

Utility Subcommittee Meeting

February 27, 2008

Minutes

Attendees:

Gerald Ringer, Cherokee, Inc.
John Ard, Rea Contracting, LLC
Tim Wilhelm, Blythe Construction
Mike Hanley, US Constructors, Inc.
David Fletcher, Rea Contracting LLC
Kevin Harrington, SCDOT
Catherine Blackwell, FHWA
Beach Brooker, SCDOT
Mark Attaway, SCDOT
Robert McFee, SCDOT

The meeting was called to order by Mark Attaway.

Old Business

Legislation for Utilities to remove from Right-of-Way

Sammy Hendrix – Information was given out at the last meeting concerning New Jersey and Georgia.

David Fletcher – Georgia has a law that is part of the bid package, but it has no teeth in it to enforce. DOT is not a party if a contractor brings an action against the utility.

New Jersey has a law with even less.

Catherine Blackwell has reviewed other states also.

SCDOT cost of project delay due to Utilities

Much discussion followed on this topic. Discussion points follow.

Kevin Harrington – Provided and reviewed a handout of a model of road user impacts if not completed in time.

The example reviewed is \$13 per hour for cars and \$25 per hour for trucks. These figures are 3 to 4 years old. You can say it is a \$7,000 per day cost to the public. Cost to the contractor is on top of this figure.

The delays can be lane closures where a utility is in the way and has not been moved and the delay by the utility keeps the lanes closed. This is a cost.

We need to give Legislators information on what utility delays are costing to push for legislation and law for enforcement. We need to eliminate having to go directly to a Legislator on individual projects. A law for all projects is needed.

Does DOT have any problems or concerns moving forward with this?

Beach Brooker – Are you planning to draft Legislation? We may need to talk with Michael Covington.

Sammy Hendrix – Florida has real teeth in their legislation and the large utilities work with them.

Catherine Blackwell – In Virginia the contractor has some authority after a period of time to cut utilities.

Rob McFee – We have had some good relationships. The legal interpretation of right of way is the problem and the perception of whether it is public right of way or DOT. If it is DOT, then the utility is there by permit and therefore should move in a reasonable time. Has a contractor sued for lost time?

Sammy – By virtue of DOT having encroachment permits, don't they own it?

Beach – Utility use is secondary use and has to yield to primary use as a road.

Catherine – VDOT has this language in their law.

Beach – SC grants utilities the right to locate on public roads.

David – An example is a project we had where the contract time to build the road was the same as the contract time to move the utilities. There is no way this can work.

Sammy – Contractor is liable from his start date and while the project is setting waiting for utility work. Bonding companies don't like this either.

David – Is anyone at the State House on our side that we can get to help us?

Sammy – Senator Grooms is an advocate of transportation. I think with information and facts we can go to him.

Rob – A dollar sign/amount will put a “face” on the problem they can identify with.

Sammy – Honestly believe utilities will go along if they know up front.

David – How do we proceed?

Sammy – We need to get information on a real job to present the facts.

Mark – We need to look at a complete job. May US 17 in Charleston.

Sammy – Also pull information from Virginia and Florida laws to start the process of a draft.

They will be interested in what the cost is to the public rather than the contractor cost.

Rob – one problem is prior rights. Utilities think they have this which means DOT pays for moving lines. Generally all major electric companies have prior rights. DOT paying does not tend to make any difference for the time frame of utilities performing the work.

Prior rights means the utility was there before the road or before a road was widened.

Beach – Relocation assistance is discretionary. Can go eminent domain.

Sammy – **Strategy:** Talk to Senator Grooms and then get his permission to bring others to the table. We will let Senator Grooms write a draft with information we provide.

South Carolinas has some tools in place. Will DOT use these and support this in Legislation?

Gerald Ringer – Have we talked to the State Engineers office to see if they can help?

Kevin – We will pick a good project in Senator Groom district.

Tim Wilhelm – Maybe add statewide savings as well.

Kevin – Maybe utilities really don't understand the dollar impact.

Rob – They get nothing out of the expense of moving. No new customers, etc. They may think if they wait, DOT will work around them, and if not, they finally move their utility. There has never been a consequence.

New Business

VDOT Manual

Catherine Blackwell has reviewed and studied their statute. All the burden is on the utility to move.

Florida DOT is 30 day notice they have to start or contractor moves and bills the utility for the cost. Ninety percent of FDOT jobs are ready for the contractors. FDOT is very detailed in their contract.

Beach – Our legislation is from the 1920's. Other states have updated and we have not. We need to update.

Action:

Pull VDOT and FDOT and SC existing statute. See Senator Grooms and tell him about the cost data that is coming and get his staff work on a draft. We will see how Senator Grooms responds. Then, get this committee and Beach to review and go from there.

The meeting was adjourned.