

# PROPOSED REGULATION OF THE PUBLIC UTILITIES

## COMMISSION OF NEVADA

### LCB File No. R030-22

March 24, 2022

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

AUTHORITY: § 1, NRS 455.110, 455.115, 703.025, 704.260 and 704.280; §§ 2 and 3, NRS 455.130, 703.025, 704.260 and 704.280; § 4, NRS 455.137, 703.025, 704.260 and 704.280; §§ 5 and 6, NRS 703.025, 704.260 and 704.280.

A REGULATION relating to subsurface installations; requiring an association for operators to compile certain reports requested by the Regulatory Operations Staff of the Public Utilities Commission of Nevada; requiring an operator of a subsurface installation to notify an association for operators upon the completion of certain duties related to the location and identification of subsurface installations; requiring an association for operators to notify an excavator upon receiving a notification from every relevant operator regarding the completion of duties related to the location and identification of subsurface installations; revising the conditions that must be satisfied before an excavation or demolition may commence; and providing other matters properly relating thereto.

#### **Legislative Counsel's Digest:**

Existing law authorizes the Public Utilities Commission of Nevada to regulate excavations and demolitions near subsurface installations, which are defined as pipelines, force mains, supply lines, conductors, conduits, cables, ducts, wires, communications lines, sewer lines, storm drains, other drain lines or other structures that are located underground. (NRS 455.080-455.180, 704.260, 704.280) **Section 1** of this regulation requires an association for operators of subsurface installations to compile any report requested by the Regulatory Operations Staff of the Commission concerning information received from operators of subsurface installations and excavators.

Existing law and regulations require an operator who is notified of a proposed excavation or demolition to: (1) locate and identify the subsurface installations of the operator located within the affected area of the excavation or demolition; and (2) place certain markings and otherwise convey certain information to the excavator regarding the location and description of any subsurface installation located within the affected area. (NRS 455.130, NAC 455.125) **Section 3** of this regulation requires an operator to immediately notify the association for operators of which it is a member: (1) once the operator has completed its duties with respect to placing markings and otherwise conveying information to the excavator regarding any subsurface installation; or (2) if the excavator and operator have agreed that the operator will complete such

duties within a timeframe that exceeds 2 working days after the operator is notified of the excavation or demolition, once the operator has commenced the performance of such duties. **Section 2** of this regulation requires the association for operators to immediately send an electronic notification to the excavator upon receiving the notification required by **section 3** from every operator who was notified of the excavation or demolition. **Sections 5 and 6** of this regulation make conforming changes.

Existing regulations prohibit an excavator, except in an emergency, from commencing an excavation or demolition before: (1) the date and time identified by the excavator as the commencement of the excavation or demolition; and (2) two working days after the date and time the excavator provided notification to the association for operators. (NAC 455.145) **Section 4** of this regulation removes this limitation.

Existing regulations require an excavator to review certain materials before commencing an excavation or demolition to ensure that all subsurface installations in the affected area have been properly located and identified. (NAC 455.145) **Section 4** adds the electronic notification sent by the association for operators to the excavators pursuant to **section 2** to the list of materials which must be reviewed.

**Section 1.** Chapter 455 of NAC is hereby amended by adding thereto a new section to read as follows:

*An association for operators shall compile any report requested by the Regulatory Operations Staff of the Commission regarding information provided to the association for operators by operators and excavators pursuant to this chapter and chapter 455 of NRS.*

**Sec. 2.** NAC 455.120 is hereby amended to read as follows:

455.120 **1.** 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.

**2.** *Upon receiving the notification required pursuant to subsection 3 of NAC 455.125 from every operator to whom the association for operators transmitted information pursuant*

*to subsection 1, an association for operators shall immediately send an electronic notification to the excavator.*

**Sec. 3.** NAC 455.125 is hereby amended to read as follows:

455.125 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 NAC 455.130 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.

3. *An operator shall:*

*(a) Immediately notify the association for operators once the duties described in subsections 1 and 2 have been completed; or*

*(b) If the operator and excavator mutually agree upon a time for the completion of the duties described in paragraph (a) of subsection 1 of NRS 455.130 which is later than 2 working days after the date on which the operator received notice through the association for operators pursuant to paragraph (a) of subsection 1 of NRS 455.110, immediately notify the association for operators once the operator has commenced the performance of the duties described in subsections 1 and 2, and inform the association for operators that the duties described in subsections 1 and 2 will be completed within a time mutually agreed upon by the operator and excavator.*

Sec. 4. NAC 455.145 is hereby amended to read as follows:

455.145 ~~1-1~~ Except when commencing an emergency excavation as provided in the provisions of subsection 2 of NRS 455.110, an excavator:

~~1(a)~~ 1. Shall not commence an excavation or demolition ~~1-~~

~~1-1~~ ~~(1) Until~~ *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 NAC

455.125 . ~~1-~~ ~~and~~

~~1-1~~ ~~(2) Before:~~

~~1-1~~ ~~(1) The date and time the excavator identified as the date and time of commencement of the excavation or demolition; and~~

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

~~—(b)~~ 2. 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)}~~ (a) All marks made by operators pursuant to the provisions of NAC 455.125;

~~{(2)}~~ (b) All marks made by the excavator pursuant to the provisions of NAC 455.115;

~~{(3)}~~ (c) 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)~~ (d) 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 NAC 455.125, 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.† ; and~~

*(e) The electronic notification sent by the association for operators to be excavated pursuant to subsection 2 of NAC 455.120.*

Sec. 5. NAC 455.310 is hereby amended to read as follows:

455.310 1. A complaint filed with the Commission must:

(a) Clearly and concisely state the grounds of the 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

(d) Be accompanied by copies of 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 *subsection 1 of* NAC 455.120, any extensions granted pursuant to the provisions of NAC 455.165, correspondence and photographs.

2. 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. 6.** NAC 455.315 is hereby amended to read as follows:

455.315 1. A respondent who is served with a complaint in accordance with NAC 455.310 shall file with the Commission a written response to the complaint within 15 calendar days after service of the complaint unless, for good cause shown, the Commission extends the time for responding.

2. The response must include, without limitation:

(a) A copy of the record of the notification transmitted by the association for operators to operators pursuant to the provisions of *subsection 1 of* NAC 455.120, if applicable;

(b) Any extensions granted pursuant to the provisions of NAC 455.165;

(c) Correspondence and photographs;

(d) A response to each material allegation of the complaint; and

(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.

5. An unexcused failure of the respondent to respond to the complaint within the prescribed time may be deemed by the Commission or presiding officer as an admission by the respondent of all relevant facts stated in the complaint. If all relevant facts are deemed admitted 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.