

ADOPTED REGULATION OF THE PUBLIC UTILITIES

COMMISSION OF NEVADA

LCB File No. R103-99

Effective December 2, 1999

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

AUTHORITY: §§1-24, NRS 703.025 and 704.998.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 24, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliate” means any entity which provides natural gas or services related to the provision of natural gas in the United States and which controls, is controlled by or is under common control with any other entity.*

Sec. 4. *“Alternative seller” has the meaning ascribed to it in NRS 704.994.*

Sec. 5. *“Discretionary service” means the sale of natural gas to end-use customers eligible to be served under a tariff for transportation service approved by the commission or under a schedule or contract pursuant to NAC 704.518.*

Sec. 6. *“End-use customer” means a retail customer of a potentially competitive service.*

Sec. 7. *“Generating customer” has the meaning ascribed to it in NRS 704.075.*

Sec. 8. *“Industrial customer” has the meaning ascribed to it in NRS 704.075.*

Sec. 9. *“Large commercial customer” has the meaning ascribed to it in NRS 704.075.*

Sec. 10. *“Local distribution company” means a public utility that provides distribution services relating to natural gas within its authorized service territory pursuant to its certificate of public convenience and necessity.*

Sec. 11. *“Potentially competitive service” has the meaning ascribed to it in NRS 704.996.*

Sec. 12. *“Residential and small commercial customer” means any customer other than a generating, industrial or large commercial customer.*

Sec. 13. *To obtain a license to provide discretionary service as an alternative seller to generating, industrial or large commercial customers, an applicant must submit an affidavit to the commission which states that the applicant will provide only discretionary services to generating, industrial or large commercial customers.*

Sec. 14. *The provisions of sections 15 to 24, inclusive, of this regulation apply to alternative sellers of potentially competitive services.*

Sec. 15. *A person who wishes to provide a potentially competitive service as an alternative seller must apply to the commission for a license to be an alternative seller. The application must include:*

- 1. The legal name of the applicant and all other names under which the applicant is doing business in the United States.*
- 2. The current telephone number, mailing address and physical street address of the applicant.*
- 3. The type of business entity that the applicant is organized as and the date on which, and the place where, the business entity was formed.*
- 4. A copy of each business license and certificate issued by this state and any local government within this state authorizing the applicant to conduct business in this state.*

5. *A list and description of all affiliates of the applicant which provide natural gas or services related to the provision of natural gas in the United States.*
6. *The names and business addresses of:*
 - (a) *The officers, directors or partners of the applicant; or*
 - (b) *The members of the applicant, if the applicant is a limited-liability company.*
7. *The telephone number of the department or person responsible for providing customer service for the applicant.*
8. *The name, title and telephone number of the regulatory contact person for the applicant.*
9. *The name, title and address of the registered agent of the applicant in Nevada for service of process.*
10. *The most recent annual report filed with the Securities and Exchange Commission, if any.*
11. *A disclosure of all:*
 - (a) *Civil, criminal and regulatory sanctions and penalties imposed within the previous 5 years pursuant to any state or federal law or regulation relating to consumer protection on:*
 - (1) *The applicant or any affiliates thereof;*
 - (2) *Any officer, director or partner of the applicant, or any affiliate thereof; and*
 - (3) *If the applicant is a limited-liability company, any member of the applicant; and*
 - (b) *Felony convictions within the previous 5 years that relate to the business of the applicant or an affiliate thereof, of:*
 - (1) *Any officer, director or partner of the applicant or any affiliate thereof; and*
 - (2) *If the applicant is a limited-liability company, any member of the applicant.*

12. A list of each potentially competitive service the applicant expects to offer, the date on which the applicant intends to begin marketing activities associated with the provision of each such service and the date on which the applicant expects to begin providing each such service.

13. The names of the local distribution companies in whose service territories the applicant intends to market the potentially competitive services.

14. A demonstration of the ability of the applicant to provide the potentially competitive services proposed in its application, including, without limitation, prior experience in the provision of the services and the qualifications of the technical personnel at the executive and managerial levels who will be responsible for the provision of the services.

15. If the applicant intends to provide or market any potentially competitive service through a contractor:

(a) A description of each type of service to be provided or marketed through the contractor and of the group of customers to whom the service will be provided or marketed; and

(b) The name and telephone number of the contractor and a contact person for the contractor.

16. If the applicant is applying to provide any gas supply or retail procurement service, evidence of creditworthiness showing that the applicant is capable of complying with section 16 of this regulation.

17. If the applicant is currently providing, or has provided in the previous 5 years, any services relating to the provision of natural gas in any jurisdiction in the United States other than Nevada:

(a) A list of all applicable certificates, registrations and licenses, with the associated document numbers, currently held, or held in the previous 5 years, in those jurisdictions

authorizing the applicant to provide natural gas and services related to the provision of natural gas in those jurisdictions; and

(b) A brief description of the services provided in each such jurisdiction.

FLUSH *If the applicant is not currently providing, and has not provided in the previous 5 years, any services related to the provision of natural gas in any jurisdiction in the United States other than Nevada, the applicant shall so state on the application.*

18. A toll-free number for the applicant's customer service.

19. If the applicant or any of its affiliates has ever engaged in the provision of services relating to the provision of natural gas in this or any other state, a report of all instances of lapses in standards of reliability within the previous 3 years that were determined to be the fault of the applicant or affiliate, including, without limitation, unplanned outages, failures to meet service obligations and any other deviations from the standards of reliability. The report must include for each instance of such a lapse:

(a) A description of the lapse in the standards of reliability, including, without limitation, the duration and cause of the lapse;

(b) The number of customers affected by the lapse;

(c) Any reports, findings or issuances by regulators relating to the lapse;

(d) A description of any penalties imposed on the applicant or affiliate because of the lapse; and

(e) A statement of whether the problem that caused the lapse was solved and, if so, a description of the remedy.

20. If the applicant plans to use an outside company to solicit individual customers on behalf of the applicant in person, by telephone or electronically:

(a) The name and telephone number of the company; and

(b) The name of the contact person for the company.

Sec. 16. 1. *Except as otherwise provided in subsection 2, an alternative seller that provides gas supply or retail procurement service shall have and maintain a long-term bond rating, or other senior debt rating, of at least BBB- or an equivalent rating as determined by Standard & Poor's Ratings Services or another recognized debt rating service in the United States or Canada.*

2. In lieu of having and maintaining the long-term bond rating or other senior debt rating required pursuant to subsection 1, an alternative seller that provides gas supply or retail procurement service may maintain a security deposit that is made payable to the commission. The security deposit must be in the form of:

(a) A renewable surety bond issued by a major insurance company; or

(b) A guarantee with a guarantor possessing a credit rating of Baa2 or higher from Moody's Investor 's Service or BBB or higher from Standard and Poor's Ratings Services, Fitch IBCA or Duff & Phelps Credit Rating Company, except that if the commission determines that a material change in the creditworthiness of the guarantor has occurred, the commission may require the alternative seller to use a different guarantor.

3. The security deposit required pursuant to subsection 2 is an amount equal to the revenue required to provide service to the customers of the alternative seller for 2 months pursuant to NRS 704.999, except that the initial security deposit required is the greater of \$250,000 or an amount calculated by using the rates for service set forth in the tariffs filed pursuant to NRS 704.999 multiplied by a good faith estimate of the expected volume of natural gas service to be provided by the alternative seller during its first 2 months of operation. The

alternative seller shall, every 6 months after the date on which it first provides service to customers, update the security deposit based on the average volume of natural gas provided by the alternative seller to customers during that 6-month period.

Sec. 17. 1. *At least 10 business days before filing its first service request form with a local distribution company, a licensed alternative seller must:*

(a) Post a cash security deposit of \$10,000 with the local distribution company;

(b) Post a financial guarantee bond or other form of insurance in an amount of \$10,000, which is payable to the local distribution company; or

(c) Open a customer trust account in the amount of \$10,000, in a bank or other financial institution which is federally insured or otherwise authorized to do business in this state.

2. A financial guarantee bond posted as security pursuant to subsection 1 must carry an endorsement that allows the issuer of the bond or the insurer to pay such amounts, and in such a manner, as ordered by the commission. Any form of security provided pursuant to subsection 1 must be for the exclusive protection of residential and small commercial customers in Nevada.

3. The security posted pursuant to this section must be increased by an amount equal to \$100 for each residential or small commercial customer of the alternative seller in excess of the first 100 such customers enrolled into the service of the alternative seller, as adjusted quarterly by the local distribution company. Additional deposits are not required after 1,000 such customers are enrolled. Upon request, a licensed alternative seller shall provide information on the number of its customers to the local distribution company in a timely manner.

Sec. 18. 1. *At least 10 business days before requesting or accepting any fees, deposits or other payments of any kind from any residential or small commercial customer located in Nevada, a licensed alternative seller must file with the commission proof that the local distribution company serving the territory in which the alternative seller intends to provide service has authorized the alternative seller to file service request forms pursuant to the distribution tariff of the local distribution company. Before providing any potentially competitive service, an alternative seller must file with the commission any other documentation that the commission requests regarding the provision of that service.*

2. *The provisions of this section do not preclude a licensed alternative seller from advertising or accepting enrollments for any service that it has been licensed by the commission to sell before satisfying the requirements of subsection 1.*

Sec. 19. *Any contract entered into by an alternative seller with a customer must be conditioned on the compliance of the alternative seller with sections 2 to 24, inclusive, of this regulation.*

Sec. 20. *An alternative seller shall comply with all:*

1. *Applicable rules and procedures of any governmental or private institution charged with ensuring the reliability of the natural gas system; and*

2. *Obligations that the commission may impose to ensure sufficient availability of capacity of the alternative seller.*

Sec. 21. *An alternative seller that applies to provide any potentially competitive service shall comply with generally accepted technical protocols and regulations relating to the provision of that service, as required by the commission.*

Sec. 22. 1. A licensed alternative seller shall inform the commission of any change in the name, address or telephone number of the licensed alternative seller, and of any change of its registered agent in Nevada for service of process, within 20 business days after the change occurs.

2. A licensed alternative seller shall update the information contained in its application within 20 business days after a change in the information if the change:

(a) Materially reduces the financial condition or technical capabilities of the licensed alternative seller; or

(b) Involves any civil, criminal or regulatory sanctions or penalties that have been imposed by any state, or involves felony convictions in any state.

3. A licensed alternative seller shall not change its name or the name under which it conducts business in this state without obtaining the prior authorization of the commission.

Sec. 23. 1. After notice and opportunity for hearing, the commission may deny an application of an alternative seller for licensure, or if a license has been issued to the alternative seller, revoke, suspend or limit the license, or place the license on probationary status, if:

(a) The alternative seller, or any officer, director or executive of the alternative seller, provides information in its application that is materially incomplete, false or misleading, or fails to update the application in a timely manner;

(b) The alternative seller or any affiliate thereof, or any officer, director or executive of the alternative seller or affiliate, violates any applicable provision of NRS 704.993 to 704.999, inclusive, or any applicable regulation of the commission;

(c) The alternative seller or any affiliate thereof has engaged in any activity that is inconsistent with effective competition;

(d) The alternative seller or any affiliate thereof, or:

(1) Any officer, director or partner of the alternative seller or affiliate; or

(2) If the alternative seller is a limited-liability company, any member of the alternative seller,

FLUSH *violates any state or federal law relating to consumer protection or is convicted of a felony related to the business of the alternative seller or affiliate; or*

(e) The alternative seller possesses physical or financial resources that are or have become inadequate to ensure compliance with all of its responsibilities pursuant to NRS 704.993 to 704.999, inclusive, or any applicable regulation of the commission, or if the services provided by the alternative seller under its license or its ability to perform the services which are the subject of its application are inadequate.

2. In addition to any other penalties that may apply, a licensed alternative seller that violates any applicable provision of NRS 704.993 to 704.999, inclusive, or any applicable regulation of the commission, is subject to the penalties set forth in NRS 703.380.

3. The commission may suspend the license of an alternative seller in accordance with NRS 233B.127 if the alternative seller fails to submit:

(a) Any information required to be submitted pursuant to any applicable regulation of the commission; or

(b) Any relevant information ordered by the commission,
FLUSH *until such time as the alternative seller submits the required information.*

4. If the commission finds that there is probable cause that an alternative seller has violated any provision of this chapter or chapter 703 of NAC, the commission will:

- (a) Notify the alternative seller by certified mail and describe the evidence of the violation;*
- (b) Issue a public notice for a hearing;*
- (c) Hold a public hearing on the matter; and*
- (d) If, based on the findings of fact and the evidence presented at the hearing, the commission determines that a violation has occurred, issue a decision which may include the imposition of penalties.*

5. If the commission finds that public health, safety or welfare imperatively requires that emergency action be taken, the commission may, pursuant to subsection 3 of NRS 233B.127, order a summary suspension of the license of the alternative seller pending expedited proceedings for revocation of the license or other action to be taken against the alternative seller.

6. An alternative seller whose license has been revoked is not precluded from filing an application for a new license and attempting to demonstrate the fitness of the alternative seller and its ability to comply with all of the applicable regulations and rules of the commission.

Sec. 24. *1. An application for a license as an alternative seller must be signed by an officer of the applicant who has appropriate authority attesting, under penalty of perjury, that all information supplied on the application is true and correct and that, once licensed, the officer will ensure, to the best of his ability, that the alternative seller will comply with all applicable regulations of the commission.*

2. The signature of the officer on an application constitutes a representation that:

- (a) The person signing the application has read the application;*

(b) To the best of his knowledge, there are good grounds to support the application; and

(c) The information in the application is true to the best of his knowledge and belief.