

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R115-24

1. A clear and concise explanation of the need for the adopted regulation.

The regulation: requires an association for operators to compile certain reports requested by The Regulatory Operations Staff (“Staff”) of the Public Utilities Commission of Nevada (“Commission”); requires an operator of a subsurface installation to notify an association of operators upon the completion of marking; and requires the 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, potentially eliminating unnecessary wait time. This regulation is necessary to speed up the construction process because, under current law, marking of underground facilities is often complete in one day, yet the excavator must wait the prescribed two business days to begin construction. This regulation could eliminate unnecessary delay, ultimately reducing construction time and expense.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

(a) Copies of the proposed regulation, notice of intent to act upon the regulation and notice of workshop and hearing were sent by U.S. mail and email to persons who were known to have an interest in the subjects of noticing and interventions. These documents were also made available at the website of the Public Utilities Commission of Nevada (“Commission”), <https://puc.nv.gov>, and published in the following newspapers:

Elko Daily Free Press
Las Vegas Review Journal
Reno Gazette Journal
Tonopah Times-Bonanza,

and posted at the following locations:

Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701

Public Utilities Commission
9075 West Diablo Drive, Suite 250
Las Vegas, Nevada 89148

(b) Sierra Pacific Power Company d/b/a NV Energy (“SPPC”) and Nevada Power Company (“NPC”) and together with SPPC “NV Energy”); and Staff filed comments in the matter. The comments generally supported the proposed regulation. Nevada Bell Telephone d/b/a AT&T Nevada and AT&T Wholesale (“AT&T”) did not submit written comments, but, at the hearing, proposed two modifications to the draft regulation language. AT&T’s initial proposal is to change the word “regarding” to “limited to” in Section 1 of the draft regulation language to clarify that any reporting by the association of operators would be limited to data collected by the association of operators. Staff, NV Energy and SWG thought the existing language limited the information that could be contained in a report to information already collected by the association of operators, with nothing in the

draft regulation language allowing Staff to require the association for operators to collect additional information. Staff indicated that if they wanted information that the association for operators did not possess, it would ask utilities directly using the provisions of NAC 703.680.

AT&T's second proposal was to add a subsection (3)(c) to Section 3, stating: "Be deemed in compliance if unable to comply due to system outages, natural disasters, or causes beyond its reasonable control." AT&T indicated it was concerned with facing a violation in instances such as system outages, natural disasters, or other causes beyond its reasonable control where it may be prohibited from complying with Section 3(3)(a) or (b). Staff opposes the suggested change because it goes beyond the statutory authority under NRS Chapter 455, as it allows operators to be "deemed in compliance" even if past the two-business-day limit in NRS 455.130. Staff provides that it has never served a notice of probable violation, nor has the Commission ever fined a utility for being a few minutes late on notification. Further, pursuant to NRS 455.170(5)(b), Staff states that when Staff, and ultimately the Commission, are considering fines against an operator or an excavator, the good faith of the person charged in attempting to comply, before and after the violation, must be taken into account, and Staff regularly considers the good faith attempts of operators and excavators in meeting their duties under NRS and NAC 455.

(c) Copies of the transcripts of the proceedings are available for review at the offices of the Commission, 1150 East William Street, Carson City, Nevada 89701 and 9075 West Diablo Drive, Suite 250, Las Vegas, Nevada 89148.

- 3. The number of persons who:**
 - (a) Attended each hearing: 5**
 - (b) Testified at each hearing: 5**
 - (c) Submitted written comments: 2**
- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**
 - (a) Name;**
 - (b) Telephone number;**
 - (c) Business address;**
 - (d) Business telephone number;**
 - (e) Electronic mail address; and**
 - (f) Name of entity or organization represented.**

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5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question 2(c).

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation language, as returned from LCB, accomplished the purpose of the rulemaking. Regarding the first suggestion, the draft regulation already accomplishes the objectives behind AT&T's proposal. The Commission expects the regulation to only pertain to information already collected by the association for operators. Neither the Commission, nor Staff, can tell the association for operators what information they should collect or not collect, the draft regulation language allows Staff to ask for a report, and if the association for operators has the requested information available, then the inquiry is ended; if not, the Commission presumes Staff would send data requests to the operator.

Regarding AT&T's second suggestion, NRS 455.130 already states that "except in emergency" complete these requirements in two business days, or within a time mutually agreed upon; therefore, the emergency language of NRS 704.130 would cover AT&T's suggested modification to allow for late reporting in case of emergency or other issue beyond control of the operator. Further, as indicated by Staff, NRS 455.170 requires the Commission to take into account the good faith of the person charged with the violation, the history of previous similar violations, willfulness or negligence, and cooperation with the person charged in the violation with the investigation. The Commission maintains that, in the hypothetical situations AT&T expressed concerns over, the NRS 704.170 factors would weigh heavily in favor of not having a probable violation; therefore, no corresponding modification to the draft regulation language is necessary.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include: both adverse and beneficial effects, and both immediate and long-term effects.

(a) Estimated economic effect on the businesses which they are to regulate.

The regulation does not impose any economic effect on the businesses the regulation is to regulate due to the regulatory accounting allowances discussed in ¶ 6 of the June 8, 2022, Commission Order regarding the lack of impact on small business of Regulation R155-24.

(b) Estimated economic effect on the public which they are to regulate.

The regulation does not regulate the public.

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

Any costs associated with the regulation are considered incremental in nature.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

No regulations of other State or governmental agencies overlap or duplicate the regulation.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

N/A.

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

N/A.

12. If the proposed regulation is likely to impose a direct and significant burden upon a small business or directly restrict the formation, operation or expansion of a small business, what methods did the agency use in determining the impact of the regulation on a small business?

The Regulatory Operations Staff of the Commission (“Staff”) conducted a Delphi Method exercise to determine the impact of this proposed regulation 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 their background and expertise to reflect upon and analyze the impact of the proposed regulation on small businesses. Based upon Staff’s analysis, Staff recommended to the Commission that the Commission find that the proposed regulation will not impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. The Commission accepted Staff’s recommendation and found that the proposed regulation does not impose a direct or significant economic burden upon small businesses, nor does it directly restrict the formation, operation, or expansion of a small business, and therefore a small business impact statement pursuant to NRS 233B.0608(2) is not required. This finding was memorialized in an Order issued in Docket No. 21-01028 on June 8, 2022.

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

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. (*Id.*)

5. Based on the foregoing, Staff's report recommends that the Commission find that the proposed regulation in Docket No. 21-01028 is not likely to impose a direct and significant economic burden on small businesses or directly restrict the formation, operation or expansion of a small business. (*Id.* at 4.)

Commission Discussion and Findings

6. The Commission finds that the proposed regulation is not likely to impose a direct or 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 NRS 233B.0608(2) is not required.


7. The Commission finds that the provisions of NRS 233B.0608 have been met.

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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.

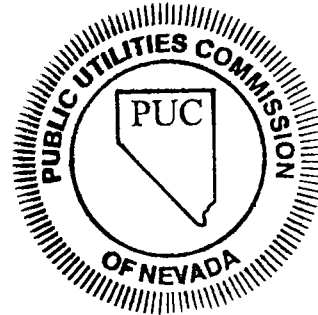
By the Commission,



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)