

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

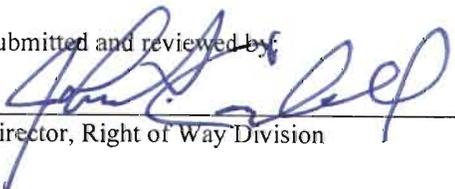
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.37, Design, relating to utility accommodation, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §21.37 are adopted and are authorized for filing with the Office of the Secretary of State.

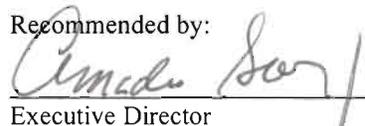
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Right of Way Division

Recommended by:



Executive Director

112384 AUG 26 10

Minute
Number

Date
Passed

1 Adoption Preamble

2 The Texas Department of Transportation (department) adopts
3 amendments to §21.37, Design, concerning utility accommodation.
4 The amendments to §21.37 are adopted without changes to the
5 proposed text as published in the June 11, 2010 issue of the
6 *Texas Register* (35 TexReg 5006) and will not be republished.

7

8 EXPLANATION OF ADOPTED AMENDMENTS

9 Current rules provide that the utility company is responsible
10 for the installation, adjustment, or relocation of their utility
11 facilities. Some individuals have read this provision to
12 prevent the department from procuring the design for the utility
13 facility adjustment or relocation on behalf of a utility
14 company. A utility company's performance of the work has
15 sometimes caused delays on transportation construction projects.
16 Amendments to §21.37 provide that the department and the utility
17 company may agree to have the department procure the design of
18 an adjustment or relocation. The amendments provide the
19 procedure to be followed for such a procurement. The procedure
20 allows the department to pay costs associated with a relocation
21 or adjustment directly to the entity performing the work instead
22 of reimbursing the utility company for the costs. The
23 amendments provide for a streamlined, efficient procurement
24 process that allows for the potential of reduced costs,
25 especially when small adjustments or relocations are combined
26 into one procurement. In addition the procedure may reduce the

1 burden on small utility companies by reducing their use of in-
2 house resources or the necessity of procuring independent
3 outside consultants.

4

5 Section 21.37 (a) is amended by deleting the language that
6 stated that the utility was responsible for the design of any
7 installation, adjustment, or relocation of a utility facility.
8 Similar language is added in a new subsection (g)(1) with
9 clarification that while the utility is responsible, it is not
10 required to do or procure the work itself.

11

12 In addition, language requiring the department to review the
13 design to preserve the safety and the integrity of the highway
14 system is amended to provide a general requirement that the
15 design measures must be taken to ensure that the utility
16 facility does not affect safety, traffic, structural integrity
17 of the highway, ease of maintenance, appearance of the highway
18 and the integrity of the utility facility. Requiring the
19 department to review the design is not necessary if the
20 department procures the design work.

21

22 Section 21.37(b)(5) is amended to make a general requirement to
23 ensure that the proposed installation is compatible with
24 existing and approved future utility facilities. The existing
25 language places this responsibility on the utility. Under the
26 amendment, if the department procures the design, the department

1 would need to ensure compatibility.

2

3 Section 21.37(c) is amended to conform to the other amendments.

4 The new language maintains the current requirements but removes

5 the specific reference to the utility, making the requirement

6 generally applicable to the entity procuring the work.

7

8 The amendments add new §21.37(g) which clarifies that the

9 department and utility company may agree to allow the department

10 to procure the design for a utility relocation or adjustment

11 under limited circumstances. Subsection (g)(1) maintains the

12 current provision that the utility is responsible for design of

13 the installation, adjustment, or relocation of a utility

14 facility.

15

16 Section 21.37(g)(2) provides that on communication, water, and

17 waste water facility projects that are 100% reimbursable and on

18 certain small electrical service distribution facility projects

19 that are 100% reimbursable, the utility may authorize the

20 department to procure the design and include the resulting plan

21 in the construction contract. The amendments do not authorize

22 the department to provide services to the utility that are not

23 the financial responsibility of the state. The language also

24 limits this procedure to the types of utilities the department

25 is capable of procuring. The department will not procure the

26 adjustment or relocation of large electrical utility facilities

1 because of the extraordinary safety factors associated with that
2 type of facility.

3

4 Section 21.37(g)(3) provides that if the department procures the
5 design, the department must use an engineering firm approved by
6 the utility and that department staff cannot provide the
7 engineering services. These provisions ensure the utility,
8 which remains responsible for the utility facility adjustment or
9 relocation, does not surrender total control of the project to
10 the department.

11

12 Section 21.37(g)(4) requires that the utility approve the design
13 prior to the plan being included in the construction contract.
14 Again this provision allows the utility oversight authority over
15 the final design product. The amendment also states that the
16 utility is responsible for ensuring that the design and
17 construction meet all regulatory and environmental requirements.
18 The utility is not able to pass that responsibility to the
19 department.

20

21 Section 21.37(g)(5) details provisions that must be included in
22 the agreement between the department and the utility. The
23 agreement must provide for concurrent construction inspection by
24 the utility and final acceptance by the utility when the project
25 is complete. These provisions ensure that the utility has the
26 opportunity to inspect the project to determine compliance

1 during the project and that the utility take full responsibility
2 of the utility at the conclusion of the project. The agreement
3 may contain other provisions.

4

5 Section 21.37(g)(6) clarifies that responsibility for continued
6 utility service remains with the utility company during the
7 design and construction of an adjustment or relocation and that
8 the department is not responsible for providing the services to
9 end users of the utility company during those phases of the
10 project.

11

12 Section 21.37(g)(7) provides that the utility is responsible for
13 any ongoing maintenance after the completion of the construction
14 work. The department's involvement in procuring the design and
15 the construction of the utility relocation or adjustment does
16 not include any future maintenance responsibilities.

17

18 Section 21.37(g)(8) provides that the department will reimburse
19 the utility for expenses incurred under the project. This
20 provision applies only to projects that are 100% reimbursable
21 and includes the expenses incurred by the utility in reviewing
22 and inspecting the design.

23

24 Section 21.37(g)(9) provides that all other provisions of 43 TAC
25 Chapter 21, Subchapter C apply to the design and construction of
26 a project handled by the department. The design must comply

1 with development of standard plans, specifications, and
2 estimates for the detailed scope of an adjustment or relocation.
3 This language is included so that it is clear that regardless of
4 who procures the design of the project the requirements of the
5 subchapter must be met.

6

7 COMMENTS

8 No comments on the proposed amendments were received.

9

10 STATUTORY AUTHORITY

11 The amendments are adopted under Transportation Code, §201.101,
12 which provides the Texas Transportation Commission (commission)
13 with the authority to establish rules for the conduct of the
14 work of the department, and more specifically, Transportation
15 Code, §203.095, which provides the commission with the authority
16 to adopt rules to implement Transportation Code, Chapter 203,
17 Subchapter E, which authorizes the relocation of utility
18 facilities.

19

20 CROSS REFERENCE TO STATUTE

21 Transportation Code, Chapter 203, Subchapter E.

1 SUBCHAPTER C. UTILITY ACCOMMODATION

2 §21.37. Design.

3 (a) General. [~~The design of any utility installation,~~
4 ~~adjustment, or relocation is the responsibility of the utility.~~]

5 Utility design will be accomplished in a manner and to a
6 standard acceptable to the department. The location and manner
7 in which a utility installation, adjustment, or relocation work
8 will be performed within the right of way must be reviewed and
9 approved by the department. Measures must [~~The department will~~
10 ~~review the measures to~~] be taken to preserve the safety and free
11 flow of traffic, structural integrity of the highway or highway
12 structure, ease of highway maintenance, appearance of the
13 highway, and the integrity of the utility facility. Utility
14 installations shall conform with:

15 (1) the requirements of this subchapter;

16 (2) the National Electrical Safety Code rules for the
17 installation and maintenance of electric supply and
18 communication lines;

19 (3) 23 CFR Part 645B, Accommodation of Utilities;

20 (4) 49 CFR Part 192, Transportation of Natural and Other
21 Gas by Pipeline: Minimum Federal Safety Standards;

22 (5) 49 CFR Part 195, Transportation of Hazardous Liquids
23 by Pipeline;

1 (6) the latest American Society for Testing and Materials
2 (ASTM) specifications;

3 (7) the latest edition of the Texas Manual on Uniform
4 Traffic Control Devices;

5 (8) 30 TAC §§290.38 - 290.47, relating to Rules and
6 Regulations for Public Water Systems;

7 (9) applicable state and federal environmental
8 regulations, including storm water pollution prevention,
9 endangered species, and wetlands; and

10 (10) applicable Railroad Commission of Texas safety
11 regulations.

12 (b) Location.

13 (1) Utility lines shall be located to avoid or minimize
14 the need for adjustment for future highway projects and
15 improvements, to allow other utilities equal access in the right
16 of way, and to permit access to utility facilities for their
17 maintenance with minimum interference to highway traffic.

18 (2) Longitudinal installations, if allowed, shall be
19 located on uniform alignments to the right of way line to
20 provide space for future highway construction and possible
21 future utility installations.

22 (3) New utility lines crossing the highway shall be
23 installed at approximately 90 degrees to the centerline of the

1 highway.

2 (4) The horizontal and vertical location of overhead
3 utility lines shall conform with §21.41 of this subchapter
4 (relating to Overhead Electric and Communication Lines),
5 consistent with the clearances applicable to all roadside
6 obstacles. No aboveground fixed objects will be allowed in the
7 horizontal clearance.

8 (5) Every effort must be made [~~The utility is responsible~~
9 ~~for determining whether other utility lines exist at, or if~~
10 ~~plans have been submitted to the department regarding, the~~
11 ~~proposed installation area. The utility must make every effort]~~
12 to insure that the proposed installation is compatible with
13 existing and approved future utility facilities.

14 (6) A utility facility on controlled access highways or
15 freeways shall be located to permit maintenance of the facility
16 by access from frontage roads, nearby or adjacent roads and
17 streets, or trails along or near the right of way line without
18 access from the mainlanes or ramps. A utility facility may not
19 be located longitudinally in the center median or outer
20 separation of controlled access highways or freeways.

21 (7) On highways with frontage roads, longitudinal utility
22 installations may be located between the frontage road and the
23 right of way line. Utility facilities shall not be placed or

1 allowed to remain in the center median, outer separation, or
2 beneath any pavement, including shoulders.

3 (8) The procedures and requirements of this paragraph
4 apply if a longitudinal installation is proposed within existing
5 access denial lines of a controlled access highway or freeway
6 without frontage roads.

7 (A) The public utility seeking the installation shall
8 submit to the district engineer a written request that includes
9 for each facility proposed for installation the following
10 detailed information:

11 (i) the information required by §21.35 of this
12 subchapter (relating to Exceptions);

13 (ii) survey data as directed by the department to
14 identify and designate the location of a utility strip, the
15 utility strip's relationship to existing highway facilities and
16 the right of way line, and the specific area of use, occupancy,
17 and access for installation and maintenance of the utility
18 facility;

19 (iii) a plan for the utility's access to, from, and
20 within the utility strip with clearly described procedures that
21 preserve the safety and free flow of traffic on the controlled
22 access highway or freeway during installation, maintenance, and
23 emergency service or repair of the utility facility; and

1 (iv) any additional information, including an
2 engineering study requested by the department, that is
3 reasonably necessary for a determination of the impact of the
4 proposed utility facility on the safety, design, construction,
5 operation, maintenance, and stability of the controlled access
6 highway.

7 (B) If the requested utility facility installation
8 meets the conditions of §21.35 of this subchapter and the other
9 applicable requirements of this subchapter, the department shall
10 establish a utility strip along the outer edge of the right of
11 way by:

12 (i) locating a utility-access denial line between the
13 proposed utility facility installation and the mainlanes and
14 connecting ramps; and

15 (ii) designating the specific area of use, occupancy,
16 and access for installation and maintenance of the requested
17 utility facility.

18 (C) The department may adjust the utility-access denial
19 line of an established utility strip to accommodate additional
20 authorized utility facilities within the utility strip.

21 (D) The utility requesting installation of the utility
22 facility is responsible for all costs associated with providing
23 the information required for designation of a new or expanded

1 utility strip. The utility shall delineate the utility-access
2 denial line on the ground by setting readily identifiable,
3 durable, and weatherproof permanent markers to represent or
4 reference the corners, angle points, and points of curvature or
5 tangency of the utility-access denial line.

6 (E) All existing and proposed fences shall be located
7 at the freeway right of way line.

8 (F) Denial of access regarding property adjoining the
9 right of way line will not be altered.

10 (c) Plans. The plans shall protect [~~Utilities shall be~~
11 ~~responsible and accountable for protecting~~] the public
12 investment in the highway, inclusive of all its components, and
13 [~~to~~] maintain traffic capacity and safety for each highway user.

14 (1) All utility installations shall be of durable
15 materials designed for long life expectancy and relatively free
16 from the need for routine servicing or maintenance. In addition
17 to the requirements of this subchapter, any existing utility
18 lines to remain in place must be of satisfactory design and
19 condition in the opinion of the district.

20 (2) Utility installation shall not disturb [~~Utilities~~
21 ~~shall avoid disturbing~~] existing drainage courses. In addition,
22 soil erosion shall be held to a minimum and sediment from the
23 construction site shall be kept away from the highway and drain

1 inlets.

2 (3) Utility expansions shall be planned to minimize
3 hazards to, and interference with, future highway projects or
4 other utility installations.

5 (4) Plans shall include the design, proposed location,
6 vertical elevations, and horizontal alignments of the utility
7 facility based on the department's survey data, the relationship
8 to existing highway facilities and the right of way line, and
9 location of existing utility facilities that may be affected by
10 the proposed utility facility.

11 (5) As-built plans or certified as-installed construction
12 plans shall include the installed location, vertical elevations,
13 and horizontal alignments of the utility facility based upon the
14 department's survey data, the relationship to existing highway
15 facilities and the right of way line, and access procedures for
16 maintenance of the utility facility. As-installed construction
17 plans certified by a utility or its representative shall be
18 submitted to the department for each relocation or new
19 installation. In the alternative, if approved by the director
20 of the Maintenance Division or Right of Way Division, a district
21 may require a utility to deliver either as-installed
22 construction plans that are certified by an independent party or
23 final as-built plans that are signed and sealed by an engineer

1 or registered professional land surveyor. In determining
2 whether to authorize a requirement for independently certified
3 or signed and sealed plans, the director shall consider:

4 (A) the amount of available right of way or the
5 proposed utility facility's proximity to department facilities
6 and other utility facilities that may be impacted; and

7 (B) past performance of the utility in providing
8 accurate location data and conformance with its certified as-
9 installed construction plans.

10 (6) If approved by the director of the Maintenance
11 Division or the Right of Way Division, a district may require a
12 utility to deliver plans that are signed and sealed by an
13 engineer. In determining whether to authorize a requirement for
14 signed and sealed plans, the director shall consider:

15 (A) the amount of available right of way or the
16 proposed utility facility's proximity to department facilities
17 or other utility facilities that may be impacted;

18 (B) the complexity of required traffic control plans;

19 (C) whether the installation or adjustment activity
20 requires a storm water pollution prevention plan; and

21 (D) the utility's past performance in providing
22 accurate location data and conformance with its construction
23 plans.

1 (d) Tunnels and bridges.

2 (1) Interstate highways. In providing a utility tunnel
3 or utility bridge, the requirements in subparagraphs (A) - (I)
4 apply.

5 (A) Mutually hazardous transmittants, such as fuels and
6 electric energy, shall be isolated by compartmentalizing or by
7 auxiliary encasement of incompatible carriers.

8 (B) The utility tunnel or utility bridge structure
9 shall conform in design, appearance, location, bury, earthwork,
10 and markings to the culvert and bridge practices of the
11 department.

12 (C) Where a pipeline on or in a utility structure is
13 encased, the casing shall be effectively opened or vented at
14 each end to prevent possible build up of pressure and to detect
15 leakage of gases or fluids.

16 (D) Where a casing is not provided for a pipeline on or
17 in a utility structure, additional protective measures shall be
18 taken, such as employing a higher factor of safety in the
19 design, construction, and testing of the pipeline than would be
20 required for cased construction.

21 (E) Communication and electric power lines shall be
22 insulated, grounded, and carried in protective conduit or pipe
23 from the point of exit from the ground to reentry, and the cable

1 carried to a manhole located beyond the backwall of the
2 structure.

3 (F) Carrier and casing pipe for gas, liquid petroleum,
4 hazardous product, and water lines shall be insulated from
5 electric power line attachments.

6 (G) Sectionalized block valves shall be installed in
7 lines at or near ends of utility structures, pursuant to 49 CFR
8 §192.179, Transmission Line Valves, unless segments of the lines
9 can be isolated by other sectionalizing devices within a
10 distance acceptable to the department.

11 (H) Any maintenance, servicing, or repair of the
12 utility lines will be the responsibility of the utility.

13 (I) The utility shall notify the district 48 hours in
14 advance of any maintenance, servicing, or repair; however, in an
15 emergency situation, the utility shall notify the district as
16 soon as practicable.

17 (2) Non-interstate highways. If a utility's line exists
18 on its own easement and it would be more economical to the
19 department to adjust the line across a highway by use of a
20 utility tunnel or bridge rather than to provide separately
21 trenched and cased crossing, consideration should be given to
22 provision of such a structure. Where the utility line was
23 placed through an approved use and occupancy agreement and the

1 adjustment of the utility is the sole responsibility of the
2 utility owner, the department may allow for the provision of a
3 utility structure without cost to the department, provided the
4 conditions outlined in subsection (a) of this section and all
5 other pertinent requirements are met. If a structure is to
6 serve as a joint utility/pedestrian crossing or a joint
7 utility/sign support structure, the department will participate
8 to the extent necessary for accommodation of pedestrians or
9 highway signs only.

10 (e) Joint use of utility and highway structures.

11 (1) The attachment of utility lines to bridges and grade
12 separation structures is prohibited if other locations are
13 feasible and reasonable.

14 (2) Where other arrangements for a utility line to span
15 an obstruction are not feasible, the utility may submit a
16 request to the district for attachment of the line to a bridge
17 structure through a bridge attachment agreement. Each
18 attachment will be considered on an individual basis, and
19 permission to attach will not be considered as establishing a
20 precedent for granting of subsequent requests for attachment.

21 (A) When it is impractical to carry a self-supporting
22 communication line across a stream or other obstruction, the
23 department may permit the attachment of the line to its bridge.

1 If approved on existing bridges, the line must be enclosed in a
2 conduit and so located on the structure as not to interfere with
3 stream flow, traffic, or routine maintenance operations. When a
4 request is made before construction of a bridge, if approved,
5 suitable conduits may be provided in the structure if the
6 utility bears the cost of all additional work and materials
7 involved.

8 (B) If it is the department's responsibility to provide
9 for the adjustment of telephone lines or telephone conduits to
10 accommodate the construction of a highway and the adjustment
11 provides for the placement of telephone conduits in a bridge,
12 the department will allow a reasonable number of spare telephone
13 conduits in the structure if the spares are placed at the time
14 of construction and the telephone company bears the cost of the
15 spare conduits.

16 (C) A utility shall not attach gas or liquid fuel lines
17 to a bridge without the written approval of the executive
18 director.

19 (D) Power lines carrying greater than 600 volts shall
20 not be permitted on bridges.

21 (E) When a utility is granted permission to attach a
22 pipeline to a proposed bridge prior to construction, any
23 additional costs associated with the design or construction to

1 accommodate the pipeline are the responsibility of the utility.

2 (F) A utility requesting permission to attach a
3 pipeline to an existing bridge shall submit sufficient
4 information to allow the department to conduct a stress analysis
5 to determine the effect of the added load on the structure. The
6 department may require other details of the proposed attachment
7 as they affect safety and maintenance.

8 (f) Aesthetics. A utility will notify the department
9 before removing, trimming, or replacing trees, bushes,
10 shrubbery, or any other aesthetic features. The department must
11 approve the extent and method of removal, trimming, or
12 replacement of trees, bushes, shrubbery, or any other aesthetic
13 feature.

14 (g) Design and construction responsibility.

15 (1) The utility is responsible for the design of the
16 installation, adjustment, or relocation of a utility facility.

17 (2) If a state highway improvement project requires the
18 adjustment or relocation of a communication, water, or waste
19 water facility that is 100 percent reimbursable by the
20 department under the requirements of Transportation Code,
21 §203.092 or the adjustment or relocation of a facility of an
22 electric distribution provider, such as an electric service
23 corporation, regional electric cooperative, or municipal or

1 joint-agency electric service provider, that is 100 percent
2 reimbursable by the department under the requirements of
3 Transportation Code, §203.092, the utility by agreement with the
4 executive director may authorize the department to procure the
5 design of an adjustment or relocation and include the resulting
6 plan in the construction contract for the adjustment or
7 relocation.

8 (3) Under the agreement the department may use only an
9 engineering consultant approved by the utility. An employee of
10 the department may not be used to provide engineering services
11 under the agreement.

12 (4) The utility must approve the resulting plan for the
13 adjustment or relocation before it may be included in the
14 construction contract. The utility is responsible for ensuring
15 that the design and construction meet all regulatory and
16 environmental compliance requirements.

17 (5) The agreement must provide for:

18 (A) concurrent construction inspection by the utility
19 during construction; and

20 (B) final acceptance by the utility of the design and
21 construction after the construction is completed.

22 (6) During the relocation or adjustment construction work
23 under the agreement, the utility remains liable under any

1 certificate of service. The department is not responsible for
2 any issue related to the design or construction of the
3 adjustment or relocation of the utility facility after final
4 acceptance by the utility of the adjustment or relocation.

5 (7) After the completion of the construction work under
6 the agreement, the utility is responsible for any ongoing
7 maintenance, including compliance with §21.38 of this subchapter
8 (relating to Construction and Maintenance).

9 (8) The department will reimburse the utility for
10 eligible expenses incurred in approving and inspecting the
11 design documents.

12 (9) All provisions of this subchapter and 43 TAC Chapter
13 21, Subchapter B that apply to the design, estimates, and scope
14 of an adjustment or relocation apply to a project carried out
15 under an agreement entered into under this subsection.