

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

LCB File No. R029-11

Docket No. 10-02007

July 15, 2011

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

AUTHORITY: NRS 703.025, 704.210

A REGULATION relating to the Public Utilities Commission of Nevada; regarding administrative proceedings and practice before the Commission.

Section 1. Chapter 455 of the Nevada Administrative Code (“NAC”) is hereby amended by adding thereto the provisions set forth herein.

Sec. 2. *“Presiding Officer” means:*

- 1. The Chairman;*
- 2. A Commissioner designated by the Chairman to preside over and conduct hearings or other proceedings, or any portion thereof; or*
- 3. A hearing officer appointed by the Chairman, as defined in NAC 703.051, to preside over and conduct hearings or other proceedings, or any portion thereof, if the Chairman designates the hearing officer as the presiding officer for the hearings or proceedings.*

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

Sec. 4. *If staff is not the complainant, staff may file a response to a complaint within 5 business days after the respondent has filed its response to the complaint pursuant to NAC 455.315.*

Sec. 5. *Staff or other complainants shall undertake appropriate investigations:*

- 1. To determine whether there has been any violation of this chapter or NRS 455.080 through 455.180, inclusive;*
- 2. To determine any facts, circumstances, conditions, practices or matters that Staff or other complainants may deem necessary or proper to aid in the enforcement of any such law or regulation; and*

3. As ordered by the Commission.

Sec. 6. Once a complaint has been filed with the Commission, Staff, other complainants or interveners shall investigate the Complaint and engage in discovery as is deemed necessary and appropriate.

Sec. 7. NAC 455.200 is hereby amended to read as follows:

As used in *Section 1 through Section 34* ~~[NAC 455.200 to 455.450]~~, inclusive, unless the context otherwise requires, the words and terms defined in *Section 1 through Section 34* ~~[NAC 455.200 to 455.450]~~, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. NAC 455.205 is hereby amended to read as follows:

“Complainant” means *the Attorney General, a district attorney, a city attorney, the Regulatory Operations Staff of the Public Utilities Commission of Nevada, the governmental agency that issued the permit to conduct an excavation or demolition, an operator or a person conducting an excavation or demolition* ~~[a person]~~ who complains to the Commission *for action of enforcement of a civil penalty pursuant NRS 455.170* ~~[of a violation of the provisions of this chapter or NRS 455.080 to 455.180, inclusive].~~

Sec. 9. NAC 455.210 is hereby amended to read as follows:

“Complaint” means:

~~[1. An oral]~~ complaint *made to the Commission by a complainant alleging any violation of the provisions of this chapter or NRS 455.080 to 455.180, inclusive, seeking a civil penalty pursuant to NRS 455.170.* ~~[: or]~~

~~[2. A written complaint.]~~

Sec. 10. NAC 455.225 is hereby amended to read as follows:

“Party to a ~~[written]~~ complaint” includes:

1. The complainant; ~~[and]~~
2. The respondent;
3. *The Regulatory Operations Staff of the Public Utilities Commission of Nevada if the Regulatory Operations Staff is not the complainant; and*
4. *Any other interveners granted intervention pursuant to NAC 703.580.*

Sec. 11. NAC 455.235 is hereby amended to read as follows:

“Respondent” means a person against whom:

~~[1. An]~~ *a* ~~[oral]~~ complaint is made ~~[: or]~~

~~2.—A written complaint is filed.]~~

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

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, *and pursuant to Sections 5 and 6, investigate all operators and excavators for compliance with the provisions of this chapter or NRS 455.080 to 455.180, inclusive.*

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

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. 14. NAC 455.280 is hereby amended to read as follows:

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

Sec. 15. NAC 455.285 is hereby amended to read as follows:

1. *In accordance with NAC 703.570, [A] a* party to a ~~[written]~~ complaint may represent himself or may be represented by an attorney. Any other person who satisfies the Commission *or presiding officer* that ~~[he]~~ *the person* possesses the expertise to render valuable service to the Commission, and that ~~[he]~~ is otherwise competent to advise and assist in the presentation of matters before the Commission, may be allowed to appear on behalf of one or more parties.

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

~~[3]2.~~ Counsel for the staff of the Commission or his assistant shall represent the staff of the Commission in all proceedings before the Commission.

Sec. 16. NAC 455.295 is hereby amended to read as follows:

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

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

Sec. 17. NAC 455.310 is hereby amended to read as follows:

~~[1.]~~A ~~[written]~~ complaint filed with the Commission must:

~~[(a)]~~1. Clearly and concisely state the grounds of the ~~[written]~~ complaint and the facts constituting the alleged wrongful acts or omissions~~[:]~~.

2. Specify the provisions in this chapter or in NRS 455.080 to 455.180, inclusive, which the respondent is alleged to have violated[:].

~~[(b)]~~3. Identify whether the alleged wrongful acts or omissions constitute:

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

~~[(2)]~~(b) Willful or repeated violations of the provisions of this chapter or NRS 455.080 to 455.180, inclusive~~[:]~~. ~~[and]~~

~~[(e)]~~4. 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, *if applicable*, any extensions granted pursuant to the provisions of NAC 455.165, correspondence, photographs and lists of potential witnesses.

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

~~(a) Send a letter of acknowledgement of the complaint.~~

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

Sec. 18. NAC 455.315 is hereby amended to read as follows:

1. A *respondent* ~~[person against whom a written complaint is made]~~ shall file with the Commission~~[Division]~~ a written response to the complaint within 15 calendar days after *being served with*~~[receiving]~~ the written complaint unless, for good cause shown, the *presiding officer or the Commission*~~[Division]~~ extends the time for responding. ~~[Any extension of the time for filing a response granted by the Division must be:~~

~~(a) Confirmed in writing; and~~

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

2. The response must include, without limitation, a copy of the record of the notification transmitted by the association for operators to operators pursuant to the provisions of NAC 455.120, *if applicable*, any extensions granted pursuant to the provisions of NAC 455.165, correspondence, photographs and lists of potential witnesses, and:

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

~~[(b)]~~**(a)** A detailed admission or denial of each material allegation of the written complaint;
and

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

3. *If respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state and this has the effect of a denial. When respondent intends in good faith to deny only part or qualify an allegation, the respondent shall specify so much of it as is true and material and shall deny only the remainder.*

~~[3]~~**4.** The response must:

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

(b) Include the full name, address, *electronic mail address* and telephone number of the respondent and, if represented, the name, address and telephone number of his attorney or other authorized representative.

~~[4]5. [If the respondent fails to file a response with the Division within the prescribed time, the Division shall place the matter before the Commission for a determination of probable cause.]~~ An unexcused failure of the respondent to respond to the ~~[written]~~ complaint within the prescribed time ~~[shall]~~ *may* be deemed *by the presiding officer or the Commission as* an admission by the respondent of all relevant facts stated in the ~~[written]~~ complaint. *If the presiding officer or Commission deems that respondent has admitted all relevant facts due to the respondent's unexcused failure to timely respond to the complaint, then the presiding officer or Commission may conduct a hearing to assess the amount of a civil penalty to be assessed against the unresponsive respondent.*

Sec. 19. NAC 455.330 is hereby amended to read as follows:

If *after receipt of response in accordance with NAC 455.315 and a response from staff pursuant to Section 4*, the *presiding officer believes* ~~[Commission determines]~~ 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 [Commission will] *presiding officer shall request that the full Commission vote that the complaint be dismissed [the written complaint] without prejudice.*~~

Sec. 20. NAC 455.335 is hereby amended to read as follows:

If the *presiding officer or the* Commission determines that probable cause exists for a ~~[written]~~ complaint ~~[received by the Commission]~~, the *presiding officer or the* Commission ~~[will]~~*shall*:

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

Sec. 21. NAC 455.340 is hereby amended to read as follows:

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

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

2. Notice of any prehearing conference must be provided to all parties to the ~~[written]~~ complaint. Unless otherwise ordered for good cause shown, the failure of a party to the ~~[written]~~ complaint to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.

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

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

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

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

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

Sec. 22. NAC 455.350 is hereby amended to read as follows:

1. *In conducting any investigation prior to the filing of a complaint, any discovery taken prior to or during the course of a complaint proceeding, or in any hearing on a complaint, the Commission, staff, any other potential complainant, and any party to a complaint is not bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony will invalidate any order, decisions, rule or regulation made. Evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.* ~~[Except as otherwise provided in this section, the Commission, the staff of the Commission or any party to the written complaint may obtain discovery pursuant to the applicable provisions of the Nevada Rules of Civil Procedure.]~~

2. *Staff, any other potential complainant, or any party to a complaint may conduct discovery both prior to a complaint being filed and during the course of a complaint proceeding with regard to any information that is not privileged through written data requests and oral depositions that are reasonably calculated to obtain information that is relevant to the matter.*

~~[2]~~3. 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 discovery. *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.*

4. *Except as otherwise provided in subsection 5, 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 staff.

5. In lieu of service pursuant to subsection 4, a responding party in a case with a significant volume of discovery responses may deposit those responses in a password-protected website.

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

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

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

9. Except as otherwise provided in subsection 10 or upon order from the 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 of the Commission 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.

10. 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 of the Commission assigned to the docket within 2 business 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.

11. 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 telephonic conferences to resolve discovery disputes and shall rule on all motions related to discovery.

12. The following standards apply to discovery responses to the extent available in the format requested:

(a) Computer files must be provided in an executable file format specified by the staff of the Commission assigned to regulatory operations.

(b) Image files must not be used.

(c) Nominally numeric fields, such as account numbers or negative values, must contain numeric data and not literal data.

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

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

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

14. Parties claiming that a response to a data request is confidential must submit, in addition to the full unredacted confidential copy to those parties who have signed a confidentiality agreement, a redacted copy of the data response 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.

15. 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 being shown.

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

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

18. As used in this section, “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.

~~[3]~~19. Discovery must be completed at least 15 calendar days before the date set for the hearing unless ordered by the Commission. Any party to the ~~[written]~~ complaint seeking to have this time shortened or lengthened must do so by a motion to the Commission. The Commission will grant the motion for good cause shown.

Sec. 23. NAC 455.355 is hereby amended to read as follows:

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. Witnesses who are representatives of non-parties to the complaint proceeding but upon whom the complainant is relying for factual evidence, shall not be required to submit pre-filed testimony to the Commission. Any party to a complaint may ask that written interrogatories, a deposition, an affidavit or some other form of sworn evidence from witnesses who are

representatives of non-parties to the complaint be submitted into evidence at the hearing in lieu of pre-filed testimony, so long as the witness is available at the hearing for cross examination.

~~[3]~~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. 24. NAC 455.360 is hereby amended to read as follows:

1. The *presiding officer or the* Commission will:
 - (a) Call a hearing to order and take the appearances of the parties to the ~~[written]~~ complaint who are present.
 - (b) Hold appropriate conferences, *including telephonic conferences*, before or during the hearing.
 - (c) Receive and rule on the admissibility of evidence.
 - (d) Rule on the admissibility of amendments to the pleadings.
 - (e) Act upon any pending motions or petitions which do not involve a final determination of the proceeding.
 - (f) Make proposed opinions, findings and conclusions of law.
 - (g) Issue appropriate interim orders.
 - (h) Recess the hearing as required.
 - (i) Rule on all procedural matters.
 - (j) Set reasonable limits of time for the presentation of oral testimony.
2. At the discretion of the *presiding officer or the* Commission, the parties to the ~~[written]~~ complaint may make opening statements.

Sec. 25. NAC 455.365 is hereby amended to read as follows:

1. Complainants may present their evidence first at a hearing. Then the respondents may present their evidence. The Commission will designate the stage of the hearing in which a member of the staff of the Commission may be heard, *if the staff of the Commission is not the complainant. Interveners shall, as far as possible, follow the party with respect to whom intervention is made, unless the presiding officer determines otherwise. If the intervention is*

not in support of either the complainant or respondent, the presiding officer shall designate at which stage the interveners will be heard. Evidence must be received in the following order unless the Commission determines that a special circumstance requires a different order:

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

2. *The Commission may take rebuttal evidence from the respondent if good cause is shown.*

~~[2]~~3. Witnesses may be cross-examined by any *party to the proceeding, any* Commissioner, *any presiding officer*~~[the Deputy Commissioner]~~, and the administrative *attorneys* ~~[assistants]~~ and legal counsel for the Commission.

~~[3]~~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 *or the presiding officer.*

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

Sec. 26. NAC 455.370 is hereby amended to read as follows:

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

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

3. If the motion is granted, the Commission will issue the order *and the order will be served on the person via personal service or via certified mail. The order provided for in this section is equivalent to a subpoena in a civil action.* 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. 27. NAC 455.380 is hereby amended to read as follows:

1. An objection to the admissibility of evidence may be made by any party to the ~~written~~ complaint, and the objection must be ruled on by the Commission. When an objection is made to the admission or exclusion of evidence, the grounds relied upon must be stated briefly. The Commission will provide an opportunity for a party to a ~~written~~ complaint to respond to an objection raised by any other party regarding the admissibility of evidence. The response 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. 28. NAC 455.390 is hereby amended to read as follows:

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. 29. NAC 455.395 is hereby amended to read as follows:

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. *Certified copies of* ~~Official~~ documents, if pertinent and properly introduced into the record of formal proceedings by reference, *including a copy of the record of the notification transmitted by the association for operators to operators and excavators*. 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. 30. NAC 455.400 is hereby amended to read as follows:

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

Sec. 31. NAC 455.405 is hereby amended to read as follows:

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

Sec. 32. NAC 455.425 is hereby amended to read as follows:

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

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

Sec. 33. NAC 455.430 is hereby amended to read as follows:

1. A petition for reconsideration must specifically:

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

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

2. A petition for rehearing must:

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

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

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

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

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

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

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

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

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

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

Sec. 34. NAC 455.445 is hereby amended to read as follows:

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

(a) Detailing the costs incurred; and

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

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

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

2. Within 5 *business*~~working~~ days after service of the statement of costs, the respondent may move that the Commission relax and settle the costs by filing with the Commission and serving upon the complainant a motion. After the hearing on the motion, the Commission will determine the reimbursable costs.

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

4. In determining the reimbursable costs, the Commission:

(a) Will consider the following:

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

(2) Fees for necessary interpreters.

(3) Fees for photocopies.

(4) Fees for long distance telephone calls.

(5) Fee for postage.

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

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

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

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

(c) Will not consider the reimbursement of any costs for the staff of the Commission.

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