

**ADOPTED REGULATION OF THE PUBLIC
UTILITIES COMMISSION OF NEVADA**

LCB File No. R092-03

Effective October 30, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 703.025 and 704.210.

Section 1. NAC 703.680 is hereby amended to read as follows:

703.680 1. ~~Except as otherwise provided in this section, the Commission, the Commission's staff, the presiding officer or any party of record may obtain discovery pursuant to the applicable provisions of the Nevada Rules of Civil Procedure.~~

~~2. Upon a motion by a party of record or by the person from whom discovery is sought and for good cause shown, the presiding officer may prohibit, restrict or modify the scope of the discovery.~~

~~3.]~~ *In addition to the provisions of NRS 703.195 and NAC 703.2208 and 703.2508, the parties to any matter that has been assigned a docket number may conduct discovery with regard to any information that is not privileged through written data requests and oral depositions that are reasonably calculated to obtain information that is relevant to the matter. Upon motion and opportunity for response, the presiding officer may, for good cause shown, prohibit discovery or restrict or modify the scope of discovery.*

2. Except as otherwise provided in subsection 3, a data request, a notice of deposition, and an objection or response to a discovery request must be served upon the appropriate party at the address, telephone number or electronic mail address designated in the application,

petition or petition for leave to intervene and may be sent by United States mail, overnight delivery service, facsimile or electronic mail.

3. In lieu of service pursuant to subsection 2, a responding party in a case with a significant volume of discovery responses may deposit those responses in a password-protected website.

4. A notice of deposition must state the date, time and location of the deposition, and be served at least 10 business days before the date of the deposition. The deposing party may enumerate in the notice any specific documents the deponent must bring to the deposition.

5. A party may object in whole or in part to a discovery request within 5 business days after receiving the request. An objection to a discovery request must be in writing and state the specific grounds for the objection.

6. Unless otherwise ordered by the presiding officer or agreed to by the parties, or unless a timely objection has been made, a response to a data request must be served on or otherwise made available to the requesting party not later than 10 business days after receipt of the request by the responding party, except that the responding party will be allowed an additional 5 business days within which to respond if the responding party timely notifies the requesting party of the need for the additional response time because the responding party is experiencing technical or practical difficulties in providing a thorough response within the 10-day period.

7. Except as otherwise provided in subsection 8, a response to a data request must be submitted in the following quantities to the following persons:

(a) Two copies must be submitted to the staff of the Commission assigned to regulatory operations, unless directed otherwise by the staff in the data request;

(b) Two copies must be submitted to the attorney of record of the Bureau of Consumer Protection in the Office of the Attorney General; and

(c) One copy must be submitted to the requesting party.

8. If a response to a data request is transmitted by electronic mail or deposited in a password-protected website, the responding party shall provide one hard copy of the response to the staff of the Commission assigned to regulatory operations and one hard copy of the response to the attorney of record of the Bureau of Consumer Protection in the Office of the Attorney General within 2 business days after the due date for the response. The parties may agree to, or the presiding officer may order, an on-site inspection of the response to a data request if the response involves confidential or voluminous material. If an on-site inspection is agreed to by the parties or ordered by the presiding officer, the responding party shall make reasonable efforts to facilitate the inspection.

9. If a dispute arises concerning discovery, the involved parties shall confer in good faith to attempt to resolve the dispute before seeking resolution by the presiding officer. The presiding officer shall rule on all motions related to discovery.

10. The following standards apply to discovery responses to the extent available in the format requested:

(a) Computer files must be executable in the file format specified by the staff of the Commission assigned to regulatory operations.

(b) Image files must not be used.

(c) Nominally numeric fields, such as account numbers or negative values, must contain numeric data and not literal data.

(d) Spreadsheet computer files that perform calculations must operate so that a change in input causes a change in output.

11. If a party that is responding to a data request believes that the response contains information which is commercially sensitive or which constitutes a trade secret, the party may, before providing the response, request that a confidentiality agreement be signed by specifying the grounds for the claim of confidential treatment of the information. If a confidentiality agreement is signed, the recipient of the information shall not publicly disclose the information except:

- (a) With the approval of the party that requested the confidentiality agreement; or*
- (b) Pursuant to an order of a court of competent jurisdiction or the Commission.*

12. The parties may agree in writing to alternative discovery procedures and timeframes. A party may pursue any other form of discovery provided for in the Nevada Rules of Civil Procedure upon agreement with the party to whom the discovery request is directed or with permission from the presiding officer upon good cause being shown.

13. If a responding party fails to respond adequately after an order from the presiding officer or the Commission concerning discovery, the Commission may, upon the motion of any party of record, enter such order as the Commission deems just, including, without limitation, the dismissal of the application or petition, the imposition of civil penalties pursuant to NRS 703.380, if applicable, or the revocation of intervener status against the nonresponsive party.

14. A response to a motion for discovery must be filed with the Commission and served upon all parties of record within 5 business days after the motion for discovery is filed with the Commission. A reply to the response, if any, must be filed with the Commission within 5 business days after the response is filed with the Commission.

15. Discovery must be completed at least 15 days before the date set for the hearing unless otherwise ordered by the presiding officer. Any party of record seeking to have this time shortened or lengthened must do so by a motion to the presiding officer. The presiding officer shall grant the motion for good cause shown.

16. *As used in this section “data request” means a comprehensive vehicle for obtaining discovery and includes, without limitation, interrogatories, requests for admission, and requests for production of documents or inspection of property.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R092-03**

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R092-03 which pertain to chapter 703 of the Nevada Administrative Code on October 15, 2003.

Notice date: 4/22/2003

Date of adoption by agency: 10/15/2003

Hearing date: 6/10/2003 & 6/12/2003

Filing date: 10/30/2003

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.

The revisions to NAC Chapter 703 regarding practice and procedure before the Public Utilities Commission (“Commission”), and in particular discovery, in Docket No. 00-10039 were noticed on two occasions: a Notice of Workshop on October 18, 2002; and one combined Notice of Intent to Amend Regulations; Notice of workshop and Notice of Hearing on April 22, 2003, published in the Elko Daily Free Press, Ely Daily Times, Humboldt Sun, Las Vegas Review Journal, Mineral County Independent, Nevada Appeal, Reno Gazette Journal, and Tonopah Times-Bonanza. Additionally, the notices were mailed to county clerks, county libraries and all persons who requested inclusion on the Commission’s service list.

The transcripts of all the public sessions are available for review at the offices of the Commission.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly noticed workshop held on November 15, 2002: Generally, the discussion centered on planning how to move forward with formulating new/amended discovery regulations. It was decided that an informal subcommittee would meet to attempt to come up with a consensus document proposing new/amended discovery rules. The workshop was then continued until January 31, 2003.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the continued workshop held on January 31, 2003: Generally, the discussion revolved around a draft set of discovery rules submitted by the Regulatory Operations Staff (“Staff”) of the Commission. Generally, the commenters were supportive of the draft discovery rules. Concerns raised included: minor typographical errors, timing issues, confidential materials, penalties for non-compliance with discovery orders, the need for electronic filing, and objections to discovery requests.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly noticed workshop held on June 6, 2003: Generally, commenters were supportive of the draft regulation that accompanied the Notice of Workshop. Concerns raised included: minor typographical errors, penalties for non-compliance with discovery orders, the need for electronic filing, possible extensions for complying with discovery requests.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the duly noticed hearing held on June 10, 2003: No public responses were made as the hearing was continued to June 12, 2003.

In addition to the public response from affected businesses discussed in #3 below, the following represents a summary of the public responses that were made to the Commission at the continued hearing held on June 12, 2003: Generally, commenters were supportive of the revised draft regulation circulated at the June 6, 2003 hearing. Concerns raised included: possible problems with e-mail delivery of discovery requests/responses, the format for electronic filings, timing issues, the penalty of dismissal of applications, and objection periods.

A copy of the summary may be obtained by calling the Commission at (775) 687-6001 or (702) 486-2600, or by writing to the Commission at 1150 East William Street, Carson City, Nevada 89701 or 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

2. The number of persons who:

(a) Attended the workshop:

November 15, 2002:	15
January 31, 2003:	13
June 6, 2003:	13

(b) Testified at the workshop:

November 15, 2002:	5
January 31, 2003:	8
June 6, 2003:	7

(c) Attended the hearing:

June 10, 2003:	11
June 12, 2003:	12

(d) Testified at the hearing:

June 10, 2003:	0
June 12, 2003:	8

(e) Submitted to the agency written comments:

Written comments were submitted to the Commission by the Attorney General's Bureau of Consumer Protection and Southwest Gas Corporation.

3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by notices placed in the newspapers mentioned in the response to question #1 above, by direct mailings to interested persons on the Commission's mailing list and by posting of notices at county libraries, courthouses and the Commission's website.

Appearances were made at the foregoing workshops and hearing by interested persons, including the Regulatory Operations Staff of the Commission, the Attorney General's Bureau of Consumer Protection ("BCP"); Sierra Pacific Power Company and Nevada Power Company; Central Telephone Company - Nevada, d/b/a Sprint of Nevada and Sprint Communications Company L.P.; Nevada Bell Telephone Company; Verizon California, Inc. d/b/a Verizon Nevada; Lionel, Sawyer & Collins; WorldCom, Inc.; Nevada Telecommunications Association; and Southwest Gas Corporation ("SWG").

Written responses were received as set forth in the response to questions 2(e) above. All written comments are available for review at the offices of the Commission.

SWG submitted written comments on January 30, 2003. SWG's comments were submitted in response to the draft discovery rules filed by the Regulatory Operations Staff of the Commission on January 24, 2003. SWG's comments expressed concern over the procedure for protecting confidential materials, the penalties for non-compliance with Commission orders regarding discovery, the specification of proprietary software in the draft rule, and minor typographical errors.

The next comments were filed on June 10, 2003 by the BCP. The BCP's comments were filed in response to the proposed regulation circulated with the Notice of Workshop for the June 6, 2003 Workshop. The BCP's comments expressed concern about electronic filing. BCP wanted clarification as to whether filing by e-mail and deposit in a password protected web-site were alternatives to filing in hard copy. BCP also expressed a desire to specify certain software in the regulation as required to be used when making electronic filings.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Multiple changes were made to the proposed regulation April 22, 2003 noticed regulation after the June 6, 2003, Workshop, and the June 12, 2003, Hearing, and before it was adopted by the Commission as temporary at a duly noticed general session on June 27, 2003. In its review of the adopted temporary regulation, the Legislative Counsel Bureau ("LCB") made several changes. The LCB's revised version of the temporary regulation was adopted as permanent by the Commission at a duly noticed general session on October 15, 2003.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

The Commission has found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada based on the following facts: (1) participation in the Commission's process is now more clearly stated and allows cheaper methods (e.g. E-mail) for discovery; and (2) the effect of the requirement does not impose a significant economic burden upon small business, nor does it restrict the formation, operation, or expense of a small business.

6. The estimated cost to the agency for enforcement of the adopted regulation.

At this time, the Commission cannot quantify what, if any, estimated cost it will incur to enforce the adopted regulation..

7. A description of any regulations of other state or governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Commission is not aware of any overlap or duplication by this regulation of any regulation of any other local, state or federal government agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Commission is not aware of any provision in this regulation that is more stringent than a federal regulation which regulates the same activity.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.