

STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608)

LCB File No. R115-24 (PUCN Docket No. 21-01028)

- 1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

N/A. *See* Informational Statement accompanying the Regulation, Question Nos. 2-5 and 12.

Pursuant to NRS 233B.0608 (1), the Regulatory Operations Staff (“Staff”) of the Public Utilities Commission of Nevada (“PUCN”) conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business. In a Memorandum filed on May 26, 2022, Staff memorialized its conclusion that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 1.

On June 8, 2022, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses, nor does it directly restrict the formation, operation or expansion of a small business. *See* Attachment 2.

NRS 233B.0608 (2)(a) only requires an agency to consult with owners and officers of small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry, as no such “affected” small businesses exist.

- 2. The manner in which the analysis was conducted.**

See Attachments 1 and 2. Staff used a version of the Delphi method that incorporates elements of the Staff Delphi method to determine the potential impact of a regulation on small businesses.

- 3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:**
 - (a) Both adverse and beneficial effects; and**
 - (b) Both direct and indirect effects.**

See Informational Statement accompanying the Regulation, Question No. 7. See also Attachments 1 and 2.

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

N/A. See Attachments 1 and 2.

Pursuant to NRS 233B.0608 (1), Staff conducted an investigation to determine whether the proposed regulation is likely to: (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation or expansion of a small business.

On June 8, 2022, the PUCN issued an Order adopting the findings of Staff and specifically found that the proposed regulation does not impose a direct and significant economic burden upon small businesses nor does it directly restrict the formation, operation or expansion of a small business. See Attachment 2.

NRS 233B.0608 (2)(c) only requires an agency to consider methods to reduce the impact of a proposed regulation on small businesses “*if* an agency determines pursuant to subsection 1 that a proposed regulation *is* likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business ...” (emphasis added). Given the PUCN’s determination that the proposed regulation does not impose a direct and significant economic burden upon small businesses or directly restrict the formation, operation or expansion of a small business, the PUCN is not statutorily mandated to make this inquiry as there are no impacts on small businesses and no methods that were considered for reducing the non-existent impacts.

5. The estimated cost to the agency for enforcement of the proposed regulation.

See Informational Statement accompanying the Regulation, Question No. 8. See also Attachment 1.

6. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

N/A. See Informational Statement accompanying the Regulation, Question No. 11.

7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

See Informational Statement accompanying the Regulation, Questions Nos. 9 and 10. See also Attachment 1.

8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The PUCN complied with NRS 233B.0608 by making a concerted effort to determine whether the proposed regulation imposes a direct and significant economic burden upon small businesses or directly restricts the formation, operation, or expansion of a small business. The PUCN concluded that no such impacts would occur from the adoption of the proposed regulation based upon the well-reasoned investigation of Staff.

I, STEPHANIE MULLEN, Executive Director of the PUCN, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in the statement was prepared properly and is accurate.

DATED this 29 day of August, 2024.



STEPHANIE MULLEN,
Executive Director
PUBLIC UTILITIES COMMISSION OF NEVADA

PUBLIC UTILITIES COMMISSION OF NEVADA
MEMORANDUM

DATE: May 18, 2022

TO: The Commission
Via Anne-Marie Cuneo, DRO

FROM: Eric S. Petrozino, Assistant Staff Counsel

SUBJECT: Small Business Impact Report
Agenda 10-22; Item No. 7A; Docket No. 21-01028;
Investigation and Rulemaking to consider adopting and revising regulations contained in Chapter 455 of the Nevada Administrative Code regarding notifications, preparation of reports, and other matters related thereto.

I. Introduction:

On December 29, 2021, the Public Utilities Commission of Nevada (“Commission”) issued a Notice of Investigation and Rulemaking, Notice of Request for Comments, and Notice of Workshop. The Notice explained that the Commission opened a rulemaking to consider adopting and revising regulations contained in Chapter 455 of the Nevada Administrative Code regarding notifications, preparation of reports, and other matters related thereto. This matter was designated as Commission Docket No. 21-01028.

On January 21, 2022, Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy, Southwest Gas Corporation, and the Regulatory Operations Staff (“Staff”) filed comments.

On February 1, 2022, the Commission held a workshop.

On March 8, 2022, the Commission mailed to the Legislative Council Bureau (“LCB”) a proposed regulation for review.

On March 24, 2022, the LCB returned the proposed regulation in revised form.

On March 25, 2022, the Commission issued a Procedural Order, directing Staff to investigate pursuant to Nevada Revised Statute (“NRS”) 233B.0608(1) whether the proposed regulation, attached to the Procedural Order as Attachment 1, is likely to:

- a. Impose a direct and significant economic burden upon a small business; or
- b. Directly restrict the formation, operation, or expansion of a small business.

The Procedural Order directed Staff to conduct an investigation into whether the proposed regulation is likely to affect small businesses as contemplated in NRS 233B.0608(1) and to present a report of the results of this investigation, including all the information required by NRS 233B.0609(1), along with a statement identifying the methodology used in determining the impact on small business. Staff was further directed to place this report on a Commission agenda meeting no later than May 31, 2022, for Commission consideration.

NRS 233B.0608(1) requires an agency to make a concerted effort to determine whether a proposed regulation is likely to:

- (a) impose a direct and significant economic burden upon small businesses; or
- (b) directly restrict the formation, operation, or expansion of small business.

A small business is defined in NRS 233B.0382 as “a business conducted for profit which employs fewer than 150 full-time or part-time employees.” NRS 233B.0608 (1) further requires that the assessment must be made prior to conducting a workshop regarding the proposed regulation.

NRS 233B.0608(3) requires that an agency considering a proposed regulation to “prepare a statement identifying the methods used by the agency in determining the impact of a proposed regulation on a small business and the reasons for the conclusions of the agency.”

Two Staff Engineers, both of whom were involved in the rulemaking in this Docket and who were most knowledgeable about the proposed regulation, participated in this analysis.

This briefing memo constitutes the Staff Report regarding the Small Business Impact of the proposed regulation.

II. Investigation and Analysis:

In accordance with NRS 233B.0608 (3), Staff used a version of the Delphi method that incorporates elements of the Policy Delphi method to determine the potential impact of a regulation on small businesses. The Delphi method is a systematic interactive forecasting method based on independent inputs of selected experts. It recognizes the value of expert opinion, experience, and intuition and allows the use of limited information when full scientific knowledge is lacking.

In this instance, the participants were members of the Regulatory Operations Staff, both of whom were involved in the rulemaking and who are most familiar with the subject matter of the rulemaking. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the regulation on small businesses. Following receipt of the written responses, the Delphi participants engaged in a critique of the other participants’ responses, arriving at a consensus position.

The proposed regulation relates to subsurface installations. It requires: an association for operators to compile certain reports requested by Staff; an operator of a subsurface installation to notify an association of operators upon the completion of certain duties related to the location and identification of subsurface installations; and an association for operators to notify an excavator upon receiving notification from every relevant operator regarding the completion of duties related to the location and identification of subsurface installations. The regulation also revises the conditions that must be satisfied before an excavation or demolition may commence.

Immediate Adverse Effects:

The proposed regulation will not have any direct immediate adverse effects on small businesses. The proposed regulation relates to subsurface installations. It primarily aims to require: an operator to immediately notify the association for operators (of which the operator is a member) that the operator has completed its duties with respect to placing markings and otherwise conveying information to the excavator regarding any subsurface installations; or if the excavator and operator have agreed that the operator will complete their duties within a time exceeding two working days after the operator is notified of the excavation, once the operator has commenced the performance of such duties. While there may be a very minimal inconvenience to the operator given this additional step of notifying the association, this is outweighed by the subsequent productivity of the excavator performing the overall project, as it may afford them the opportunity to move forward sooner than two working days to wait for markings.

Immediate Beneficial Effects:

Direct immediate beneficial effects on small businesses may include earlier project completion timelines for the person or entities requesting the project. Also, many excavating companies calling in tickets are small businesses. The proposed regulation will inform these excavation firms earlier that line locates are complete via the positive response process and, thus, may begin excavating sooner, saving time, money, and adding to productivity.

Long-Term Adverse Effects:

Similar to the immediate adverse effects outlined above, the proposed regulation will not have any direct long-term adverse effects on small businesses.

Long-Term Beneficial Effects:

Similar to the immediate adverse effects outlined above, long-term beneficial effects on small businesses may include costs and time savings, as many excavators are small businesses.

Cost to the Commission to enforce or administer the proposed regulation, including start-up and ongoing costs:

The Commission and Staff would incur negligible costs to enforce or administer the proposed regulation. The Commission and Staff may incur very minimal additional workload to review and audit subsurface installations and associated markings that were completed earlier than the two-day marking window or beyond the two-day working window if agreed upon between the operator and excavator, when circumstances require Staff to become involved. However, any additional costs or workload to the Commission and Staff associated with the proposed regulations can be absorbed by the Commission's and Staff's existing resources.

As a result of the investigation, Staff concludes that the proposed regulation is intended to regulate operators of subsurface installations and excavators. While excavators may be small businesses, the proposed regulation is not likely to: (a) impose a direct and significant economic burden upon small business; or (b) directly restrict the formation, operation, or expansion of small business. Therefore, a small business impact statement pursuant to NRS 233B.0608(2) is not required.

III. Notice and Subsequent Action:

On March 25, 2022, the Presiding Officer issued a Procedural Order, directing Staff to investigate pursuant to NRS 233B.0608(1) whether the proposed regulation is likely to (a) impose a direct and significant economic burden upon a small business; or (b) directly restrict the formation, operation, or expansion of a small business.

IV. Conclusion:

The proposed regulation is intended to regulate operators of subsurface installations and excavators. While excavators may be small businesses, Staff does not believe the proposed regulation will impose a direct and significant economic burden upon small business, or directly restrict the formation, operation, or expansion of small business.

Staff recommends that, in accordance with NRS 233B.0608(1), the Commission find that the proposed regulation is not likely to impose a direct or significant economic burden on a small business, or to restrict the formation, operation or expansion of a small business.

Staff further recommends that, pursuant to NRS 233B.0608(3), the Commission state that the Delphi method was used in the determination of the impact of the proposed regulation on small business.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Investigation and Rulemaking to consider adopting)
and revising regulations contained in Chapter 455 of)
the Nevada Administrative Code regarding) Docket No. 21-01028
notifications, preparation of reports, and other)
matters related thereto.)
_____)

At a general session of the Public Utilities
Commission of Nevada, held at its offices
on May 31, 2022.

PRESENT: Chair Hayley Williamson
Commissioner C.J. Manthe
Commissioner Tammy Cordova
Assistant Commission Secretary Trisha Osborne

ORDER

The Public Utilities Commission of Nevada (“Commission”) makes the following findings and conclusions:

I. INTRODUCTION

The Commission opened a rulemaking to consider adopting and revising regulations contained in Chapter 455 of the Nevada Administrative Code regarding notifications, preparation of reports, and other matters related thereto.

II. SUMMARY

The proposed regulation in Docket No. 21-01028 is not likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to Nevada Revised Statutes (“NRS”) 233B.0608(2) is not required.

III. PROCEDURAL HISTORY

- The Commission has opened a rulemaking to consider adopting and revising regulations contained in Chapter 455 of the Nevada Administrative Code regarding notifications, preparation of reports, and other matters related thereto. This rulemaking is designated as Docket No. 21-01028.

- This Investigation and Rulemaking is being conducted pursuant to the NRS and the Nevada Administrative Code (“NAC”) Chapters 233B, 703 and 704, including but not limited to, NRS 703.025 and 704.210.
- On December 29, 2021, the Commission issued a Notice of Investigation and Rulemaking, Notice of Request for Comments, and Notice of Workshop.
- On January 21, 2022, Southwest Gas Corporation (“SWG”), Nevada Power Company d/b/a NV Energy (“NPC”) and Sierra Pacific Power Company d/b/a/ NV Energy (“Sierra Pacific” and collectively with NPC “NV Energy”), and the Regulatory Operations Staff (“Staff”) of the Commission filed comments.
- On February 1, 2022, the Commission held a Workshop where the draft regulation language was discussed.
- On March 8, 2022, the draft regulation language was sent to the Legislative Counsel Bureau (“LCB”) for pre-adoption review, pursuant to NRS 233B.063.
- On March 24, 2022, the regulation was returned from LCB in revised form.
- On March 25, 2022, the Commission issued a Procedural Order requesting Staff make a concerted effort to determine whether the proposed regulation is likely to:
 - a. Impose a direct and significant economic burden upon a small business; or
 - b. Directly restrict the formation, operation or expansion of a small business.
- On May 26, 2022, Staff filed a briefing memorandum containing its Small Business Impact Report (“Staff Report”).

IV. SMALL BUSINESS IMPACT REPORT

Staff’s Report

1. Staff conducted a Delphi Method exercise to determine the impact of these proposed regulations on small businesses. The Delphi Method is a systematic, interactive, forecasting method based on independent inputs of selected experts. In this instance, the participants were members of Staff. Each participant in the exercise used his or her background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. (Staff Report at 2.)

2. Staff states that the proposed regulation relates to subsurface installations. It requires: an association for operators to compile certain reports requested by Staff; an operator of a subsurface installation to notify an association of operators upon the completion of certain duties related to the location and identification of subsurface installations; and an association for operators to notify an excavator upon receiving notification from every relevant operator regarding the completion of duties related to the location and identification of subsurface installations. The regulation also revises the conditions that must be satisfied before an excavation or demolition may commence. (*Id.* at 3.)


3. Staff further states that proposed regulation will not have any direct immediate or long-term adverse effects on small businesses. The proposed regulation relates to subsurface installations. It primarily aims to require: an operator to immediately notify the association for operators (of which the operator is a member) that the operator has completed its duties with respect to placing markings and otherwise conveying information to the excavator regarding any subsurface installations; or if the excavator and operator have agreed that the operator will complete their duties within a time exceeding two working days after the operator is notified of the excavation, once the operator has commenced the performance of such duties. While there may be a very minimal inconvenience to the operator given this additional step of notifying the association, this is outweighed by the subsequent productivity of the excavator performing the overall project, as it may afford them the opportunity to move forward sooner than two working days to wait for markings. (*Id.*)

4. Staff indicates that the proposed regulation may, in fact provide an immediate and long-term beneficial effect which may include earlier project completion timelines for the person or entities requesting the project. Also, as many excavating companies calling in tickets are

THEREFORE, it is ORDERED that:

1. The proposed regulation in Docket No. 21-01028 is not likely to impose a direct and significant economic burden upon small businesses, nor is it likely to directly restrict the formation, operation, or expansion of a small business.

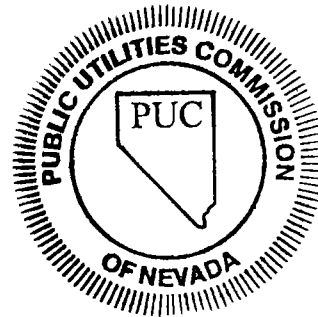
By the Commission,



TRISHA OSBORNE,
Assistant Commission Secretary
On behalf of the Commissioners

Certified: /s/ Stephanie Mullen _____
STEPHANIE MULLEN,
Executive Director

Dated: Carson City, Nevada
 6/8/22



(SEAL)