



DAVID STEFFEN

STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

May 23, 2023

Testimony to the Assembly Committee on Transportation on Assembly Bill 275

Chairperson VanderMeer and Committee Members:

Thank you for the opportunity to testify in support of Assembly Bill 275 which will clarify and simplify the steps that take place when a highway construction project is delayed due to unreported or inaccurately marked utility infrastructure.

Today, if a transportation contractor has to delay their project because they run into utility infrastructure that has not been properly relocated, it is the job of the contractor to collect compensation from the utility to cover the costs associated with the delay. This results in litigation to resolve disputes between contractors and utilities. Consequently, contractors are incentivized to build potential risk costs into their project bids, resulting in higher costs to the taxpayers.

Assembly Bill 275 simplifies this process by requiring the Wisconsin Department of Transportation to compensate the contractor in the event of a compensable utility-related delay in the project. This will ensure that projects move forward in a timely manner and eliminates the need for contractors to build in this additional cost within their bids. The WisDOT may then go through the process of collecting compensation from the responsible utility. The utility will have the ability to appeal this claim.

After four years under the new process created by AB 275, the WisDOT will provide a report related to this issue so that the legislature will have information and data to review and determine the effectiveness of this adjusted process.

I am very proud to have worked with Senator Tomczyk on this bill that will keep our state road construction projects on time and on budget. I am happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Steffen". The signature is fluid and cursive, with a long horizontal stroke at the end.

David Steffen
State Representative, 4th Assembly District



JAMES W. EDMING

STATE REPRESENTATIVE • 87TH ASSEMBLY DISTRICT

Testimony in Support of Assembly Bill 275

Assembly Committee on Transportation

Tuesday, May 23, 2023

Chairperson VanderMeer and committee members, thank you for this opportunity to speak to you today in support of Assembly Bill (AB) 275. I would like to thank Representative Steffen and Senator Tomczyk for bringing this legislation forward with me.

As I travel my district, one of the top concerns I hear about from folks is the need to invest more in our roads and bridges. I am sure that this is something that many of you have heard about from your constituents as well. We have made some great strides over the past few sessions on investing in our road and bridge infrastructure. However, we must also make sure the taxpayer dollars we are investing in transportation are being spent as efficiently as possible.

A few years ago, I was contacted by a road builder in my district with concerns about the issues that he and other roadbuilders were facing with delays caused by utilities. A short time later, he hosted my staff and me out at one of his company's job sites. While we were there, we were able to see several instances of utility-caused delays firsthand. For example, part of this road-building project was the construction of a storm water retention pond. We noticed that this retention pond was only about halfway finished. My constituent pointed out an electric utility pole near the unfinished pond and told us that the pole was supposed to have been moved weeks ago and they could not finish the pond until it was moved. We also had the opportunity to talk with one of the subcontractors on the project. They had been waiting several days on the relocation of utilities in order for them to begin work on their part of the project.

While contractors can seek compensation from utilities for delays in utility infrastructure relocation, this turns the contractors and utilities into adversaries. This often results in legal challenges and increased costs. To better insulate themselves from these increased costs, contractors are incentivized to build these costs into their bids increasing the costs of road-building projects for taxpayers. AB 275 would solve this problem by getting contractors out of the bill-collecting business and instead would have the Department of Transportation compensate contractors directly for utility-related delays.

Madam Chair and members, I ask for your support of AB 275 and thank you again for the opportunity to testify before you today.



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

Chair VanderMeer and Members of the Committee on Transportation,

Thank you for being here today to hear A.B. 275.

In Wisconsin, when a highway project is delayed due to unreported, unmoved, or incorrectly marked utility infrastructure, costs are incurred by contractors working on the project as they wait for the relocation of that infrastructure. The only method for a contractor to recover costs from that delay is to go to court and try to collect damages from utilities directly. This process costs contractors and utilities time and money, pitting them against each other when they should be collaborating on developing Wisconsin's infrastructure.

As a result of this process, contractors are incentivized to build potential risk costs into their public bids or even foregoing bidding altogether, resulting in increased costs to the Wisconsin taxpayer. I can tell you firsthand that I have heard from small contractors in my district who have decided not to bid on projects because of concerns with this issue.

In order to streamline this process and save both taxpayers and businesses time and money, we have introduced A.B. 275. This legislation creates a process for a contractor to file a damages claim with the Department of Transportation (DOT) directly due to costs associated with utility relocation delays.

Under the bill, contractors may petition DOT and receive compensation if the department determines a delay in construction due to a utility relocation delay outside the scope of the approved work plan, and DOT judges these claims as compensable.

DOT is then able to seek out damages from the utility responsible for the delay to recuperate those costs. This legislation also provides an appeals process so that any disputes can be resolved transparently.



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

A.B. 275 also provides that DOT must submit a report to the legislature within four years of enactment that outlines details and usage of this new process. Doing so will allow us to evaluate how the program has been working and whether or not additional modifications must be made.

I also want to briefly explain the amendment to this legislation as well. These changes were drafted from stakeholder feedback and will:

Increase the statutorily allowed timeline for utilities to reimburse DOT for delays from 60 days as drafted to 90 days as amended.

Provides additional clarifying language that utilities are only liable for delays that are within their control, not delays caused by another entity.

This legislation has the support of a variety of groups including not just those who build our roads and infrastructure, but also utility providers who understand that reform is needed to ensure a cost-efficient and timely investment in Wisconsin's future.



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Testimony of Wisconsin Department of Transportation
Assistant Deputy Secretary Joel Nilsestuen
Before the Assembly Committee on Transportation
May 23, 2023

RE: Assembly Bill 275, relating to damages claims relating to delayed relocation of utilities in a highway right-of-way and modifying administrative rules promulgated by the Department of Transportation.

Thank you, Chairwoman VanderMeer, and members of the committee for having us before you today as you consider AB-275. Joining me today is Mr. Scott Lawry, Deputy Administrator of the Division of Transportation System Development, which oversees our highway program.

Delays incurred by utility relocations is an issue that impacts some construction projects and at WisDOT we are committed to being part of the solution. The department has been engaged with industry on this issue for several years. We believe that WisDOT, contractors, and utilities all have a responsibility to improve so that transportation projects are delivered in a way that increases safety, leads to timely project delivery, lowers service and cost impacts, and holds all parties accountable.

The primary change made by AB-275 is to transfer responsibility of seeking damages for utility-related project delays from the contractor to WisDOT. We recognize the desire for a mechanism to hold all parties accountable. We respect the concept of AB-275, but we also need to be good stewards of taxpayer funds and have the authority to effectively manage contracts.

WisDOT has engaged the road construction and utility industries on this issue, while also researching how other states approach utility coordination. From our analysis it is clear that a number of essential elements need to be added or changed in order for WisDOT to be more comfortable with the changes made by AB-275. I will detail these changes but will first ask Mr. Lawry to describe actions taken to improve utility coordination.

WisDOT wants to be part of the solution to improve utility coordination. We have taken action and have studied the approaches taken by other states. That research and our analysis of this legislation leads us to respectfully ask the committee to consider four changes to improve this proposal.

- Create a mechanism for WisDOT to receive damages from the utility should they be at fault for a delay. Such a mechanism is an essential component of how

other states manage utility coordination. It is also necessary so that WisDOT continues to be a good steward to taxpayer funding while limiting the need to sue in court.

- In section 9, removal of language regarding liquidated damages. WisDOT already adjusts contract time to reflect a delay due to utilities. As written, the language could be interpreted as no liquidated damages can occur on a project if a contractor is delayed, even if those damages were outside of a utility claim.
- In section 9, remove language that stipulates the utility owner shall not be liable if delays were outside the owner's reasonable control. WisDOT must be able to make this determination. Making accommodation for instances such as natural disasters is one thing, but losing the ability to manage the contract and the work required on our projects is quite another.
- In section 7, clarify the language that delay damages are on those items that control the overall project schedule. To extend to items other than controlling items undermines the structure of our specs and takes the onus off the contractor to put forward a viable schedule.

Thank you for your time and consideration today. We appreciate the committee's attention to this issue, and we stand ready to work with the bill authors and the committee to develop the changes the department feels are necessary to increase safety, add accountability, maintain timely project completion, and reduce service and cost impacts. We are happy to answer any questions that committee members may have.



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**May 23, 2023 – Assembly Transportation Committee
WTBA Testimony in Favor of AB 275
Elise Nelson, Director of Government Affairs – WTBA**

Good morning. My name is Elise Nelson and I'm Director of Government Affairs at the Wisconsin Transportation Builders Association. We are a trade group working for Wisconsin's heavy highway contractors and their affiliates and represent more than 200 companies within our state's transportation industry.

Joining me today is Matt Grove, our Director of Engineering and Construction Policy, and Dan Sande, Manager of Gas and Electric Policy at WEC Energy Group. WEC Energy Group is Wisconsin's largest electric and natural gas utility serving more than 3 million customers. Recognizing that changes put forth by this bill have impacts on the utility industry, we worked hand in hand with WEC to ensure a workable solution for both industries involved. Matt and Dan are subject matter experts and will help answer your questions about the implications of the bill at hand.

We thank you for considering AB 275 this morning and taking up such an important topic for Wisconsin's transportation industry.

The bill's authors already outlined current practice when contractors are authorized a "compensable delay" on a highway construction project. They also described the changes we've suggested to enhance that process for all involved. So I'll cut to the chase –

The bill before you today protects those doing the work, it protects the traveling public, and it protects the taxpayer. It does not change anything in terms of liability. Instead – it will reduce state highway project costs and create a safer work environment.

1. Protecting those doing the work: The bill encourages stronger coordination between utilities and DOT on the development and execution of their work plans. This will enhance the safety of our crews who are digging in the rights-of-way every day.

2. Protecting the traveling public: It's our belief that better coordination under the bill will reduce the number of utility conflicts – which will in turn shorten the length of time drivers must slow down through a work zone and navigate those orange cones.

3. Protecting the taxpayer: We are confident that by reducing litigation costs to contractors, taxpayers will ultimately save money. Why? By creating a more efficient and cooperative process on the front end, costs will be reduced on the back end and more companies will be willing to bid on projects. That competition will lead to lower-cost bids.

We've drafted a simple amendment to solve two issues that came up as we continued to work with utility stakeholders:

First, it clarifies that a utility shall not be held responsible for a delay caused by another utility – An example of a situation like this would be when the owner of an electric pole cannot move the pole because another utility has something attached to it.

Second – we're making the time consistent in which a utility must pay DOT when they're liable – changing the current language from 60 days to 90.

Shortly you'll hear first-hand from several of our members on the need for this legislation with examples from the field. But we're happy to answer any questions you may have at this time.

Projects with Utility Conflicts

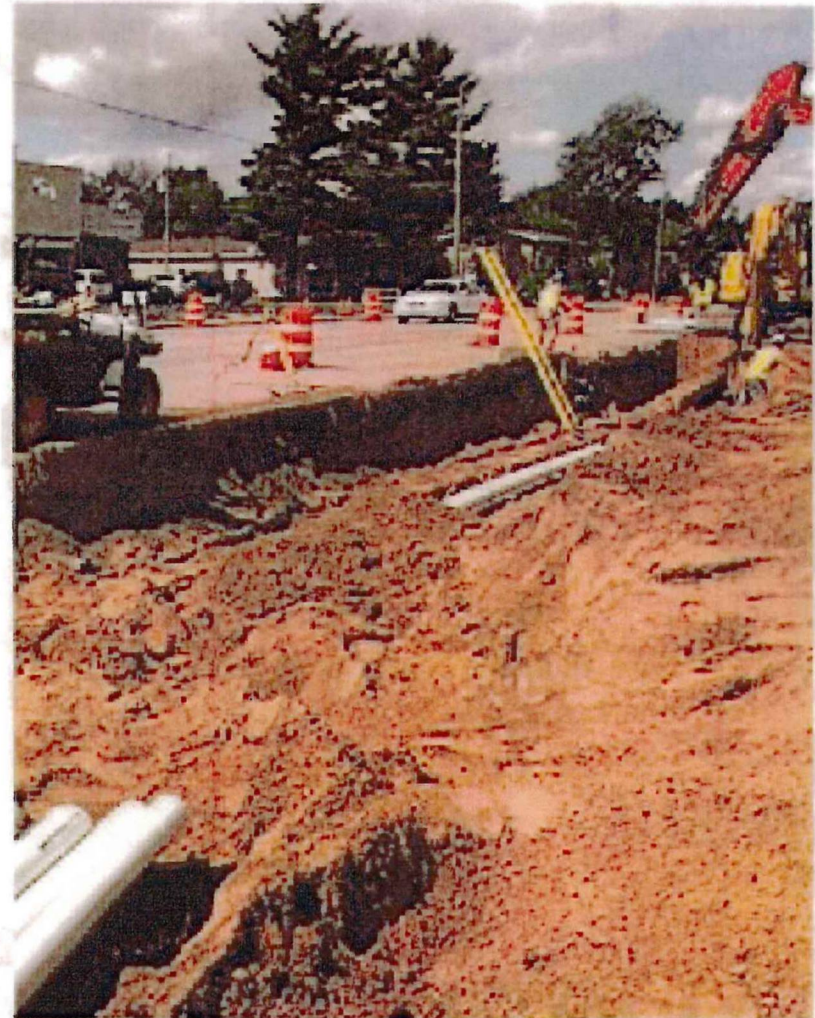


WTBA Board of Directors May, 5 2020



Project: 6414-00-80

- **Company:** James Peterson, Sons
- **Utilities in conflict:** AT&T
- **Error:** Utility not moved
- **Description of Image:** Utility was not moved prior to construction



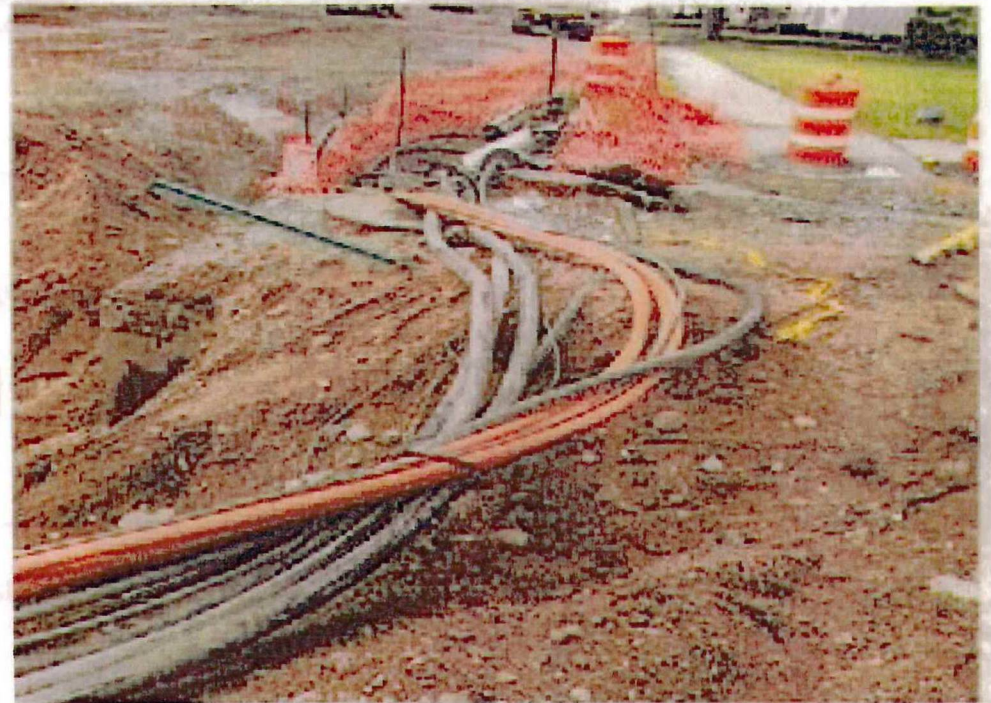
Project: 2060-00-76

- **Company:** Musson
- **Utilities in conflict:** TDS, We Energies, AT&T, Municipality Water Main
- **Error:** Utility not moved and mismarked
- **Description of Image:**
 - Exposed facilities.
 - When lines are found that were either marked or not marked, workers are often left wondering weather the facility is live or dead.



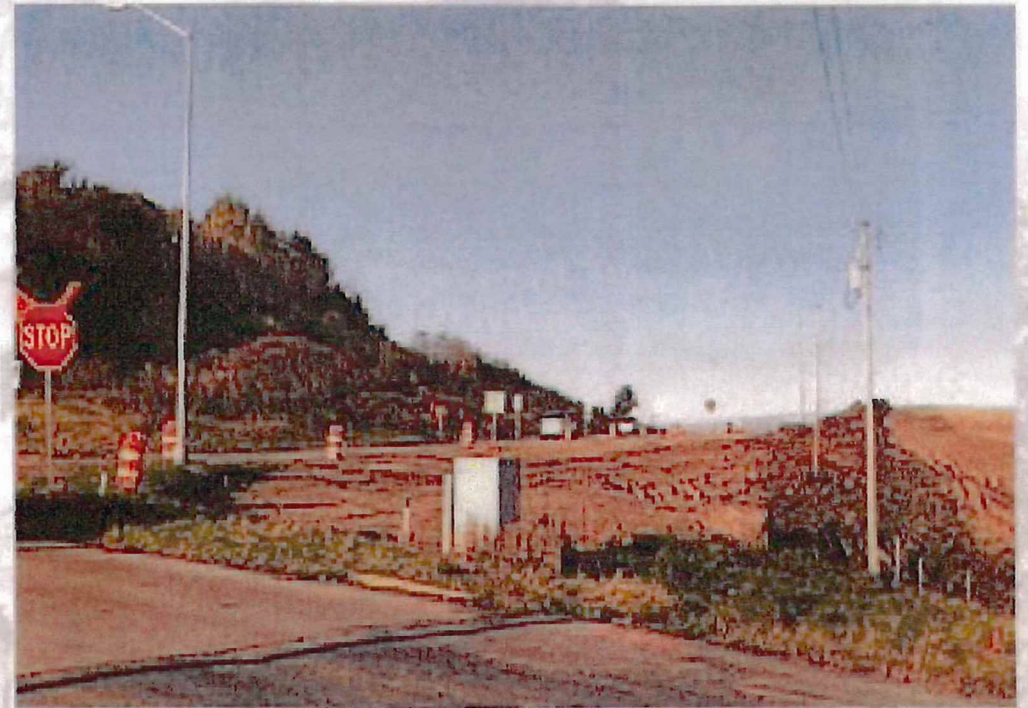
Project: 6999-18-73

- **Company:** James Peterson Sons
- **Utilities in conflict:** WPS
- **Error:** Utility not moved
- **Description of Image:**
 - Facilities not moved prior to construction



Project: 5290-00-72

- **Company:**
Zignego/James
Peterson, Sons
- **Utilities in conflict:**
Alliant Energy, MG&E
CenturyLink
- **Error:** Utility not moved
- **Description of Image:**
 - Overhead facilities not
moved prior to
construction



Project: 1033-02-71

- **Company:**
JPS/Zignego
- **Utilities in conflict:**
AT&T, Charter, Mid
West Fiber
- **Errors: Utility
lines/conduit located
too high. In the way
of the pipe runs**



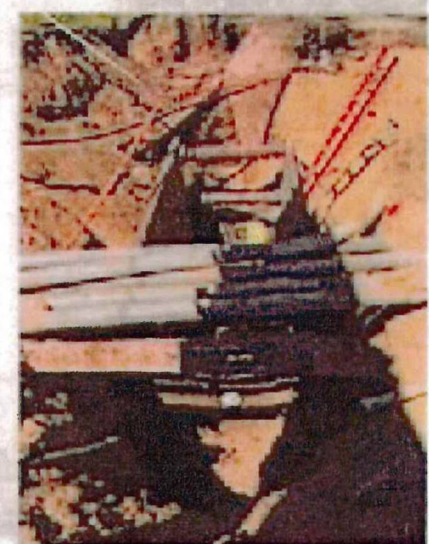
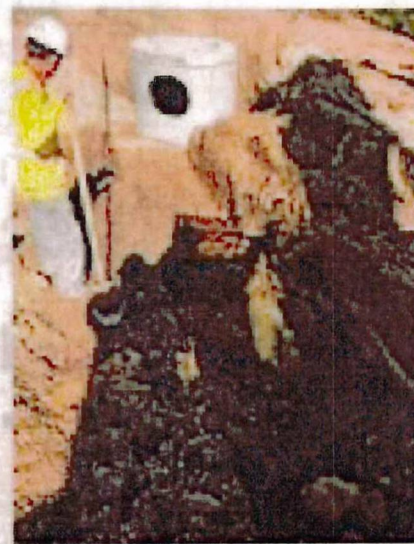
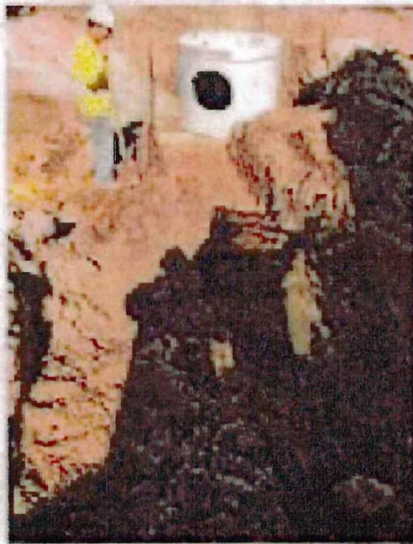
Project: 6430-12-71 cond

- **Company:** JPS
- **Utilities in conflict:** WPS
- **Errors:** Supposed to be moved by start of construction, too high
- As of 4.1.20, still not moved, not marked at all, struck and found



Project: 5849-02-02 con'd

- **Company:** Integrity Grading and Excavating
- **Utilities in conflict:** USIC/ ATT
- **Errors:** USIC didn't identify ATT Pack, treated the line as live, had to wait around



Project: 5849-02-02

- **Company:** Integrity Grading and Excavating
- **Utilities in conflict:** USIC/ MG&E
- **Errors:**
 - The gas markings are 3-4 feet off.
 - Our crew found the actual gas without damage.



Project: 1206-08-77

- **Company:** Integrity Grading and Excavating
- **Utilities in conflict:** USIC
- **Errors:** Did not identify gas or electrical lines or fiber lines on project



Project: 2001 (non WisDOT)

- **Company: IGE**
- **Utilities in conflict: WIN**
- **Errors: Relocate:
Bored through
concrete storm
sewer**



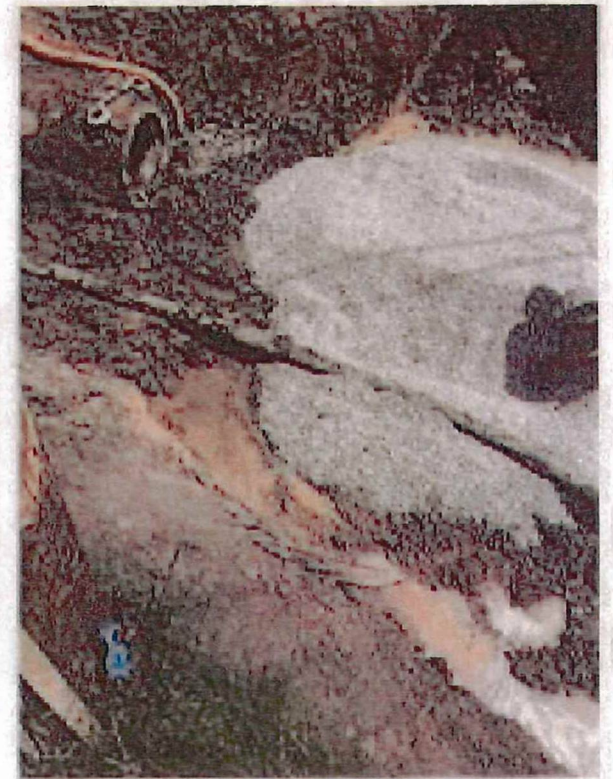
Project: 2001 (non WisDOT)

- **Company: IGE**
- **Utilities in conflict: ATT/USIC**
- **Errors: Utility not located, as a result, struck, cut in half**



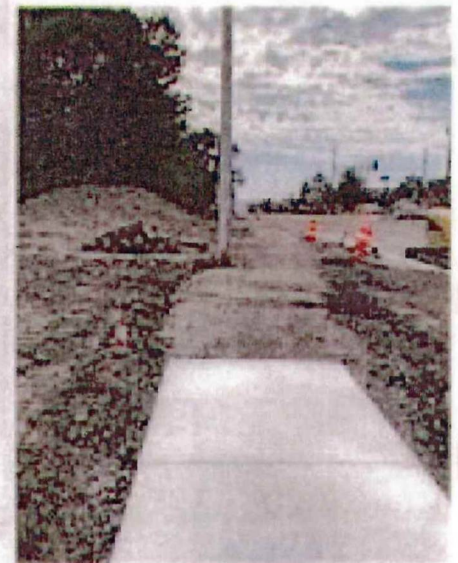
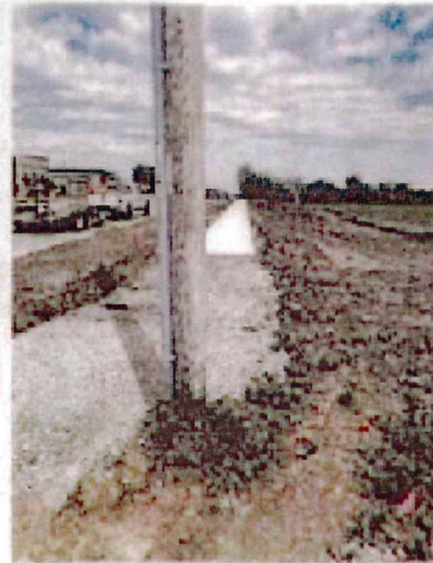
Project: 2759-63-70

- **Company: JPS**
- **Utilities in conflict:
AT&T**
- **Errors: Not moved
yet**



Project: 5992-09-26

- **Company: JPS**
- **Utilities in conflict: MG&E**
- **Errors: Light pole not removed**



Project: 5992-09-26

- **Company: JPS**
- **Utilities in conflict: MG&E**
- **Errors: Electric Box is 3 feet above the subgrade**



Project: 5155-02-62

- **Company: JPS**
- **Utilities in conflict:
Alliant Energy
power**
- **Errors: Relocate:
Electrical poles not
moved prior to
construction**



Project: Adams Co. A57040-1

- **Company: JPS**
- **Utilities in conflict:
Alliant**
- **Errors: Relocate
issues, power pole
is in the shoulder**

