

Underground Utility Damage Cost Mediation Process Guidelines for the Pilot Period of 24 months beginning July 1, 2007

1. Background

For more than 15 years, damage prevention stakeholders in Virginia have worked tirelessly to reduce damage to underground utility lines. Their efforts have resulted in one of the most effective damage prevention programs in the country. The desire and partnership of these stakeholders to work together and resolve issues of common interest continues to be one of the cornerstones of this program.

The recovery of utility damage cost has been an issue of some controversy and has threatened to harm the partnership Virginia stakeholders have worked so hard to establish. After much deliberation and discussion, a group representing utilities and contractors have reached consensus on a non-binding Damage Cost Recovery Mediation Pilot program. The purpose of this program is to gauge the effectiveness of a mediation process to help contractors and utilities in Virginia reach resolution on disputed utility damage cost claims without expensive, frustrating, and time-consuming adjudication through the courts. A mediation process facilitated by a neutral person affords parties who understand their dispute better than anyone to reach a “win-win” resolution as opposed to issues being resolved by a judge or jury. This saves time and money and preserves the parties’ relationship by improving communication. Better relationships amongst contractors and utilities will continue to strengthen the partnership in Virginia’s damage prevention program.

The State Corporation Commission’s Division of Utility and Railroad Safety will collect certain data during the pilot period and will provide regular reports to stakeholders in order to determine the effectiveness of the mediation process. The Department of Dispute Resolution Services of the Virginia Supreme Court has agreed to assist by informing the certified mediators in Virginia regarding this pilot program. Interested mediators will then be trained relative to the Underground Utility Damage Prevention Act. The names and contact information of these mediators will be made public through several means including the Supreme Court and the Miss Utility of Virginia websites.

2. Mediation Request

- A. When a utility damage cost is disputed by the contractor involved, either party may request, in writing, to the other party, a mediation to reach resolution. The other party will respond to this request no later than 30 days from the date of the request.
- B. The mediation shall be completed within 60 days from the date parties agree to the mediation process, unless a longer time is agreed upon by the parties and the mediator.

3. Mediator Certification, Training and Experience:

- A. **Certification:** Mediators must meet the basic criteria established by the Office of the Executive Secretary of the Supreme Court of Virginia for the level of General District Court. This certification requires at least 20 hours of basic mediation training, a 4-hour course on Virginia’s Judicial System, two mediation observations and three co-mediations with a certified Mentor.

- B. **Training:** Mediators will be required to attend a six hour seminar on Virginia's damage prevention program facilitated by representatives of the State Corporation Commission Staff, utility operators, excavators and the notification center. Additional training may be required as changes to the law, policy, or regulations associated with the Virginia Underground Damage Prevention Act occur.
- C. **Experience:** Mediators with subject matter expertise in construction/utilities/building-contractor matters may be given preference.

4. **Mediation Location**

Ideally, mediation should take place in a safe, neutral and accessible location. The mediator may have office space for this purpose. Parties may agree to meet in one of their offices. State agencies may be able to offer a space for this purpose.

5. **Mediation Fees and Mediator Travel Expenses:**

- A. **Mediation Fees:** Services rendered by mediators will be incurred on a per case basis, regardless of how many sessions are required. Fees will be divided equally between the parties agreeing to the mediation service. The cost will be incurred regardless of the outcome of the case.

- (1) For disputes up to \$20,000.00, there will be a charge of \$200.00 per case.
- (2) For disputes greater than \$20,000.00, there will be a charge of \$300.00 per case.
- (3) The parties may agree to a different fee than those detailed here, if appropriate.

- B. **Mediator Travel Expenses:**

- (1) If a mediator is required to travel for the convenience of the parties requesting mediation service, reimbursement for the cost incurred by the mediator will be divided equally between the parties requesting the service.
- (2) Current Virginia State Travel Regulations may be used as a guide in establishing the maximum travel cost incurred by the mediator.

6. **Data Collection During the Mediation Pilot Program:**

- A. Mediators will be required to collect and maintain the following data regarding cases they mediate:

- (1) Number of cases requested to be mediated.
- (2) Types of utilities involved.
- (3) Number of cases where both parties reach consensus and resolve the dispute through mediation.

(4) Number of cases where the dispute did not get resolved through mediation.

The collected data will be mailed directly to the Virginia State Corporation Commission, Division of Utility and Railroad Safety at the following address on a quarterly basis:

Virginia State Corporation Commission
Division of Utility and Railroad Safety
1300 East Main Street, 4th Floor
Richmond, Virginia 23219

- B. Parties who initiate requests for mediation will report to the Commission's Division of Utility and Railroad Safety if the other party involved refuses or does not respond to the request in a timely manner.
- C. The data collected will be used in evaluating the Mediation Pilot Program.

7. Mediation Evaluation During the Mediation Pilot Program:

- A. Upon completion of the mediation service, the mediator will provide both parties involved in mediation, the Office of the Executive Secretary ("OES") Form ADR-1002 "Client Evaluation of Mediation and Mediators" and inform the parties to comply with the requirements in subparagraph B.
- B. Form ADR-1002 will be completed by both parties and mailed directly to Virginia State Corporation Commission, Division of Utility and Railroad Safety at the following address within 15 days of case closure:

Virginia State Corporation Commission
Division of Utility and Railroad Safety
1300 East Main Street, 4th Floor
Richmond, Virginia 23219

- C. The evaluations will be used in evaluating the Mediation Pilot Program. Evaluations are confidential and will not be disclosed to anyone other than the mediator, the parties involved, and the Director of the Office of Dispute Resolution Services, Office of the Executive Secretary, except as may be required by law.