

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

LCB File No. R021-07

July 26, 2007

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

AUTHORITY: §§1-11, NRS 703.025 and 704.210.

A REGULATION relating to public utilities; revising provisions pertaining to persons who are allowed to participate as commenters in a proceeding; allowing certain organizations that claim to represent the public interest to participate as interveners in a proceeding in certain circumstances; revising provisions pertaining to persons who are allowed to participate as interveners in a proceeding; and providing other matters properly relating thereto.

Section 1. Chapter 703 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation:

Sec. 2. *As used in this section, NAC 703.578 to 703.600, inclusive, and section 3 of this regulation, unless the context otherwise requires, the words and terms defined in NAC 703.578 and section 3 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Nevada-based organization” means a group or organization that:*

- 1. Has members and an office in this State; and*
- 2. Claims to represent the public interest.*

Sec. 4. NAC 703.491 is hereby amended to read as follows:

703.491 1. A person who is not a party to a proceeding may participate in the proceeding as a commenter if:

(a) The person has a direct and substantial interest in the proceeding but the person does not desire to participate in the proceeding as an intervener; or

(b) The person does not have a direct and substantial interest in the proceeding to participate in it as an intervener but the person desires to file written comments , *make an oral presentation or both file written comments and make an oral presentation* concerning issues in the proceeding.

2. To participate in the proceeding as a commenter, the person must file with the Commission a notice of intent to participate as a commenter. If the person files such notice, the Commission will place the person on the service list maintained by the Commission, and the person will receive from the Commission copies of Commission-issued pleadings in the proceeding.

3. Each person who participates in the proceeding as a commenter:

(a) Must be styled a “commenter” in all pleadings;

(b) Is not a party of record; and

(c) Is limited to filing written comments in the proceeding *and making an oral presentation, if the presiding officer allows the commenter to make an oral presentation,* pursuant to subsection 4.

4. ~~Before~~ *Not later than 10 days before* the beginning of the hearing in the proceeding, each commenter may file with the Commission written comments concerning issues in the proceeding. *At the hearing, a commenter may make an oral presentation concerning issues in the proceeding, if the presiding officer, in his discretion, allows the commenter to make such an oral presentation.* The written comments *and any oral presentation* will be made part of the

record of the proceeding, but the written comments *and any oral presentation* will not be treated as evidence.

5. A commenter is not a party of record to the proceeding, and a commenter shall not take any action that only a party of record may take, including, without limitation, presenting or cross-examining witnesses, conducting discovery, filing a petition for reconsideration or rehearing or seeking judicial review of a decision of the Commission.

6. *If a commenter files written comments or makes an oral presentation and the written comments or oral presentation include a representation of fact concerning a party to the proceeding, the presiding officer shall provide that party with a reasonable opportunity to respond to or clarify the representation by filing written comments or making an oral presentation.*

7. If, during the pendency of the proceeding, a commenter claims to have a direct and substantial interest in the proceeding and desires to participate in the proceeding as an intervener, the commenter may file a petition for leave to intervene with the Commission pursuant to NAC 703.578 to 703.600, inclusive. If the petition for leave to intervene is filed with the Commission after the applicable period set forth in NAC 703.590, the petition must state a substantial reason for the delay as required by that section.

Sec. 5. NAC 703.500 is hereby amended to read as follows:

703.500 Except as otherwise provided by specific regulation, in any proceeding before the Commission:

1. Each party of record 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.

2. Each commenter is entitled to ~~file~~ :

(a) *File* written comments with the Commission pursuant to NAC 703.491 ~~{} ; and~~

(b) *Make an oral presentation, at the hearing, concerning the issues in the proceeding, if the presiding officer, in his discretion, allows the commenter to make such an oral presentation.*

Sec. 6. NAC 703.510 is hereby amended to read as follows:

703.510 1. A party or commenter may represent himself or may be represented by an attorney. Any other person who satisfies the Commission or the presiding officer 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 or may be allowed to file written comments *and make an oral presentation, if the presiding officer allows a commenter to make an oral presentation pursuant to NAC 703.491*, on behalf of one or more commenters.

2. An attorney at law appearing as counsel in any proceeding 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 Commission's staff or his assistant shall represent the Commission's staff in all proceedings before the Commission.

Sec. 7. NAC 703.525 is hereby amended to read as follows:

703.525 1. Any person appearing , ~~in a proceeding or~~ filing written comments *or making an oral presentation* in a proceeding must conform to recognized standards of ethical and courteous conduct required of practitioners before the courts of the State.

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

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

Sec. 8. NAC 703.578 is hereby amended to read as follows:

703.578 ~~[As used in NAC 703.578 to 703.600, inclusive, unless the context otherwise requires, “association”]~~ **“Association”** means an organization, other than a for-profit corporation, partnership or limited-liability company, created to represent the interests of its members.

Sec. 9. NAC 703.580 is hereby amended to read as follows:

703.580 1. Any person who claims to have a direct and substantial interest in a proceeding and desires to participate in it as an intervener must file a petition for leave to intervene with the Commission requesting an order permitting the intervention.

2. A person has a direct and substantial interest in a proceeding if:

(a) A statute explicitly confers on the person a right to intervene; or

(b) The person claims an interest relating to the property or transaction which is the subject of the proceeding and the person is so situated that the disposition of the proceeding will, as a practical matter, impair or impede the ability of the person to protect that interest, unless the person is adequately represented by existing parties.

3. A person does not have a direct and substantial interest in a proceeding if the person claims an interest that is:

(a) Based **, wholly or substantially,** on a speculative business or marketing plan;

(b) Based solely on a person’s involvement in a proceeding in another unrelated docket;

(c) Based **, wholly or substantially,** on an interest that is irrelevant to the proceeding; ~~[or]~~

(d) Based solely on a desire to monitor the proceeding or to obtain information from the proceeding ~~[]~~; *or*

(e) Based, wholly or substantially, on a person's involvement in a prior, pending or planned competitive solicitation or other procurement or supply process.

4. A Nevada-based organization that desires to participate in a proceeding as an intervener must file a petition for leave to intervene with the Commission requesting an order permitting the intervention.

Sec. 10. NAC 703.585 is hereby amended to read as follows:

703.585 A petition for leave to intervene must be in writing and set forth the following:

1. The title and docket number of the proceeding in which leave to intervene is sought;
2. The name and address of the petitioner and, if represented, the name, address and telephone number of his attorney or other authorized representative;

3. ~~[A]~~ *If the petitioner:*

- (a) Claims to have a direct and substantial interest in a proceeding, a* clear and concise statement of the direct and substantial interest of the petitioner in the ~~[proceedings and, if the petitioner is]~~ *proceeding.*

- (b) Is an association, or a Nevada-based organization,* all information that is necessary for the petitioner to satisfy the requirements set forth in NAC 703.595;

4. The manner in which the petitioner will be affected by the proceedings;
 5. A statement as to whether the petitioner intends to present evidence in the proceeding;and

6. If affirmative relief is sought, a description of the desired relief and the basis for that relief.

Sec. 11. NAC 703.595 is hereby amended to read as follows:

703.595 1. If the petitioner is a person other than an association *or a Nevada-based organization* and the petition for leave to intervene shows that the petitioner has a direct and substantial interest in the subject of the proceeding, or any part of it, and the intervention would not unduly broaden the issues, the Commission will or the presiding officer may grant leave for the petitioner to intervene or otherwise to appear in the proceeding with respect to the matters set forth in the petition and subject to such reasonable conditions as may be prescribed by the Commission or presiding officer.

2. If the petitioner is an association and:

(a) The petition for leave to intervene shows that two or more members of the association have a direct and substantial interest in the subject of the proceeding, or any part of it;

(b) The petitioner demonstrates, through its charter, a contract or some other document, that the purpose of the association is directly related to the subject of the proceeding and that the association is authorized to represent its members in the proceeding; and

(c) The intervention would not unduly broaden the issues,
↳ the Commission will or the presiding officer may grant leave for the petitioner to intervene or otherwise to appear in the proceeding with respect to the matters set forth in the petition and subject to such reasonable conditions as may be prescribed by the Commission or presiding officer.

3. *If the petitioner is a Nevada-based organization and the petition for leave to intervene shows that:*

(a) The petitioner is asserting an interest that is significantly or substantially related to issues material to the proceeding;

(b) The Commission or presiding officer has not granted leave to intervene pursuant to subsection 1 to a person or entity who is asserting the same interest as the petitioner; and

(c) Another party in the proceeding is not asserting the same interest as the petitioner, ↪ the Commission will or the presiding officer may grant leave for the petitioner to intervene or otherwise to appear in the proceeding with respect to the matters set forth in the petition and subject to such reasonable conditions as may be prescribed by the Commission or presiding officer.

4. If the Commission or presiding officer grants leave for a Nevada-based organization to intervene in a proceeding pursuant to subsection 3, the Commission or presiding officer may limit the participation of the Nevada-based organization in any manner, including, without limitation, allowing the Nevada-based organization to participate as an intervener in a limited number of the issues in the proceeding.

5. If it appears during the proceedings that an intervener has no direct or substantial interest in the proceeding or otherwise does not satisfy the requirements to intervene in the proceeding, and that the public interest does not require his further participation, the Commission will or the presiding officer shall dismiss the intervener from the proceeding.