

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

**LCB File No. R153-07**

§§1, 3, 5, 6 and 7 effective January 30, 2008

§§2 and 4 effective July 1, 2008

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

AUTHORITY: §§1-7, NRS 703.025.

A REGULATION relating to subsurface installations; revising certain provisions relating to excavations and demolitions near subsurface installations; requiring an excavator to request that an operator make additional marks to identify subsurface installations under certain circumstances; requiring excavators and operators to report any contact with, exposure of or damage to a subsurface installation that occurs on or after January 1, 2008, but before January 1, 2009, to the Regulatory Operations Staff of 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 a new section to read as follows:

*1. The excavator and the operator of a subsurface installation within the affected area of the proposed excavation or demolition shall, with respect to an excavation or demolition that occurs on or after January 1, 2008, but before January 1, 2009, report any contact with, exposure of or damage to the subsurface installation that results from the excavation or demolition to the Regulatory Operations Staff of the Commission. The report must be made on the form made available by the Commission on its website.*

*2. The excavator and the operator of a subsurface installation shall:*

*(a) Prepare the report described in subsection 1 for each calendar quarter; and*

*(b) File the report with the Regulatory Operations Staff of the Commission not later than 45 days after the last day of the calendar quarter.*

*3. As used in this section, “any contact with, exposure of or damage to the subsurface installation that results from the excavation or demolition” does not include:*

*(a) Exposure of a subsurface installation that does not result in any damage to the subsurface installation;*

*(b) Any contact with, exposure of or damage to a subsurface installation if the operator of the subsurface installation explicitly authorizes the excavator to contact, expose or damage the subsurface installation, unless the contact with, exposure of or damage to the subsurface installation results in death, serious physical harm or serious property damage beyond the damage to the subsurface installation; or*

*(c) Any contact with, exposure of or damage to a subsurface installation made by an operator if the subsurface installation is owned, operated or maintained by the operator, unless the contact with, exposure of or damage to the subsurface installation results in death, serious physical harm or serious property damage beyond the damage to the subsurface installation.*

**Sec. 2.** NAC 455.015 is hereby amended to read as follows:

455.015 “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~~ 24 inches horizontally of the perimeter of the proposed area of the excavation or demolition.

**Sec. 3.** NAC 455.135 is hereby amended to read as follows:

455.135 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 subsections 2 and 3 of NAC 455.115; and

(b) Of the approximate location of subsurface installations made by an operator pursuant to paragraph ~~[(b)]~~ (a) of subsection 1 of NAC 455.125.

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

(a) ~~[:]~~ *Shall not begin the excavation or demolition, or, if* the excavator has begun the excavation or demolition, *shall* cease the excavation or demolition ~~[:]~~ *in the portion of the affected area of the proposed excavation or demolition;* and

(b) ~~[:Submit:]~~ *Shall mark the portion of the affected area of the proposed excavation or demolition with white markings, note the areas as remarked and resubmit* 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 , *confirm existing marks or make replacement marks for* the subsurface installations in the ~~[:affected:]~~ *remarked* area . ~~[:of the proposed excavation or demolition.]~~

3. An excavator ~~[:who submits:]~~ *may, by submitting* a notification ~~[:pursuant to the provisions of subsection 2 shall not commence an excavation or demolition until 2 working days after submitting the notification.]~~ *to the association for operators, request that an operator make replacement marks in all or a portion of the affected area of the proposed excavation or*

*demolition if the existing marks are faded but still visible and the excavator has no concerns regarding the accuracy and meaning of the operator's marks as a result of the fading.*

*4. An operator shall respond to a request made by an excavator pursuant to subsection 2 or 3 not later than 2 working days after receipt of the request, unless the operator and excavator agree upon a different period. An operator who complies with the provisions of this subsection is not relieved of his duty to mark his subsurface installations pursuant to NRS 455.133 and NAC 455.130 or any other duty imposed pursuant to this chapter.*

*5. An excavator who complies with the provisions of subsections 2, 3 and 4 is not relieved of his duty to maintain the marks pursuant to subsection 1 or any other duty imposed pursuant to this chapter.*

**Sec. 4.** NAC 455.150 is hereby amended to read as follows:

455.150 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~~ 24 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. 5.** NAC 455.165 is hereby amended to read as follows:

455.165 1. A notification submitted by an excavator to an association for operators is valid to conduct an excavation or demolition for ~~[14]~~ 28 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]~~ 28 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 association for operators shall notify the operators of subsurface installations within the affected area of the proposed excavation or demolition of the extension of time for excavation or demolition, and* the period for which the excavator may engage in the excavation or demolition shall be deemed to be extended for ~~[14]~~ 28 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 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.~~

~~—8.]~~ **4.** An excavator may not request more than ~~{five}~~ *two* 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 NAC 455.170, if}~~ *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. 6.** NAC 455.170 is hereby repealed.

**Sec. 7.** 1. This section and sections 1, 3, 5 and 6 of this regulation become effective upon filing with the Office of the Secretary of State.

2. Sections 2 and 4 of this regulation become effective on July 1, 2008.

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**TEXT OF REPEALED SECTION**

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**455.170 Renewal of expired notification. (NRS 455.110, 703.025, 704.260, 704.280)**

1. In addition to the procedure for the extension of a notification provided pursuant to subsections 2 to 8, inclusive, of NAC 455.165, 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 NAC 455.165 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 NAC 455.165 or renewed pursuant to the provisions of this section.



**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R153-07**

The Public Utilities Commission of Nevada adopted regulations assigned LCB File No. R153-07 which pertain to chapter 455 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**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 annual reports and licensing fees for alternative sellers of natural gas. These documents were also made available at the website of the Public Utilities Commission (“PUC”), <http://pucweb1.state.nv.us/PUCN/>, mailed to all county libraries in Nevada, published in the following newspapers:

Elko Daily Free Press  
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  
101 Convention Center Drive, Suite 250  
Las Vegas, Nevada 89109

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

All participants supported the revisions that revised the regulations to incorporate the statutory changes of Senate Bill 396. Remark procedures were also addressed given the likelihood that the need for remarks would increase based on the expanded timeframe for excavator notification. Some participants argued that there is a public interest benefit to encourage excavators to request remarks so that the approximate location of the underground utility facilities is clear, thereby reducing damage and corresponding service

interruptions. The current regulations provide a disincentive for remarks because the excavator must stop all excavation in the area once remarks have been requested and until the operators have finished remarking the area. Other participants argued that these revisions were beyond the scope of this proceeding, contrary to statutory intent, or unnecessary given that the Commission recently addressed marking issues in 2004 and 2006.

A copy of the transcript of the proceedings is available for review at the offices of the PUC, 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109.

**2. The number of persons who:**

**(a) Attended each hearing:** December 7, 2007 - 11

**(b) Testified at each hearing:** December 7, 2007 - 11

**(c) Submitted to the agency written comments:** 9

**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 December 19, 2007. They were revised to provide clarification to the reporting and remarking procedures.

**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:

Utility operators and excavators will see reduced work demands and costs related to marking and remarking of subsurface installations in areas where excavation and demolition are to occur because of the new efficiencies created by the proposed regulations.

(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 PUC 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 PUC 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.