

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Emergency Order regarding Limited Deviation from)
Commission Regulations that Require the Mailing of) Docket No. 20-04008
Physical Copies During the State of Emergency.)
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At an emergency meeting of the Public Utilities Commission of Nevada, held at its offices on April 8, 2020.

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

ORDER ON LIMITED DEVIATION FROM PORTIONS OF NEVADA ADMINISTRATIVE CODE 703.680 AND 703.158

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

I. INTRODUCTION

On March 12, 2020, Governor Sisolak declared a state of emergency for the State of Nevada due to the novel coronavirus (“COVID-19”) and concerns for the health and safety of the population. On March 15, 2020, Governor Sisolak directed executive branch agencies to close State offices to the public and to transition agency services to the public to online or over-the-phone means. On March 17, 2020, Governor Sisolak ordered the closure of nonessential businesses as a part of Nevada’s health response and risk mitigation initiative. In the interest of public health and safety, the Commission finds that good cause exists and the public interest is served by deviating on a limited basis and for a limited period of time from certain provisions of the Commission’s regulations regarding hard copies of discovery responses or hard copies of notices and orders distributed pursuant to Commission-maintained service lists.

II. SUMMARY

Consistent with the Governor’s declarations, the Commission’s offices are closed to the public, many Commission employees are working remotely, and limited staff is present at Commission offices to conduct essential services that cannot be completed remotely. The entities that the Commission regulates are undertaking similar measures, including working remotely and limiting office staff. Nevada Administrative Code (“NAC”) 703.680(9) provides, in part, that a party responding to a discovery request via electronic mail or on a password-protected website is required to mail a hard copy of that discovery response within two business days to the Regulatory Operations Staff (“Staff”) of the Commission and to the Nevada Bureau

of Consumer Protection (“BCP”). NAC 703.158(2) states that the Commission Secretary is required to send hard copies or electronic mail notification of all notices and orders issued by the Commission or a presiding officer in all proceedings to which Commission-maintained service lists apply for at least six months after the date of the request or until the conclusion of a docket.

NAC 703.115 permits the Commission to deviate from NAC Chapter 703 if good cause for the deviation exists, and the Commission finds that a deviation is in the public interest and is not contrary to statute. Given the health and safety concerns related to the COVID-19 pandemic, the Commission finds good cause to deviate from the requirements of NAC 703.680(9) and NAC 703.158(2) during the state of emergency. It is in the public interest to protect the public’s health and safety by temporarily suspending the requirement that hard copies of notices, orders, and responses to data requests be provided, given that such hard copy requirements may necessitate that people go into their offices to send or receive hard copies. Furthermore, given that Commission notices and orders are easily accessible on the Commission’s website, deviation from NAC 703.158(2) for a limited period of time during the COVID-19 pandemic serves the public interest. The temporary deviation from the portions of NAC 703.680(9) and NAC 703.158(2) requiring hard copies shall be terminated once the emergency declaration for the COVID-19 pandemic is lifted. The Commission’s order approving a deviation is subject to three directives outlined below.

III. EMERGENCY ORDER

1. NAC 703.680(9) states in part:

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 attorney of record of the Regulatory Operations Staff and one hard copy of the response to the attorney of record of the Bureau of Consumer Protection in the Office of the Attorney General within 2 business days after the due date for the response.

2. NAC 703.158(2) states:

[A] person may submit to the Secretary a written request to be placed on one or more service lists maintained by the Commission. If a person makes such a request, the Secretary will send the person either copies or electronic mail notification of all notices and orders issued by the Commission or a presiding officer in all proceedings to which the service lists apply for at least 6 months after the date of the request, or until the conclusion of a docket for matters which continue for more than 6 months. A person may submit to the Secretary a written request to renew the person’s placement on the service list.

3. NAC 703.115 provides that the Commission 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 referenced to each provision of this chapter from which deviation is requested; and
3. The Commission finds that the deviation is in the public interest and is not contrary to statute.

While no person has specifically requested a deviation to NAC 703.680(9) or NAC 703.158(2), the Commission may consider a deviation from regulations *sua sponte* or upon its own motion.

4. Issuance of an emergency order is appropriate under the unique circumstances presented by the COVID-19 pandemic. NAC 703.680(9) likely requires parties responding to discovery requests and parties receiving discovery responses to go into their offices to send or process the paper copies of the discovery requests. So long as responses to discovery requests are served via electronic mail or on a password-protected website and the requesting parties have access to discovery responses in a timely fashion, the public interest supports temporary suspension of the requirement in NAC 703.680(9) that paper copies must be sent within two business days of the delivery of the electronic copy. Similarly, the requirement in NAC 703.158(2) that the Commission mail hard copies of notices and orders to persons on a Commission-maintained service list requires Commission personnel to go into the Commission offices to complete this task. Thus, the public interest supports temporary suspension of this requirement. It is in the public interest to protect the public's health and safety by preventing unnecessary trips outside of the home during the state of emergency for the COVID-19 pandemic.

5. Nevada Revised Statutes ("NRS") 233B.038 defines "regulation" and specifies what is not a "regulation." NRS 233B.038(2)(1) states that the term "regulation" does not include "[a]n emergency action taken by an agency that is necessary to protect public health and

safety.” Emergency deviation from NAC 703.680(9) and NAC 703.158(2) on a limited basis and for a limited period of time to protect the public’s health and safety does not result in the promulgation of a new regulation by the Commission.¹ Thus, it is not contrary to statute for the Commission to temporarily deviate from NAC 703.680(9) and NAC 703.158(2).

6. Given that it is in the public interest to protect the public’s health and safety and it is not contrary to the statute to temporarily deviate from NAC 703.680(9) and NAC 703.158(2), the Commission finds that there is good cause for the deviation.

7. The Commission is deviating only from the portion of NAC 703.680(9) that requires a party responding to a discovery request via electronic mail or on a password-protected website to mail a hard copy of that discovery response within two business days to Staff and the BCP. The Commission also is deviating only from the portion of NAC 703.158(2) that requires it to mail hard copies of notices and orders to persons on a Commission-maintained service list. The Commission’s deviation from the portions of these regulations is only for the period of time that an emergency declaration is in place for the State of Nevada regarding the COVID-19 pandemic. Once the emergency declaration is lifted, this deviation from NAC 703.680(9) and NAC 703.158(2) will also be lifted automatically without any further action from the Commission.

8. As a directive to this order, in advance of a hearing, Staff and the BCP may request that the respondent to the discovery requests provide the hard copies of the discovery responses that were not previously provided pursuant to this order. The Commission requests

¹ Furthermore, a temporary deviation from Commission regulations during a state of emergency in support of public health and safety does not constitute action on the Commission to define a new term or adopt a new standard of general applicability which effectuates policy for the future without complying with NRS Chapter 233B. *See, e.g., Las Vegas Transit Sys., Inc. v. Las Vegas Strip Trolley*, 105 Nev. 575, 576–77, 780 P.2d 1145, 1146 (1989); *Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 304-06, 721 P.2d 375, 376-78 (1986).

that respondents to discovery requests work with Staff and the BCP to the extent that a request for hard copies has been made in advance of hearing. If a discovery dispute arises regarding this request for hard copies of discovery responses from Staff or the BCP, either party may request that the presiding officer of a docket address the discovery dispute.

9. Also as a directive to this order, during the time period in which this deviation is in place, Staff and the BCP shall include in their cover letters for discovery requests a reference to this order, notifying the parties that they are not required to provide hard copies of responses to discovery requests so long as the parties are serving discovery responses via electronic mail or on a password-protected website.

10. As a directive related to the deviation from NAC 703.158(2), the Assistant Commission Secretary shall post in a prominent location on the Commission's website for the period of the emergency declaration a notice that the Commission will not be mailing hard copies of notices and orders to persons on Commission-maintained service lists.

THEREFORE, it is hereby ORDERED that:

1. The Commission finds good cause to deviate from the portion of Nevada Administrative Code 703.680(9) that states the following: 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 attorney of record of the Regulatory Operations Staff and one hard copy of the response to the attorney of record of the Bureau of Consumer Protection within two business days after the due date for the response. The deviation shall remain in place until the emergency declaration is lifted by Governor Sisolak for the COVID-19 pandemic.

2. The Commission finds good cause to deviate from the portion of Nevada Administrative Code 703.158(2) that requires the Commission to mail hard copies of notices and orders to persons on a Commission-maintained service list. The deviation shall remain in place until the emergency declaration is lifted by Governor Sisolak for the COVID-19 pandemic.

Directives:

3. In advance of a hearing, the Regulatory Operations Staff and the Bureau of Consumer Protection may request that the respondent to the discovery requests provide the hard copies of the discovery responses that were not previously provided pursuant to this order. Discovery respondents shall work with the Regulatory Operations Staff and the Bureau of Consumer Protection if such a request is made.

4. During the time period in which this deviation is in place, the Regulatory Operations Staff and the Bureau of Consumer Protection shall include in their cover letters for discovery requests a reference to this order, notifying the parties that they are not required to provide hard copies of responses to discovery requests so long as the parties are serving discovery responses via electronic mail or on a password-protected website.

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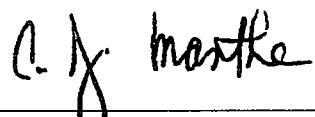
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5. The Assistant Commission Secretary shall post in a prominent location on the Commission's website for the period of the emergency declaration a notice that the Commission will not be mailing hard copies of notices and orders to persons on Commission-maintained service lists.


By the Commission,



HAYLEY WILLIAMSON,
Chair and Presiding Officer



CJ MANTLE, Commissioner

Attest: 
TRISHA OSBORNE,
Assistant Commission Secretary

Dated: Carson City, Nevada

4/8/20
(SEAL)

