility relocation" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 8. "Facility relocation" means any activity involving a facility that is needed for an improvement project including, but not limited to, the following:

(1) Abandoning.
(2) Altering.
(3) Deactivating.
(4) Installing.
(5) Maintaining.
(6) Modifying.
(7) Moving.
(8) Removing.
(9) Supporting.

(Indiana Department of Transportation; 105 IAC 13-2-8; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-9 "Highway" defined

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 9. "Highway" means any roadway:

(1) under the jurisdiction of the department; or
(2) where an improvement project is planned.

(Indiana Department of Transportation; 105 IAC 13-2-9; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-10 "Improvement project" defined

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 10. "Improvement project" means the construction, reconstruction, rehabilitation, and process incidental to building, fabricating, or bettering any of the following:

(1) A state, United States, or interstate route.
(2) Projects within the state parks or other roadways the department is required by statute to build and maintain.
(3) A local project administered by the department.
(4) A project on the state highway system administered by a local authority.

The term does not include routine maintenance. *(Indiana Department of Transportation; 105 IAC 13-2-10; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-11 "Initial notice" defined

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 11. "Initial notice" means a written notice denoted as an "Initial notice" that is:

(1) prepared by the department for an improvement project; and
(2) sent by mail to the utility under 105 IAC 13-3-1(c).

(Indiana Department of Transportation; 105 IAC 13-2-11; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-12 "Letting date" defined

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 12. "Letting date" means the date the department opens bids for an improvement project. *(Indiana Department of Transportation; 105 IAC 13-2-12; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-13 "Mail" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 13. "Mail" means a written transmittal or electronic file readable by the department and sent to the addressee by:
(1) U.S. mail;
(2) private carrier;
(3) e-mail;
(4) fax; or
(5) hand delivery.
(Indiana Department of Transportation; 105 IAC 13-2-13; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-14 "Major project" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 14. "Major project" means an improvement project that:
(1) due to scope or complexity, involves a long term design process of more than twelve (12) months; or
(2) is otherwise designated by the department as a major project.
(Indiana Department of Transportation; 105 IAC 13-2-14; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-15 "Minor project" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 15. "Minor project" means an improvement project that:
(1) due to scope or complexity, involves a short term design process of less than twelve (12) months; or
(2) is otherwise designated by the department as a minor project.
(Indiana Department of Transportation; 105 IAC 13-2-15; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-16 "Project plan" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 16. "Project plan" means the plans for the improvement project suitable for the design of facility relocation that the department sends to the utility. *(Indiana Department of Transportation; 105 IAC 13-2-16; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-17 "Ready for contract date" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 17. "Ready for contract date" means the date established by the department when all materials will be available for the preparation of contract documents for an improvement project. This date is subject to change depending on the actual progress of the design. *(Indiana Department of Transportation; 105 IAC 13-2-17; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-2-18 "Utility" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 18. "Utility" means the owner of a facility. *(Indiana Department of Transportation; 105 IAC 13-2-18; filed Apr 14, 2008,*

10:23 a.m.: 20080514-IR-105070494FRA)

105 IAC 13-2-19 "Work plan" defined
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-26

Sec. 19. "Work plan" means a plan of the utility to carry out facility relocation to accommodate an improvement project. *(Indiana Department of Transportation; 105 IAC 13-2-19; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

Rule 3. Procedure

105 IAC 13-3-1 Identification and notification
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-1-26-17

Sec. 1. (a) Each utility shall submit the following information about its authorized representative to the department in January of each year:
(1) Name.
(2) Street address.
(3) Mailing address.
(4) Phone number.
(5) Fax number.
(6) E-mail address.
If any of the prescribed information changes, the department shall be notified within thirty (30) days.
(b) The department shall make a reasonable effort to do the following:
(1) Determine what facilities are located within the geographical limits of an improvement project. Efforts shall include, but not be limited to, the following:
(A) Researching permit files.
(B) Reviewing map files maintained by the department.
(C) Investigating field conditions.
(D) Reviewing information provided by the Indiana Underground Plant Protection Service (IUPPS) or its successor organizations as described in IC 8-1-26-17(c).
(E) Contacting local government offices.
(2) Identify the name of each utility determined in subdivision (1).
(c) The department shall send by mail to the identified utility an initial notice of the proposed improvement project. A notice shall include the following:
(1) The name or route number, or both, of the highway.
(2) The geographical limits of the improvement project.
(3) A general description of the work to be done.
(4) The anticipated date an approved work plan will be needed.
(5) The anticipated ready for contract date of the improvement project.
(6) The name of the designer and other contact information, if available.
(7) The department's determination of whether the project is major or minor.
The department shall inform the utility of the latest anticipated dates with each notice.
(d) Within thirty (30) days after receiving the initial notice, the utility shall respond in writing to the department with a:
(1) description of the type and location of its facilities within the geographical limits of the proposed improvement project; or
(2) statement that the utility has no facilities within the geographical limits of the improvement project.
(e) Following the thirty (30) day period in subsection (d), the department may request through IUPPS for the utilities to locate their facilities that are within the geographical limits of the proposed improvement project in accordance with IC 8-1-26. The department and utility may agree on another mutually acceptable format or schedule for the exchange of this information. The

department will measure and record the locations of the field markings.

(f) The department will list the utilities and identify the locations of all facilities identified in subsection (e) on one (1) or more plan sheets. *(Indiana Department of Transportation; 105 IAC 13-3-1; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-3-2 Verification of existing facilities

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-2

Sec. 2. (a) The department shall send by mail to each utility a copy of the plan sheets identified in section 1(f) of this rule that shows all existing facilities known to the department that are within the:

(1) right-of-way of the improvement project; or

(2) geographical limits of the improvement project.

(b) Each utility shall do the following within thirty (30) days of receiving the plan sheets:

(1) Review the accuracy of the plan as to the location of its existing facilities.

(2) Declare in writing to the department whether the information is accurate or inaccurate.

(3) Detail in writing to the department any inaccuracies in the information.

Failure to reply within the allotted time shall be deemed verification that the information is accurate. *(Indiana Department of Transportation; 105 IAC 13-3-2; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-3-3 Work plan development

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 4-21.5-3

Sec. 3. (a) In conjunction with the mailing in section 2(a) of this rule or as a separate mailing later, the department shall send by mail preliminary project plans to the involved utilities. After receiving the preliminary project plans, each utility shall do the following:

(1) Review the preliminary project plans.

(2) Declare in writing to the department whether there are or are not conflicts between its facilities and the improvement project.

(3) Detail in writing to the department any conflicts between its facilities and the proposed improvement project within:

(A) thirty (30) days for minor projects; or

(B) sixty (60) days for major projects.

Failure to reply within the allotted time shall be deemed an indication of no conflicts. In the event of conflicts, the utility may recommend design changes for the improvement project to minimize utility costs or delays. The department will review the recommended changes and implement the changes where appropriate.

(b) After completion of the preliminary project plan development, the department will proceed with the development of final project plans for the improvement project. The department shall send by mail to the utility a copy of the preliminary final project plans for the improvement project, generally before those plans are complete, but which shall have sufficient detail to allow the preparation of the utility work plan. The utility shall use the preliminary final project plans to develop and provide to the department its work plan. A work plan shall be submitted:

(1) whether or not any facility relocations are required; and

(2) within:

(A) sixty (60) days after receiving the preliminary final project plans for a minor project; and

(B) one hundred twenty (120) days after receiving the preliminary final project plans for a major project.

If a utility or the department determines there is a potential for conflict between work plans, the department will schedule a meeting. The department and the affected utilities will attend to coordinate the work. An additional thirty (30) days will be allowed to furnish the work plan if coordination is required with another utility or utilities. Additional time may be allowed by the department for unusually complex or extensive facility relocations, but not more than one hundred eighty (180) days.

(c) The work plan shall include the following:

(1) A narrative description of the facility relocation that will be required.

(2) A statement whether the facility relocation is or is not dependent on work:

(A) to be done by:
(i) another utility; or
(ii) the department or contractor; or
(B) on the acquisition of additional right-of-way;
with a description of that work.
(3) A statement whether the utility is or is not willing to allow the contractor to do the required work as part of the highway contract.
(4) The:
(A) earliest date when the utility could begin to implement the work plan; and
(B) number of days to complete the required work.
(5) The expected lead time in days to:
(A) obtain any required permits;
(B) obtain materials;
(C) schedule work crews; and
(D) obtain the necessary additional right-of-way.
(6) A drawing of sufficient detail and scale to show the proposed location of the facility relocation.
(d) For work that the utility is entitled to be compensated by the department, in addition to the items specified in subsection (c), the work plan shall include a cost estimate for the facility relocation including appropriate credits for betterments and documentation of easements and compensable land rights.
(e) The department shall review the work plan to ensure that it:
(1) is compatible with:
(A) department permit requirements;
(B) the project plans;
(C) the construction schedule; and
(D) other utility relocation work plans; and
(2) has a reasonable:
(A) relocation scheme; and
(B) cost for compensable work.
(f) If the work plan submitted by the utility is not compatible or reasonable, the department shall notify the utility by mail as soon as practicable. The utility shall submit a revised work plan within thirty (30) days of receipt of the notification by the department. The department shall review the revised work plan, and, if the work plan is still not compatible or reasonable, the department will prepare an alternative work plan for submission to the utility. Within thirty (30) days of receipt by the utility of the alternative work plan, the utility may accept the alternative work plan or request, in writing, specific changes. The department shall review any requested changes to the alternative work plan. The department shall adopt a final work plan that considers the interests of the utility, contractor, and public, to ensure safety and reliability of the utility facilities and the highway and avoid the imposition of unnecessary and unreasonable costs. The final work plan adopted by the department will be:
(1) the approved work plan; and
(2) considered a final agency action, subject to appeal under IC 4-21.5-3.
(g) A highway utility agreement, if required, shall be executed at this time.
(h) The department shall notify the utility by mail as soon as practicable when the final work plan is approved. *(Indiana Department of Transportation; 105 IAC 13-3-3; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-3-4 Construction
Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-2

Sec. 4. (a) The department shall notify the utility by mail not less than thirty (30) days before the utility is required to begin the implementation of the approved work plan. The utility shall acknowledge the notification by mail within fifteen (15) days.
(b) The department will include or reference a copy of each approved work plan in the highway contract.
(c) If an approved work plan is dependent on work by the contractor, the contractor shall do the following:
(1) Provide the department and the utility a good faith notice not less than fifteen (15) days before the contractor's work is

expected to be complete and ready for the utility to implement its work plan.

(2) Follow up with a confirmation notice to the department and the utility not less than five (5) days before the contractor's work will be complete so that the utility may implement the work plan.

(d) The utility shall notify the department and contractor, if identified, as follows:

(1) At least five (5) days before beginning fieldwork within the right-of-way.

(2) When the work is complete.

(e) The notifications under subsection (d) may be verbal but must be confirmed in writing within five (5) days of starting work and within five (5) days of completing the work. *(Indiana Department of Transportation; 105 IAC 13-3-4; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-3-5 Work plan revisions

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-23-2

Sec. 5. (a) If, before the letting date of the improvement project, the project plan is revised so that additional facility relocation work is found necessary, the:

(1) department shall:

(A) furnish to the utility the revised project plan under section 3 of this rule; and

(B) identify to the utility the revisions within the project plan; and

(2) utility shall provide to the department a revised work plan under section 3 of this rule, except that the time allowed for the utility to submit the revised work plan after receiving the revised project plan shall not exceed sixty (60) days.

(b) If, after the letting date of the improvement project, additional facility relocation is found necessary, the department shall notify the utility to prepare an expedited work plan as soon as practicable for submission to the department.

(c) A utility may submit a new work plan that will be considered by the department if more than one (1) year has passed since the department adopted the final work plan. The department may require the utility to proceed with the previously approved work plan. *(Indiana Department of Transportation; 105 IAC 13-3-5; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*

105 IAC 13-3-6 Responsibilities

Authority: IC 8-23-2-5; IC 8-23-2-6
Affected: IC 8-1-26

Sec. 6. (a) The utility, contractor, and department shall perform the duties imposed by the approved work plan, contract, and this article within the time frames specified.

(b) Factors that shall excuse a utility from meeting the schedule in its approved work plan include the following:

(1) The facility relocation was impacted by any of the following:

(A) Significantly differing site conditions.

(B) Unexpected impacts of other utilities.

(C) Other unforeseen circumstances that could not have been reasonably anticipated through due diligence.

(D) A force majeure event.

(2) Occurrence of severe weather or other factors beyond the control of the utility directly affecting the approved work plan.

(3) The final project plans differ substantially from the plans provided to the utility under section 3(b) of this rule.

(4) If a facility is discovered during the process required by IC 8-1-26, has not been previously identified as being within the improvement project limits, and the utility can show the following:

(A) The facility was installed after the date the department identified the affected facilities under section 1(b) of this rule.

(B) A proper permit was obtained for the installation of the facility from the department.

(c) If an approved work plan requires adjustment due to the occurrence of one (1) or more factors enumerated in subsection (b), the department and the utility shall proceed as directed in section 5(b) of this rule. *(Indiana Department of Transportation; 105 IAC 13-3-6; filed Apr 14, 2008, 10:23 a.m.: 20080514-IR-105070494FRA)*