

UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF TEXAS  
 AUSTIN DIVISION

SHUDDE FATH, <i>et al.</i> ,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	No. 1:16cv00234-LY
	§	
TEXAS DEPARTMENT OF TRANSPORTATION,	§	
<i>et al.</i> ,	§	
<i>Defendants.</i>	§	

**STATUS REPORT**

TO THE HONORABLE LEE YEAKEL:

During the Court’s hearing on June 22, 2016, Defendants agreed to file with the Court regular status reports regarding the schedule for the construction of the proposed highway projects, including the MoPac Intersections project. On June 24, 2016, The Texas Department of Transportation (TxDOT) filed with the Court a Defendants’ Joint Status Report explaining, among other things, that construction of the MoPac Intersections project is scheduled to begin on December 1, 2016. That schedule remains in place. However, as a matter of disclosure to the Court, we wish to advise you of recent utility relocation work at the site of the MoPac Intersections project.

For a highway project, utility relocation work is normally handled as a preconstruction matter. The rules of the Federal Highway Administration specify that authorization to advertise for bids for the physical construction of a highway project shall normally be issued as soon as, but not until, several conditions have been met, including completion of utility relocation. 23 CFR 635.309(a), (b). Following this process, on March 1, 2016, AT&T submitted a Notice of Proposed Installation to TxDOT’s Austin District, proposing to install new ducts, meant to move telecommunications lines north of the MoPac and Slaughter Lane interchange, out of conflict with the proposed highway project. The Austin District approved the application on March 14, 2016.

Upon the filing of the complaint in this case, the TxDOT Austin District sought direction from TxDOT’s General Counsel Division concerning whether project development activities may continue for the MoPac Intersections project. General Counsel Division directed that the preliminary engineering, and other activities leading up to the scheduled construction start date of

December 1, 2016, may continue. However, at the time, there was no discussion concerning anyone, whether TxDOT, a utility, or anyone else, starting work on the site of the project that would require excavation or other similar activities.

AT&T, in accordance with the approval it had received from the TxDOT Austin District, entered the site on May 23, 2016. It completed open trench installation of 1339 feet of conduit, excavated two bore pits, and began the boring of a line crossing under MoPac. Later, when the bore reamer passed through gravel, the bore hole collapsed, and AT&T excavated a pit to recover the bore reamer. TxDOT General Counsel Division first learned of AT&T's work on the site of the project on July 19, 2016. On July 20, 2016, General Counsel Division consulted with TxDOT Environmental Division. On July 21, 2016, -General Counsel Division discussed the matter with the District Engineer for the Austin District, and concluded that the work should be stopped. On the same day, TxDOT directed AT&T to stop the work and fill in any excavations it made. AT&T stopped its work immediately. As of July 22, 2016, AT&T had stopped work, filled in all excavations, and laid down erosion control matting and seeding.

We regret the miscommunications within TxDOT's own offices which lead to the activities described herein, and wish to clarify for you that, moving forward, construction or excavation activities (of any sort) at the project site of MoPac Intersections will begin only after the scheduled start of construction, currently set for December 1, 2016.

Respectfully submitted,

KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

JEFFREY C. MATEER  
FIRST ASSISTANT ATTORNEY GENERAL

BRANTLEY STARR  
DEPUTY FIRST ASSISTANT ATTORNEY  
GENERAL

JAMES E. DAVIS  
DEPUTY ATTORNEY GENERAL FOR CIVIL  
LITIGATION

RANDALL K. HILL  
ASSISTANT ATTORNEY GENERAL  
CHIEF, TRANSPORTATION DIVISION

/s/ Shane D. Neldner

SHANE D. NELDNER  
ASSISTANT ATTORNEY GENERAL  
Texas Bar No. 24062435  
[Shane.Neldner@texasattorneygeneral.gov](mailto:Shane.Neldner@texasattorneygeneral.gov)

MATTHEW BOHUSLAV  
ASSISTANT ATTORNEY GENERAL  
Texas Bar No. 24069395  
[Matthew.Bohuslav@texasattorneygeneral.gov](mailto:Matthew.Bohuslav@texasattorneygeneral.gov)

Office of the Attorney General of Texas  
Transportation Division (020)  
P.O. Box 12548  
Austin, Texas 78711-2548  
Phone No.: (512) 463-2004 / Fax: (512) 472-3855  
**COUNSEL FOR TEXAS DEPARTMENT OF  
TRANSPORTATION**

**CERTIFICATE OF SERVICE**

I certify that on July 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically notify via email all counsel of record.

/s/ Shane D. Neldner

SHANE D. NELDNER

ASSISTANT ATTORNEY GENERAL