Transportation and Telecommunications December 13, 2017 2:30 p.m.

Room 1113

FRIESEN: [00:00:00] -- Friesen, District 34. Welcome to the Transportation and Telecommunications Committee. I'll ask that all cell phones and other devices be turned off and silenced. If you'll be testifying, legibly complete one of the green testifier sheets and hand the sheet to a page when you come to testify. Be sure to spell your first and last names when you come up to testify; and if you don't, I will stop and remind you. The committee clerk is Elice Hubbert over here, Hubbert, and Tip O'Neill is the legal counsel. And several senators are missing right now. I don't know if some of them are going to return. But we have-- Senator Smith is not here at the moment. He might return. Senator Murante I don't know about, and Senator Geist. And I'll let you introduce yourself.

HUGHES: [00:00:50] Stinner Hughes, District 44, ten counties in southwest Nebraska.

BOSTELMAN: [00:00:55] Senator Bostelman, District 23, Saunders, Butler, and most of Colfax Counties.

FRIESEN: [00:01:01] So with that, we've had kind of a full schedule today and people are still running in and out of different places. So we're just going to proceed here and whoever would like to step up-- and here we're joined by Senator Smith. Welcome, Director Schneweis.

KYLE SCHNEWEIS: [00:01:25] Thank you for the improved chair, Senator Friesen.

FRIESEN: [00:01:28] Just for you.

KYLE SCHNEWEIS: [00:01:31] Just got to speak up, that's all.

SMITH: [00:01:33] It was the last testimony did it for me.

KYLE SCHNEWEIS: [00:01:37] I appreciate that. Good afternoon, Chairman Friesen, distinguished members of the committee. I'm Kyle Schneweis, K-y-l-e S-c-h-n-e-w-e-i-s. I'm the director of the Nebraska Department of Transportation. I appreciate the opportunity to come before you today to share information about our process for relocating utilities within public right-of-way. To provide some historical and regulatory context, the department has the authority and the responsibility to regulate utility occupancy on all state highways. Specifically, I'm talking about utilities like aerial communication lines, aerial electric lines, aerial TV lines, buried communication lines, buried electric lines, gas lines, storm sewers, water lines that are within the state highway right-of-way. In exercising this responsibility, the department may enter into agreements with utility companies and political subdivisions regarding utility facilities that run alongside or cross the state highway system. From a utility perspective, utilities are permitted to occupy our right-of-way in accordance with state statutes and are subject to the regulations of the entity having jurisdiction over the highway, that being the Department of Transportation. An additional consideration is that in order to receive federal aid for state highways we are required to have a policy for accommodating utility facilities on the right-of-way with the main purpose of the policy being to allow the user to locate the laws, regulations, and procedures which are most pertinent to the coordination process. I really want to spend most of my time outlining our current process. And so when we begin planning for any project there are lots of things that we have to think about and account for and one of those certainly is utilities and the potential impacts to the utility, utilities and any necessary relocation. As it relates to utilities, one of the first things we do is an initial survey of the area which includes utility location markings. From there we'll use the survey to design the project and create our footprint. At this point on more complicated projects, we invite the utility

company to view the project plans so they can consider potential impacts. We-- we coordinate with utility companies during our plan-in-hand process so that all parties involved understand the nature and scope of the work. And for those of you who aren't familiar with the plan-in-hand, it's essentially a field visit to the project site to verify the scope and consider everything from how the construction project will be phased to what permitting may be required and any issues surrounding right-of-way and utility relocation. On the heels of the plan-in-hand, if right-of-way acquisition is required as part of the project, appraisal plans are created and the department will send our detailed project and right-of-way appraisal plans to the utility companies impacted. The companies then plan to create plan-- use those plans to create plans of their own to relocate their facilities and determine a cost estimate of the work. We review the utility's rehab plans, determine reimbursement eligibility to the utilities for this work, and ultimately execute an agreement. After all these steps are completed, we authorize the utilities to order materials and begin their relocation. We have covenant agreements with the utilities on many of the actions required as a part of re-- relocating the lines but in some instances new agreements are necessary. All utility work in the highway right-of-way requires a permit issued by the department and in some cases, as part of a highway project, a properly executed-- executed agreement is considered to be the permit. Since we've been keeping track for-- which is about a decade or so, we have issued 11,236 permits, with this number going up nearly every single day. There are approximately 130 utility companies that we routinely coordinate with on projects and we have a covenant agreement established with 71 of those. Most of the time, the process worked pretty well and without incident. However, there are situations where it has not worked as it should and the reasons for this are varied and the consequences can be impactful in terms of delays and costs. And as a department, those are two things that we want to avoid and so the question obviously is, why-- why does it happen? In some cases we're not able to purchase the right-of-way early enough for the utilities to be relocated before a project moves to construction. Sometimes the utilities that need to be relocated are actually under the existing highway and so the-- they need to be relocated concurrently with the construction which adds complexity. Additionally,

utility companies may need to work with third parties as a part of the relocation which again adds complexity and sometimes delay. The final point on the why, and I want to highlight and would like to leave you with this, is the potential for reimbursement or lack thereof when it comes to resolving utility relocation. Conflict can greatly impact our ability to move forward quickly and if a utility facility is on our right-of-way, it occupies that right away by permit or permission and thus relocation costs are not eligible for reimbursement. The-- the one exception is that if the facility is within the corporate limit of a city or a village. In this case the costs are eligible for reimbursement. Additionally, so if a utility company has used our corridor and locate facilities just off or parallel to our right-of-way, knowing that any work we conduct could encroach on their facility, those costs can be reimbursed. In this case, when the facility is off our right-of-way, the utility owner is well positioned to be compensated for the move and the situation lends itself for more room to negotiate because of the availability of payment. So Chairman Friesen-- Friesen and distinguished members of the committee, thank you for your time and I would be happy to any-- answer any questions you have.

FRIESEN: [00:07:00] Thank you, Director Schneweis. Any questions? Senator Hughes.

HUGHES: [00:07:03] Thank you, Mr. Chairman. Thank you, Director Schneweis. Would you just kind of help me get down to the ground level? Does the Department of Transportation have people who go out and locate or do you rely on the utilities to [INAUDIBLE]

KYLE SCHNEWEIS: [00:07:16] We rely on the utilities to-- to locate their own utility.

HUGHES: [00:07:18] Okay, is that a-- the individual utilities or do you have someone that just comes out and does all of them, comes, looks at the records, and say there's--

KYLE SCHNEWEIS: [00:07:27] I-- I believe the individual utilities do it.

KYLE SCHNEWEIS: [00:07:30] OK. So if you have phone and sewer and gas--

KYLE SCHNEWEIS: [00:07:34] Um-hum, we'll talk to each one of those, correct.

HUGHES: [00:07:35] -- each individual-- and then there are records in the district offices of what's supposed to be buried along all the highways? In some cases, yes, but not always. That's why we have to-- we do it on site and we ask for their location.

HUGHES: [00:07:46] OK. But that's generally the utilities--

KYLE SCHNEWEIS: [00:07:48] Correct--

HUGHES: [00:07:49] -- themselves' expense.

KYLE SCHNEWEIS: [00:07:49] Yeah. And-- and the other-- one other exception is we have our own utilities and which we-- we would obviously know where those are and locate those ourselves.

HUGHES: [00:07:56] OK. OK. Thank you. Thank you, Senator Hughes. Any other questions from the committee? So you do have some utilities buried and--

KYLE SCHNEWEIS: [00:08:05] Um-hum.

FRIESEN: [00:08:06] --and you do always know where they're at?

KYLE SCHNEWEIS: [00:08:08] We do, yeah. Well, we-- we can figure it out when we get out there.

FRIESEN: [00:08:12] There-- there-- there have been cases where I've seen municipalities where they forgot where they put things, so.

KYLE SCHNEWEIS: [00:08:15] Well, it-- it happens.

FRIESEN: [00:08:16] It-- it has.

[00:08:16] I mean if you go back long enough it's hard sometimes to find records. But generally ours are around intersection for the lighting or interchange for the lighting, those kinds of things, the-- the gates, those-- and so it's pretty simple to figure out where we are usually.

FRIESEN: [00:08:29] So have you had a lot of contracts that were delayed because utilities either didn't get their own time or missed their location, thought they were OK and they weren't?

KYLE SCHNEWEIS: [00:08:40] I-- I-- I wouldn't-- so I-- I don't have any data for you. What I can tell you is that when-- when I've started asking questions about this topic, generally the con-- the feeling is that it generally works pretty well most of the time. However, there-- sometimes it does not end as-- disastrously so. And I think that's why we're here talking about it today. You know, from our perspective I think there are some things we can do. The-- I mentioned the-- the right-of-way piece. We've got to be able to get our schedule synced up so that we're out of the way in time. That's important. And I think that's something that we're-- we're-- we've taken on and-- and are working hard to be able to meet our schedules including getting out of the way on the right-of-way side. I think the communication piece is an area. A lot of times this comes down to being able

to communicate with folks and making sure that we have those steady relationships with-- with utilities that can continue to-- to communicate about what the issues are and work through them and-- and that's something we've talked about at the department as an area that we need to intensify our focus.

FRIESEN: [00:09:38] OK. Thank you, Director. Senator Bostelman.

BOSTELMAN: [00:09:40] Thank you, Chairman Friesen. Director, I have a question. Is there a general prohibition on things that are going into our right-of-ways, especially our rural highways and stuff, maybe above ground and below ground? I mean [INAUDIBLE]

KYLE SCHNEWEIS: [00:09:58] Hmm. Unless that's a trick question, I think the answer is no, Senator. So do you have a specific that you're referring to?

BOSTELMAN: [00:10:03] Well, I'm saying that typically--

KYLE SCHNEWEIS: [00:10:03] We don't have a general prohibition.

BOSTELMAN: [00:10:04] -- yeah, typically, you know, our [INAUDIBLE] on the outside of the right-of-ways and that.

KYLE SCHNEWEIS: [00:10:08] Uh-huh.

BOSTELMAN: [00:10:08] So we're not putting power pools within the right-of-way; we're not laying fiber, per se, in-- in the right-of-way along our highways and that. But is there a-- typically it's pushed off into the-- onto the private [INAUDIBLE]

KYLE SCHNEWEIS: [00:10:21] So two points I would make. One, we've got to make sure that the right-of-way is clear for safety and so when we design the road we need to clear a zone to keep things like utility poles out of where a vehicle may enter just to keep that piece safe. I think it certainly complicates our work to have utilities in our right-of-way. But I also would tell you we are supportive as an agency in-- in the need to-- to take advantage of the public right-of-way to serve the citizens of our state. So we are not opposed to sharing our-- our ground. We certainly want certain things to be in place, liability and some of those things. But as long as we can meet those requirements, we're happy to-- to accommodate.

BOSTELMAN: [00:11:03] Thank you.

FRIESEN: [00:11:05] Thank you, Senator Bostelman. Any other questions from the committee? And for the record, I guess, Senator Geist and Senator Murante have joined us.

KYLE SCHNEWEIS: [00:11:15] Welcome.

FRIESEN: [00:11:16] Seeing no other questions, thank you for your testimony.

KYLE SCHNEWEIS: [00:11:18] OK. Thank you.

FRIESEN: [00:11:18] Welcome.

LUCAS BILLESBACH: [00:11:33] Welcome. Good afternoon, Chairman Friesen, members of the Transportation and Telecommunications Committee. My name is Lucas Billesbach; that is L-u-c-a-s B-i-l-l-e-s-b-a-c-h. I'm a licensed professional engineer with JEO Consulting Group where I

oversee the environmental department, helping to advance water, wastewater, and aquatic improvements in the communities that we serve. Today I am here representing the American Council of Engineering Companies of Nebraska as the legislative committee chair to deliver comments here on LR203, the study to examine issues surrounding the relocation of utilities within the public right-of-way. We have a few points we'd like to share. Number one, we do believe it's an important topic and ACEC Nebraska does support additional study of how utility conflicts are dealt with. The concern for utility conflicts within the state is not only within state-owned right-of-ways. We'd like to make a point that is also within counties, municipalities, and both in urban and rural areas. ACEC would urge that this study evaluate utility conflicts on projects not only during the construction process but also during the design process when field topographic survey is being obtained. We-- we have an 811 system within the state commonly called the "call before you dig" system. It's designed to mitigate utility interruptions during construction and create a process for who is at fault when a conflict arises. However, the process is inadequate to properly help mitigate and avoid conflicts during design. Often utilities receiving a design ticket for locating during the design process are providing just basic maps that do not provide the level of detail to properly plan for avoidance or mitigation. Locating in the field does provide the highest level of accuracy to all of our members. Our members believe we are the first and best opportunity to develop proper planning to avoid or mitigate utility conflicts well in advance of construction. If utilities are properly identified and located during the design process, there can be considerable cost savings and time saved on projects to all parties involved. Thus, improving utility coordination during preconstruction would lead to increased accuracy, especially during construction when erroneous markings or failure to locate creates greater risk to job site personnel, public safety, and consumer disruption. The benefits of providing one-call locate far outweigh the costs. ACEC Nebraska represents 50-plus engineering firms doing business in Nebraska. ACEC Nebraska initiatives create an enhanced business climate for our members. Our members are engaged in engineering and construction projects that propel Nebraska's and the nation's economy, enhance the safeguard of

America's quality of life. Thank you for the opportunity to appear before you today and I'm happy to answer any questions you might have.

FRIESEN: [00:14:33] Thank you, Mr.-- Billesbach?

LUCAS BILLESBACH: [00:14:33] Billesbach. Thank you.

FRIESEN: [00:14:37] Billesbach. Any questions from the committee? Senator Hughes.

HUGHES: [00:14:41] Thank you, Mr. Chairman. Thank you, Mr. Billesbach. So what-- what is your solution for the problem? I mean you would like--

LUCAS BILLESBACH: [00:14:49] Yeah, we would like to--

HUGHES: [00:14:49] -- 811 system you--

LUCAS BILLESBACH: [00:14:51] We'd really like to see an enhanced 811 system that on a design ticket the utilities would be field-locating utilities versus-- you know, the level of detail we're getting on the maps from these utilities often for rural areas would be an 8.5 by 11 covering up to a mile square of area where the level of detail you-- you just can't identify where utilities are actually at to help avoid or mitigate those disruptions during design.

HUGHES: [00:15:18] Can you ask for additional, better detailed locating?

LUCAS BILLESBACH: [00:15:22] Yeah, we-- we certainly have-- I think our members tried really hard to work with utilities. Often on the-- the level of detail the-- or what they're able to

provide us in map form is just not there and we've just-- haven't seen the cooperation necessary to get it out in the field where they can use equipment to more probably identify and get it to a better level of accuracy for us.

HUGHES: [00:15:44] So what's-- what's the solution, bigger maps and on-site?

LUCAS BILLESBACH: [00:15:48] We'd like to see on-site.

HUGHES: [00:15:50] Dual, dual individual siting or--

LUCAS BILLESBACH: [00:15:53] We-- yeah, we'd like to see at least a-- a process where the utilities get on site and use more advanced technology to identify where the utilities are actually at versus providing just maps of that information.

HUGHES: [00:16:08] I guess, and you'll have to educate me, I apologize, but generally when I've seen the 811, I mean, they're out there and they're spray-painting on the ground and--

LUCAS BILLESBACH: [00:16:16] Correct.

HUGHES: [00:16:17] -- putting in flags and what-- what additional do you need [INAUDIBLE]

LUCAS BILLESBACH: [00:16:20] That-- that process that you're seeing is commonly only before digging occurs. So it's-- it's well on most projects. It's past the point of bidding and construction has started.

HUGHES: [00:16:32] OK.

LUCAS BILLESBACH: [00:16:32] Where our members are getting involved when we're asking is how can we get that information well in advance of a project being let so we can help avoid and mitigate before-- during the design process.

HUGHES: [00:16:44] So you need just on-site inspection before you begin, before your group begins their portion of a project?

LUCAS BILLESBACH: [00:16:53] Yeah, correct. It's kind of-- the director touched on there is a process. You know, typically with any project we're gathering field topographic data, which is survey data, that it's happening before the design is starting. It's during that time that we're trying to also gather utility data. What we'd like to see is an improved process during that time frame where the utilities are field locating so that our surveyors can pick up those flags and markings. But during that time we're not performing any actually subsurface digging. So we're having some pushback to actually get them located in the field at that time.

HUGHES: [00:17:27] And you feel that that needs to be mandated from the Legislature, the industry?

LUCAS BILLESBACH: [00:17:31] Yeah, I just think it's--

HUGHES: [00:17:33] Is it working it out?

LUCAS BILLESBACH: [00:17:33] Right. I-- I'm not I guess here to maybe mandate from a Legislature but certainly, as a study component, to understand the entirety of the issue I think it's an important point of consideration--

HUGHES: [00:17:43] OK. Thank you.

LUCAS BILLESBACH: [00:17:44] --for overall utility conflicts.

HUGHES: [00:17:48] Thank you very much for your testimony.

FRIESEN: [00:17:48] Thank you, Senator Hughes. Any other questions from the committee?

FRIESEN: [00:17:51] So when you-- at times when you have designed a project and if you know utilities are there, you-- do you attempt to design around it, if you can, so you don't get into the relocation?

LUCAS BILLESBACH: [00:18:03] Yeah, I would say it varies certainly by the utility for-- and for what we're putting in place. If we're putting in some-- place something that has flexibility in how we design it, certainly we would shoot for avoidance. If it's something, you know, such as sewer main that has to be installed on a very straight linear grade and we know we're going to have a conflict, it gives us that opportunity, though, to work with that utility before we ever go let construction of what the plan is going to be to then mitigate it in the field.

FRIESEN: [00:18:34] OK. Thank You for your testimony.

LUCAS BILLESBACH: [00:18:34] Thank you.

FRIESEN: [00:18:54] Welcome.

ERIC KLEIN: [00:18:54] Thank you. Good afternoon. My name is Eric Klein; that is E-r-i-c K-l-e-i-n, and I'm up here representing NUCA of Nebraska and our members as we are often the third party to relocate the utilities ahead of any building of roads or movement of right-of-way. We're seeing a lot of delays because we do not have the correct information to go re-- relocate the utilities. Most of it consists of elevations and cuts. A lot of times in our plans what we'll have is just a blank sheet that says you have to be X amount of feet deep and that's where it has to get put because, as far as our liability standpoint and a lot of times as roads are moved or approaches are moved, there's grades and cuts that are done and then re-exposing the utility we just moved and we are having to go back and move it again. And a lot of-- part of it now, too, is that there is a $500,000 fine implemented on fiber hits as part of the 811 system as it's treated like the pipeline and that's going to slow a lot of things down and cause conflict with some of these moves. A lot of it is we don't have information to temp facilities that are going in. A lot of our utilities have aboveground trans-- if it's a buried utility it's an aboveground transformer or communication "ped" and if we can go put these in, in the location that it's been designed, we're having to go move them so that drive temporary approaches can be done, a temporary road can be built, and then there's-- a lot of it is a lack of coordination we feel between our engineers and people above them that may be doing the designing is they're not getting the proper information. There's been plenty of projects we've shown up to with plans that have said please go do this, get this move done, but the final plan grade for-- such as a state highway has not been finalized. And so it's a lot of guesswork, what we're doing, and we're seeing that delay a lot of projects and us having to come back a couple of times. So with that, if you guys have any questions--

FRIESEN: [00:21:26] Thank you, Mr. Klein. Any questions from the committee? So what is-- what is your business exactly? You-- you relocate utilities or--

ERIC KLEIN: [00:21:37] We relocate utilities, typically fiber optic or high-voltage power lines.

Most of that's underground. And we install all the transformers.

FRIESEN: [00:21:52] So you're-- when a project starts they come to you and say, you're in our way, you need to move, relocate, they give you specs of where you expect to be?

ERIC KLEIN: [00:22:04] Correct.

FRIESEN: [00:22:04] And then things change and suddenly your grade is wrong and you're no longer 18 inches deep, or 36, and you relocate again.

ERIC KLEIN: [00:22:13] Correct. Well, we-- a lot of-- often we'll go in. Our typical bury standard is 48 inches but a lot of times they're finding that a concrete storm sewer is going to be in place or a concrete storm drain or maybe there may be some risers for inlets that are in conflict. And so we end up going back and moving and again causing further delays to the road project.

FRIESEN: [00:22:33] Who pays that cost?

ERIC KLEIN: [00:22:36] We recover our costs from the utility owner. As far as who they recover cost from, I do not know.

FRIESEN: [00:22:44] OK. But otherwise it is still a project delay and it costs everybody some money?

ERIC KLEIN: [00:22:47] It's still a project delay and a lot of it is dealing with unknown utilities. The-- we find that the 811 doesn't locate prior to these projects being bid out and they specifically have addressed that with the 811 board and they will not do it as far as a design ticket standpoint.

They will only hand over the maps to the-- which is their best guess.

FRIESEN: [00:23:13] But part of your problem, too, is you're saying that you're asked to relocate in an area where if plans would have been drawn correctly you wouldn't have been put there.

ERIC KLEIN: [00:23:23] Correct. And we find ourselves in that conflict an awful lot.

FRIESEN: [00:23:26] Yeah.

ERIC KLEIN: [00:23:26] As far as trying to get that resolved, there's a pretty large disconnect as far as if we do come up on a problem. And typically to us it's an easy fix. We can solve the problem on the job site. But a lot of times it goes to higher ups and we can be down for 5, 10, 14 days with no progress because this is in the order of events to get things relocated.

FRIESEN: [00:23:53] OK. Any questions from the committee? Senator Bostelman.

BOSTELMAN: [00:24:00] Thank you, Chairman Friesen. Is your issue separate from our last testifier? I mean I'm trying to understand a process in this. We have the engineers who are talking about, it sounds to me, early planning. You're during the job so you're a subcontractor of the contractor of the utility, right?

ERIC KLEIN: [00:24:15] We would be--

BOSTELMAN: [00:24:16] So the project may or may not be going and I'm trying to understand where we've got multiple hands in onto a project and whose ultimate-- is there a contractor ultimately responsible for that, that whole construction process, if you will? Is that bid out already

where the-- the-- the-- the state is doing it or is that a-- is that, you know, a contractor that's responsible for them? That-- does that-- am I making sense with that?

ERIC KLEIN: [00:24:44] Yeah. Typically we would be the contractor, I guess, the prime to move, relocate the utility. Utility would get their information from the Department of Roads or the municipality that we're relocating for and we're finding that they're not getting us the proper information to do our job properly and stay ahead and mitigate all your down time.

BOSTELMAN: [00:25:09] [INAUDIBLE] I'm just trying to figure out that process because it seems like as what-- what we're hearing is there's a breakdown in the process. There's a-- there's a-- there's a project proposed. There's bids that go out, request for a proposal or whatever. There's some engineering information that needs to be made. Then when we actually come to do the-- the relocation, that's another issue as to whether we've gotten the right drawings, the right specs, if you will. Then my guess is we're going to hear from someone who's actually going to, let's say, build the road, because we're going to have another question and I'm just trying to understand where we don't-- don't have to process, it sounds like, from maybe the state level on how to coordinate these activities so we don't run into that, so we can eliminate our delays. But maybe I'm being too simplistic.

ERIC KLEIN: [00:25:56] No, I believe you're correct on that, their needs for a process for this. I can speak to a specific instance where we were mobilized, our entire crew, out to Alliance, Nebraska. And there's-- the road is not finalized. We've been asked to move utilities. The plans have not been finalized. The right-of-way has not been staked or marked and we have no stations to go off of to know where these new road approaches are. We may have plans of the area they will be in, but for us that's not specific enough to make sure that we're out of the way.

BOSTELMAN: [00:26:31] Ok. Thank you.

FRIESEN: [00:26:32] Thank you, Senator Bostelman. Any other questions? Thank you for your testimony, Mr. Klein.

ERIC KLEIN: [00:26:38] Thank you.

FRIESEN: [00:26:50] Welcome.

KATIE WILSON: [00:26:50] Good afternoon. Good afternoon, Senator Friesen and the rest of the committee members. My name is Katie Wilson, K-a-t-i-e W-i-l-s-o-n. I'm the executive director of the Associated General Contractors, Nebraska Chapter. I represent heavy highway contractors doing work in Nebraska as well as their supplier and service organizations that support them. Utility conflicts in the state right-of-way have been an ongoing issue for heavy highway contractors for many, many years. Many times these conflicts cost contractors in delays and lost revenues and we feel it's-- the time has come to bring all the stakeholders involved in the process together. So when the highway program is largely maintenance and preservation, there is very little underground work, therefore, a few issues with utility conflicts. But with the additional funding from the Build Nebraska Act and the Transportation Innovation Act, there's increased focus towards capital improvement projects which increases the likelihood for utility conflicts because of adding/widening lanes, removing/replacing culverts, bridges. There's just basically more subgrade work and a lot more grading. So obviously you've heard there's some confusion between the 811 one-call system and capital improvement projects. So the 811 one-call notification system is basically a service which locates the underground facility prior to excavation only in order to prevent injury to persons and damage to property and the interruption of utility services. It's a state statute. It's for pre-excavation work. With capital improvement projects, require advanced design,

significant planning and work that must be performed sequentially by a number of different parties and it takes many, many, many years to develop and design a project. A lot of things can happen in those years. The-- the owner has to deal with NEPA, just design changes, and-- and-- lots of things can happen. While I can't speak on the specifics of what happens pre-bid letting, you know, our hope is that all the coordination and the utility and the right-of-way and the communications have been done when we get the plans, when the contractors get the plans, and they start working on their bids. So when the contractors get involved in the coordination, it's at contract award time, so post-letting they get the contract. Now they are responsible for coordinating the-- the-- any relocation of the utilities while they do their construction work, aerial and underground. So it's assumed all known underground facilities and interested parties affected by the work have been notified and communicated with during the planning and design stages, so pre-letting, pre-contractor involved. Each project includes a status utility document which lists all the known utility facilities within the project area, known utility facilities in the area. So it's the contractor's responsibility to request a utility status update at the preconstruction conference and again prior to start work. Many contractors, you know, if it's a larger job, they will take it upon themselves as soon as they get the contract to start coordinating, communicating with the utilities. You know, they're working on their critical path schedule. They want to know who's in the way, you know, if they need to come out, they need to get their third-party utility companies to come out, maybe do the relocations and start just that whole coordination. So once they start planning, now they start working with the project managers, the owner, project manager, and they plan for the preconstruction conference. All right, so the critical path schedule, it's a huge part of the discussion at the meeting. So for those that don't know what that is, it's basically the project activity, so from start date to finish, you know, who's-- who's responsible, what phasing is going to happen, you know, maybe there's a major utility that needs to be moved, so all that-- all that's happening at the same time, so critical path schedule. So at the preconstruction conference, this is basically the first time that all the parties of the contract are in the meeting together face to face. They talk about the path schedule. A lot of times issues arise

with the schedule, so-- or it's been known that maybe there's a utility company that didn't even know that the job was supposed to start so there's been maybe a change in-- in the planning phases that the communication didn't get to them. Who knows why? All right, so what happens when these issues arise with the critical path? Well, first and foremost, it has to be revised. Now contractors live within specific working-day requirements as they bid these jobs. Some have completion dates. Some have calendar dates. So as these delays occur or the changes in the schedule, you're-- there's going to be a delay probably. So you don't just have a prime contractor. You've got graders; you've got culvert guys; you've got bridge guys. You've got them all, I mean, especially on a large job. So we had a contractor a year and a half ago on a Build Nebraska Act job got to the “precon” and having the utility coordination meeting and, lo and behold, one of them did not know that that start date had been moved up and that just-- it was a domino effect. So the grader was the first one to move in. It's a new project, new lanes. The grader had to start building those lanes out. Well, there's utilities under that. Got-- they were supposed to be relocated or at least coordinated so it's-- you start fresh. So instead of starting in May, it's going to start late summer, early fall, moves those guys back, moves the subcontractors back, moves the prime contractor back, the locals probably upset that nothing is going to happen for a while, right? So what happens? Two things: Everything gets moved off. There's projects that these contractors had scheduled in the fall probably. Now they have to change those around. Summertime, now they don't have four months of work to do, so they can't just go out and grab four months of work, because usually at the beginning of the year everybody has the majority of their work scheduled for the year. You're going to do some fill-in lettings but-- and fill-in work but it-- and it's just a domino effect. I mean these poor guys and gals, they just, OK, do you send your crews home, do you "mobe" in again? It's just a lot of added cost to their bottom dollar on something that, you know, could have been happen-- you know, coordinated better, better communication probably. Another example, so you have a bridge job, a complete tear out/replacement. It's done usually under road closure, calendared completion days, 90 days, 120 days, right? So the contractor has the preconstruction conference. Everybody's there, everybody's,

yep, let's-- good, go. We move in. The contractor starts tearing out the bridge and, boom, underground utility in the way a couple feet away from where the road is. So it stops everything, calls the utility company. They come out. You know, according to the records it was farther away from the road, shouldn't have been an issue. Well, there's the delay. So the road is closed. The locals know that it's going to be closed for 90 days. It has a detour route. Contractor moves out probably depending on how much work has been done on removing the bridge. And utility company comes in a couple of weeks, could be months, whatever, so contractor, bad guy who never gets their work done. Right? It's not necessarily the contractor's fault, is it? So anyway, these are the things that-- that-- that come up for the-- for my members and, you know, the coordination, or the lack of, pre to the highway letting and-- and-- and we are hopeful that we can get all the stakeholders together to start talking about some of these issues to-- to fix the process. So the utility facilities have agreements with the states allowing their property to be in the right-of-way. Some of these agreements have been in place for many, many years. Things change in those years. Contractor, we don't have an agreement directly with the utility company. We have to coordinate with them. If-- if that coordination starts and the relocation starts, we don't have anything to hold them accountable. Now, yes, the owner does, but it's just, you know, it's a three-legged stool, here we go. So while we understand, you know, utilities are a necessity for every community and the state, just as the infrastructure tying those communities together is just as important, all stakeholders involved with the utility, coordination must work together to improve best practices associated with project planning, design, and construction. We've had numerous conversations with the department over this. Every-- everybody has a-- they're a player in this. There is-- there is tons of stakeholders that are in the communication part of it, the coordination part of it. A lot of people have data probably that can help the situation and the process. So, you know, we are hopeful that we can get a independent study to get out there to get all the stakeholders together, find out what the process is, what it should be, and let's, you know, try to reduce the cost for everybody: contractors, third parties, designers, the state. So I'd like to thank Senator Friesen and all of you for this important

hearing and we hope something comes out of it. And that pretty much ends my testimony. So if you have any questions, I will try to answer.

FRIESEN: [00:36:39] Thank you, Ms. Wilson. Any questions from the committee? Is there any round-number estimate what it costs contractors every year if they--

KATIE WILSON: [00:36:52] I wish I had it.

FRIESEN: [00:36:53] -- round numbers.

KATIE WILSON: [00:36:54] It's, you know, a lot of it is delays, it's-- it's juggling things back and forth, it's--

FRIESEN: [00:36:58] But it all--

KATIE WILSON: [00:36:58] -- it's moving out, moving in, it's-- it's not a direct cost.

FRIESEN: [00:37:02] But it all costs money.

KATIE WILSON: [00:37:02] Yeah

FRIESEN: [00:37:04] I mean mobilization costs are--

KATIE WILSON: [00:37:05] Yeah, yeah, yeah.

FRIESEN: [00:37:06] -- big part of the project.

KATIE WILSON: [00:37:06] Yeah. And What do you do with the employees, you know, if they can't go to work here? Are you going to move them? You're going to maybe move to the other side of the state, so.

FRIESEN: [00:37:13] So is it just better coordination or a better way of keeping track of where our utilities are located?

KATIE WILSON: [00:37:21] Yes and yes.

FRIESEN: [00:37:22] All of the above?

KATIE WILSON: [00:37:22] Yeah, pretty much.

FRIESEN: [00:37:29] OK. Thank you, Ms.-- Senator Hughes.

HUGHES: [00:37:30] Yes. Thank you, Mr. Chairman. Is this virtually every project has this delay or half or 10 percent or--

KATIE WILSON: [00:37:40] No.

HUGHES: [00:37:41] I mean, how big of a problem is it?

KATIE WILSON: [00:37:43] It depends. I mean there's municipal jobs that have delays also it's not just the state-- state work. You know, I-- I have-- I could tell you stories that I've heard for-- that would go on and on. But, no, most, most projects we coordinate, the contractors coordinate well in

advance, everything goes smoothly. But it, you know it's as we're going to the capital improvement projects and we're seeing a lot more grading, that's where the issues come up. You know, when you start doing a lot of excavation and-- or a lot of bridge removals and things like that, that's kind of where this happens. You know, for ten years we haven't done a whole lot of capital improvement so it's been a little quieter but yeah.

HUGHES: [00:38:24] Do you think we're-- we're getting better at doing it, we're keeping better records and we're understanding how important this is or is it a growing problem?

KATIE WILSON: [00:38:35] It's just a growing problem again. So, I mean, I've been involved in the industry for 28 years and it's just, you know, it comes and goes and I think we're-- it's time that we get everybody together and find out what is-- what process isn't working. So, you know, let's work together to fix it.

HUGHES: [00:38:54] Thank you for coming today.

KATIE WILSON: [00:38:54] Sure.

HUGHES: [00:38:54] Thank you, Mr. Chairman.

FRIESEN: [00:38:56] Thank you, Senator Hughes. Any other questions from the committee? Seeing none, thank you for your testimony.

KATIE WILSON: [00:39:02] Thank you.

FRIESEN: [00:39:09] Anyone else? Welcome.

MICHAEL KLEFFNER: [00:39:10] Thank you. My name is Michael Kleffner, M-i-c-h-a-e-l K-l-e-f-f-n-e-r. I'm here on behalf of the City of Omaha Public Works Department. I was asked today to come by the director to kind of give you some history on how we've dealt with utilities in our right-of-way and where we're at today. In the early 2000s there was a lot of uproar in Omaha about utility conflicts with capital improvement projects and significant delays. Utilities were coming in the year before or during the construction of projects and delaying the contractors. During Mayor Fahey's time in Omaha, he put together a council that-- or a task force to review some of the issues that's in-- and he came up with a report. It's included in what I gave you. And from that they actually came up with an MOU that includes OPPD and MUD and they are-- the M-- MOU was basically a starting point. It was a kickoff on basically how we could work together better to fix the problems we were having with utility conflicts within the city of Omaha. From that point we've improved the process. Now currently we have a monthly meeting with all the utilities that are in Omaha along with the surrounding communities. We have Douglas, Sarpy County; we have Ralston, Papillion, Bellevue, Omaha, basically everyone within the metro MAPA area. With that, we have just about all the utilities. We have MUD, OPPD. Charter, Comcast, all the cable telecommunications companies, they're all invited. At that meeting we'll review what projects we currently have coming up, whether they are-- they've started design or not, projects in design, projects in construction, and projects finishing up design. We also include maintenance projects in that so everybody is aware of that. Part of that process that we deal with utilities companies we have what we call predesign. When we know it's a significant project or a project we're going to have impacts, before we get into design, we'll have a utility-- coordination meeting with utilities. After we get into design, we have another utility coordination meeting to basically iron out what issues we are going to have. Following that, once we're into design at the plan-in-hand, which director of the DOT kind of went over, we'll have another meeting in the field to go through that. As part of that design, we'll actually do one-calls on all the utilities. I was unaware of some of the issues that some of the speakers went

over. But on our one-calls all the utilities will do field locations on our utilities of what they're aware of. So they actually go out and physically mark them and we will survey all those utilities to ensure that we have accurate locations. If they're not very accurate, we will actually pull the plans or the utilities will give us the plan so we can tie the field locations in with what they have for plans. Following that plan-in-hand we'll actually start coordinating on relocations of utilities. With that is, is to determine whether those utilities can be relocated during the project, before the project, or what we've gone to recently is actually doing joint projects where we will do the [INAUDIBLE] the contractor that the city contracts with will actually also do the work for the utility. So if it's a water main or anything like that, they'll actually move the utilities as part of our contract so it's built into the contract. And then at the 90 percent, we'll iron out the full schedule on that. “Precon,” after the bidding before we start construction, we'll again have another meeting that the utilities and the contractors are there to iron those out. One aspect that we constantly keep is continued coordination, continued communication with those utilities to make sure we're all on the same page and to lessen the impacts. We always have hiccups. Nothing's ever perfect but we try to move forward in as smooth process as possible. That's kind of where we're at now. Again, we constantly reevaluate the situation. Again, one of our more recent developments is doing more joint contracting because of the amount of work we are doing within the city related to the CSO, CIP projects, things along those lines.

FRIESEN: [00:43:54] Thank you, Mr. Kleffner. Any questions from the committee? So do you think you have most of your problems worked out by following this protocol or do you still run into a few problems?

MICHAEL KLEFFNER: [00:44:06] We still run into a few problems no matter what. Occasionally a utility won't have a record of a utility in place and will-- will end up coming in conflict, conflict with it during construction. Occasionally we'll get a stray utility that is new to the

network because there's a lot of new fiber companies out there that are putting services in and they-- they think that they don't need to come to our coordination meetings or-- or things along those lines and then when we get out there we find them. We tend to use a forceful manner because we're there within our right-of-way to tell them to move in a timely manner or else in those type of situations.

FRIESEN: [00:44:53] OK. Well, seeing no further questions, thank you for your testimony.

MICHAEL KLEFFNER: [00:44:54] Thank you.

FRIESEN: [00:45:08] Welcome.

RENAY ROBISON-SCHEER: [00:45:09] Thank you. Good afternoon, Chairman Friesen I'm Renay Robison-Scheer with Union Pacific Railroad, Renay, R-e-n-a-y, Robison, R-o-b-i-s-o-n, hyphen, Scheer, S-c-h-e-e-r. I was asked here today to talk about the process that Union Pacific and railroads used to allow utilities to access their-- their-- their right of way and-- and our partnerships and how the process works and to answer any questions that you might have about that process. I am-- oversee the group what we call the-- in the real estate department called the utility contracts group. So it is all the utilities come through our-- our group to-- to have access to cross, to parallel, and you'll hear me a couple of times today to talk about two different terms. Crossing, obviously, is-- is a crossing of our right-of-way. I will sometimes call it an-- an encroachment is what we call a parallel occupancy or a-- a utility that runs alongside us for a short distance of time. I cannot speak for other railroads but I think that railroads and transportation companies, we all have shared--and utilities--have shared interest and-- and primarily Union Pacific's number-one goal is safety and our-- our-- and-- and safely fulfilling our common carrier obligations. So I-- I view our-- my job at the-- at the railroad as-- as making sure that not only utilities and others that need access to our right-of-way that they're doing it properly and safely so that we can all go home in the-- in the

evening, as well as any contractors that work for the utilities, work for the railroads. We recognize that utilities need to cross the railroad. And so we have a very, very specific set-out process and it's-- it's developed over time and in the last eight years I've actually spent a lot of time not only speaking to utility organizations themselves and their associations to-- to partner and work on and how we can make the process easier and more efficient but also developing an on-line system that allows that to occur. We're committed at Union Pacific to partnering with them to make sure that they-- that they're-- that they're given the full consideration and have that opportunity to do so in a safe and timely manner whether it's to access it from their utility for maintenance or to relocate or to do-- just to be on the property for crossing. Safety is our number-one priority. So it's-- it's important to us that they follow all of our-- our railroad procedures that have been developed. We -- there-- we have-- so, therefore, we have put them and made them available on-line. In any of those that are proprietary, for example, most railroads will use the AREMA standard for engineering and require utilities to follow those standards and their-- and their own specific standards. But those are made available through AREMA. And in our partnership, Union Pacific's partnership with AREMA, they actually made a subset for utilities available at Union Pacific's request so that they could have them on-line and be able to-- to pay for and get those in that section of a very, very large engineering manual for railroads. So again, our processes, we've developed it over time. We've tried to make it as easy and as seamless as-- as we can for the utilities to know what we-- what our expectations of them. Obviously one of our expectations is also to-- to give us the information on-line as to their location and-- and make sure that they follow all those processes. Once they submit that on-line application we do-- we vet it through our engineering department. The on-line system takes their-- their uploaded plan sets which we highly encourage. And not only are we going to ask all the very specific questions of-- of some very-- some detail that should give us the information we need. But we also need a plan set that shows, you know, exactly where they intend to be and their depths and making sure that they're following all the guidelines that-- that we need them to follow. Once they have uploaded that, it immediately goes to our engineering department. Usually from the time they-

- the I will say usually because we take 4,000 applications a year for access from utilities and others to do maintenance or to-- for brand-new crossings or parallel encroachments. But we-- if they are following the process correctly and they're following all of the standards that we have laid out before them, it'll take somewhere between 30 to 45 days to actually get a written contract in their hand. That contract is critical to us. It is a-- what we call a license and it-- it sets out the terms and conditions that we expect them to follow for the safe access again for any maintenance activities. It sets out, you know, the notification, who they need to notify at the railroad for-- for-- if there's flagging, if there will be flagging required. We also may require on special projects very certain engineering criteria that may require on-site observation. We will require that of-- for a utility to have on-site observation to ensure that they are actually following the plans that they have designed to put forth to us but also it may be-- most likely it's a higher risk project to the railroad. It's-- it's-- it's-- obviously sometimes what we would consider as a railroad industry as-- as higher risk may not always be what the utility would include-- consider higher risk. But again, we have, you know, very certain criteria that that needs to be followed. We then actually send out the agreement in [INADUIBLE] and it will be returned to us. If they ask for a parallel encroachment, it does take longer. It can take up to 120 days or more to get a-- an application for a parallel occupancy approved. And that is because, as-- as you probably are aware, there are hundreds of spider webs of utilities across our right-of-way that parallel, either parallel or cross us. We also have our own fiber lines and fiber systems that-- that not only support PTC but other signal systems for road, public road crossings and the like, and for communications, for-- and safety reasons. So we need them to make sure that-- that their-- the standards are-- are followed and that-- and that as we vet this process, this new parallel occupancy request, that we don't have anything out in the way, that we don't have any plans for-- for that right-- right-of-way that they're wishing to occupy or that we won't be out there in each other's way at the same time that they're wanting to construct. So it does take a longer time for that thorough vetting of a parallel occupancy of our right-of-way. And it can-- may not always be approved. Obviously electrical lines can cause, you know, great havoc to our

signal systems. They can burn up our signal systems which obviously impacts the public direct and-- and the departments of roads/transportation in cities and counties as well as for-- if their gates should come down. So we, we need-- so we're providing that constantly to make sure that there's a safe process. Once we have it vetted and we have an agreement and a license in place, you know, that-- that license will set out and-- and determine the terms as well as the location. And-- and we believe that with that contract in place that says where you're going to be located, it benefits the utility and us for any future projects that we may have. We-- we-- we know where they and expect where they will be and we're able to then, you know, we can design our projects around them as well as communicate with them our needs and expectations for them to relocate or to protect their utility as we-- as we construct ours. I think in the end hat utilities recognize that we have a legally binding document that governs it and-- and understands the process and the procedures and our expectations not only now when they install new or to do maintenance but also any expectations of the future.

FRIESEN: [00:54:49] Thank you, Ms. Spear [SIC].

RENAY ROBISON-SCHEER: [00:54:50] Scheer, Yes.

FRIESEN: [00:54:53] So any questions from the committee? So when you're doing an expansion project, obviously, you run into utilities that probably have been put in 40-50 years ago and they no longer meet your expectations for safety or whatever else. So do you notify those people then and require them to relocate? I take it you give them advance notice and their projects are moved and taken care of before you get there?

RENAY ROBISON-SCHEER: [00:55:25] I don't handle that process, that procedures, but I can tell you from-- from contractually having seen licenses and-- that are 100-plus years old, I can tell

you for over 100 years those licenses have really governed that process and procedures and our expectations and-- and generally our expectations as a railroad that-- that as a common carrier we recognize all utilities have common interest in the public good as well. But as a common carrier and a property owner we need to be able to use, you know, our right-of-way for what we need to use it for so we have set out in those terms and conditions on-- as to whether or not we expect them to relocate or protect. If we can protect it, you know, if-- if-- you know, if-- maybe extend the casing or that, then, you know, we'll work with them. And again, I know that our-- our acquisitions group, our utilities acquisition group works very, very closely from the very start to know what existing licenses and utilities are out there as well as what those licenses say. So as we work with them-- them, we all know and have that-- that expectation.

FRIESEN: [00:56:47] So do you run across what you would call unlicensed utilities crossing your tracks?

RENAY ROBISON-SCHEER: [00:56:53] Yes, all the time.

FRIESEN: [00:56:55] What happens with those? I mean my experience recently with a constituent was-- is they had a license or a permit to run a line. Over the last 50 years, someone lost that permit. The railroad obviously didn't care about keeping track of those documents so they couldn't find their copy and, therefore, it's an illegal line. That-- is that a true statement kind of?

RENAY ROBISON-SCHEER: [00:57:25] You know, I think it's a case-by-case system. I-- whether the license-- I mean, running a railroad for 150 years I can-- and, yes, we can lose records. But we have over-- we-- we have over a million licenses that are stored off site in various places that-- that, you know, have-- that we-- given the right location and the right information, we usually can find a license. But-- but it's not unusual that-- that maybe that license didn't get assigned to the--

the new owner or the-- the-- to the new user of that utility so maybe we're not looking in the right place. But, yeah, it will happen that they also may have installed. So either way we want to know where they're out now and-- and make sure that we have the exact location where they're at and going forward.

FRIESEN: [00:58:30] So if-- if a utility--communications, fiber optic--wants to bury a new line and they're crossing your tracks, you indicated it would take probably roughly 45 days to get a permit to do that?

RENAY ROBISON-SCHEER: [00:58:43] Yes.

FRIESEN: [00:58:44] And what-- is it a-- a long process? Is it-- I mean to me I'm-- you know, I'm just a layperson that I look at the technology we have today. I mean they set up a couple hundred yards away. They-- they bore ten feet under your tracks. You would never see them. You'd never know they're there. It's low risk because there's no gas, no water. It's just a cable. So, I mean, it seems to me like sometimes 45 days for a simple project like that is plenty long.

RENAY ROBISON-SCHEER: [00:59:21] Again, it-- it would-- it would seem that a-- a-- a jack and bore or an HDD bore for a fiber utility would be, you know, from-- from a layperson's view, it would be less risk, but anything that could go wrong, I-- I-- I personally have had experience and worked for two different borers, were aware of two borers that-- that-- that caused a void in the-- underneath the track. I mean literally there was a-- a sinkhole underneath track because of-- of a-- of a small bore. You know, and again it's about the-- the proper procedures. If, you know, 30 to 45 days to get a-- a crossing through our system and out the door is-- is we feel a very reasonable time. If there-- we have set up mechanisms on-- on-- you know, in order to rush that. It-- it is expensive on purpose. When we have a queue, like I said, we-- we actually process 4,000 licenses a year so

you can imagine what's coming in behind that at all times. So there is a queue and for us that 30 to 45 days from the time they-- they come in and have identified their-- their-- their request is a pretty fast turnaround. And in the end of the industry I think that it's-- it's probably on the-- the short side, you know, or average at worst.

FRIESEN: [01:01:13] OK. Thank you for your testimony. Anyone else wish to testify? Seeing none, we will close the hearing on LR203. Thank you everyone.