DEPARTMENTAL POLICY State of Tennessee Department of Transportation	Policy Number : 340-07 Effective Date: July 1, 2014
Approved By:	Supersedes: September 17, 2007
SUBJECT: Utility Relocations from Public Highway Rights-of-Way Under TCA § 54-5-804	

RESPONSIBLE OFFICE: Right-of-Way Division, Utilities Office

AUTHORITY: TCA §§ 4-3-2303 and 54-5-804. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

PURPOSE: The purpose of this policy is to identify categories of highway construction projects involving the relocation of utility facilities located on public highway rights-of-way that the Department will generally consider as qualified or as non-qualified for utility relocation reimbursement or inclusion in the Department's construction contract pursuant to TCA § 54-5-804 and to establish procedures for administering utility relocations under this statute.

APPLICATION: This policy applies to highway construction projects administered by the Department that require the relocation of utility facilities located on public highway rights-of-way.

DEFINITIONS:

1. Chapter 86 refers to TCA § 54-5-804 as amended by Public Chapter 86 of the 2003 Acts of the Tennessee General Assembly.
2. Qualified Project refers to a highway construction project involving the relocation of utility facilities located on public highway right-of-way which is within a category of projects that the Department will generally consider as qualified for utility relocation reimbursement or for inclusion in the Department's highway construction contract in accordance with this policy.
3. Non-Qualified Project refers to a highway construction project involving the relocation of utility facilities located on public highway right-of-way which is not within a category of projects that the Department will generally consider as qualified for utility relocation reimbursement or for inclusion in the Department's highway construction contract in accordance with this policy.
4. Eligible Utility refers to a utility that fully complies with the conditions established in Chapter 86 for utility relocation reimbursement or inclusion in the Department's highway construction contract.
5. Municipally Owned means a municipal, county, or metropolitan government utility board, system or commission, or any other system created by private act as a political subdivision of the State that provides electric, gas, water, wastewater, or communication service, or any combination thereof, for sale to consumers.

6. Utility District means any utility district created pursuant to Tennessee Code Annotated Title 7, Chapter 82, or as otherwise provided in state law.
7. Utility Cooperative means any non-profit corporation or association that provides electric, gas, water, wastewater, or communication service for the benefit of its members, and which does not accumulate or distribute profits or net earnings to its members or owners, and including without limitation, an electric cooperative created under Tennessee Code Annotated Title 65, Chapter 25, or as otherwise provided in state law.

POLICY:

QUALIFIED PROJECTS:

The relocation of utility facilities from public highway rights-of-way will generally be considered as qualified for inclusion in the Department's highway construction contract or for reimbursement of utility relocation costs under Chapter 86, if the utility is an Eligible Utility, in the following types of projects:

- Grade and Drainage projects with right-of-way acquisition; and
- Bridge Replacement projects on the State highway system.

In addition, a project within one of these categories will generally be considered a Qualified Project only if the schedule allows at least nine (9) months to process the project for Chapter 86 between the letting date for the construction contract and the date on which the project plans are sent to the utility as provided in TCA § 54-5-854.

NON-QUALIFIED PROJECTS:

The relocation of utility facilities from public highway rights-of-way will generally not be considered as qualified for inclusion in the Department's highway construction contract or for reimbursement of utility relocation costs under Chapter 86, even if the utility is an Eligible Utility, in the following types of projects:

- Local Interstate Connectors (LIC);
- Resurfacing projects (State or Federal-aid funded);
- State Industrial Access (SIA) highways;
- Minor intersection improvement projects with no right-of-way acquired;
- Bridge repair projects;
- Safety funded projects
- Maintenance projects;
- Signal installation projects;
- Minor projects that have limited project funding available;
- BRZE off-system bridges; and
- Any project that does not allow at least nine (9) months to process the project for Chapter 86 between the scheduled letting date for the construction contract and the date on which the project plans are sent to the utility as provided in TCA § 54-5-854.

LOCAL PROJECTS:

For local highway projects administered by the Department on behalf of a local government or local agency, the relocation of utility facilities from public highway rights-of-way will be

considered as qualified for inclusion in the Department's highway construction contract or for reimbursement of utility relocation costs under Chapter 86 only if:

1. the utility is an Eligible Utility,
2. the local government requests to include the cost of relocating utility facilities from public highway right-of-way as a project cost,
3. the project cost is funded by non-state controlled funds such as Local Surface Transportation Program (STP) funds or Congestion Mitigation and Air Quality (CMAQ) funds allocated to the Metropolitan Planning Organization of which the local agency is a member, and
4. the Department's Local Programs Development Office determines that projects funds are available for this purpose.

In addition, a project with this consideration will generally be considered a Qualified Project only if the schedule allows at least nine (9) months to process the project for Chapter 86 between the letting date for the construction contract and the date on which the project plans are sent to the utility as provided in TCA § 54-5-854.

LIMITATIONS:

Eligible reimbursement will be in accordance with CFR 645.107.

Eligible reimbursement or payment of expenses for the relocation of utility facilities from public highway rights-of-way on qualified projects will be further limited under this policy by the following conditions:

1. If a **Move Prior** Contract is requested, it will be reviewed on a case by case basis and only approved if it is determined to be beneficial to the Department highway construction schedule. Municipally Owned utilities, Utility Districts, Utility Cooperatives will be eligible for 50% of the relocation cost. All other utilities will be eligible for 25% of the relocation cost for utility facilities located on public highway rights-of-way.
   If a **Move In** Contract is requested, Municipally Owned utilities, Utility Districts, Utility Cooperatives will be eligible for 100% of the relocation cost. All other utilities will be eligible for 75% of the relocation cost for utility facilities located on public highway rights-of-way.

2. Reimbursement or payment will be limited to a maximum cap of $1.75 million of the relocation cost for utility facilities located on public highway rights-of-way for each of the following categories:
   - Water
   - Waste water
   - Gas (Distribution/Transmission)
   - Electric (Distribution/Transmission)
   - Communication (CATV, Phone, Fiber Optic, Broadband)
   - Street Lighting

EXCEPTIONS:

This policy is to be used as a standard guideline for the administration of Chapter 86. The Commissioner retains the discretionary authority under Chapter 86 to stop or suspend the

application of Chapter 86 to all projects, to modify this policy, or to make exceptions to this policy on a case-by-case basis.

PROCEDURE:

UTILITY ELIGIBILITY:

By law, Chapter 86 may be applied to a Qualified Project, as defined in this policy, only if the utility is an Eligible Utility as provided in Chapter 86. Failure to comply with one or more of the conditions prescribed in Chapter 86 will cause the utility's relocation of facilities on public right-of-way to be deemed ineligible for reimbursement or for inclusion in the Department's highway construction contract. The statutory conditions for utility eligibility include, without limitation, the following:

1. In accordance with TCA § 54-5-804(a)(1), the utility must be in full compliance with all provisions of TCA § 54-5-854(b), including submission of the utility's relocation plan, cost estimate and schedule to the Department within 120 days after receiving the Department's project plans, or within such additional time – not to exceed 45 days – as the Department shall allow when (1) coordination with other utility owners is required to prepare a relocation plan and schedule or (2) a change in the Department's project plans requires a change in the utility's relocation plan or schedule.
2. In accordance with TCA § 54-5-804(a)(2), the utility must either (a) enter into a written agreement to include the utility relocation in the Department's highway construction contract or (b) if approved by the Department, enter into and timely fulfill a written agreement to remove all utility facilities that conflict with the highway construction prior to the scheduled date for letting the Department's construction contract.
3. In accordance with TCA § 54-5-804(b), the utility must have a valid permit to locate on the public highway right-of-way from the Department or the local government having jurisdiction over the highway right-of-way.

REQUIRED COMPLIANCE DOCUMENTATION:

The Regional Utility Office will notify the utility if the project is a Qualified Project in the letter providing the utility with project plans and authorizing utility relocation engineering, as provided in TCA § 54-5-854(a). When the utility submits its relocation plan, schedule, and cost estimate as required in TCA § 54-5-854(b), it must also submit documentation demonstrating its compliance with TCA 54-5-804, and this policy including as follows:

1. Documentation that the utility is in full compliance with TCA § 54-5-804(a)(1) in that the utility has returned its relocation plan, schedule, and cost estimate to the Department within 120 days after receipt of the Department's project plans, or within such additional time as may be allowed in accordance with TCA § 54-5-854(b). If the utility documents the need for additional time beyond the 120 days based on either (a) the need to coordinate with other utility owners in order to prepare the utility's relocation plan and schedule, or (b) the need to alter the utility's relocation plan or schedule because of changes in the Department's project plans, then the utility shall be allowed additional time, not to exceed 45 days, in which to submit its initial or modified relocation plan or schedule as the case may be. The utility shall not be considered an Eligible Utility under Chapter 86 if the utility fails to submit its relocation plan, schedule and cost estimate to the Department within the time required under TCA § 54-5-854(b).

2. Documentation that the utility is in compliance with TCA 54-5-804(b) in that the utility has a valid permit to locate its utility facility on the public highway right-of-way. A separate permit must be documented for each separate utility facility for which Chapter 86 reimbursement or inclusion is requested, and for this purpose street lighting must be considered as separate from any other overhead utility installation. The utility may document compliance with this permit requirement for each separate utility facility (a) by submitting a copy of a current, valid permit for the utility facility issued by the Department or the local government having jurisdiction over the public highway right-of-way, or (b) where no such permit can be found, the utility may be presumed to have a valid permit where it can demonstrate that the utility facility has been installed in accordance with applicable permit conditions and there is no evidence sufficient to rebut this presumption. A utility that fails to provide documentation of a valid permit for a utility facility shall not be considered an Eligible Utility with respect to that utility facility.

UTILITY RELOCATION AGREEMENT:

If the project is a Qualified Project and the utility submits the required compliance documentation to demonstrate that it is an Eligible Utility, the Headquarters Utility Office will offer the utility the opportunity to enter into a standard written utility relocation agreement which provides either:

1. that the utility relocation will be included in the Department's highway construction contract, with or without an exception for relocation work that must be performed by the utility's union employees under a collective bargaining agreement, as provided in TCA § 54-5-804(a)(2)(A)
2. if approved by the Department, that the utility will timely remove all utility facilities that conflict with the Department's highway construction project prior to the date scheduled for the letting of that contract, as provided in TCA 54-5-804(a)(2)(B).

To include the utility relocation work in the Department's highway construction contract, the utility must submit the following documentation to the Headquarters Utility Office by no later than sixteen (16) weeks prior to the scheduled letting date:

1. reproducible relocation plans, signed and sealed by a licensed professional engineer;
2. an estimate of the utility relocation construction cost in a bid format prescribed by the Department;
3. a deposit of funds for the estimated cost of the utility relocation construction cost which is the responsibility of the utility, including any betterment costs and costs above eligible relocation costs as specified above;
4. complete utility specifications; and
5. Department-prescribed documentation required to secure permits for the highway construction.

Late submittals will not be accepted by the Department, and in such a case the utility relocation work cannot be included in the Department's highway construction contract.