

NV

EXCAVATION LAW

NRS 455.092 "Excavation" means the movement or removal of earth, rock or other material in or on the ground by use of mechanical equipment or by the placement and discharge of explosives. The term includes augering, backfilling, boring, digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and tunneling.



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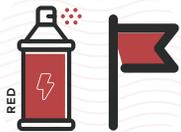
The Nevada Regional Common Ground Alliance (NRCGA) provides an effective, local forum to discuss best practices in damage prevention, and offers free training in the state of Nevada.

NRCGA.ORG

APWA UNIFORM COLOR CODE



Proposed Excavation



Electric



Water



Communication / CATV



Reclaimed Water, Irrigation, Slurry



Temporary Survey Marking



Gas, Oil, Steam



Sewer / Storm Drain

Chapter 455 of Nevada Revised Statutes & Nevada Administrative Code

TITLE 40 – PUBLIC HEALTH AND SAFETY

Revised January 1, 2020

Codes and Statutes accurate as of date of printing. Be sure to stay up to date on the law and statutes at <https://www.leg.state.nv.us/>

NEVADA REVISED STATUTES

CHAPTER 455

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EXCAVATIONS AND HIGH-VOLTAGE LINES

EXCAVATION OR DEMOLITION NEAR SUBSURFACE INSTALLATION

NRS 455.080 Definitions. As used in NRS 455.080 to 455.180, inclusive, unless the context otherwise requires, the words and terms defined in 2.1 2020 USAN Codes&Regs NV ed in NRS 455.082 to 455.105, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1991, 1141; A 2005, 905; 2009, 1168; 2015, 322)

NRS 455.082 “Approximate location of a subsurface installation” defined. “Approximate location of a subsurface installation” means a strip of land not more than 24 inches on either side of the exterior surface of a subsurface installation. The term does not include the depth of the subsurface installation.

(Added to NRS by 1991, 1142; A 2007, 675)

NRS 455.084 “Association for operators” defined. “Association for operators” means an organization that receives notifications pursuant to subsection 1 of NRS 455.110 and transmits such notifications to its members.

(Added to NRS by 1991, 1142)

NRS 455.086 “Damage” defined.

“Damage” means:

1. The substantial weakening of the structural or lateral support of a subsurface installation;
2. The penetration or destruction of any protective coating, housing or other protective device of a subsurface installation; or
3. The partial or complete severance of a subsurface installation.

(Added to NRS by 1991, 1142)

NRS 455.088 “Demolition” defined. “Demolition” means the wrecking, razing, rendering, movement or removal of a structure or mass of material by means of tools, equipment or the placement and discharge of explosives.

(Added to NRS by 1991, 1142)

NRS 455.090 “Emergency” defined. “Emergency” means a sudden, unexpected occurrence that involves clear and imminent danger and requires immediate action to prevent or mitigate loss of life or damage to health, property or essential public services.
(Added to NRS by [1991, 1142](#))

NRS 455.092 “Excavation” defined. “Excavation” means the movement or removal of earth, rock or other material in or on the ground by use of mechanical equipment or by the placement and discharge of explosives. The term includes augering, backfilling, boring, digging, ditching, drilling, grading, plowing-in, ripping, scraping, trenching and tunneling.

(Added to NRS by [1991, 1142](#); A [2009, 1168](#))

NRS 455.093 “High consequence subsurface installation” defined. “High consequence subsurface installation” means the following types of subsurface installations:

1. A high-pressure natural gas pipeline with a normal operating pressure greater than 100 pounds per square inch gauge;
2. A petroleum pipeline;
3. A pressurized sewage pipeline or force main;
4. A high-voltage electric supply line, conductor or cable that has a phase-to-phase potential of 115 kilovolts or more;
5. A high-capacity water pipeline that is 18 inches or more in diameter;
6. An optical carrier level communications line and any related facility;
7. A hazardous materials pipeline; or
8. Any other subsurface installation that if damaged will interrupt services provided by any facility or agency that provides health or safety services to the public, including, without limitation, hospitals, law enforcement agencies, armed forces, firefighting agencies, detention centers, air traffic control, emergency operation centers, telecommunication towers and water or sewer treatment plants.

(Added to NRS by [2015, 322](#))

NRS 455.094 “Mechanical equipment” defined. “Mechanical equipment” means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow or any other equipment used for plowing-in cable or pipe.

(Added to NRS by [1991, 1142](#))

NRS 455.096 “Operator” defined. “Operator” means any person who owns, operates or maintains a subsurface installation. The term does

not include the Department of Transportation.

(Added to NRS by [1991, 1142](#))

NRS 455.098 “Person” defined. “Person” includes a government, governmental agency or political subdivision of a government.

(Added to NRS by [1991, 1142](#))

NRS 455.099 “Sewer main” defined. “Sewer main” means a sewer line with a diameter that exceeds 6 inches.

(Added to NRS by [2009, 1167](#))

NRS 455.0995 “Sewer service lateral” defined. “Sewer service lateral” means a pipe or conduit that connects a building or other property to a sewer main.

(Added to NRS by [2009, 1167](#))

NRS 455.101 “Subsurface installation” defined. “Subsurface installation” means a pipeline, force main, supply line, conductor, conduit, cable, duct, wire, communications line, sewer line, storm drain, other drain line or other structure that is located underground.

(Added to NRS by [1991, 1142](#); A [2015, 323](#))

NRS 455.103 “Unexpected occurrence” defined. “Unexpected occurrence” includes, but is not limited to, fire, flood, earthquake or other cause of the movement of the soil, or a riot, an accident, a motor vehicle crash or an act of sabotage that causes damage to a subsurface installation which requires immediate repair.

(Added to NRS by [1991, 1142](#); A [2015, 1679](#))

NRS 455.105 “Working day” defined. “Working day” means every day from 7 a.m. to 5 p.m., except Saturday, Sunday and any federal or state holiday.

(Added to NRS by [1991, 1142](#))

NRS 455.107 Exemption from compliance with statutory provisions.

1. Except as otherwise provided in subsection 2, possession of a permit to conduct an excavation or demolition does not exempt a person from complying with the provisions of [NRS 455.080 to 455.180](#), inclusive.

2. A person is exempt from complying with the provisions of [NRS 455.080 to 455.180](#), inclusive, if the person obtains the written consent of all operators involved in the proposed excavation or demolition before the person receives a permit to conduct the excavation or demolition.

(Added to NRS by [1991, 1142](#); A [2005, 905](#); [2009, 1168](#))

NRS 455.110 Notification of association for operators required; marking proposed area of excavation or demolition; exception.

1. Except as otherwise provided in subsection 2, a person shall not begin an excavation or demolition if the excavation or demolition is to be conducted in an area that is known or reasonably should be known to contain a subsurface installation, except a subsurface installation owned or operated by the person conducting the excavation or demolition, unless the person:

(a) Notifies the appropriate association for operators pursuant to [NRS 455.120](#), at least 2 working days but not more than 28 calendar days before excavation or demolition is scheduled to commence. The notification may be written or provided by telephone and must state the name, address and telephone number of the person who is responsible for the excavation or demolition, the starting date of the excavation or demolition, anticipated duration and type of excavation or demolition to be conducted, the specific area of the excavation or demolition and whether explosives are to be used.

(b) Cooperates with the operator in locating and identifying its subsurface installation by:

(1) Meeting with its representative as requested; and

(2) Making a reasonable effort that is consistent with the practice in the industry to mark with white paint, flags, stakes, whiskers or another method that is agreed to by the operator and the person who is responsible for the excavation or demolition, the proposed area of the excavation or demolition.

2. A person responsible for emergency excavation or demolition is not required to comply with the provisions of subsection 1 if there is a substantial likelihood that loss of life, health or property will result before the provisions of subsection 1 can be fully complied with. The person shall notify the operator of the action the person has taken as soon as practicable.

(Added to NRS by [1987, 1178](#); A [1991, 1145](#); [2005, 906](#); [2007, 675](#))

NRS 455.115 Record of notification of excavation or demolition; provision of names of operators to whom notice is transmitted by association for operators.

1. An association for operators who receives notification pursuant to [NRS 455.110](#) by telephone and an operator who receives notification of a proposed excavation or demolition by telephone shall keep a written record of the notification for 6 years. The record must include, but is not limited to, the following information:

(a) The name of the person initiating the telephone call;

(b) The name, address and telephone number of the person who is responsible for the excavation or demolition;

(c) The starting date and anticipated duration of the excavation or demolition;

(d) The type of excavation or demolition to be conducted;

(e) The specific area of the excavation or demolition; and

(f) Whether explosives are to be used.

2. If a person makes a notification to an association for operators pursuant to [NRS 455.110](#), the association for operators shall provide to the person the names of the operators to whom the notice is transmitted by the association.

(Added to NRS by [1991, 1144](#))

NRS 455.120 Operator required to join association for operators to receive notification; statement to be filed with county clerk identifying association; record of notification received by telephone. An operator shall:

1. Join an association for operators to receive the notification required pursuant to paragraph (a) of subsection 1 of [NRS 455.110](#) for its members.

2. File a statement with the clerk of the county in which the business of the operator is located:

(a) Containing the name, telephone number and address of the association; and

(b) Describing the geographical area served by the association for operators.

3. Make a written record of each notification of a proposed excavation or demolition that the operator receives by telephone.

(Added to NRS by [1987, 1178](#); A [1991, 1146](#))

NRS 455.125 Duties of operator of sewer main upon receipt of notification concerning sewer service lateral. If an operator of a sewer main receives notice through an association for operators pursuant to paragraph (a) of subsection 1 of [NRS 455.110](#):

1. For a proposed excavation or demolition, the operator of the sewer main shall provide the person responsible for the excavation or demolition with the operator's best available information regarding the location of the connection of the sewer service lateral to the sewer main. The operator shall convey the information to the person responsible for the excavation or demolition in such manner as is determined by the operator which may include any one or more of the following methods, without limitation:

(a) Identification of the location of the connection of the sewer service lateral to the sewer main;

(b) Providing copies of documents relating to the location of the sewer service lateral within 2 working days; or

(c) Placement of a triangular green marking along the sewer main or the edge of the public right-of-way, pointing toward the real property serviced by the sewer service lateral to indicate that the location of the sewer service lateral is unknown.

2. The operator of a sewer main shall make its best efforts to comply with paragraph (a) or (c) of subsection 1 within 2 working days. If an operator of a sewer main cannot complete the requirements of paragraph (a) or (c) of subsection 1 within 2 working days, then the operator and the person responsible for the excavation or demolition must mutually agree upon a reasonable amount of time within which the operator must comply.

3. A government, governmental agency or political subdivision of a government that operates a sewer main:

(a) Except as otherwise provided in subsection 4, in a county with a population of 45,000 or more may not charge a person responsible for excavation or demolition in a public right-of-way for complying with this section.

(b) In a county with a population of less than 45,000 may charge a person responsible for excavation or demolition in a public right-of-way for complying with this section in an amount that does not exceed the actual costs for the operator for compliance with this section. Costs assessed pursuant to this paragraph are not subject to the provisions of NRS 354.59881 to 354.59889, inclusive.

4. A government, governmental agency or political subdivision that operates a sewer main in a county with a population of 45,000 or more may charge a person responsible for excavation or demolition in a public right-of-way for complying with this section in an amount that does not exceed the actual costs for the operator for compliance with this section if:

(a) The sewer system of the operator services not more than 260 accounts; and

(b) There is no natural gas pipeline located within the service area of the operator of the sewer main.

↪ Costs assessed pursuant to this subsection are not subject to the provisions of NRS 354.59881 to 354.59889, inclusive.

5. If the operator of a sewer main has received the information required pursuant to NRS 455.131 or has otherwise identified the location of the sewer service lateral in the public right-of-way, then the operator of the sewer main shall be responsible thereafter to identify the location of the sewer service lateral from that information.

(Added to NRS by 2009, 1167; A 2009, 1171; 2011, 1278)

NRS 455.127 Duty of operator of sewer main to maintain certain information relating to locations of connections. An operator of a sewer main shall maintain all information relating to the locations of connections of sewer service laterals to the sewer main:

1. Developed by the operator pursuant to NRS 455.125; or

2. Provided to the operator pursuant to subsection 2 of NRS 455.131.

(Added to NRS by 2009, 1168)

NRS 455.129 Operator of sewer main does not assume further duties or responsibilities for compliance with provisions. An operator of a sewer main who is not otherwise required by law to be responsible for the maintenance, operation, ownership or repair of a sewer service lateral that connects to the sewer main does not assume any further duty with respect to a sewer service lateral pursuant to this chapter nor become responsible for the maintenance, operation, ownership or repair of the sewer service lateral that connects to the sewer main solely because the operator complied with the provisions of NRS 455.080 to 455.180, inclusive.

(Added to NRS by 2009, 1168)

NRS 455.130 Duties of operator upon receipt of notification concerning certain subsurface installations.

1. Except in an emergency or as otherwise provided in subsection 2 or NRS 455.125, if an operator receives notice through an association for operators pursuant to paragraph (a) of subsection 1 of NRS 455.110, the operator shall:

(a) Locate and identify the subsurface installations and, if known, the number of subsurface installations that are affected by the proposed excavation or demolition to the extent and to the degree of accuracy that the information is available in the records of the operator or can be determined by using techniques of location that are commonly used in the industry, except excavating, within 2 working days or within a time mutually agreed upon by the operator and the person who is responsible for the excavation or demolition;

(b) Remove or protect a subsurface installation as soon as practicable if the operator decides it should be removed or protected; and

(c) Advise the person who contacted the association for operators of the location of the subsurface installations of the operator that are affected by the proposed excavation or demolition.

2. The operator shall notify the person who contacted the association for operators if the operator has no subsurface installations that are affected by the proposed excavation or demolition.

(Added to NRS by 1987, 1178; A 1991, 1146; 2009, 1169)

NRS 455.131 Use of permanent device to identify location of certain subsurface installations required; options for operator of sewer main.

1. Except as otherwise provided in subsection 2, an operator shall, for each subsurface installation that is installed on or after October 1, 2005, which cannot be detected from or above the surface of the ground by means of either the material used in constructing the subsurface installation or a conductor within the subsurface installation, install a permanent device which designates or provides a means of detecting a subsurface installation through the use of a noninvasive method from or above the surface of the ground. Such a device includes, without limitation, a tracer wire or a marker.

2. A person who connects a sewer service lateral to a sewer main shall, at the option of the operator of the sewer main:

(a) Install a permanent device as described in subsection 1 of a type designated by the operator of the sewer main at the connection of the sewer service lateral to the sewer main and where the sewer service lateral exits the public right-of-way and promptly provide the operator of the sewer main with the location of such permanent devices;

(b) Promptly provide the operator of the sewer main with the location of the connection of the sewer service lateral to the sewer main and where the sewer service lateral exits the public right-of-way as described by global positioning system coordinates which:

(1) Are either identified by latitude and longitude using decimal degrees or are identified using coordinates of the Universal Transverse Mercator system; and

(2) Specify for each coordinate whether the North American Datum of 1927, North American Datum of 1983 or the World Geodetic System 1984 was used; or

(c) Provide to the operator of the sewer main notification of when the sewer service lateral is exposed so that the operator of the sewer main can identify the location of the sewer service lateral.

3. As used in this section:

(a) "Above ground marker" is a marker which is installed flush with the surface of the ground or which protrudes above the surface of the ground above a subsurface installation and includes information concerning the subsurface installation.

(b) "Electronic marker" is a marker which is buried at various depths below or near the surface of the ground above a subsurface installation and which contains a passive antenna that:

(1) Can be identified with detection equipment; and

(2) Does not require an internal power source.

(c) "Marker" is a device that physically designates the location of a subsurface installation at intermittent locations along or above the subsurface installation and includes, without limitation, an above ground marker or electronic marker.

(d) "Tracer wire" is a locating wire which is installed in conjunction with a subsurface installation and is connected to a transmitter that carries a signal which is read by a receiver above the surface of the ground for the detection of the location of the subsurface installation.

(Added to NRS by [2005, 904](#); [A 2009, 1169](#))

NRS 455.133 Criteria and colors for marking location of subsurface installation: Regulations of Public Utilities Commission of Nevada.

1. An operator who marks the approximate location of a subsurface installation shall make a reasonable effort to make the markings in a manner that is consistent with the practice in the industry. The operator shall use the identifying criteria and colors set forth in the regulations of the Public Utilities Commission of Nevada for the markings.

2. In adopting regulations setting forth the criteria and colors to be used pursuant to this section, the Public Utilities Commission of Nevada shall use nationally accepted standards for the identifying criteria and colors for marking subsurface installations.

(Added to NRS by [1991, 1143](#); [A 2005, 906](#))

NRS 455.137 Determination of location of subsurface installation required before mechanical equipment may be used.

1. Except as otherwise provided in subsection 2, the person responsible for an excavation or demolition shall, before using any mechanical equipment, determine the exact location of a subsurface installation that is affected by the excavation or demolition by excavating with hand tools or by any other method agreed upon by the person responsible for the excavation or demolition and the operator within the approximate location of the subsurface installation as designated by markings made in accordance with [NRS 455.133](#).

2. A person may use mechanical equipment for the removal of pavement if there are no subsurface installations contained in the pavement.

3. If the exact location of a subsurface installation cannot be determined by using hand tools, the person responsible for an excavation or demolition shall request the operator to provide additional information to locate the installation. The operator shall, within 1 working day, provide any information that is available to the operator to enable the person responsible for the excavation or demolition to determine the exact location of the installation.

(Added to NRS by [1991, 1143](#))

NRS 455.140 Duties of person responsible for contact with, exposure of or damage to subsurface installation.

1. Each person responsible for any excavation or demolition that

results in contact with, exposure of or damage to a subsurface installation shall:

- (a) Notify the operator of the location and nature of the damage; and
- (b) Allow the operator reasonable time, consistent with the practice in the industry, to arrange for and to make any necessary repairs to the subsurface installation before completing the excavation or demolition in the immediate area of the subsurface installation.

2. Each person responsible for any excavation or demolition that results in any damage to a subsurface installation which permits the escape of water, of any flammable, toxic or corrosive gas or liquid, or of electricity, shall:

- (a) Notify the operator; and
- (b) Minimize the hazard until the arrival of the personnel of the operator.

(Added to NRS by [1987, 1178](#); A [1991, 1146](#))

NRS 455.150 Release from liability for cost of repairs to subsurface installation. Any person who substantially complies with the provisions of [NRS 455.080](#) to [455.180](#), inclusive, is not liable for the cost of repairing any damage to a subsurface installation which results from the person's excavation or demolition.

(Added to NRS by [1987, 1179](#); A [1991, 1147](#); [2009, 1170](#))

NRS 455.160 Injunctive relief.

1. The Regulatory Operations Staff of the Public Utilities Commission of Nevada, the Attorney General, an operator, a person conducting an excavation or demolition, or the district attorney of a county or the city attorney of a city in which there is an excavation or demolition or a proposed excavation or demolition which he or she believes may cause death, serious physical harm or serious property damage may file a complaint in the district court for the county seeking to enjoin the activity or practice of an operator or a person who is responsible for the excavation or demolition.

2. Upon the filing of a complaint pursuant to subsection 1, the court may issue a temporary restraining order before holding an evidentiary hearing.

(Added to NRS by [1991, 1143](#); A [1997, 2000](#); [2007, 675](#))

NRS 455.170 Civil penalty: Action for enforcement; amount; considerations; reimbursement for cost of prosecution; judicial review.

- 1. An action for the enforcement of a civil penalty pursuant to

this section may be brought before the Public Utilities Commission of Nevada by 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.

2. Except as otherwise provided in subsection 4, in addition to any other penalty provided by law, any person who willfully or repeatedly violates a provision of [NRS 455.080](#) to [455.180](#), inclusive, is liable for a civil penalty:

- (a) Not to exceed \$2,500 per day for each violation; and
- (b) Not to exceed \$250,000 for any related series of violations within a calendar year.

3. Except as otherwise provided in subsections 2 and 4, any person who negligently violates any such provision is liable for a civil penalty:

- (a) Not to exceed \$1,000 per day for each violation; and
- (b) Not to exceed \$50,000 for any related series of violations within a calendar year.

4. The maximum civil penalty imposed pursuant to this section may be tripled for each violation that involves contact with, or that occurs less than 24 horizontal inches from a high consequence subsurface installation, regardless of the depth of the location of the high consequence subsurface installation. The amount of any civil penalty imposed pursuant to this section and the propriety of any settlement or compromise concerning a penalty shall be determined by the Public Utilities Commission of Nevada.

5. In determining the amount of the penalty or the amount agreed upon in a settlement or compromise, the Public Utilities Commission of Nevada shall consider:

- (a) The gravity of the violation;
- (b) The good faith of the person charged with the violation in attempting to comply with the provisions of [NRS 455.080](#) to [455.180](#), inclusive, before and after the violation;
- (c) Any history of previous violations of the provisions of [NRS 455.080](#) to [455.180](#), inclusive, by the person charged with the violation;
- (d) The willfulness or negligence of the person charged with the violation in failing to comply with the provisions of [NRS 455.080](#) to [455.180](#), inclusive;
- (e) The timeliness of notification of the violation to the Public Utilities Commission of Nevada by the person charged with the violation;
- (f) The cooperation of the person charged with the violation in the investigation and repair of any damage caused by the violation; and

(g) Whether an interruption of services occurred as a result of the violation.

6. Except as otherwise provided in this subsection, a civil penalty recovered pursuant to this section must first be paid to reimburse the person who initiated the action for any cost incurred in prosecuting the matter. If the Regulatory Operations Staff of the Public Utilities Commission of Nevada initiates the action, a civil penalty recovered pursuant to this section must be deposited in the State General Fund.

7. Any person aggrieved by a determination of the Public Utilities Commission of Nevada pursuant to this section may seek judicial review of the determination in the manner provided by NRS 703.373.

(Added to NRS by 1991, 1144; A 1997, 2000; 2005, 907; 2007, 675; 2009, 1170; 2015, 323)

NRS 455.180 Civil remedies preserved; additional civil remedy not created. The provisions of NRS 455.080 to 455.170, inclusive, do not affect any civil remedies provided by law for personal injury or property damage and do not create a new civil remedy for any personal injury or property damage.

OVERHEAD LINES CARRYING HIGH VOLTAGE

NRS 455.200 Definitions. As used in NRS 455.200 to 455.250, inclusive, unless the context otherwise requires:

1. "High voltage" means voltage in excess of 600 volts measured between conductors or between a conductor and a ground.
2. "Overhead line" means a bare or insulated electrical conductor installed above ground.
3. "Public utility" has the meaning ascribed to it in NRS 704.020.

(Added to NRS by 1993, 878)

NRS 455.210 Applicability of provisions. The provisions of NRS 455.220 and 455.230 are not applicable to:

1. An employee of a public utility which produces, transmits or delivers electricity, or a public utility which provides communication services, while the employee, in the course of his or her employment, constructs, modifies, operates or maintains:
 - (a) Electrical systems;
 - (b) Communication systems; or
 - (c) Overhead electrical or communication circuits or conductors, or the structures supporting them.

2. An employee of a video service provider operating pursuant to chapter 711 of NRS or a business which provides communication services, while the employee, acting within the scope of his or her employment, is making service attachments to the structure supporting an overhead line carrying high voltage, if authorized to do so by the public utility operating the overhead line.

(Added to NRS by 1993, 878; A 2007, 1392)

NRS 455.220 Conducting of activities near line: Prohibition; exception. Except as otherwise provided in NRS 455.230:

1. A person shall not perform any act if it is reasonably foreseeable that during the performance of the act the person, or any part of any tool or material used by the person, is likely to be moved or to be placed any closer to an overhead line carrying high voltage than the following clearances:

(a) For lines rated 50 kilovolts or less, 10 feet of clearance.

(b) For lines rated greater than 50 kilovolts, 10 feet of clearance plus four-tenths of an inch of clearance for each kilovolt greater than 50 kilovolts.

2. A person shall not operate any mechanical or hoisting equipment in a manner by which any part of the equipment or load of the equipment is capable by vertical, lateral or swinging motion to be moved or to be placed any closer to an overhead line carrying high voltage than the following clearances:

(a) For lines rated 50 kilovolts or less, 10 feet of clearance.

(b) For lines rated greater than 50 kilovolts, 10 feet of clearance plus four-tenths of an inch of clearance for each kilovolt greater than 50 kilovolts.

(Added to NRS by 1993, 878)

NRS 455.230 Conducting of activities near line: Authorization; powers and duties of public utility; payment of expenses for preventative measures.

1. A person may perform an act or operate equipment in closer proximity to an overhead line carrying high voltage than authorized by NRS 455.220 if, before performing the work:

(a) Notice of the work to be performed is provided to the public utility operating the overhead line carrying high voltage; and

(b) The public utility operating the overhead line carrying high voltage consents to the performance of the work.

2. If the work can be performed with reasonable safety, the public utility shall promptly consent to the performance of the work. As a condition of consent, the public utility may:

(a) Reasonably limit the time, place and manner of the work to preserve public safety.

(b) Place temporary mechanical barriers to separate and prevent contact between material, equipment or persons and the overhead line carrying high voltage.

(c) Temporarily disconnect power to the overhead line, ground the overhead line or relocate the overhead line.

3. Except as otherwise provided in this subsection, the person responsible for performing the work in the vicinity of the overhead line carrying high voltage shall pay any actual expenses incurred by the public utility in carrying out the preventative measures required as a condition of consent pursuant to paragraphs (b) and (c) of subsection 2. If, at the time the public utility installed the overhead line involved, the structure on which the person is performing the work was within 10 feet of the overhead line, the public utility shall pay any actual expenses incurred by it in carrying out the preventative measures required as a condition of consent pursuant to paragraphs (b) and (c) of subsection 2.

4. The public utility may require that an agreement regarding payment be executed before the public utility carries out the preventative measures required as a condition of consent pursuant to paragraphs (b) and (c) of subsection 2.

5. The public utility shall initiate the provision of preventative measures required as a condition of consent pursuant to paragraphs (b) and (c) of subsection 2:

(a) If an agreement regarding payment for the preventative measures is required, within 5 working days after the date the agreement is executed.

(b) If an agreement regarding payment for the preventative measures is not required, within 5 working days after the date that the public utility receives notice of the work pursuant to paragraph (a) of subsection 1.

↳ The preventative measures must be completed as soon as practicable.

(Added to NRS by 1993, 879)

NRS 455.240 Liability for violation causing contact with line. If an act constituting a violation of any provision of this chapter causes contact with an overhead line carrying high voltage, each person who committed the violation or caused another person to commit the violation shall pay the public utility operating the overhead line carrying high voltage for:

1. All damages to property of the public utility;

2. All reasonable costs and expenses incurred by the public utility as a result of the contact; and

3. The costs and expenses incurred by the public utility as a result of the contact for damages to third persons.

↳ Each person who committed a violation causing the contact or who caused another person to commit a violation causing the contact is jointly and severally liable for the payment required by this section.

(Added to NRS by 1993, 879)

NRS 455.250 Civil penalty: Action for enforcement; amount; disposition of proceeds; judicial review.

1. An action for the enforcement of a civil penalty pursuant to this section may be brought before the Public Utilities Commission of Nevada by the Attorney General, a district attorney, a city attorney or legal counsel for the Public Utilities Commission of Nevada.

2. Any person who violates a provision of NRS 455.200 to 455.240, inclusive, is liable for a civil penalty not to exceed \$1,000 per day for each violation.

3. The amount of any civil penalty imposed pursuant to this section and the propriety of any settlement or compromise concerning a penalty must be determined by the Public Utilities Commission of Nevada upon receipt of a complaint by the Attorney General, an employee of the Public Utilities Commission of Nevada who is engaged in regulatory operations, a district attorney or a city attorney.

4. In determining the amount of the penalty or the amount agreed upon in a settlement or compromise, the Public Utilities Commission of Nevada shall consider:

(a) The gravity of the violation;

(b) The good faith of the person charged with the violation in attempting to comply with the provisions of NRS 455.200 to 455.240, inclusive, before and after notification of a violation; and

(c) Any history of previous violations of those provisions by the person charged with the violation.

5. A civil penalty recovered pursuant to this section must first be paid to reimburse the person who initiated the action for any cost incurred in prosecuting the matter. Any amount remaining after such reimbursement must be deposited in the State General Fund.

6. Any person aggrieved by a determination of the Public Utilities Commission of Nevada pursuant to this section may seek judicial review of the determination in the manner provided by NRS 703.373.

(Added to NRS by 1993, 880; A 1997, 2001; 1999, 492)

NEVADA ADMINISTRATIVE CODE

CHAPTER 455

EXCAVATIONS AND DEMOLITIONS

GENERAL PROVISIONS

NAC 455.010 Definitions. (NRS 703.025, 704.260, 704.280) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 455.015 to 455.095, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R048-06, 9-18-2006)

NAC 455.015 “Affected area of the proposed excavation or demolition” defined. (NRS 703.025, 704.260, 704.280) “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 24 inches horizontally of the perimeter of the proposed area of the excavation or demolition.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R153-07, 1-30-2008, eff. 7-1-2008)

NAC 455.020 “Approximate location of a subsurface installation” defined. (NRS 703.025, 704.260, 704.280) “Approximate location of a subsurface installation” has the meaning ascribed to it in NRS 455.082.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.025 “Association for operators” defined. (NRS 703.025, 704.260, 704.280) “Association for operators” has the meaning ascribed to it in NRS 455.084.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.030 “Commission” defined. (NRS 703.025, 704.260, 704.280) “Commission” means the Public Utilities Commission of Nevada.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.035 “Damage” defined. (NRS 703.025, 704.260, 704.280) “Damage” has the meaning ascribed to it in NRS 455.086.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.040 “Demolition” defined. (NRS 703.025, 704.260, 704.280) “Demolition” has the meaning ascribed to it in NRS 455.088.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.045 “Emergency” defined. (NRS 703.025, 704.260, 704.280) “Emergency” has the meaning ascribed to it in NRS 455.090.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.050 “Excavation” defined. (NRS 703.025, 704.260, 704.280) “Excavation” has the meaning ascribed to it in NRS 455.092.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.055 “Excavator” defined. (NRS 703.025, 704.260, 704.280) “Excavator” means any person who directly or through an employee performs an excavation or demolition.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.060 “Identify” defined. (NRS 703.025, 704.260, 704.280) “Identify” means to describe:

1. The type of a subsurface installation; and
2. If the subsurface installation has a diameter or width of more than 2 inches, the diameter or width and composition of the subsurface installation, if reasonably known.

↪ The term does not include describing the depth of a subsurface

installation.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.065 “Locate” defined. (NRS 703.025, 704.260, 704.280) “Locate” means to determine the location of a subsurface installation. The term does not include determining the depth of the subsurface installation.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.067 “Marking practices in the industry” defined. (NRS 703.025, 704.260, 704.280) “Marking practices in the industry” means the marking standards adopted by reference in NAC 455.105.

(Added to NAC by Pub. Utilities Comm'n by R048-06, eff. 9-18-2006)

NAC 455.070 “Notification” defined. (NRS 703.025, 704.260, 704.280) “Notification” means a notice of an excavation or demolition submitted by an excavator to an association for operators.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.075 “Operator” defined. (NRS 703.025, 704.260, 704.280) “Operator” has the meaning ascribed to it in NRS 455.096.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.080 “Person” defined. (NRS 703.025, 704.260, 704.280) “Person” has the meaning ascribed to it in NRS 455.098.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.085 “Proposed area of the excavation or demolition” defined. (NRS 703.025, 704.260, 704.280) “Proposed area of the excavation or demolition” means the area identified by the excavator pursuant to the provisions of NAC 455.115 and subparagraph (2) of paragraph (b) of subsection 1 of NRS 455.110.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.090 “Subsurface installation” defined. (NRS 703.025, 704.260, 704.280) “Subsurface installation” has the meaning ascribed to it in NRS 455.101.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.095 “Working day” defined. (NRS 703.025, 704.260, 704.280) “Working day” has the meaning ascribed to it in NRS 455.105.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.100 “Association for operators” deemed to be Underground Service Alert North. (NRS 455.084, 703.025, 704.260, 704.280) For the purposes of this chapter and NRS 455.080 to 455.180, inclusive, the “association for operators,” as described in NRS 455.084, shall be deemed to be Underground Service Alert North, or its successor organization.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

EXCAVATION OR DEMOLITION NEAR SUBSURFACE INSTALLATION

NAC 455.105 Marking standards: Adoption by reference; availability. (NRS 455.133, 703.025, 704.260, 704.280)

1. The Commission hereby adopts by reference the marking standards described in the:

- (a) “Uniform Color Code”;
- (b) “Guidelines for Excavation Delineation”; and
- (c) “Guidelines for Operator’s Facility Field Delineation,”

↳ as set forth in Appendix B of *Best Practices Version 3.0*, published by the Common Ground Alliance.

2. A copy of this publication can be obtained from the Common

Ground Alliance, free of charge, at the Internet address <http://www.commongroundalliance.com/>.

(Added to NAC by Pub. Utilities Comm'n by R048-06, eff. 9-18-2006)

NAC 455.107 Marking standards: Controlling provisions. (NRS 455.133, 703.025, 704.260, 704.280) If there is a conflict between the marking practices in the industry and the other provisions of this chapter, the other provisions of this chapter control.

(Added to NAC by Pub. Utilities Comm'n by R048-06, eff. 9-18-2006)

NAC 455.110 Notification of association for operators: Required information. (NRS 455.110, 703.025, 704.260, 704.280) In addition to the requirements set forth in paragraph (a) of subsection 1 of NRS 455.110, an excavator submitting a notification shall provide to the association for operators:

1. If applicable, the number of the facsimile machine at which the excavator can receive documents;
2. If applicable, the electronic mail address at which the excavator can be contacted;
3. If the affected area of the proposed excavation or demolition was the subject of a previous notification submitted by the excavator, information relating to the previous notification; and
4. Any additional information relating to the excavation or demolition that is requested by the association for operators.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.115 Marking of proposed area of excavation or demolition; exemption from requirement for notification. (NRS 455.110, 703.025, 704.260, 704.280)

1. Except as otherwise provided in subsections 3 and 4, an excavator who marks the proposed area of an excavation or demolition pursuant to the provisions of subparagraph (2) of paragraph (b) of subsection 1 of NRS 455.110 shall mark:

- (a) The area before submitting a notification; and

(b) Only the area that can reasonably be excavated or demolished within 14 calendar days after the date the excavator submitted the notification of the excavation or demolition to the association for operators pursuant to the provisions of NRS 455.110.

2. An excavator marking the proposed area of an excavation or demolition pursuant to subsection 1 shall mark in a manner consistent with the marking practices in the industry and shall mark with white:

(a) The perimeter of the proposed excavation or demolition; or

(b) The centerline and width of the proposed excavation or demolition.

3. If an excavator and all the operators of subsurface installations in the affected area of the proposed excavation or demolition agree to identify the proposed area of the excavation or demolition in another manner pursuant to the provisions of subparagraph (2) of paragraph (b) of subsection 1 of NRS 455.110, the excavator shall comply with the terms of that agreement.

4. Pursuant to subsection 1 of NRS 455.110, an excavator conducting an excavation or demolition that will expose only a subsurface installation owned or operated by the excavator is not required to notify an association for operators pursuant to NRS 455.110.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R048-06, 9-18-2006)

NAC 455.120 Association for operators: Dissemination of information received in notification. (NRS 455.115, 703.025, 704.260, 704.280) 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.125 Duties of operator upon receipt of notification from association for operators. (NRS 455.130, 455.133, 703.025, 704.260, 704.280)

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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.130 Marking location of subsurface installation. (NRS 455.130, 455.133, 703.025, 704.260, 704.280)

1. Except as otherwise provided in subsection 2 or when otherwise

agreed to by an operator and an excavator, an operator marking the approximate location of a subsurface installation that has been located and identified pursuant to the provisions of NAC 455.125 shall mark the approximate location of the subsurface installation in a manner consistent with the marking practices in the industry.

2. The requirement of marking the approximate location of a subsurface installation does not apply to an individual irrigation system for landscaping or to a playing field.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R048-06, 9-18-2006)

NAC 455.135 Marks: Duties of excavator; re-marking; confirmation or replacement. (NRS 455.137, 703.025, 704.260, 704.280)

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 (a) of subsection 1 of NAC 455.125.

2. If 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:

(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) Shall mark the portion of the affected area of the proposed excavation or demolition with white markings, note the areas as re-marked 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 re-marked area.

3. An excavator may, by submitting a 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 the duty to mark his or her 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 the duty to maintain the marks pursuant to subsection 1 or any other duty imposed pursuant to this chapter.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R153-07, 1-30-2008)

NAC 455.140 Marks: Prohibited acts; removal upon completion of excavation or demolition. (NRS 703.025, 704.260, 704.280)

1. Except as otherwise provided in subsection 2, an excavator, an operator or any other person shall not create, remove, change or modify a mark made by an excavator or an operator in an affected area of a proposed excavation or demolition for the purpose of violating a provision of this chapter or NRS 455.080 to 455.180, inclusive.

2. Except as otherwise provided in NAC 455.160, an excavator or operator may remove a mark made by the excavator or an operator if the excavation or demolition has been completed.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.145 Restrictions upon and duties of excavator before commencement of excavation or demolition. (NRS 455.137, 703.025, 704.260, 704.280)

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

(a) Shall not commence an excavation or demolition:

(1) 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; and

(2) Before:

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

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

(b) 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) All marks made by operators pursuant to the provisions of NAC 455.125;

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

(3) 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) 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.150 Duties of excavator: Procedures for conducting excavation or demolition. (NRS 455.137, 703.025, 704.260, 704.280)

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 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R153-07, 1-30-2008, eff. 7-1-2008)

NAC 455.155 Duties of excavator: Discovery of unmarked subsurface installation during course of excavation or demolition. (NRS 455.140, 703.025, 704.260, 704.280)

1. In addition to the requirements set forth in subsection 4 of NAC 455.150 if, during the course of an excavation or demolition, an excavator discovers a subsurface installation the location of which was not marked or otherwise identified by an operator pursuant to the provisions of NAC 455.125, the excavator shall:

(a) Before continuing with the excavation or demolition, inform the owner of the subsurface installation, if known, of the discovery of the subsurface installation; and

(b) As soon as practical, provide notification to the association for operators of the discovery of the subsurface installation.

2. The association for operators shall transmit the information

contained in the notification made by the excavator to the operator of the subsurface installation discovered by the excavator.

3. Upon receipt of the notification by the excavator or the association for operators of a subsurface installation the location of which was not marked, the operator shall locate and identify and mark the subsurface installation pursuant to the provisions of NAC 455.125.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.160 Duties of excavator: Causing or observing damage to subsurface installation during excavation or demolition. (NRS 455.140, 703.025, 704.260, 704.280)

1. If an excavator causes or observes any damage, including, without limitation, a scratch, kink, stretch mark or any other unusual condition, to a subsurface installation during an excavation or demolition, the excavator shall:

(a) Cease work on the excavation or demolition in the area around the damaged subsurface installation;

(b) Inform the operator of the subsurface installation of the damage; and

(c) Except as otherwise provided in subsection 2, not backfill the area around the damaged subsurface installation until the operator of the subsurface installation has had a reasonable amount of time to inspect, maintain and repair the subsurface installation.

2. If the operator of a damaged subsurface installation consents, the excavator may backfill the area around a damaged subsurface installation without the inspection, maintenance or repair of the subsurface installation by the operator.

3. If the damaged subsurface installation presents an emergency, the excavator:

(a) In addition to the notification required pursuant to subsection 1, shall inform all appropriate local public service agencies or, if available, telephone emergency 911 services;

(b) Except as otherwise provided in paragraph (c), shall take reasonable steps to ensure public safety and to minimize the hazard presented by the damaged installation; and

(c) Shall not operate any valve or other device of the operator of the damaged subsurface installation while taking steps to ensure public

safety and to minimize the hazard presented by the damaged installation.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.163 Reporting of contact with, exposure of or damage to subsurface installation. (NRS 455.140, 703.025, 704.260, 704.280)

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.

(Added to NAC by Pub. Utilities Comm'n by R153-07, eff. 1-30-2008)

NAC 455.165 Period for conducting excavation or demolition: Validity of notification; extension. (NRS 455.110, 703.025, 704.260, 704.280)

1. A notification submitted by an excavator to an association for operators is valid to conduct an excavation or demolition for 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 28 calendar days.

3. 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 28 calendar days.

4. An excavator may not request more than 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. 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 subsequent extensions, the excavator shall submit a new notification to the association for operators pursuant to the provisions of NRS 455.110.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R153-07, 1-30-2008)

ADMINISTRATIVE PROCEEDINGS AND PRACTICE

General Provisions

NAC 455.200 Definitions. (NRS 703.025, 704.260, 704.280) As used in NAC 455.200 to 455.450, inclusive, unless the context otherwise requires, the words and terms defined in NAC 455.205 to 455.237, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.205 “Complainant” defined. (NRS 455.170, 703.025, 704.260, 704.280) “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 submits a complaint to the Commission.

(Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.210 “Complaint” defined. (NRS 455.170, 703.025, 704.260, 704.280) “Complaint” means a written complaint made to the Commission by a complainant:

1. Alleging a violation of a provision of this chapter or NRS 455.080 to 455.180, inclusive; and
2. Seeking the imposition of a civil penalty pursuant to NRS 455.170.

(Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.225 “Party to a complaint” defined. (NRS 703.025, 704.260, 704.280) “Party to a complaint” includes:

1. The complainant;
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.

(Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.227 “Presiding officer” defined. (NRS 703.025, 704.260, 704.280) “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.

(Added to NAC by Pub. Utilities Comm’n by R029-11, eff. 2-20-2013)

NAC 455.235 “Respondent” defined. (NRS 703.025, 704.260, 704.280) “Respondent” means a person against whom a complaint is made.

(Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.237 “Staff” defined. (NRS 703.025, 704.260, 704.280) “Staff” means the Regulatory Operations Staff of the Commission.

(Added to NAC by Pub. Utilities Comm’n by R029-11, eff. 2-20-2013)

NAC 455.245 Deviation from provisions of chapter. (NRS 703.025, 704.260, 704.280) The Commission or presiding officer may allow deviation from the provisions of this chapter if:

1. Good cause for the deviation appears;
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.

(Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.250 Computation and extension of time. (NRS 703.025, 704.260, 704.280) Except as otherwise provided by law:

1. In computing any period prescribed or allowed by any regulation of the Commission, the day of the act, event or default from or after which the designated period begins to run is not included. The last day of the period so computed is included, but if it is not a working day, the period

runs until the end of the next day which is a working day.

2. If an act is required or allowed under any regulation of the Commission, or any notice given thereunder, to be done within a specified period, the period will be extended by the Commission, for good cause shown, upon a motion made before the specified period expires.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.255 Civil penalties and remittances. (NRS 455.170, 703.025, 704.260, 704.280) A civil penalty or remittance by money order, bank draft or check to the Commission must be made payable to the "Public Utilities Commission of Nevada." A remittance in currency or coin is acceptable but is sent wholly at the risk of the remitter, and the Commission assumes no responsibility for the loss of such a remittance.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

Parties and Representatives

NAC 455.270 Rights of staff. (NRS 703.025, 704.260, 704.280) The staff 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.275 Rights of parties. (NRS 703.025, 704.260, 704.280) In any hearing before the Commission, each party to a 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.280 Appearances. (NRS 703.025, 704.260, 704.280) A party to a 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 complaint, the person must also identify the party he or she represents.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.285 Representation of parties and staff; qualifications of attorneys. (NRS 703.025, 704.260, 704.280)

1. 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 the person possesses the expertise and 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 appearing in any proceeding before the Commission must be admitted to practice and in good standing before the highest court of any state 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 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 shall represent the staff in all proceedings before the Commission.

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

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.290 Restriction on former employee acting as representative or expert witness. (NRS 703.025, 704.260, 704.280) No person who has served as an employee of the Commission may practice or act as an expert witness or representative in connection with any proceeding which is pending before the Commission on the date on which his or her employment was terminated.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.295 Withdrawal of representative. (NRS 703.025, 704.260, 704.280)

1. Any representative wishing to withdraw from a proceeding before the Commission must make a motion stating the reasons for the requested withdrawal.

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

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.300 Standards of conduct; exclusion for contumacious conduct. (NRS 703.025, 704.260, 704.280)

1. Any person appearing in a hearing must conform to recognized standards of ethical and courteous conduct required of practitioners before the courts of this State.

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

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

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

Complaints

NAC 455.310 Contents of complaints; supporting documents or evidence; service of documents. (NRS 703.025, 704.260, 704.280)

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 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.315 Response; failure to respond. (NRS 455.170, 703.025, 704.260, 704.280)

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 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 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.317 Staff authorized to file response if staff is not complainant. (NRS 703.025, 704.260, 704.280) 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.

(Added to NAC by Pub. Utilities Comm'n by R029-11, eff. 2-20-2013)

NAC 455.330 Dismissal of complaint. (NRS 703.025, 704.260, 704.280) If 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 NAC 455.317, believes that no probable cause exists for the complaint, the presiding officer shall request that the Commission vote to dismiss the complaint without prejudice.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.335 Setting of dates for prehearing conference and public hearing; interim relief. (NRS 703.025, 704.260, 704.280) If the Commission or presiding officer determines that probable cause exists for

a complaint, the Commission or presiding officer shall:

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

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

Hearings

NAC 455.340 Prehearing conference. (NRS 703.025, 704.260, 704.280)

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 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 complaint. Unless otherwise ordered for good cause shown, the failure of a party to the complaint to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.

3. 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 complaint and persons who subsequently become parties to the complaint.

4. In any hearing, the Commission or presiding officer may call all the parties to the 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.345 Continuances. (NRS 703.025, 704.260, 704.280) The Commission may, for good cause, either before or during a hearing, grant a continuance of the hearing for the convenience of the parties or the Commission.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.350 Discovery and investigation. (NRS 455.170, 703.025, 704.260, 704.280)

1. The Commission, the staff, any party to a complaint or any potential complainant is subject to the provisions of this chapter concerning discovery, 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. 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 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. (Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.355 Testimony; oath of witnesses; sworn evidence of certain witnesses; cross-examination, redirect examination and recross-examination. (NRS 703.025, 704.260, 704.280)

- 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 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.

(Added to NAC by Pub. Utilities Comm’n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.360 Authority of Commission or presiding officer. (NRS 703.025, 704.260, 704.280)

- 1. The Commission or presiding officer will:
 - (a) Call a hearing to order and take the appearances of the parties to the 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 or presiding officer, the parties to the complaint may make opening statements.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.365 Order of proceedings; rebuttal evidence; questioning of witnesses by certain persons to clarify testimony. (NRS 703.025, 704.260, 704.280)

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 may be heard, 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, if the staff is not the complainant; and

- (d) Rebuttal by complainant.

- 2. The Commission or presiding officer may allow rebuttal evidence from the respondent if good cause is shown.
- 3. Any Commissioner, presiding officer, administrative attorney, policy advisor or legal counsel for the Commission 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 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.370 Order requiring appearance of witness or compelling production of document. (NRS 703.025, 704.260, 704.280)

- 1. If a party to 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.375 Admissibility of evidence: Relevancy. (NRS 703.025, 704.260, 704.280)

1. All evidence offered in a hearing, including, without limitation, the testimony of a witness, must be relevant.

2. For the purposes of this section, evidence is "relevant" only if the evidence has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.380 Objections concerning admissibility of evidence. (NRS 703.025, 704.260, 704.280)

1. An objection to the admissibility of evidence may be made by any party to the complaint, and the objection must be ruled on by the presiding officer. When an objection is made to the admission or exclusion of evidence, the grounds relied upon must be stated briefly. The presiding officer shall provide an opportunity for a party to the 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.385 Stipulations regarding facts in issue. (NRS 703.025, 704.260, 704.280)

1. With the approval of the Commission, the parties may stipulate as to any fact in issue, either by written stipulation introduced in evidence as an exhibit or by an oral statement made upon the record. This stipulation is binding only upon the parties so stipulating and is not binding upon the Commission.

2. The stipulation may be considered by the Commission as evidence at the hearing. The Commission may require proof of the facts stipulated to by independent evidence, notwithstanding the stipulation of the parties. A stipulation without additional proof is not binding on the Commission in its determination of the matter.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.390 Interim orders. (NRS 703.025, 704.260, 704.280)

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 complaint aggrieved by the interim order may file a written motion to set aside, stay or modify the order.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.395 Official notice. (NRS 703.025, 704.260, 704.280) 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 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 complaint.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.400 Briefs. (NRS 703.025, 704.260, 704.280) In any hearing, the Commission or presiding officer may order briefs to be filed within a reasonable time. The briefs must be filed in accordance with the provisions of NAC 703.132 and must be accompanied by an acknowledgment of or an affidavit showing service on each party to the complaint.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.405 Oral arguments. (NRS 703.025, 704.260, 704.280) 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 complaint, unless the Commission considers a shorter time advisable.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.410 Submission of matter for decision. (NRS 703.025, 704.260, 704.280) Unless otherwise specifically ordered, a matter stands submitted for decision by the Commission at the close of the hearing.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.415 Reopening proceedings to receive additional evidence. (NRS 703.025, 704.260, 704.280) At any time after the conclusion of a hearing and before the issuance of a final order, the Commission, on its own motion, may reopen the proceedings for the taking of additional evidence.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.425 Date of issuance and effective date of order. (NRS 703.025, 704.260, 704.280)

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 date of issuance of an order may or may not be the day of decision by the Commission. The Secretary 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.430 Petition for reconsideration or rehearing. (NRS 703.025, 704.260, 704.280)

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 complaint within 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 complaint in the proceeding within 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 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.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.435 Copies of transcripts. (NRS 703.025, 704.260, 704.280) Any party may obtain a copy of the transcript of a hearing before the Commission from the official reporter upon payment of the fees fixed therefor. The original and one copy of each transcript must be provided to the Commission by the initiating party within 15 calendar days after the close of the hearing unless otherwise ordered by the Commission.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

NAC 455.445 Reimbursement for costs of prosecution: Procedure; determination of reimbursable costs. (NRS 455.170, 703.025, 704.260, 704.280)

1. If a civil penalty is 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 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 complaint

with the Commission.

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

(b) Will not consider:

(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 complaint.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004; A by R029-11, 2-20-2013)

NAC 455.450 Reimbursement for costs of prosecution: Order; payment. (NRS 455.170, 703.025, 704.260, 704.280)

1. Within 15 calendar days after determining the reimbursable fees, the Commission will enter an order establishing the reimbursable fees as determined pursuant to NAC 455.445.

2. The Commission will pay the reimbursable fees to the complainant upon:

(a) Entry of the order; and

(b) Receipt of the civil penalty from the respondent.

(Added to NAC by Pub. Utilities Comm'n by R156-03, eff. 8-25-2004)

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