

LCB File No. T014-02

**PROPOSED TEMPORARY REGULATION OF THE
PUBLIC UTILITIES COMMISSION**

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re Petition of the Regulatory Operations Staff to adopt)
regulations pertaining to the One Call Program.) Docket No. 02-7044
_____)

**NOTICE OF INTENT TO AMEND/ADOPT/REPEAL REGULATIONS
AND NOTICE OF WORKSHOP**

NOTICE IS HEREBY GIVEN that the Public Utilities Commission of Nevada (“Commission”) will hold a WORKSHOP on **Thursday, November 14, 2002**, 10:00 a.m., at the office of the Commission, Hearing Room A, 1150 E. William Street, Carson City, Nevada 89701, at which time interested persons may appear and be heard. The purpose of this workshop is to receive comments from all interested persons regarding the attached proposed regulations pertaining to the One Call Program.

The following information is provided pursuant to the requirements of NRS 233B.0603:

In July of 2002, the Regulatory Operations Staff (“Staff”) petitioned the Commission to adopt regulations pertaining to the administration of the One Call program. This petition has been designated by the Commission as Docket No. 02-7044. Pursuant to NRS 455.170, the Commission has primary jurisdiction for violations of the One Call program, and enforcement of a civil penalty pursuant to NRS 455.080-.180 must be brought before the Commission. The need for and purpose of adopting these proposed regulations is to remedy ambiguities created by the lack of appropriate regulations in this area, and establish procedures for addressing complaints filed by interested parties, including the possible imposition of civil penalties.

The proposed regulations potentially affect all entities involved in the One Call program. At this time, the Commission cannot quantify either the adverse or beneficial economic effects on the entities affected by the regulation or the public, either immediate or long-term, which may result from the regulation.

The Commission envisions an increase in costs associated with enforcement of these proposed regulations. The regulations do not overlap or duplicate any other state or local federal government regulation, nor do they establish any new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the Commission may appear at the scheduled public workshop or address their comments, data, views, or arguments, in written form, to the Secretary of the Commission, 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

A copy of this notice and the proposed regulations will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulations will be available at the offices of the Commission, at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adopting any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been posted at the county courthouses located in Reno, Carson City, and Las Vegas.

By the Commission,

CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL) _____

PROPOSED TEMPORARY REGULATION OF THE PUBLIC UTILITIES COMMISSION

Revised July 22, 2002

Summary Titles of Sections - Proposed Call Before You Dig Regulation

Sections 1-28 - Definitions

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Section 64. Construction.

Section 65. Severability.

- Section 66. Deviation from regulations.
- Section 67. Computation and extension of time.
- Section 68. Civil penalties and remittances.
- Section 69. NAC Chapter 703 Amended.
- Section 70. NAC 703.035, "Complaint" Defined.

**PROPOSED TEMPORARY REGULATION OF THE
PUBLIC UTILITIES COMMISSION**

AUTHORITY: NRS 455.080 to 455.180; NRS 703. 025(2)(d); NRS 703.151(1)(2) &
(5); NRS 703.153; NRS 703.154; NRS 704.260 and NRS 704.280.

Section 1. Chapter 455 of NAC is hereby created by adding thereto the provisions set forth as sections 2 to 76, inclusive, of this regulation.

Section 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 29, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Section 3. *"Abandoned subsurface installation" means a subsurface installation that is no longer in service and is physically disconnected from the operating subsurface installation that is in service. "Abandoned subsurface installation" does not include any installation which is temporarily out of service during repair, upgrade, maintenance or otherwise.*

Section 4. *"Approximate location" and "Approximate location of a subsurface installation" have the meaning ascribed to it in NRS 455.082.*

Section 5. *"Association for operators" has the meaning ascribed to it in NRS 455.084. As of June 1, 2001, the association for operators is known as Underground Service Alert-North (USA-North).*

Section 6. *"Commission." "Commission" means the Public Utilities Commission of Nevada."*

Section 7. *"Damage" has the meaning ascribed to it in NRS 455.086.*

Section 8. *"Demolition" has the meaning ascribed to it in NRS 455.088.*

Section 9. *"Emergency" has the meaning ascribed to it in NRS 455.090.*

Section 10. *"Excavation" has the meaning ascribed to it in NRS 455.092.*

Section 11. *"Excavator" means any person who engages in excavation or demolition.*

Section 12. *"Extension" means the extension of the term of a current and valid notification ticket for an additional 14 calendar days beyond the current expiration date.*

Section 13. *"Identify" means to describe the nature, type, size, material, width, diameter, color, coating or other characteristics of a locatable or unlocatable subsurface facility, not including the depth of the facility.*

Section 14. *"Locatable subsurface installations means subsurface installations for which the approximate location can be marked with reasonable accuracy.*

Section 15. *"Locate" means to:*

- 1. Determine the field location of Subsurface Installations which are within or are within 30 inches horizontally of, the proposed area of excavation or demolition,*
- 2. Provide information to the excavator concerning the location of subsurface installations which are within 30 inches horizontally of the proposed area of excavation or demolition marked with white paint, or otherwise, or*
- 3. Determine that no subsurface Installations are located within or within 30 inches horizontally of the proposed area of excavation or demolition marked with white paint, or otherwise.*

Section 16. *"Mark" means to indicate the approximate location or absence of subsurface installations at a proposed excavation or demolition site, or, to identify the immediate area of a proposed excavation or demolition using non-permanent paint, chalk, stakes, flags, whiskers or other clearly identifiable material.*

Section 17. *"Notification ticket" refers to the summary document created by the association for operators upon receipt of notification under Section 32.*

Section 18. *"Operator" has the meaning ascribed to it in NRS 455.096.*

Section 19. *"Oral "Complaint". An "oral complaint" means a request for relief filed with the division of safety and quality assurance as specified in section 56.*

Section 20. *"Person" has the meaning ascribed to it in NRS 455.098.*

Section 21. *"Person conducting the excavation or demolition or demolition" as used in NRS Chapter 455 means the excavator.*

Section 22. *"Person who is responsible for the excavation or demolition or demolition" as used in NRS Chapter 455 means the excavator.*

Section 23. *"Renewal" means the issuance of a new notification ticket based upon the identical information previously provided to support the request of an expired notification ticket.*

Section 24. *"Response" means action taken by operators of subsurface installations to:*

- 1. Mark or identify by other means the location of its locatable subsurface installations and abandoned subsurface facilities in the area of the proposed excavation;*
- 2. Provide information to the excavator concerning the location of subsurface installations and abandoned subsurface facilities which are within 30 inches horizontally of the proposed area of excavation or demolition,*
- 3. Notify the excavator that there are unlocatable subsurface installations or abandoned unlocatable subsurface installations in the area of the proposed excavation or demolition; or*
- 4. Notify the excavator that there are no subsurface installations or abandoned subsurface installations in the area of the proposed excavation or demolition.*

Section 25. *"Subsurface installation" has the meaning ascribed to it in NRS 455.101.*

Section 26. *"Unlocatable subsurface installations" mean subsurface installations that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic subsurface installations that have no trace wires.*

Section 27. *"Working day" has the meaning ascribed to it in NRS 455.105.*

Section 28. *"Written "Complaint". A "written complaint" means a request for relief filed with the division of safety and quality assurance as specified in section 50.*

Section 29. *Notification Prior to Excavation.*

1. Except as provided in paragraph 2 of this rule, at least two (2) working days, but not more than fourteen (14) calendar days before commencing an excavation or demolition, the excavator shall notify the association for operators of the date and location of the proposed excavation or demolition, the type of work to be performed and furnish information as to how the excavator can be contacted, including, but not limited to a facsimile telephone number or email address for physical delivery of a copy of the notification ticket. The excavator shall provide such additional information to the association for operators relating to the excavation as it may reasonably request.

2. The notice requirement of paragraph 1 of this section shall not apply if the excavation or demolition is in response to an emergency.

Section. 30. *Pre-marking of site. 1. Except as provided in paragraph 2 of this section, prior to notifying the association for operators, an excavator shall pre-mark with the color white the immediate area of the proposed excavation or demolition which can reasonably be completed within fourteen (14) calendar days.*

2. A person need not pre-mark as required in paragraph 1 of this rule if the person obtains the written consent of all operators involved in the proposed excavation or demolition before he begins the excavation or demolition, or if the person is the owner of the subsurface installations.

Section 31. *Association's duty upon notification. Upon receipt of a notification under Section 30, the association for operators shall:*

1. Transmit the notification information to all operators which may have subsurface installations in the area of the proposed excavation or demolition;

2. Transmit by facsimile or email transmission, as soon as possible a copy of the notification ticket to the person providing notification; and

3. maintain a record of the notification consistent with the requirements of NRS 455.115.

Section 32. *Operator's duty upon notification.*

1. Except as provided in section 39, within two working days after the excavator notifies the association for operators of a proposed excavation or demolition, the operator of the subsurface installations shall:

(a) Locate and identify the subsurface installations and, if reasonably known, the number of subsurface installations that are affected by the excavation or demolition to the extent and to the degree of accuracy that the information is available in the records of the operator or can be determined by using techniques of location that are commonly used in the industry, except excavating;

(b) Mark with reasonable accuracy all of its locatable subsurface installations within the area of proposed excavation or demolition. All marks shall indicate the name, initials or logo of the operator of the subsurface installations, and the width of the subsurface installation if it is greater than two (2) inches;

(c) Provide the excavator the best description available to the operator of the unlocatable subsurface installations in the area of the proposed excavation or demolition including as-built drawings, or other subsurface installation maps that are maintained by the subsurface installation operator; and

(d) Provide the excavator with a description of the number, nature and width of subsurface installations if greater than 2 inches.

2. If the operator does not have any subsurface installations in the area of the proposed excavation or demolition, he shall so notify the excavator.

Section 33. Marking Subsurface installations. Subsurface installations shall be marked with high visibility paint or other markings in accordance with the following designated color code:

1. SAFETY RED -- Electrical power, distribution and transmission installations, conduit for traffic signals and street lights and municipal electric installations.

2. SAFETY YELLOW must be used for gas distribution and transmission installations, oil distribution and transmission installations and installations containing or transporting dangerous materials, products or steam.

3. SAFETY ALERT ORANGE must be used for telephone and telegraph installations, police and fire communication installations and cable television installations.

4. SAFETY PRECAUTION BLUE must be used for water installations and slurry pipelines.

5. SAFETY GREEN must be used for sewer installations.

6. SAFETY PURPLE must be used for reclaimed water installations.

7. WHITE must be used for pre-marking of the outer limits of the proposed excavation or demolition or marking the centerline and width of proposed lineal installations of buried installations.

8. PINK must be used for temporary survey markings.

Section 34. Excavator's duty. An excavator shall not commence an excavation or demolition which requires notice under these rules until the excavator has received a response from each operator of subsurface installations in the area of the proposed excavation or demolition, or until at least two (2) working days (48 hours) have elapsed from the time the excavator notified the association for operators.

Section 35. Possession of Notification Ticket. Before commencing any excavation or demolition, the excavator shall have in his physical possession, at the excavation or demolition site, a copy of the notification ticket received from the association for operators. The

excavator shall allow that copy to be reviewed by any person requesting to see the notification ticket for the excavation or demolition project.

Section 36. Verification of Notification Ticket. Before commencing any excavation or demolition, the excavator shall review the notification ticket and compare it with the marks on the surface, all information provided by the association for operators or operators, and all other visible information at the site of the excavation or demolition to assure himself that proper and full notification was provided and that no miscommunication occurred.

Section 37. Protection of Marks and Subsurface installations. Once subsurface installations have been marked, the excavator shall:

1. Maintain all marks, whether placed by the excavator or others, during the excavation or demolition period to ensure that the original marks remain effective for the life of the project and can be re-established, and, when any doubt exists concerning the effectiveness of the marks he shall immediately call the association for operators and request new locations and marks;

2. Stop excavating in the vicinity of the subsurface installation and notify the association for operators to have the area re-marked as specified in these rules if prior to or during the excavation or demolition process, the marking or route of any subsurface installation is removed or no longer visible;

3. Employ hand tools or other such non-invasive methods to determine the exact location of the subsurface installation when excavation or demolition is to be performed within the approximate location of a subsurface facility; and

4. Provide such lateral and subjacent support for subsurface installations as may be reasonably necessary for the protection of such installations.

Section 38. Duty of care. Providing notice to the association for operators under these regulations does not excuse any person from performing an excavation or demolition in other than a careful and prudent manner.

Section 39. Short Time Notification. 1 An excavator may provide less than two (2) working days prior notice before commencing an excavation or demolition if:

(a) The excavator is responding to an emergency, so long as the excavator notifies the association for operators immediately and so long as the excavator proceeds in a careful and prudent manner; or

(b) The excavator has a written agreement with each operator of subsurface installations that marks will be provided on a regular basis as the excavator progresses through a project.

2. Upon receipt of an emergency notification, or, notification of discovery of unmarked subsurface installations, the association for operators shall expedite the notification of affected operators and identify the specific nature of the notification.

Section 40. Discovery of unmarked subsurface installations. If an excavator discovers subsurface installations in an area where the operator of the subsurface installations had previously indicated there were no subsurface installations, the excavator shall, prior to continuing excavation, notify the association for operators and the operator which owns the subsurface facility. After providing notification, the excavator shall proceed in a careful and

prudent manner in the affected area. If the excavator notifies the operator of unmarked subsurface installations discovered during an excavation or demolition in response to an emergency, the operator of subsurface installations shall comply with Section 33 as soon as possible.

Section 41. *Marking New Subsurface Installations. In areas of ongoing excavation or demolition or construction, excavators shall mark newly installed subsurface installations immediately upon placement.*

Section 42. *Installation of Unlocatable Installations. Except while making minor repairs to existing non-conductive, unlocatable installations, an operator burying non-conductive, unlocatable installations within the public rights-of-way or utility easements shall place a tracer wire or other similar conductive marking tape or device with the subsurface installation to allow for later location and marking.*

Section 43. *Marking Abandoned Installations. On and after January 1, 2003, operators of newly abandoned facilities shall, to the extent information is available:*

- 1. Mark abandoned subsurface installations to the standards of locatable subsurface installations or unlocatable subsurface installations,*
- 2. Mark any abandoned or out-of-service subsurface installation in the same manner it marks an subsurface installation that is in service, and*
- 3. If an operator uses offset marking, the operator shall correctly measure the amount of offset, so that the excavator can reestablish the location of subsurface installations.*

Section 44. *Damage to Subsurface Installations. If an excavator causes or observes damage to subsurface installations, or causes or observes any scratch, nick, kink, stretch mark or other unusual condition in a subsurface facility, the excavator shall immediately notify the operator of the subsurface installations, stop excavation or demolition in the immediate area, and allow the operator a reasonable time to inspect, and if necessary, repair or maintain the subsurface installation before the excavation or demolition is back filled. If the damage causes an emergency, the excavator shall also notify all appropriate local public safety agencies immediately by calling 9-1-1 and shall take reasonable steps to insure the public safety and to minimize the hazard until the arrival of the personnel of the operator. The excavator shall not bury damaged subsurface installations without the consent of the operator of the damaged subsurface installations.*

Section 45. *Modification or Concealment of Marks. No person shall remove, make, obliterate or fabricate marks in an unmarked area or change marks in a marked area for the purpose of concealing or avoiding liability for a violation of or noncompliance with the requirements of NRS Chapter 455 or this Chapter. Nothing in this section shall prohibit removal of marks after completion of the excavation or demolition.*

Section 46. *Request for New Marks. Any excavator who possesses a valid notification ticket number may, at any time, call the association for operators and request new marks, and if any doubt exists concerning the visibility or nature of any marks, the excavator shall call the*

association for operators, and if known, the affected operator of subsurface installations and request new marks for such installations.

Section. 47. Extension of Notification ticket. Any excavator who possesses a valid notification ticket may, not less than 6 calendar days before the notification ticket expires, request a one-time extension of the term of the ticket for an additional 14 calendar days. If the excavator states that no remarks are necessary, the extension shall be granted without further location or marks. If the excavator requests that new marks be established, the association of operators shall notify all affected operators to locate and mark subsurface installations at the site, and, the extension shall be granted.

Section 48. Renewal of Notification Ticket. If an expired notification ticket has not been archived in the record systems of the association for operators, any excavator who possesses an expired notification ticket who desires renewal of the expired ticket may:

- 1. Call the association of operators,*
- 2. Provide the number or other identification of the expired ticket, and*
- 3. Request that a new ticket be issued for the same excavation or demolition project.*

The association shall process the request in the same manner as an original notification. The excavator must allow the operators two (2) working days to locate and mark subsurface installations before beginning any excavation or demolition.

Section 49. Mapping of Abandoned Installations. All operators shall maintain records, by mapping or other means, of all subsurface installations abandoned on or after January 1, 2003, that show:

- 1. The location of such subsurface installation to the level of detail available when abandoned;*
- 2. The date of abandonment of such facility; and*
- 3. Whether each such subsurface installation is a locatable subsurface installation or an unlocatable subsurface facility.*

Section 50. Disposition of complaints. The division of safety and quality assurance shall attempt to resolve informally any complaint made by a person against an operator, excavator or other person under NRS Chapter 455. If the person submitting the complaint is not satisfied with the informal resolution of his complaint, the division shall inform him that he has a right to file a written complaint with the division.

Section 51. Resolution of Complaints by agreement of the parties.

1. The division of safety and quality assurance shall encourage the parties to the complaint to meet informally to seek an agreed to resolution of the complaint. The division may waive any obligation of a person to submit a response to the complaint while informal meetings are pending. Either party to the complaint may report in writing the results of any informal meeting. A copy of any such report must, at the same time, be delivered to all of the parties to the complaint by the person making the report.

2. If the parties to the complaint are able to agree to a resolution of the complaint which requires no further action by the commission, the division of safety and quality assurance may close the investigation of the complaint by providing written notice to all parties.

3. *If the parties to the complaint are able to agree to a resolution of the complaint which requires further action by the commission, not including the imposition of a civil penalty, the division must evaluate the propriety of the proposed resolution. If the division of safety and quality assurance determines that the proposed resolution of the complaint is appropriate under the law and the circumstances, the division shall notify all parties of the results of its investigation and shall recommend any actions which the parties should take in order to resolve the complaint.*

4. *If the division of safety and quality assurance determines that the proposed resolution of the complaint submitted by the parties is not appropriate under the law, the division shall notify all parties of its determination, and advise the parties of the procedural process to be followed.*

Section 52. *Investigation of complaint by division of safety and quality assurance.*

1. *If the parties to a complaint are not able to agree to a resolution under Section 51, the division shall request the complainant to submit the complaint in writing on forms provided by the division.*

2. *The party against whom a written complaint has been submitted, which does not seek enforcement of a civil penalty, shall file with the division a written response to the complaint with 15 days after receiving the complaint unless, for good cause, the division extends the time for response.*

3. *The response must include a detailed admission or denial of each material allegation of the complaint and a full statement of the facts and matters of law relied upon as a defense.*

4. *The response must be signed by the respondent or his authorized representative, including the full name, address and phone number of the respondent and any representative.*

5. *If the respondent fails to file a response with the division within the prescribed time, the division shall place the matter before the commission for action, including possible dismissal. An unexcused failure of the respondent to respond to the complaint within the prescribed time shall be deemed an admission by it of all relevant facts stated in the written complaint*

Section 53. *Written complaints for enforcement of civil penalty.*

1. *A written complaint for enforcement of a civil penalty under NRS 455.170 must:*

(a) *Clearly and concisely state the grounds of the complaint and the facts constituting the alleged wrongful acts or omissions;*

(b) *Be accompanied by copies of all supporting documents and evidence, such as notification ticket, extensions renewals, correspondence, photographs, lists of potential witnesses;*

(c) *Identify whether the alleged wrongful acts or omissions, constitute negligent violations, or, willful or repeated violations of NRS 455.080 to 455.180, inclusive.*

2. *The division of safety and quality assurance shall:*

(a) *Within ten (10) days after receiving a written complaint for enforcement of a civil penalty, send a letter of acknowledgment to the complainant.*

(b) *Within ten (10) days after receiving a written complaint for enforcement of a civil penalty, send a copy of it to the person against which the complaint is made and require that person to file a response to the complaint with the division in accordance with Section .*

Section 54. *Response to written complaint for enforcement of a civil penalty.*

1. A person against whom a complaint is made shall file with the division of safety and quality assurance a written response to the complaint within 15 days after receiving the complaint unless, for good cause shown, the division extends the time for responding. Any extension granted by the division shall be confirmed in writing and a copy of such confirmation shall be served on all parties to the complaint.

2. The response must include, without limitation:

(a) A statement that the respondent has successfully resolved the complaint; or

(b) A detailed admission or denial of each material allegation of the complaint and a full statement of the facts and matters of law relied upon as a defense;

(c) Copies of all supporting documents and evidence, such as notification tickets, extensions renewals, correspondence, photographs, lists of potential witnesses.

3. The response must:

(a) Be signed by the respondent or, if represented, by its attorney or other authorized representative. If signed by an authorized representative, the response must state the nature of that person's representative status.

(b) Include the full name, address and telephone number of the respondent and, if represented, the name, address and telephone number of its attorney or other authorized representative.

4. If the respondent fails to file a response with the division within the prescribed time, the division shall place the matter before the commission for a determination of probable cause. An unexcused failure of the respondent to respond to the complaint within the prescribed time shall be deemed an admission by it of all relevant facts stated in the complaint.

Section 55. Investigation and recommendation by division.

1. When the division of safety and quality assurance receives a response to a written complaint, it shall examine the complaint, the response and any other information it has obtained which is necessary for the resolution of the complaint. The division may also discuss the complaint with the parties, solicit additional information that it deems appropriate, or otherwise investigate the complaint. After completing an investigation of the matter set forth in the complaint, the division shall notify all parties of the results of the investigation and shall recommend any actions which the parties should take in order to resolve the complaint.

2. If the division recommends the imposition of a civil penalty, whether or not agreed to by the parties to the complaint through a written settlement or compromise, it shall state the factual basis for and magnitude of the proposed civil penalty, and provide notice to all parties of its recommendation.

Section 56. Transmittal of unresolved complaints to commission.

1. If the division of safety and quality assurance cannot resolve a complaint, either because it determines that the complaint cannot be resolved, or because the complainant or the respondent does not agree with the division's recommendation, or because the division recommends imposition of a civil penalty, it shall inform all parties that the complaint has been transmitted to the commission for review.

2. In addition to transmitting the complaint, the results of its investigation and its recommendation to the commission, the division shall transmit:

(a) The reasons for the complaint;

(b) The position taken by the respondent;

- (c) The nature of any settlement or compromise agreed to by the parties; and*
- (d) Any interim action taken by the division.*

The division shall send this additional information to all parties to the complaint.

Section 57. Public hearing; interim relief. If the commission determines that probable cause exists for a complaint received by the division of safety and quality assurance, it will:

- 1. Set a date for a public hearing on the complaint.*
- 2. Direct whether such hearing shall be held before a hearing officer.*
- 3. The commission may order such interim relief as it deems appropriate under the circumstances.*

Section 58. Resolution of written complaint. If the commission determines that no probable cause exists for a written complaint received by the division of safety and quality assurance or if the complaint has been settled and the commission has received notice of the settlement, the commission will dismiss the complaint. If the division recommends imposition of a civil penalty, the commission shall determine whether such action is consistent with NRS 455.170, and issue an order affirming, modifying or otherwise addressing the recommended civil penalty, and close the investigation of the complaint. The commission may, after consideration of all information before it, impose a civil penalty without a recommendation for a penalty from the division. A copy of the commission's order showing its resolution of the complaint and a short statement of its reasons for that resolution will be served upon the complainant and respondent.

Section 59. Incorporation by Reference.

- 1. The provisions of sections 50 through 56, inclusive, govern the resolution of complaints filed under NRS 455.070 to 455.180.*
- 2. To the extent that any aspect of the resolution of a complaint before the commission under NRS 455.080 to 455.180 is not covered by these provisions, the commission may follow the applicable rule of practice in NAC Chapter 703.*

Section 60. Request for Reimbursement of Costs. 1. A complainant in whose favor an order is rendered, and who claims reimbursement of his costs under NRS 455.170(6), must file with the commission, and serve a copy upon the adverse party, within five (5) days after the service of the order, or such further time as the commission may grant, a memorandum of the items of his costs in the proceeding upon the form issued by the commission, which memorandum must be verified by the oath of the party, stating that to the best of his knowledge and belief the items are correct, are consistent with this section, and that the costs have been necessarily incurred in the action or proceeding.

2. Within 3 days after service of a copy of the memorandum, the adverse party may move the commission, upon two (2) days notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion commission shall determine and settle the reimbursable costs.

3. If the adverse party does not move to retax and settle the costs in a timely manner, the commission shall determine and settle the reimbursable costs.

4. For purposes of this section, "costs incurred in prosecuting the matter" defined. For the purposes of Sections 66 to 67, inclusive, the term "costs incurred in prosecuting the matter" means:

a. Reasonable fees of not more than one expert witness in an amount of not more than \$500 for each witness, unless the commission allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.

(1). Reasonable fees of necessary interpreters.

(2). Reasonable costs for photocopies.

(3). Reasonable costs for long distance telephone calls.

(4). Reasonable costs for postage.

(5). Any other reasonable and necessary expense incurred in connection with conducting the action.

b. "Cost incurred in prosecuting the matter" does not include attorney's fees, lawyer's fees or fees, compensation of any other representative or interest.

Section 61. Order for Payment of Costs. 1. Within five (5) working days after the costs are tried or ascertained, or after the time for making a motion to tax the same has expired, the commission shall enter an order establishing the amount thereof, and direct payment thereof within 10 working days thereafter.

2. Any reimbursement of costs incurred in prosecuting the matter shall only be paid after the commission has received payment of the civil penalty imposed in response to the complaint, and, no reimbursement of costs incurred in prosecuting the matter shall exceed the actual amount of civil penalty received by the commission.

Section 62. Division records. The division of safety and quality assurance shall maintain a record of each written complaint, including, without limitation:

1. Each pertinent fact relative to the origin, nature and basis of the complaint;

2. A description of the steps taken by the complainant or respondent to attempt to resolve the complaint;

3. The response to the complaint, with copies of supporting documents, if any; and

4. Any other information the division deems to be relevant to the understanding and resolution of the complaint.

Section 63. Forms. 1. A copy of any form that is required to be used pursuant to this regulation may be:

(a) Obtained at the Internet website of the commission at <<http://www.puc.state.nv.us>>;

(b) Obtained at an office of the commission; or

(c) Obtained from the commission by a written request sent to the principal office of the commission in Carson City, Nevada, by United States mail or other messenger or delivery service.

2. The available forms include:

(a) Complaint for enforcement of a civil penalty;

(b) Memorandum of the items of cost in the proceeding;

Section 64. *Construction. The provisions of this chapter and any regulations incorporated by reference will be construed by the commission or any presiding officer as to secure a just and speedy determination of the issues.*

Section 65. *Severability. If any provision of this chapter or any application thereof to any person, thing or circumstance is held invalid, the commission intends that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.*

Section 66. *Deviation from regulations. (NRS 703.150). The commission will and presiding officer shall allow deviation from the provisions of this chapter if:*

- 1. The deviation would not adversely affect the substantial interests of the parties;*
- 2. Good cause for the deviation appears; and*
- 3. The person requesting the deviation provides a specific reference to each provision of this chapter from which deviation is requested.*

Section 67. *Computation and extension of time. Except as otherwise provided by law:*

1. In computing any period prescribed or allowed by any regulation of the commission, the day of the act, event or default from or after which the designated period begins to run is not included. The last day of the period so computed is included, but if it is a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

2. Whenever an act is required or allowed under any regulation of the commission, or any notice given thereunder, to be done within a specified period, the period will be extended by the commission for good cause upon a motion made before the specified period expires.

Section 68. *Civil penalties and remittances. A civil penalty or remittance by money order, bank draft or check to the commission must be made payable to the "Public Utilities Commission of Nevada." A remittance in currency or coin is acceptable but is sent wholly at the risk of the remitter, and the commission assumes no responsibility for the loss of such a remittance.*

Section 69. Chapter 703 of NAC is hereby amended by modifying the provision set forth as Section 70 of this regulation.

Section 70. NAC 703.035. "Complaint" defined. *1. A "Complaint" means a request for relief filed with the division of consumer complaint resolution as specified in NAC 703.621, or with the commission as specified in NAC 703.651 or 703.860.*

- 2. "Complaint" does not include a complaint filed under NRS 455.170.*