

REVISED REVISED PROPOSED REGULATION OF THE PUBLIC

UTILITIES COMMISSION OF NEVADA

LCB File No. R156-03

May 25, 2004

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

AUTHORITY: §§1-85, NRS 703.025, 703.151, 703.154, 704.260 and 704.280.

A REGULATION relating to subsurface installations; establishing the requirements related to an excavation or demolition conducted near a subsurface installation; establishing the procedures for a complaint of a violation of the requirements related to an excavation or demolition conducted near a subsurface installation; and providing other matters properly relating thereto.

Section 1. Chapter 455 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 84, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 19, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affected area of the proposed excavation or demolition” means the area that is:*

- 1. Within the perimeter of the proposed area of the excavation or demolition; and*
- 2. Within 30 inches horizontally of the perimeter of the proposed area of the excavation or demolition.*

Sec. 4. *“Approximate location of a subsurface installation” has the meaning ascribed to it in NRS 455.082.*

Sec. 5. *“Association for operators” has the meaning ascribed to it in NRS 455.084.*

Sec. 6. *“Commission” means the Public Utilities Commission of Nevada.*

Sec. 7. *“Damage” has the meaning ascribed to it in NRS 455.086.*

Sec. 8. *“Demolition” has the meaning ascribed to it in NRS 455.088.*

Sec. 9. *“Emergency” has the meaning ascribed to it in NRS 455.090.*

Sec. 10. *“Excavation” has the meaning ascribed to it in NRS 455.092.*

Sec. 11. *“Excavator” means any person who directly or through an employee performs an excavation or demolition.*

Sec. 12. *“Identify” means to describe:*

1. The type of a subsurface installation; and

2. If the subsurface installation has a diameter or width of more than 2 inches, the diameter or width and composition of the subsurface installation, if reasonably known.

↪The term does not include describing the depth of a subsurface installation.

Sec. 13. *“Locate” means to determine the location of a subsurface installation. The term does not include determining the depth of the subsurface installation.*

Sec. 14. *“Notification” means a notice of an excavation or demolition submitted by an excavator to an association for operators.*

Sec. 15. *“Operator” has the meaning ascribed to it in NRS 455.096.*

Sec. 16. *“Person” has the meaning ascribed to it in NRS 455.098.*

Sec. 17. *“Proposed area of the excavation or demolition” means the area identified by the excavator pursuant to the provisions of section 22 of this regulation and subparagraph (2) of paragraph (b) of subsection 1 of NRS 455.110.*

Sec. 18. *“Subsurface installation” has the meaning ascribed to it in NRS 455.101.*

Sec. 19. *“Working day” has the meaning ascribed to it in NRS 455.105.*

Sec. 20. *For the purposes of this chapter and NRS 455.080 to 455.180, inclusive, the “association for operators,” as described in NRS 455.084, shall be deemed to be Underground Service Alert North, or its successor organization.*

Sec. 21. *In addition to the requirements set forth in paragraph (a) of subsection 1 of NRS 455.110, an excavator submitting a notification shall provide to the association for operators:*

- 1. If applicable, the number of the facsimile machine at which the excavator can receive documents;*
- 2. If applicable, the electronic mail address at which the excavator can be contacted;*
- 3. If the affected area of the proposed excavation or demolition was the subject of a previous notification submitted by the excavator, information relating to the previous notification; and*
- 4. Any additional information relating to the excavation or demolition that is requested by the association for operators.*

Sec. 22. *1. Except as otherwise provided in subsections 3 and 4, an excavator who marks the proposed area of an excavation or demolition pursuant to the provisions of subparagraph (2) of paragraph (b) of subsection 1 of NRS 455.110 shall mark:*

- (a) The area before submitting a notification; and*
- (b) Only the area that can reasonably be excavated or demolished within 14 calendar days after the date the excavator submitted the notification of the excavation or demolition to the association for operators pursuant to the provisions of NRS 455.110.*

2. An excavator marking the proposed area of an excavation or demolition pursuant to subsection 1 shall mark with white:

- (a) The perimeter of the proposed excavation or demolition; or*

(b) The centerline and width of the proposed excavation or demolition.

3. If an excavator and all the operators of subsurface installations in the affected area of the proposed excavation or demolition agree to identify the proposed area of the excavation or demolition in another manner pursuant to the provisions of subparagraph (2) of paragraph (b) of subsection 1 of NRS 455.110, the excavator shall comply with the terms of that agreement.

4. Pursuant to subsection 1 of NRS 455.110, an excavator conducting an excavation or demolition that will expose only a subsurface installation owned or operated by the excavator is not required to notify an association for operators pursuant to NRS 455.110.

Sec. 23. In addition to the requirements set forth in NRS 455.115, an association for operators that receives a notification pursuant to the provisions of NRS 455.110 shall transmit the information contained in the notification to all members of the association for operators who have reported to the association for operators that they own, operate, maintain or control a subsurface installation in the affected area of the proposed excavation or demolition.

Sec. 24. 1. An operator locating and identifying subsurface installations pursuant to the provisions of paragraph (a) of subsection 1 of NRS 455.130 shall locate and identify all subsurface installations of the operator that are in use or held for prospective use and are located within the affected area of the proposed excavation or demolition and shall:

(a) Mark the approximate location of the subsurface installations located and identified as required by NRS 455.133 and section 25 of this regulation or in another manner agreed to in writing between the excavator and the operator; or

(b) For any subsurface installations of the operator that the operator was unable to identify or locate according to the records of the operator:

(1) Inform the excavator of the approximate location of the subsurface installation; and

(2) Provide to the excavator the best description available of the subsurface installation from those records.

2. If an operator determines that it has no subsurface installations within the affected area of the proposed excavation or demolition, the operator shall notify the excavator pursuant to the provisions of subsection 2 of NRS 455.130 by:

(a) Notifying the excavator directly; or

(b) Making a mark which indicates that the operator has no subsurface installations within the affected area of the proposed excavation or demolition in a manner that:

(1) Is consistent with the practice in the industry; or

(2) Includes the name, initials or logo of the operator.

Sec. 25. Except when otherwise agreed to by an operator and an excavator, an operator marking the approximate location of a subsurface installation that has been located and identified pursuant to the provisions of section 24 of this regulation shall mark the approximate location of the subsurface installation using the following colors for the markings:

1. Pursuant to the provisions of NRS 455.133, safety red must be used for electrical power, distribution and transmission installations, conduit for traffic signals and street lights and municipal electric installations.

2. Pursuant to the provisions of NRS 455.133, high visibility 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. Pursuant to the provisions of NRS 455.133, safety alert orange must be used for telephone and telegraph installations, police and fire communication installations and cable television installations.

4. Pursuant to the provisions of NRS 455.133, safety precaution blue must be used for water installations and slurry pipelines.

5. Pursuant to the provisions of NRS 455.133, safety green must be used for sewer and storm drain installations.

6. Safety purple must be used for reclaimed water installations.

7. Pink must be used for temporary survey markings.

Sec. 26. 1. *Until an excavation or demolition is completed, an excavator shall maintain the marks:*

(a) Of the proposed area of an excavation or demolition made by the excavator pursuant to the provisions of subsection 2 of section 22 of this regulation; and

(b) Of the approximate location of subsurface installations made by an operator pursuant to paragraph (b) of subsection 1 of section 24 of this regulation.

2. *If before the commencement of an excavation or demolition or during an excavation or demolition the marks are removed, obliterated, covered or otherwise become disturbed or the excavator has concerns regarding the accuracy and meaning of the marks, the excavator shall:*

(a) If the excavator has begun the excavation or demolition, cease the excavation or demolition; and

(b) Submit a notification to the association for operators that requests the operators with subsurface installations in the affected area of the proposed excavation or demolition to mark the subsurface installations in the affected area of the proposed excavation or demolition.

3. An excavator who submits a notification pursuant to the provisions of subsection 2 shall not commence an excavation or demolition until 2 working days after submitting the notification.

Sec. 27. *1. Except as otherwise provided in subsection 2, an excavator, an operator or any other person shall not create, remove, change or modify a mark made by an excavator or an operator in an affected area of a proposed excavation or demolition for the purpose of violating a provision of this chapter or NRS 455.080 to 455.180, inclusive.*

2. Except as otherwise provided in section 31 of this regulation, an excavator or operator may remove a mark made by the excavator or an operator if the excavation or demolition has been completed.

Sec. 28. *1. Except when commencing an emergency excavation as provided in the provisions of subsection 2 of NRS 455.110, an excavator:*

(a) Shall not commence an excavation or demolition:

(1) Until each operator of a subsurface installation within the affected area of the proposed excavation or demolition has marked the location or has provided the approximate location of the subsurface installations of the operator pursuant to the provisions of section 24 of this regulation; and

(2) Before:

(I) The date and time the excavator identified as the date and time of commencement of the excavation or demolition; and

(II) Two working days after the date and time the excavator provided notification to the association for operators.

(b) To ensure that all subsurface installations in the affected area have been properly located and identified, shall not commence an excavation or demolition until the excavator has reviewed:

(1) All marks made by operators pursuant to the provisions of section 24 of this regulation;

(2) All marks made by the excavator pursuant to the provisions of section 22 of this regulation;

(3) All other information regarding subsurface installations provided to the excavator by an operator with subsurface installations in the affected area of the proposed excavation or demolition; and

(4) All other evidence that is visible of the approximate location of subsurface installations in the affected area of the proposed excavation or demolition.

2. In addition to the requirements provided in subsection 1, if an excavator is commencing an excavation or demolition pursuant to subparagraph (2) of paragraph (a) of subsection 1 and each operator of a subsurface installation within the affected area of the proposed excavation or demolition has not marked or otherwise identified the location of the subsurface installations of the operator pursuant to the provisions of section 24 of this regulation, the excavator shall, before commencing the excavation or demolition, provide notification to the association for operators and request that each operator, who has a subsurface installation that has not been marked, return and mark the subsurface installation in the affected area of the proposed excavation or demolition.

Sec. 29. 1. *An excavator conducting an excavation or demolition shall proceed in a careful and prudent manner.*

2. In accordance with the provisions of NRS 455.137, the excavator shall, when conducting an excavation or demolition within the approximate location of a subsurface installation, determine the exact location of the subsurface installation by excavating with hand tools or by any other method agreed upon by the excavator and the operator having responsibility for the subsurface installation before using any mechanical equipment.

3. If, during the course of an excavation or demolition, an excavator is unable to determine the exact location of a subsurface installation within 30 horizontal inches of a mark placed by an operator, the excavator shall notify immediately the association for operators and the operator who placed the mark.

4. If, during the course of an excavation or demolition, an excavator discovers any subsurface installation, the excavator shall provide the lateral and subjacent support of the subsurface installation that is needed to ensure the protection and stability of the subsurface installation.

Sec. 30. 1. *In addition to the requirements set forth in subsection 4 of section 29 of this regulation, if, during the course of an excavation or demolition, an excavator discovers a subsurface installation the location of which was not marked or otherwise identified by an operator pursuant to the provisions of section 24 of this regulation, the excavator shall:*

(a) Before continuing with the excavation or demolition, inform the owner of the subsurface installation, if known, of the discovery of the subsurface installation; and

(b) As soon as practical, provide notification to the association for operators of the discovery of the subsurface installation.

2. *The association for operators shall transmit the information contained in the notification made by the excavator to the operator of the subsurface installation discovered by the excavator.*

3. *Upon receipt of the notification by the excavator or the association for operators of a subsurface installation the location of which was not marked, the operator shall locate and identify and mark the subsurface installation pursuant to the provisions of section 24 of this regulation.*

Sec. 31. *1. If an excavator causes or observes any damage, including, without limitation, a scratch, kink, stretch mark or any other unusual condition, to a subsurface installation during an excavation or demolition, the excavator shall:*

(a) Cease work on the excavation or demolition in the area around the damaged subsurface installation;

(b) Inform the operator of the subsurface installation of the damage; and

(c) Except as otherwise provided in subsection 2, not backfill the area around the damaged subsurface installation until the operator of the subsurface installation has had a reasonable amount of time to inspect, maintain and repair the subsurface installation.

2. *If the operator of a damaged subsurface installation consents, the excavator may backfill the area around a damaged subsurface installation without the inspection, maintenance or repair of the subsurface installation by the operator.*

3. *If the damaged subsurface installation presents an emergency, the excavator:*

(a) In addition to the notification required pursuant to subsection 1, shall inform all appropriate local public service agencies or, if available, telephone emergency 911 services;

(b) Except as otherwise provided in paragraph (c), shall take reasonable steps to ensure public safety and to minimize the hazard presented by the damaged installation; and

(c) Shall not operate any valve or other device of the operator of the damaged subsurface installation while taking steps to ensure public safety and to minimize the hazard presented by the damaged installation.

Sec. 32. 1. *A notification submitted by an excavator to an association for operators is valid to conduct an excavation or demolition for 14 calendar days after the date and time that the excavator provided the notification to the association for operators pursuant to the provisions of NRS 455.110.*

2. An excavator may submit a request to the association for operators to extend the period for which the excavator may engage in the excavation or demolition by an additional 14 calendar days.

3. At the time the excavator submits a request pursuant to the provisions of subsection 2, the excavator shall inform the association for operators whether an operator with subsurface installations within the affected area of the proposed excavation or demolition needs to make replacement marks identifying the location of a subsurface installation.

4. If the excavator informs the association for operators pursuant to the provisions of subsection 3 that replacement marks are not required, the period for which the excavator may engage in the excavation or demolition shall be deemed to be extended for 14 calendar days.

5. If the excavator informs the association for operators pursuant to the provisions of subsection 3 that replacement marks are required, the association for operators shall transmit that notification to the operator of the subsurface installations within the affected area of the proposed excavation or demolition.

6. Except as otherwise provided in subsection 7, if an excavator informs the association for operators that replacement marks are required pursuant to the provisions of subsection 5, the excavator shall cease the excavation or demolition for 2 working days to permit an operator to locate, identify and mark the location of subsurface installations of the operator. Upon either the completion of the replacement marks by the operator or the expiration of the 2 working days during which an operator may make the replacement marks, whichever occurs first, the period for which the excavator may engage in the excavation or demolition shall be deemed to be extended for 14 calendar days.

7. If the excavator informs the association for operators that replacement marks are required and more than 2 working days remain of the period in which the excavator is permitted to engage in the excavation or demolition, the excavator may continue the excavation or demolition.

8. An excavator may not request more than five extensions of the period in which the excavator is permitted to engage in an excavation or demolition pursuant to the provisions of this section. Except as otherwise provided in section 33 of this regulation, if the excavator needs additional time in which to engage in the excavation or demolition beyond the period afforded by the original notification and the five subsequent extensions, the excavator shall submit a new notification to the association for operators pursuant to the provisions of NRS 455.110.

Sec. 33. 1. *In addition to the procedure for the extension of a notification provided pursuant to subsections 2 to 8, inclusive, of section 32 of this regulation, an excavator may submit a request to the association for operators to renew an expired notification.*

2. *If an excavator submits a request to renew a notification pursuant to the provisions of subsection 1, the excavator shall provide to the association for operators the reference number of the expired notification.*

3. *If based on the reference number provided to the association for operators pursuant to the provisions of subsection 2 the association for operators is able to determine that it has a record of the expired notification, the association for operators shall verify with the excavator that the information contained in the expired notification is accurate.*

4. *If the association for operators determines that the information contained in the expired notification is accurate pursuant to the provisions of subsection 3, the association for operators shall transmit that notification to the operators of subsurface installations within the affected area of the excavation or demolition. The excavator shall not engage in the excavation or demolition for 2 working days to permit an operator to locate, identify and mark the location of subsurface installations of the operator. Upon either the completion of the replacement marks by the operator or the expiration of the 2 working days during which an operator may make the replacement marks, whichever occurs first, the period for which the excavator may engage in the excavation or demolition shall be deemed to be renewed for 14 calendar days. An excavator may submit a request for the extension of a notification pursuant to the provisions of section 32 of this regulation for a notification renewed pursuant to the provisions of this section.*

5. *If the association for operators determines that the information contained in the expired notification is not accurate pursuant to the provisions of subsection 3, the excavator shall submit a new notification to the association for operators pursuant to the provisions of this chapter and NRS 455.110.*

6. *If, based on the reference number provided to the association for operators pursuant to the provisions of subsection 2, the association for operators is unable to determine that it has a record of the expired notification, the excavator shall submit a new notification to the association for operators pursuant to the provisions of this chapter and NRS 455.110.*

7. *As used in this section, “expired notification” means a notification for which the period to engage in an excavation or demolition has expired without having been extended pursuant to the provisions of section 32 of this regulation or renewed pursuant to the provisions of this section.*

Sec. 34. *As used in sections 34 to 84, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 35 to 42, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 35. *“Complainant” means a person who complains to the Commission of a violation of the provisions of this chapter or NRS 455.080 to 455.180, inclusive.*

Sec. 36. *“Complaint” means:*

1. *An oral complaint; or*
2. *A written complaint.*

Sec. 37. *“Division” means the Division of Safety and Quality Assurance of the Commission.*

Sec. 38. *“Oral complaint” means an allegation of a violation of the provisions of this chapter or NRS 455.080 to 455.180, inclusive.*

Sec. 39. *“Party to a written complaint” includes:*

1. *The complainant; and*
2. *The respondent.*

Sec. 40. *“Party to an oral complaint” includes:*

1. The complainant; and

2. The respondent.

Sec. 41. *“Respondent” means a person against whom:*

1. An oral complaint is made; or

2. A written complaint is filed.

Sec. 42. *“Written complaint” means a complaint filed pursuant to the provisions of NRS 455.170.*

Sec. 43. *The staff of the Commission may appear, may be represented by counsel for the staff and may intervene in all hearings before the Commission on a complaint without filing a petition for leave to intervene.*

Sec. 44. *In any hearing before the Commission, each party to a written complaint is entitled to enter an appearance, introduce relevant evidence, examine and cross-examine witnesses, make arguments, make and argue motions, and generally participate in the proceeding.*

Sec. 45. *A party to a written complaint may enter an appearance at the beginning of a hearing or at some other time designated by the Commission by giving his name and address. If a person is appearing on behalf of a party to a written complaint, he must also identify the party he represents.*

Sec. 46. *1. A party to a written complaint may represent himself or may be represented by an attorney. Any other person who satisfies the Commission that he possesses the expertise to render valuable service to the Commission, and that he is otherwise competent to advise and*

assist in the presentation of matters before the Commission, may be allowed to appear on behalf of one or more parties.

2. An attorney at law appearing as counsel in any hearing must be duly admitted to practice and in good standing before the highest court of any state. If an attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he must associate with an attorney so admitted and entitled to practice.

3. Counsel for the staff of the Commission or his assistant shall represent the staff of the Commission in all proceedings before the Commission.

Sec. 47. No person who has served as an employee of the Commission may practice or act as an expert witness or representative in connection with any proceeding which is pending before the Commission on the date on which his employment was terminated.

Sec. 48. 1. Any representative of a party to a written complaint wishing to withdraw from a hearing before the Commission must make a motion stating the reasons for the requested withdrawal.

2. The Commission may order the representative to serve the motion in writing upon the party to the written complaint whom he represents and upon all parties to the written complaint.

Sec. 49. 1. Any person appearing in a hearing must conform to recognized standards of ethical and courteous conduct required of practitioners before the courts of this state.

2. Contumacious conduct by any person at any hearing before the Commission is a ground for the exclusion of that person from that hearing and for summary suspension of that person from further participation in the hearing.

3. Smoking is not permitted at any meeting or hearing of the Commission.

Sec. 50. 1. *If a person submits an oral complaint to the Commission, the Division shall attempt to resolve informally the oral complaint.*

2. *The Division shall encourage the complainant and the respondent to the oral complaint to meet informally to seek a mutually agreeable resolution of the oral complaint.*

3. *Any party to the oral complaint may report to the Division the results of the informal meetings between the parties. A copy of this report must be provided to the other parties to the oral complaint.*

4. *If the parties to the oral complaint are able to resolve the issues set forth in the oral complaint, the Division shall review the proposed resolution to determine if the resolution complies with the requirements of this chapter and NRS 455.080 to 455.180, inclusive.*

5. *If the Division determines that the proposed resolution of the oral complaint complies with the requirements of this chapter and NRS 455.080 to 455.180, inclusive, pursuant to subsection 4, the Division shall close the file on the oral complaint.*

6. *If the Division determines that the proposed resolution does not comply with the requirements of this chapter and NRS 455.080 to 455.180, inclusive, pursuant to subsection 4, the Division shall inform the parties of:*

(a) Its determination; and

(b) The option of filing a written complaint with the Commission.

7. *If the parties to the oral complaint are unable to resolve the issues set forth in the oral complaint, the Division shall notify the parties of the option of filing a written complaint with the Commission.*

8. *On not less than a quarterly basis, the Division shall report to the Commission on the oral complaints that were informally resolved since the last report to the Commission.*

Sec. 51. 1. A written complaint filed with the Commission must:

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

(b) Identify whether the alleged wrongful acts or omissions constitute:

(1) Negligent violations of the provisions of this chapter or NRS 455.080 to 455.180, inclusive; or

(2) Willful or repeated violations of the provisions of this chapter or NRS 455.080 to 455.180, inclusive; and

(c) Be accompanied by copies of all supporting documents or evidence, including, without limitation, a copy of the record of the notification transmitted by the association for operators to operators pursuant to the provisions of section 23 of this regulation, any extensions granted pursuant to the provisions of section 32 of this regulation, correspondence, photographs and lists of potential witnesses.

2. The Division shall, within 10 days after receiving a written complaint:

(a) Send a letter of acknowledgment to the complainant.

(b) Send a copy of the written complaint to the respondent and require the respondent to file a response to the written complaint with the Division.

Sec. 52. 1. A person against whom a written complaint is made shall file with the Division a written response to the complaint within 15 calendar days after receiving the written complaint unless, for good cause shown, the Division extends the time for responding. Any extension of the time for filing a response granted by the Division must be:

(a) Confirmed in writing; and

(b) Provided to all parties to the written complaint.

2. The response must include, without limitation, a copy of the record of the notification transmitted by the association for operators to operators pursuant to the provisions of section 23 of this regulation, any extensions granted pursuant to the provisions of section 32 of this regulation, correspondence, photographs and lists of potential witnesses and:

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

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

3. The response must:

(a) Be signed by the respondent or, if represented, by his attorney or other authorized representative.

(b) Include the full name, address and telephone number of the respondent and, if represented, the name, address and telephone number of his 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 written complaint within the prescribed time shall be deemed an admission by the respondent of all relevant facts stated in the written complaint.

Sec. 53. *1. When the Division receives a response to a written complaint, the Division shall examine the written complaint, the response and any other information the Division has obtained which is necessary for the resolution of the complaint.*

2. In addition to the provisions of subsection 1, the Division may:

(a) Discuss the written complaint with the parties to the written complaint;

- (b) Request additional information relating to the written complaint; and*
- (c) Investigate the facts relevant to the written complaint.*

3. After completing an investigation of the matter set forth in the written 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 written complaint.

4. If the actions the Division recommends pursuant to subsection 3 include the imposition of a civil penalty pursuant to NRS 455.170, the Division shall:

- (a) Set forth the factual basis for the imposition of the civil penalty; and*
- (b) Recommend the amount of the civil penalty to be imposed.*

Sec. 54. *1. If the Division cannot resolve a written complaint, either because the Division determines that the written complaint cannot be resolved or because any party to the written complaint is not satisfied with the recommendation of the Division, the Division shall inform all parties that the written complaint has been transmitted to the Commission for review.*

2. In addition to transmitting the written complaint, the results of its investigation and its recommendation to the Commission, the Division shall transmit a description of:

- (a) The reasons for the written 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.*

3. The Division shall send the additional information required pursuant to the provisions of subsection 2 to the parties to the complaint.

Sec. 55. *If the Commission determines that no probable cause exists for a written complaint received by the Commission or if the written complaint has been settled and the Commission has received notice of the settlement, the Commission will dismiss the written complaint.*

Sec. 56. *If the Commission determines that probable cause exists for a written complaint received by the Commission, the Commission will:*

- 1. Set a date for a public hearing on the written complaint; and*
- 2. Order appropriate interim relief as the Commission deems appropriate.*

Sec. 57. *1. The Commission may, upon its own motion or a motion made by a party to the written complaint, hold a prehearing conference to accomplish one or more of the following purposes:*

- (a) Formulate or simplify the issues involved in the hearing.*
- (b) Obtain admissions of fact or any stipulation of the parties.*
- (c) Arrange for the exchange of proposed exhibits or prepared expert testimony.*
- (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary.*
- (e) Rule on any pending procedural motions, motions for discovery or motions for protective orders.*
- (f) Establish a schedule for the completion of discovery.*
- (g) Establish any other procedure that may expedite the orderly conduct and disposition of the proceedings.*

2. Notice of any prehearing conference must be provided to all parties to the written complaint. Unless otherwise ordered for good cause shown, the failure of a party to the written

complaint to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.

3. The action taken and the agreements made at a prehearing conference:

(a) Must be made a part of the record.

(b) Control the course of subsequent proceedings unless modified at the hearing by the Commission.

(c) Are binding upon all parties to the written complaint and persons who subsequently become parties to the written complaint.

4. In any hearing, the Commission may call all the parties to the written complaint together for a conference before the taking of testimony or may recess the hearing for such a conference to carry out the intent of this section. The Commission will state on the record the results of such a conference.

Sec. 58. *The Commission may, for good cause, either before or during a hearing, grant a continuance of the hearing for the convenience of the parties or the Commission.*

Sec. 59. 1. *Except as otherwise provided in this section, the Commission, the staff of the Commission or any party to the written complaint may obtain discovery pursuant to the applicable provisions of the Nevada Rules of Civil Procedure.*

2. Upon a motion by a party to the written complaint or by the person from whom discovery is sought and for good cause shown, the Commission may prohibit, restrict or modify the scope of the discovery.

3. Discovery must be completed at least 15 calendar days before the date set for the hearing unless otherwise ordered by the Commission. Any party to the written complaint

seeking to have this time shortened or lengthened must do so by a motion to the Commission. The Commission will grant the motion for good cause shown.

Sec. 60. 1. *All testimony to be considered by the Commission at a hearing must be sworn testimony, except for matters of which official notice is taken or matters entered by stipulation.*

2. Before testifying at the hearing, each witness shall declare, under oath or affirmation, that the testimony the witness is to give at the hearing will be the truth, the whole truth and nothing but the truth.

3. At the hearing, each party to the written complaint may cross-examine an opposing witness in accordance with NRS 233B.123. After cross-examination of the witness, redirect examination of the witness is limited to matters raised during cross-examination. After redirect examination of the witness, recross-examination of the witness is limited to matters raised during redirect examination.

Sec. 61. 1. *The Commission will:*

(a) Call a hearing to order and take the appearances of the parties to the written complaint who are present.

(b) Hold appropriate conferences before or during the hearing.

(c) Receive and rule on the admissibility of evidence.

(d) Rule on the admissibility of amendments to the pleadings.

(e) Act upon any pending motions or petitions which do not involve a final determination of the proceeding.

(f) Make proposed opinions, findings and conclusions of law.

(g) Issue appropriate interim orders.

(h) Recess the hearing as required.

(i) Rule on all procedural matters.

(j) Set reasonable limits of time for the presentation of oral testimony.

2. At the discretion of the Commission, the parties to the written complaint may make opening statements.

Sec. 62. *1. Complainants may present their evidence first at a hearing. Then the respondents may present their evidence. The Commission will designate the stage of the hearing in which a member of the staff of the Commission may be heard. Evidence must be received in the following order unless the Commission determines that a special circumstance requires a different order:*

(a) Complainant;

(b) Respondent;

(c) Staff of the Commission; and

(d) Rebuttal by complainant.

2. Witnesses may be cross-examined by any Commissioner, the Deputy Commissioner, and the administrative assistants and legal counsel for the Commission.

3. If there is more than one complainant, the witnesses of all complainants may present direct testimony on an issue before any of these witnesses may be cross-examined on that issue, unless otherwise ordered by the Commission.

4. If two or more matters are set for hearing at the same time and place, the matter having the lowest docket number will be heard first, unless the Commission directs a different order for the convenience of the parties.

Sec. 63. 1. *A request by a party to the written complaint for an order for the appearance of a witness at any designated place of hearing or for the production of a book, paper or document must be made in the form of a written motion filed with the Commission.*

2. A motion for an order to compel the production of a book, paper or document must set forth the reasons which support the issuance of the order and must identify, as clearly as possible, the book, paper or document desired.

3. If the motion is granted, the Commission will issue the order. Where appropriate, the issuance of the order may be conditioned upon an advancement by the moving party of the reasonable cost of the production of books, papers or documents.

4. The Commission will, upon its own initiative or upon a written request by the party to whom the order is directed, quash or modify the order if the order is determined to be unreasonable or oppressive.

5. The Commission may, upon its own initiative, issue an order requiring the attendance and testimony of witnesses and the production of a book, paper, document or other tangible thing.

Sec. 64. 1. *All evidence offered in a hearing, including, without limitation, the testimony of a witness, must be relevant.*

2. For the purposes of this section, evidence is “relevant” only if the evidence has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

Sec. 65. 1. *An objection to the admissibility of evidence may be made by any party to the written complaint, and the objection must be ruled on by the Commission. When an objection is made to the admission or exclusion of evidence, the grounds relied upon must be*

stated briefly. The Commission will provide an opportunity for a party to the written complaint to respond to an objection raised by any other party regarding the admissibility of evidence.

The responses must be brief and state the specific grounds relied upon.

2. An offer of proof for the record must consist of a statement of the substance of the evidence to which an objection has been sustained.

Sec. 66. *1. With the approval of the Commission, the parties may stipulate as to any fact in issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. This stipulation is binding only upon the parties so stipulating and is not binding upon the Commission.*

2. The stipulation may be considered by the Commission as evidence at the hearing. The Commission may require proof of the facts stipulated to by independent evidence, notwithstanding the stipulation of the parties. A stipulation without additional proof is not binding on the Commission in its determination of the matter.

Sec. 67. *1. The Commission may, in the course of a hearing and before entering a decision or a recommended decision, issue an appropriate written interim order.*

2. An interim order is not subject to exceptions or petitions for rehearing, reconsideration or reargument, but any party to the written complaint aggrieved by the interim order may file a written motion to set aside, stay or modify the order.

Sec. 68. *The Commission may take official notice of the following matters:*

1. Rules, regulations, official reports, decisions and orders of the Commission and any other agency of this state.

2. Contents of decisions, orders, certificates and permits issued by the Commission.

3. *Matters of common knowledge and technical or scientific facts of established character.*

4. *Official documents, if pertinent and properly introduced into the record of formal proceedings by reference. A proper and definite reference to a document must be made by the party offering the document, and the document must be generally circulated to each party to the written complaint.*

Sec. 69. *In any hearing, the Commission may order briefs to be filed within a reasonable time. The original and seven copies of each brief must be filed with the Commission and must be accompanied by an acknowledgment of or an affidavit showing service on each party to the written complaint.*

Sec. 70. *The Commission may, following the filing of briefs or upon contested motions, set the matter for oral argument upon 10 days' notice to each party to the written complaint, unless the Commission considers a shorter time advisable.*

Sec. 71. *Unless otherwise specifically ordered, a matter stands submitted for decision by the Commission at the close of the hearing.*

Sec. 72. *At any time after the conclusion of a hearing and before the issuance of a final order, the Commission, on its own motion, may reopen the proceedings for the taking of additional evidence.*

Sec. 73. 1. *The Commission may require any party to the written complaint to file proposed findings of fact and conclusions of law at the close of the proceeding. The Commission will fix the period within which these proposed findings and conclusions must be filed. No decision, report or recommended order may be made until after the expiration of this period.*

2. Each proposed finding of fact and conclusion of law must be clearly and concisely stated and numbered. Each proposed finding of fact must specifically show, by appropriate references to the transcript, the testimony which supports the statement.

3. An original and seven copies of proposed findings of fact and conclusions of law, accompanied by a certificate of service, must be filed with the Commission by each party, and one copy must be served upon each party to the written complaint.

4. Any party to the written complaint may petition the Commission for an extension of time in which to file proposed findings of fact and conclusions of law.

Sec. 74. *1. The date of the issuance of an order is the day the Secretary signs and verifies the order and affixes the seal of the Commission on the order. The Secretary will mail or deliver copies of the order to the parties to the written complaint not later than 1 working day following the date of issuance. The date of issuance of an order may or may not be the day of decision by the Commission. The Secretary will clearly indicate on each order the date of its issuance.*

2. Unless otherwise specifically provided in the order, an order of the Commission is effective as of the date of its issuance.

Sec. 75. *1. A petition for reconsideration must specifically:*

(a) Identify each portion of the challenged order which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

2. A petition for rehearing must:

(a) Allege that an order is in error because of an incomplete or inaccurate record.

(b) Specifically set forth the nature and purpose of any additional evidence to be introduced.

(c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

3. A petition for reconsideration or rehearing of an order must be filed with the Commission and served upon all parties to the written complaint within 15 calendar days after the effective date of the order.

4. An answer to a petition for reconsideration or rehearing may be filed with the Commission by any party to the written complaint in the proceeding within 15 calendar days after the filing of the petition. The answer must be confined to the issues contained in the petition. The answer must be served upon all parties to the written complaint. Proof of service must be attached to the answer.

5. The Commission will grant or deny a petition for reconsideration or rehearing within 40 calendar days after the date of its filing. If no action is taken by the Commission within this time, the petition shall be deemed denied.

6. Unless otherwise ordered by the Commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged order.

7. If the Commission grants a petition for reconsideration, the Commission will reexamine the record and order with regard to the issues on which reconsideration was granted and issue a modified final order or reaffirm its original order.

8. *If the Commission grants a petition for rehearing, the Commission will, within 20 calendar days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final order or reaffirm its original order.*

9. *A modified final order of the Commission issued upon reconsideration or rehearing will incorporate those portions of the original order which are not changed or modified by the modified final order. A modified final order is the final decision of the Commission.*

Sec. 76. *Any party may obtain a copy of the transcript of a hearing before the Commission from the official reporter upon payment of the fees fixed therefor. The original and one copy of each transcript must be provided to the Commission by the initiating party within 15 calendar days after the close of the hearing unless otherwise ordered by the Commission.*

Sec. 77. 1. *If the Division recommends the imposition of a civil penalty on the written complaint, the Commission will:*

(a) Review the recommendation of the Division;

(b) Review all evidence and testimony presented to the Commission; and

(c) Determine whether the imposition of the penalty is appropriate pursuant to the provisions of NRS 455.170.

2. *If the Division does not recommend the imposition of a civil penalty on the written complaint, the Commission will:*

(a) Review all evidence and testimony presented to the Commission; and

(b) Determine whether the imposition of the penalty is appropriate pursuant to the provisions of NRS 455.170.

3. *If the Commission determines that the imposition of a civil penalty is appropriate, the Commission will:*

(a) *Issue an order imposing a civil penalty in an amount determined by the Commission;*
and

(b) *Close the file on the written complaint.*

4. *If the Commission determines that the imposition of a civil penalty is not appropriate, the Commission will:*

(a) *Issue an order denying the imposition of a civil penalty; and*

(b) *Close the file on the written complaint.*

5. *The order of the Commission must:*

(a) *Set forth the decision of the Commission on the written complaint;*

(b) *Contain a short statement of the reasons for the decision of the Commission; and*

(c) *Be served upon the complainant and the respondent.*

Sec. 78. 1. *If a civil penalty is recovered by the Commission and the complainant wishes to recover his costs pursuant to subsection 6 of NRS 455.170, within 5 working days after the service of the order of the Commission, the complainant must file with the Commission and serve upon the respondent a statement of costs:*

(a) *Detailing the costs incurred; and*

(b) *Verified under oath by the complainant that, to the best of his knowledge and belief:*

(1) *The statement is correct and complies with this section; and*

(2) *The costs incurred were related to prosecuting the written complaint.*

2. *Within 5 working days after service of the statement of costs, the respondent may move that the Commission retax and settle the costs by filing with the Commission and serving upon*

the complainant a motion. After the hearing on the motion, the Commission will determine the reimbursable costs.

3. If the respondent does not file a motion pursuant to subsection 2, the Commission will determine the reimbursable costs without a hearing.

4. In determining the reimbursable costs, the Commission:

(a) Will consider the following:

(1) Fees for expert witnesses. Unless otherwise allowed by the Commission upon a showing of good cause, the reimbursable fee for an expert witness must not exceed \$500 per expert witness. If the Commission determines that the complainant hired two or more expert witnesses that provided cumulative or duplicative testimony, the Commission may determine that a fee for only one expert witness is a reimbursable cost.

(2) Fees for necessary interpreters.

(3) Fees for photocopies.

(4) Fees for long distance telephone calls.

(5) Fee for postage.

(6) Fees for the services of a court reporter.

(7) Fees associated with the cost of filing the written complaint with the Commission.

(8) Any other reasonable fee or cost associated with prosecuting the written complaint.

(b) Will not consider attorney's fees or fees paid to any other representative of the party.

5. The reimbursable costs must not exceed the amount of the civil penalty imposed by the Commission on the written complaint.

Sec. 79. 1. *Within 15 calendar days after determining the reimbursable fees, the Commission will enter an order establishing the reimbursable fees as determined pursuant to section 78 of this regulation.*

2. The Commission will pay the reimbursable fees to the complainant upon:

(a) Entry of the order;

(b) Receipt of the civil penalty from the respondent.

Sec. 80. *The Division shall maintain a record of each complaint filed with the Commission, including, without limitation:*

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

2. A description of the actions taken by the complainant in an attempt to resolve the complaint.

3. A description of the actions taken by the respondent in an attempt to resolve the complaint.

4. The response to the complaint filed by the respondent, including any documents submitted with the response.

5. Any other information the Division determines is relevant to understanding the complaint and the resolution of the complaint.

Sec. 81. 1. *A copy of any form that is required to be used pursuant to this chapter or NRS 455.080 to 455.180, inclusive, 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, by United States mail or other messenger or delivery service.

2. *The available forms include a:*

(a) *Written complaint; and*

(b) *Statement of costs.*

Sec. 82. *The Commission may 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.*

Sec. 83. *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 not a working day, the period runs until the end of the next day which is a working day.*

2. *If 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 shown, upon a motion made before the specified period expires.*

Sec. 84. *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.*

Sec. 85. Chapter 704A of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, if an operator is burying a nonconductive subsurface installation, the operator shall place a tracer wire or other conductive marking tape or device with the subsurface installation.

2. If an operator is conducting minor repairs to an existing nonconductive subsurface installation, the operator may choose not to place a tracer wire or other conductive marking tape or device with the subsurface installation when burying the subsurface installation.

3. As used in this section:

(a) "Operator" has the meaning ascribed to it in NRS 455.096.

(b) "Subsurface installation" has the meaning ascribed to it in NRS 455.101.