

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

LCB File No. R029-11

Effective February 20, 2013

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

AUTHORITY: §§1-5, 8-16, 18-20, 22-32 and 34, NRS 703.025, 704.260 and 704.280; §§6, 7, 17, 21 and 33, NRS 455.170, 703.025, 704.260 and 704.280.

A REGULATION relating to administrative proceedings; revising provisions governing certain administrative proceedings and practice before the Public Utilities Commission of Nevada; 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, 3 and 4 of this regulation.

Sec. 2. *“Presiding officer” means:*

- 1. The Chair of the Commission;*
- 2. A member of the Commission designated by the Chair of the Commission to preside over and conduct hearings or other proceedings, or any portion thereof; or*
- 3. A hearing officer designated by the Chair of the Commission to preside over and conduct hearings or other proceedings, or any portion thereof.*

Sec. 3. *“Staff” means the Regulatory Operations Staff of the Commission.*

Sec. 4. *If the staff is not the complainant, the staff may file a response to a complaint within 5 working days after the respondent files a response in accordance with NAC 455.315.*

Sec. 5. NAC 455.200 is hereby amended to read as follows:

455.200 As used in NAC 455.200 to 455.450, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 455.205 to ~~455.240,~~ *455.235*, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 455.205 is hereby amended to read as follows:

455.205 “Complainant” means ~~a person~~ *the Attorney General, a district attorney, a city attorney, the staff, the governmental agency that issued the permit to conduct an excavation or demolition, an operator, or a person conducting an excavation or demolition* who ~~complains~~ *submits a complaint* to the Commission. ~~of a violation of the provisions of this chapter or NRS 455.080 to 455.180, inclusive.~~

Sec. 7. NAC 455.210 is hereby amended to read as follows:

455.210 “Complaint” means ~~+~~ *a written complaint made to the Commission by a complainant:*

1. ~~An oral complaint; or~~ *Alleging a violation of a provision of this chapter or NRS 455.080 to 455.180, inclusive; and*
2. ~~A written complaint.~~ *Seeking the imposition of a civil penalty pursuant to NRS 455.170.*

Sec. 8. NAC 455.225 is hereby amended to read as follows:

455.225 “Party to a ~~written~~ complaint” includes:

1. The complainant; ~~and~~
2. The respondent ~~+~~;
3. *The staff, if the staff is not the complainant; and*
4. *A person who is granted leave to intervene pursuant to NAC 703.580.*

Sec. 9. NAC 455.235 is hereby amended to read as follows:

455.235 “Respondent” means a person against whom ~~+~~

~~1. An oral~~ **a** complaint is made. ~~;~~ ~~or~~

~~2. A written complaint is filed.~~

Sec. 10. NAC 455.245 is hereby amended to read as follows:

455.245 The Commission **or presiding officer** 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.~~ **2.** The person requesting the deviation provides a specific reference to each provision of this chapter from which deviation is requested ~~+~~ **;** **and**

3. *The Commission or presiding officer finds that the deviation is in the public interest and not contrary to statute.*

Sec. 11. NAC 455.270 is hereby amended to read as follows:

455.270 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. 12. NAC 455.275 is hereby amended to read as follows:

455.275 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. 13. NAC 455.280 is hereby amended to read as follows:

455.280 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 or her name and address. If a person is appearing on behalf of a party to a ~~{written}~~ complaint, the person must also identify the party he or she represents.

Sec. 14. NAC 455.285 is hereby amended to read as follows:

455.285 1. ~~{A party to a written complaint}~~ *Subject to the specific requirements in this section for representation by an attorney, in any proceeding before the Commission, a person may represent himself or herself or may be represented by an attorney. Any other person who satisfies the Commission **or presiding officer** that ~~{he or she}~~ **the person** possesses the expertise ~~{to render valuable service to the Commission,}~~ and ~~{that he or she}~~ 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. **The Commission may, for good cause shown, exclude any representative or impose conditions upon the participation of any representative appearing before the Commission pursuant to this section.***

2. *The provisions of this section rather than the provisions of Supreme Court Rule 42 govern appearances before the Commission by an attorney who is not admitted and entitled to practice before the Supreme Court of Nevada.*

3. An attorney ~~{at law}~~ appearing ~~{as counsel}~~ in any ~~{hearing}~~ *proceeding before the Commission* 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 or she}~~ *or the District of Columbia.*

4. *With respect to any attorney appearing as a representative in a contested case:*

(a) If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada and does not reside in this State, the attorney must associate with an attorney so admitted and entitled to practice ~~†~~ ~~—3. Counsel for†~~ and must file a notice of association with the Commission pursuant to this section unless, except as otherwise provided in paragraph (b), the attorney filing the notice has appeared at least once before the Commission in the substantive area of utility regulation governed by the provisions of this chapter in the 3 years immediately preceding the date on which the case is accepted for filing.

(b) Notwithstanding any previous appearance before the Commission by the attorney, the Commission may, for good cause shown, require the attorney to associate with an attorney so admitted and entitled to practice and to file a notice of association pursuant to this section.

5. A notice of association required pursuant to this section must:

(a) Identify each jurisdiction in which the attorney who is required to file the notice is admitted and in good standing;

(b) Identify by name and State Bar of Nevada identification number the attorney with whom the attorney who is required to file the notice is associating;

(c) Describe the qualifications of the attorney who is required to file the notice to advise and assist in the presentation of the contested case before the Commission; and

(d) Be signed by the attorney who is required to file the notice and by the attorney identified in paragraph (b).

6. Except as otherwise provided in subsection 7, the Commission or presiding officer may require the attorney who is admitted and entitled to practice before the Supreme Court of

Nevada and who is identified in a notice of association pursuant to paragraph (b) of subsection 5 to sign any pleadings and be present at any proceeding on the record.

7. An attorney who resides in this State and who is not admitted and entitled to practice before the Supreme Court of Nevada may not appear in any proceeding before the Commission unless the attorney:

(a) Is qualified or has an application for qualification pending for the limited practice of law pursuant to Supreme Court Rule 49.10; and

(b) Associates with an attorney who is admitted and entitled to practice before the Supreme Court of Nevada and files a notice of association pursuant to this section. The attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified in the notice of association must sign any pleadings and be present at any proceeding on the record.

8. An attorney from the staff ~~{of the Commission or his or her assistant}~~ shall represent the staff ~~{of the Commission}~~ in all proceedings before the Commission.

9. As used in this section, “contested case” has the meaning ascribed to it in NRS 233B.032.

Sec. 15. NAC 455.295 is hereby amended to read as follows:

455.295 1. Any representative ~~{of a party to a written complaint}~~ wishing to withdraw from a ~~{hearing}~~ **proceeding** before the Commission must make a motion stating the reasons for the requested withdrawal.

2. The ~~{Commission}~~ **presiding officer** may order the representative to serve the motion in writing upon the party to the ~~{written}~~ complaint whom he or she represents and upon all parties to the ~~{written}~~ complaint.

Sec. 16. NAC 455.310 is hereby amended to read as follows:

455.310 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) *Set forth each provision of this chapter or NRS 455.080 to 455.180, inclusive, allegedly violated by the respondent;*

(c) 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

~~{e)}~~ (d) 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 NAC 455.120, any extensions granted pursuant to the provisions of NAC 455.165, correspondence ~~{,}~~ *and* 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.}~~ *Except as otherwise provided in NAC*

455.370, all documents required to be served on a party by any other party must be served in one of the following ways:

(a) *In person.*

(b) By mail. If service is by mail, the service is complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail.

(c) By electronic mail. If service is by electronic mail, the service is complete when sent, except service is deemed to have occurred on the next business day if the electronic mail message is sent after 5 p.m. on a working day, on a Saturday, on a Sunday or on a holiday during which the Commission's offices are closed.

(d) Via a password-protected website, if agreed to by the parties and pursuant to the rules determined by the parties.

3. After the commencement of a proceeding, a copy of each pleading to be filed with the Commission must be served by the pleading party on every other party of record. If a party of record is represented by an authorized representative or an attorney, service must be made on the representative or attorney. Service must be made before or concurrently with the filing of the pleading with the Commission.

4. If requested in advance by another party, a party serving a document shall telephone the requesting party when the document is ready to be served so that it may be accepted personally by the requesting party in lieu of service by mail.

Sec. 17. NAC 455.315 is hereby amended to read as follows:

455.315 1. A ~~{person against whom}~~ *respondent who is served with a {written} complaint ~~{is made}~~ in accordance with NAC 455.310* shall file with the ~~{Division}~~ *Commission* a written response to the complaint within 15 calendar days after ~~{receiving}~~ *service of the {written}* complaint unless, for good cause shown, the ~~{Division}~~ *Commission* 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}~~ :

(a) A copy of the record of the notification transmitted by the association for operators to operators pursuant to the provisions of NAC 455.120, ~~{any}~~ *if applicable*;

(b) *Any* extensions granted pursuant to the provisions of NAC 455.165 ~~{, correspondence,}~~ ;

(c) *Correspondence and* photographs ~~{and lists of potential witnesses, and:~~

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

~~—(b)}~~ ;

(d) A ~~{detailed admission or denial of}~~ *response to* each material allegation of the ~~{written}~~ complaint ; and ~~{a}~~

(e) A full statement of the facts and matters of law relied upon as a defense.

3. *If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall state that fact, which shall be deemed a denial of the allegation. If the respondent intends in good faith to qualify or deny only part of an allegation, the respondent shall specify so much of the allegation as the respondent believes is true and deny the remainder of the allegation.*

4. The response must:

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

(b) Include the full name, address , *electronic mail address* and telephone number of the respondent and, if represented, the name, address , *electronic mail address* and telephone number of his or her 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.}~~

5. An unexcused failure of the respondent to respond to the ~~{written}~~ complaint within the prescribed time ~~{shall}~~ *may* be deemed *by the Commission or presiding officer as* an admission by the respondent of all relevant facts stated in the ~~{written}~~ complaint. *If all relevant facts are deemed admitted to pursuant to this subsection, the Commission or presiding officer may conduct a hearing to impose a civil penalty against the respondent pursuant to NRS 455.170.*

Sec. 18. NAC 455.330 is hereby amended to read as follows:

455.330 If ~~{the Commission determines}~~ *a presiding officer, after receipt of a response to a complaint pursuant to NAC 455.315 and a response, if any, from the staff pursuant to section 4 of this regulation, believes* that no probable cause exists for ~~{a written}~~ *the* complaint ~~{received by the Commission or if the written complaint has been settled and the Commission has received notice of the settlement.}~~, *the presiding officer shall request that* the Commission ~~{will}~~ *vote to* dismiss the ~~{written}~~ complaint ~~{}~~ *without prejudice.*

Sec. 19. NAC 455.335 is hereby amended to read as follows:

455.335 If the Commission *or presiding officer* determines that probable cause exists for a ~~{written}~~ complaint, ~~{received by the Commission.}~~ the Commission ~~{will.}~~ *or presiding officer shall:*

1. Set a date for a *prehearing conference;*
2. *Set a date for a* public hearing on the ~~{written}~~ complaint; and
- ~~{2.}~~ 3. Order appropriate interim relief as the Commission *or presiding officer* deems ~~{appropriate.}~~ *necessary or prudent.*

Sec. 20. NAC 455.340 is hereby amended to read as follows:

455.340 1. The Commission *or presiding officer* may, upon its *or the presiding officer's* 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}~~ *Unless otherwise ordered for good cause shown, 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 *or presiding officer* 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. 21. NAC 455.350 is hereby amended to read as follows:

455.350 1. ~~{Except as otherwise provided in this section, the}~~ *The* Commission, the staff, ~~{of the Commission or}~~ any party to ~~{the written}~~ a complaint ~~{may obtain}~~ *or any potential complainant is subject to the provisions of this chapter concerning* discovery ~~{pursuant to the applicable provisions of}~~, *but is not bound by* the Nevada Rules of Civil Procedure ~~{-}~~ *or title 4 of NRS when conducting:*

(a) An investigation relating to a violation of this chapter or NRS 455.080 to 455.180, inclusive, before the filing of a complaint;

(b) Any discovery using a written data request or written interrogatories relating to a violation of this chapter or NRS 455.080 to 455.180, inclusive, before or during the course of a proceeding concerning a complaint;

(c) Any oral deposition relating to a violation of this chapter or NRS 455.080 to 455.180, inclusive, before or during the course of a proceeding concerning a complaint; or

(d) Any hearing or similar proceeding concerning a complaint.

↪ No informality in any proceeding or in the manner of taking testimony or conducting discovery will invalidate any order, decision, rule or regulation made. Any investigation or discovery conducted pursuant to this subsection is valid if any information requested is not

privileged and is reasonably calculated to obtain information that is relevant to the proceeding.

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.}~~ *Except as otherwise provided in subsection 3, before the filing of a complaint, the staff or any potential complainant may undertake an appropriate investigation of an operator or excavator to determine:*

(a) Whether a violation of this chapter or NRS 455.080 to 455.180, inclusive, has occurred;
or

(b) Any fact, circumstance, condition, practice or matter that the staff or potential complainant determines is necessary to assist in the enforcement of this chapter or NRS 455.080 to 455.180, inclusive.

3. *Any operator or excavator who is the subject of an investigation or against whom a complaint is filed may:*

(a) Before a complaint is filed, petition the Commission for appropriate relief if the operator or excavator believes that the investigation is conducted for an improper purpose or is overbroad or unduly burdensome. If the Commission accepts a petition filed pursuant to this paragraph, the Commission will assign the petition to a presiding officer.

(b) After a complaint is filed, file a motion with the Commission to prohibit any discovery or to restrict or modify the scope of any discovery.

↪Any petition or motion filed pursuant to this subsection must demonstrate good cause for the requested relief and must not be filed to cause any delay or otherwise burden an investigation or proceeding. The Commission or presiding officer may suspend any

investigation or discovery conducted pursuant to this subsection pending the outcome of any action by the Commission or a presiding officer.

4. A motion to limit the number of data requests must be filed with the Commission and served upon all parties of record not later than 45 days after the opening of the complaint docket.

5. Except as otherwise provided in subsection 6, 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 complaint, response or petition for leave to intervene and may be sent by United States mail, overnight delivery service, facsimile or electronic mail. All data requests, notices of depositions, objections and responses to data requests also must be served upon the staff.

6. In lieu of service pursuant to subsection 5, a responding party in a case with a significant volume of discovery responses may deposit those responses in a password-protected website.

7. A notice of deposition must state the date, time and location of the deposition and be served at least 10 working days before the date of the deposition, unless a shorter period is agreed upon by the deposing party and the deponent's counsel. The deposing party may enumerate in the notice any specific documents the deponent must bring to the deposition.

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

9. Unless otherwise ordered by the Commission or 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 working days after receipt of the request by the responding party, except that the responding party will be allowed an additional 5 working days within which to respond if the responding party timely notifies the requesting party of the need for the additional time to respond because the responding party is experiencing technical or practical difficulties in providing a thorough response within the 10-day period.

10. Except as otherwise provided in subsection 11 or upon order from the Commission or presiding officer, a response to a data request must be submitted in the following quantities and to the following persons:

(a) Two copies must be submitted to the counsel for the staff assigned to the docket, unless directed otherwise by the staff in the data request; and

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

11. 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 counsel for the staff assigned to the docket within 2 working 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.

12. 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 may conduct a telephonic conference to resolve the discovery dispute and shall rule on all motions relating to discovery.

13. The following standards apply to a response to a discovery request to the extent available in the format requested:

(a) Computer files must be provided in an executable file format specified by the staff.

(b) Image files must not be used.

(c) Nominally numeric fields, including, without limitation, account numbers or negative values, must contain numeric data and not literal data.

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

14. If a party who is responding to a data request believes that the response contains information which is confidential or commercially sensitive or which constitutes a trade secret, the party may, before providing the response, request that a confidentiality agreement be signed by the party 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 who requested the confidentiality agreement; or

(b) Pursuant to an order of a court of competent jurisdiction or the Commission.

15. A party claiming that a response to a data request is confidential must submit as part of the response, in addition to the full unredacted confidential copy to those parties who have signed a confidentiality agreement pursuant to subsection 14, a redacted copy of the response to the data request and:

(a) Describe with particularity the information to be treated as confidential information;

(b) Specify the grounds for the claim of confidential treatment of the information; and

(c) Specify the period during which the information must be retained, which may not exceed 5 years unless a request for an extension is granted by the Commission.

16. The parties may agree in writing to alternative discovery procedures and time frames. 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 shown.

17. If a responding party fails to respond adequately after an order from the Commission or presiding officer concerning discovery, the Commission or presiding officer may, upon the motion of any party of record, enter such order as the Commission or presiding officer deems just and appropriate.

18. A response to a motion for discovery must be filed with the Commission and served upon all parties of record within 5 working 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 working days after the response is filed with the Commission.

19. 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.

20. As used in this section:

(a) “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.

(b) “Potential complainant” means the Attorney General, a district attorney, a city attorney, the staff, the governmental agency that issued the permit to conduct an excavation or demolition, an operator, or a person conducting an excavation or demolition who may bring an action for the enforcement of a civil penalty pursuant to NRS 455.170.

Sec. 22. NAC 455.355 is hereby amended to read as follows:

455.355 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. *A witness from whom a party to the complaint may request any evidence of facts, but who is not an employee, agent or representative of that party to the complaint is not required to submit to the Commission in advance any prepared testimony. Any party to the complaint may request that written interrogatories, depositions, affidavits or other forms of sworn evidence from such a witness be submitted into evidence at the hearing, if the witness is otherwise made available at the hearing for cross-examination.*

4. 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. 23. NAC 455.360 is hereby amended to read as follows:

455.360 1. The Commission *or presiding officer* 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 , *including, without limitation, conferences by telephone,* 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 ~~H~~ *or presiding officer,* the parties to the ~~written~~ complaint may make opening statements.

Sec. 24. NAC 455.365 is hereby amended to read as follows:

455.365 1. Complainants may present their evidence first at a hearing. Then the respondents may present their evidence. The Commission will *or the presiding officer shall* designate the stage of the hearing in which a member of the staff ~~of the Commission~~ may be heard ~~H~~, *if the staff is not the complainant. To the extent practicable, an intervener shall follow the party with respect to whom intervention is made, unless the Commission or presiding officer determines otherwise. If the intervention is not in support of the complainant or respondent, the Commission will or presiding officer shall designate the stage of the*

hearing at which an intervener may be heard. Evidence must be received in the following order unless the Commission *or presiding officer* determines that a special circumstance requires a different order:

- (a) Complainant;
- (b) Respondent;
- (c) Staff ~~{of the Commission;}~~ , *if the staff is not the complainant;* and
- (d) Rebuttal by complainant.

2. ~~{Witnesses may be cross-examined by any}~~ *The Commission or presiding officer may allow rebuttal evidence from the respondent if good cause is shown.*

3. *Any* Commissioner, ~~{the Deputy Commissioner, and the}~~ *presiding officer,* administrative ~~{assistants and}~~ *attorney, policy advisor or* legal counsel for the Commission ~~{~~
~~—3.}~~ *may question a witness at any time in order to clarify any testimony provided by the witness.*

4. 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.}~~ *or presiding officer.*

5. 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 *or presiding officer* directs a different order for the convenience of the parties.

Sec. 25. NAC 455.370 is hereby amended to read as follows:

455.370 1. ~~{A request by}~~ *If* a party to ~~{the written}~~ *a* complaint *fails to respond adequately to a request for discovery, the party requesting the discovery may move* for an order

for the appearance of a witness at any designated place of *a conference, deposition or* hearing or for the production of a book, paper or document . *Any motion for such an order* must be made in the form of a written motion filed with the Commission ~~{}~~, *or any party to a complaint may request a telephonic conference with the presiding officer regarding a discovery dispute.*

2. A motion for an order *for the appearance of a witness at any designated place of a conference, deposition or hearing or* 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 *witness*, book, paper or document desired.

3. If the motion is granted, the Commission will issue the order ~~{}~~ *and provide for service of the order upon the appropriate person by personal service or certified mail.* 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. 26. NAC 455.380 is hereby amended to read as follows:

455.380 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.}~~ *presiding officer.* When an objection is made to the admission or exclusion of evidence, the grounds relied upon must be stated briefly. The ~~{Commission will}~~ *presiding officer shall* 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. 27. NAC 455.390 is hereby amended to read as follows:

455.390 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. 28. NAC 455.395 is hereby amended to read as follows:

455.395 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~~ *Certified copies of* documents, *including, without limitation, a copy of a record of notification transmitted by an association for operators to an operator or excavator,* 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. 29. NAC 455.400 is hereby amended to read as follows:

455.400 In any hearing, the Commission *or presiding officer* may order briefs to be filed within a reasonable time. The ~~{original and seven copies of each brief}~~ *briefs* must be filed *in accordance* with the ~~{Commission}~~ *provisions of NAC 703.132* and must be accompanied by an acknowledgment of or an affidavit showing service on each party to the ~~{written}~~ complaint.

Sec. 30. NAC 455.405 is hereby amended to read as follows:

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

Sec. 31. NAC 455.425 is hereby amended to read as follows:

455.425 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}~~ *shall* 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. 32. NAC 455.430 is hereby amended to read as follows:

455.430 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}~~ **10 working** 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}~~ **10 working** 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. 33. NAC 455.445 is hereby amended to read as follows:

455.445 1. If a civil penalty is ~~recovered~~ *assessed* by the Commission and the complainant wishes to recover his or her 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 the complainant's 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~~ :

(1) Attorney's fees or fees paid to any other representative of the party.

(2) Reimbursement of any costs for the staff.

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

Sec. 34. NAC 455.215, 455.220, 455.230, 455.240, 455.260, 455.265, 455.305, 455.320, 455.325, 455.420 and 455.440 are hereby repealed.

TEXT OF REPEALED SECTIONS

455.215 “Division” defined. (NRS 703.025, 704.260, 704.280) “Division” means the Division of Safety and Quality Assurance of the Commission.

455.220 “Oral complaint” defined. (NRS 703.025, 704.260, 704.280) “Oral complaint” means an allegation of a violation of the provisions of this chapter or NRS 455.080 to 455.180, inclusive.

455.230 “Party to an oral complaint” defined. (NRS 703.025, 704.260, 704.280) “Party to an oral complaint” includes:

1. The complainant; and
2. The respondent.

455.240 “Written complaint” defined. (NRS 703.025, 704.260, 704.280) “Written complaint” means a complaint filed pursuant to the provisions of NRS 455.170.

455.260 Availability of forms. (NRS 703.025, 704.260, 704.280)

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://pucweb1.state.nv.us/pucn>;
- (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.

455.265 Records of complaints. (NRS 703.025, 704.260, 704.280) 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.

455.305 Oral complaints: Resolution; reports to Commission. (NRS 703.025, 704.260, 704.280)

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.

455.320 Investigation and recommendation by Division. (NRS 703.025, 704.260, 704.280)

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.

455.325 Transmittal of unresolved complaints to Commission. (NRS 703.025, 704.260, 704.280)

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.

455.420 Proposed findings of fact and conclusions of law. (NRS 703.025, 704.260, 704.280)

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.

455.440 Resolution of written complaint. (NRS 455.170, 703.025, 704.260, 704.280)

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.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
LCB FILE R029-11 (DOCKET NO. 10-02007)**

The following informational statement is submitted for adopted amendments to Nevada Administrative Code Chapters 703 and 704.

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

Copies of the proposed regulations, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the Public Utilities Commission of Nevada (“PUCN”), <http://puc.nv.gov>, mailed to all county libraries in Nevada, published in the following newspapers:

Ely Times
Las Vegas Review Journal
Nevada Appeal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

First Judicial District Court
885 East Musser Street
Carson City, Nevada 89701

Second Judicial District Court
75 Court Street
Reno, Nevada 89501

Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Nevada Bell Telephone Company, d/b/a AT&T Nevada and AT&T Wholesale, AT&T Corp. and TCG Los Angeles, New Cingular Wireless PCS, LLC d/b/a Cingular Wireless, Nevada Power Company d/b/a NV Energy, Sierra Pacific Power Company d/b/a NV Energy, Southwest Gas Corporation, Central Telephone Company d/b/a CenturyLink, and the Regulatory Operations Staff all advocated changes that would procedurally streamline various excavation matters before the PUCN, including identification of persons entitled to complain; providing a more flexible process for filing complaints, responding to complaint allegations, and conducting discovery; eliminating the need for

non-parties to pre-file testimony; and reducing administrative cost and burden on utility representatives.

Copies of the transcripts of the proceedings are available for review at the offices of the PUCN, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

2. The number of persons who:

(a) Attended each hearing:

August 14, 2012 (Workshop) – 5

August 20, 2012 (Hearing) – 2

October 19, 2012 (Hearing) – 4

(b) Testified at each hearing:

August 14, 2012 (Workshop) – 5

August 20, 2012 (Hearing) – 0

October 19, 2012 (Hearing) – 4

(c) Submitted to the agency written comments: 5

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 in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question #1.

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.

The permanent regulations were adopted on November 15, 2012. Changes were made to the proposed regulations.

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.

(a) Both adverse and beneficial effects:

The regulations will result in streamlining the procedural process for the filing of complaints under NAC sections 455.200 through 455.450. The streamlined process will provide a more fair application of the rules between larger excavator businesses and small excavator businesses. The proposed regulations have a positive financial impact on

all parties to a complaint proceeding by reducing legal costs, and a positive financial impact on non-parties by eliminating the need to pre-file testimony.

(b) Both immediate and long-term effects:
See Item # 5(a).

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

There is no additional cost to the agency for enforcement of these regulations.

7. A description of any regulations of other state or government 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.

These regulations do not overlap or duplicate any federal, state, or local regulations.

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

N/A

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.

N/A

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The PUCN has determined that the proposed regulations do not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination, the PUCN adopted the findings of Staff, which conducted a Delphi Method exercise to determine the impacts. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts.