

LCB File No. T003-99

**TEMPORARY REGULATION OF THE PUBLIC UTILITIES
COMMISSION OF NEVADA**

(Adopted as temporary regulation November 13, 1998.)

PUCN Docket No. 97-8001 (Consumer Protection Requirements for Alternative Sellers)

LCB File No. T003-99

AUTHORITY: NRS 703.025, 704.977, 704.985, 704.979.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 16, inclusive, of this regulation.

Section 2. As used in sections 2 to 16, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in this section have the meanings ascribed to them in this section.

"Customer" has the meaning ascribed to it in NRS 704.968.

"Customer Trust Account" means an account into which all revenues paid to the Alternative Seller are deposited and which is overseen by a trustee who pays out obligations of the Alternative Seller before paying any remaining revenues to the Alternative Seller.

"Deposit" means security provided by a customer to an Alternative Seller to ensure payment for service provided by the Alternative Seller.

"Distribution tariff" means the standard tariff filed with the Commission by each Electric Distribution Utility.

"Division" means the Division of Consumer Complaint Resolution of the Commission.

"Provider of Last Resort" means the entity or entities designated by the Commission under NRS 704.982 to provide electric service to end-use customers who are unable to obtain electric service from an Alternative Seller or who fail to select an Alternative Seller.

"Residential and small commercial customer" means any customer who receives residential electric service or any customer with an average monthly energy usage less than 3,500 kilowatt-hours over the last 12 months.

Section 3. Sections 4, 6, and 7, and 9 through 13, inclusive, of this regulation shall apply to Alternative Sellers only when they provide generation or aggregation services to residential and small commercial customers.

Section 4.

1. Each licensed Alternative Seller shall, at least ten business days before filing its first Service Request Form with the Electric Distribution Utility, post a cash security deposit of \$10,000 with the electric distribution utility, or post a financial guarantee bond or other form of insurance in the amount of \$10,000. In the alternative, the licensed Alternative Seller may open a customer trust account in the amount of \$10,000. Bonds shall carry an endorsement that shall allow 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 shall be for the exclusive protection of residential and small commercial customers in Nevada.
2. The security posted shall be increased in the amount of \$100 per residential or small commercial customer in excess of the first 100 customers enrolled into the service of an

Alternative Seller, adjusted quarterly by the electric distribution utility. The alternative seller must provide customer count information to the electric distribution utility, when requested and in a timely manner. No additional deposits shall be required after the thousandth customer is enrolled.

Section 5. Each Alternative Seller offering generation or aggregation services shall list on each bill for services the telephone number of the electric distribution company for customers to call 24 hours per day to report distribution system outages and safety-related issues.

Section 6. Each Alternative Seller shall provide to the Commission:

1. a copy of the "Terms of Service" brochure as required in Section 10 and "Electricity Facts" labels as required in subsections 10.2 and 11.1, for each product being offered to residential and small commercial customers at least 15 business days prior to the filing by the Alternative Seller of its first Service Request Form with the Electric Distribution Utility; and
2. after the market opens for potentially competitive services, by January 31 and July 31 of each year, a copy of the "Terms of Service" brochure and "Electricity Facts" label for each product being offered to residential and small commercial customers in January and July of each year, respectively, provided that if no changes have been made in these materials since the last filing, the Alternative Seller shall submit a statement so stating.

Section 7. Where an Alternative Seller offering generation, aggregation or other potentially competitive services to residential and small commercial customers has contracted

with an entity to solicit individual customers in person, by telephone or electronically for such Alternative Seller, the Alternative Seller shall ensure that such entity:

1. clearly advises all customers contacted by the entity on the Alternative Seller's behalf that the entity is marketing on behalf of the Alternative Seller;
2. complies with all applicable laws, decisions and orders of the Commission; and
3. includes the Alternative Seller's name on all advertising, marketing, and billing materials and communications.

Section 8. Alternative Sellers which offer any potentially competitive service which requires personnel to enter on the premises of a customer shall, at least 30 business days prior to performing any such service, certify that such personnel have the training and knowledge to comply with generally accepted technical protocols applicable to the particular service as approved by the Commission.

Section 9. Each licensed Alternative Seller:

1. (a) shall, prior to filing a Service Request Form for a new customer pursuant to the Distribution Tariff, obtain the customer's authorization in one of the following ways:
 - i. obtain the customer's written or electronic mail authorization and retain the document;
 - ii. obtain the customer's authorization over the telephone and retain proof of authorization such as tapes of phone conversations or other evidence; and

- (b) shall retain evidence of authorization for at least twelve months. Such evidence shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or penalties for canceling service prior to the end of the minimum contract term; provided that these procedures are not required where an existing customer moves to a new address and wishes to continue with the same Alternative Seller.
2. shall provide a "Terms of Service" brochure as described in Section 10:
 - (a) to any customer at least three days prior to filing a Service Request Form for that customer pursuant to the Distribution Tariff;
 - (b) to each of its customers at least annually;
 - (c) to any potential customer upon request;
 - (d) in English or Spanish, as requested by the customer;
 - (e) in electronic or printed form as requested by the customer.
 3. shall allow a customer the right to cancel without fee or penalty any contract within five business days of receiving the Terms of Service brochure;
 4. shall notify each customer in a conspicuous written statement entitled "Notice of New Terms" of any changes in prices, fees or other charges at least ten business days prior to the changes taking effect;
 5. shall not collect deposits exceeding an amount equal to 150 percent of the estimated average monthly charge which the Alternative Seller will collect from

such customer, and shall return any deposit paid by a customer if he has made timely payments for 12 consecutive months, including interest calculated in accordance with NRS 704.655;

6. shall not charge late fees or interest in excess of 1.5 percent per month;
7. shall return any deposits and release customers from any early termination obligations if the Alternative Seller's license has been suspended or revoked or if the customer moves to a new residence outside of the territory served by the Alternative Seller;
8. may calculate a bill based upon estimated usage when circumstances beyond the control of the Alternative Seller are present and shall consider the following factors in calculating a bill based upon estimated usage:
 - (a) the usage of the customer during the same month of the preceding year;
 - (b) any change in temperature from the preceding month;
 - (c) the usage during the preceding month; and
 - (d) seasonal load factors.

The Alternative Seller shall notify the customer of the circumstances that caused the bill to be estimated. Circumstances beyond the control of an Alternative Seller include:

- severe weather
- the presence of an animal on the premises of a customer which prevents an employee from reading the meter without risk of injury, or

- any other circumstance which makes it unreasonably difficult to read the meter.
- 9. shall adjust the estimated usage upon the first reading of a meter after an estimated reading;
- 10. shall provide a toll-free telephone number that customers can call during specified hours for questions or complaints about their bill;
- 11. if the Alternative Seller has declined to provide service to a customer, shall inform the customer of his right to obtain a written statement disclosing the reason for the denial of service, and upon the verbal or written request of the customer, shall disclose the reason to the customer in writing within three business days of the request;
- 12. shall inform a customer of the following at least 20 business days prior to any cancellation of a contract:
 - (a) the reason for any contract cancellation;
 - (b) how the customer can avoid cancellation, if possible;
 - (c) in the case of customer default, the amount of all fees or charges for early contract termination, if any, pursuant to the Terms of Service brochure provided to the customer at the time of the initiation of the contract;
 - (d) any amount overdue;
 - (e) a toll-free telephone number the customer can call to discuss the notice or file a complaint with the Alternative Seller and the statement, "If you

are not satisfied with our response to your inquiry or complaint, you can contact the Public Utilities Commission of Nevada and file a complaint by calling the Consumer Complaint Resolution Division of the Commission in Carson City or Las Vegas or writing to the Consumer Complaint Resolution Division of the Public Utilities Commission of Nevada, which statement shall include current telephone numbers and mailing addresses for the Commission;

- (f) the customer's right to obtain services from other licensed Alternative Sellers or from the Provider of Last Resort and that information on these companies can be obtained from the Commission's Consumer Complaint Resolution Division, listing the appropriate telephone numbers of the Commission and the Provider of Last Resort;
- (g) if a deposit is being held on the customer's behalf by the Alternative Seller, a statement that it will be refunded or applied against the final bill, or a combination of both;
- (h) notification that if the customer does not select another Alternative Seller by a certain date that is at least 20 business days after the notice is mailed, that the customer will be automatically assigned to a Provider of Last Resort for service;
- (i) the availability from the Alternative Seller, if any, of deferred payment or budget billing arrangements, and the availability of any state or federal payment assistance programs and contact information; and

- (j) the collection activities that the Alternative Seller will initiate if the customer does not pay or make acceptable arrangements with the Alternative Seller, including the use of debt collection agencies, small claims court and other legal remedies allowed by law. At no time must the Alternative Seller state or imply that the customer's ability to access the electric distribution system will be affected by the customer's nonpayment.
13. (a) shall prepare and maintain records for each of its customers for at least two years, or as long as available if less than two years, which contain:
- i. payment performance;
 - ii. usage of electric energy for each billing period;
 - iii. the number of discontinuations and reestablishments of service;
 - iv. the number of deposits which have been collected and returned;
- and
- v. the number and general description of written complaints filed by the customer with the Alternative Seller.
- (b) upon the request of the Commission, shall submit to the Commission or a Provider of Last Resort, or both, a written summary of the information contained in these records relating to a particular customer or customers.
- (c) upon the request of another Alternative Seller that has received authorization from a customer to provide service, shall submit to that Alternative Seller data on that customer's monthly usage for the previous

12 months, or for as long as the Alternative Seller has provided service, whichever is shorter.

14. shall notify the Commission at least 45 business days prior to any planned discontinuation of service to residential and small commercial customers;
15. shall not publicly disclose or make available for sale any customer data provided by the Electric Distribution Utility pursuant to the distribution tariff.
16. shall, upon the request of a customer, notify a third party chosen by the customer of the pending termination of the customer's service.

Section 10. Alternative Sellers shall create a "Terms of Service" brochure which shall serve as the contract between the Alternative Seller and its residential and small commercial customers. The brochure shall prominently present the following information:

1. a statement on the front in Spanish that the brochure contains important information that is available in Spanish by calling a specified toll-free telephone number;
2. a bold font box on the front or back page labeled "Electricity Facts" which contains the following disclosures for each product or pricing plan, regardless of actual price structure:
 - (a) For the total cost of electric services (exclusive of applicable taxes):
 - (i) Where billing rates do not vary by season or time of day, the average price (reflecting all recurring charges) expressed as cents per kilowatt-hour rounded to the nearest one-tenth of a cent for each usage level indicated in 2(a)(iii) or 2(a)(iv).

- (ii) Where billing is based on rates that vary by season or time of day, the average price (reflecting all recurring charges) expressed as cents per kilowatt-hour rounded to the nearest one-tenth of a cent for each usage level indicated in 2(a)(iii) or 2(a)(iv), using a generic load profile for Nevada for residential and small commercial customers as periodically determined by the Commission.
 - (iii) The average price for residential customers shall be shown for the following usage levels: 500, 1,000, and 1,500 kilowatt-hours per month.
 - (iv) The average price for small commercial customers shall be shown for the following usage levels: 1,500, 2,500, and 3,500 kilowatt-hours per month.
- (b) If the pricing plan envisions prices which vary according to time-of-day or seasonal rates, include the statement: "This is an example based on average usage patterns—your average electricity price will vary according to when you use electricity." Identify on-peak times and seasons, and state "See Terms of Service brochure for actual prices."
- (c) If the pricing plan envisions prices which vary during the term of the contract, include the statement: "This is an example based on average contract prices—your average electricity price will vary according to [add

description of the basis for and frequency of price changes during the contract period]. See your Terms of Service brochure for more details."

- (d) If the contract price does not vary, the disclosure shall state "fixed price" and specify the length of time that the price will be fixed.
- (e) Where billing is based on season or time of day, the disclosure shall identify the on-peak season or times.
- (f) Where conservation services are offered in conjunction with electricity services, the Alternative Seller may provide a separate price disclosure based on the effect of these services on electricity costs in Nevada climates and typical dwellings.
- (g) Whether there is a minimum contract term, a minimum usage requirement, start-up fee, or any minimum or fixed charges.
- (h) Whether there are penalties to cancel service before the end of the minimum contract term.

3. Pricing information disclosed pursuant to Section 10.2(a) shall conform to the following:

- (a) The value of credits or gifts not recurring monthly may be stated in plain language on a separate line within the Electricity Facts statement but shall not be factored in average charges.
- (b) Where charges for electric services are combined with charges for any other product, the Alternative Seller must disclose the total price for electric services separately from other products, if sold separately from

the other products, or if the Alternative Seller does not permit the customer to purchase the electric service without purchasing the other products, state the total charges for all products as the price of total electric services.

(c) Terms of Service brochures for a product or products available exclusively or primarily to either residential or small commercial customers need only disclose price information for the usage levels of the targeted customer class.

4. The "Electricity Facts" label shall be presented in a standard format as shown in an example label available upon request from the Commission and shall be of a size no less than 5 inches in width and 2 inches in height. This label must be approved by the Commission prior to any dissemination;
5. If the Alternative Seller requires deposits, the conditions that will trigger a request for a deposit, its maximum amount, the fact that interest will be paid on the deposit amount and the amount of such interest, and the conditions under which the customer can obtain a refund of a deposit;
6. Any late payment fees, fees that may be charged to the customer for returned checks, and any other fees and charges;
7. The Alternative Seller's policies regarding estimated meter readings, payment arrangements, late payments, payments in dispute, and customer default;
8. Statement of availability of any state or federal payment assistance programs and contact information;

9. The Alternative Seller's policy for handling disputes or complaints, including a toll-free telephone number which customers can call for customer service and complaints, and the statement, "If you are not satisfied with our response to your inquiry or complaint, you can contact the Public Utilities Commission of Nevada and file a complaint by calling the Consumer Complaint Resolution Division of the Commission in Carson City or Las Vegas or writing to the Consumer Complaint Resolution Division of the Public Utilities Commission of Nevada, which statement shall include current telephone numbers and mailing addresses for the Commission;
10. All other material terms and conditions, including, but not limited to, exclusions, reservations, limitations and conditions of the contract offered by the Alternative Seller;
11. In a separate paragraph or box in bold font type, a new customer's right to cancel the contract within five business days of receipt of the Terms of Service brochure without penalty or further obligation and instructions for canceling the contract, including the mailing address, and telephone and telefax numbers where this can be accomplished. If the contract imposes any costs on the customer other than energy usage charges (such as switching or fixed monthly fees) or imposes any minimum requirements (such as a fixed-length contract and fee for early termination), the front of the Terms of Service brochure must state in bold font type: "New customers have the right to cancel this contract within

five business days of receiving this brochure C see [location of cancellation procedures in the brochure];"

12. A statement of a customer's right to request from Alternative Sellers who decline to provide service to the customer a written statement of the reason for the denial of service, which must be provided within three business days of the request;
13. If advertisements and marketing materials are used that make any claims regarding fuel mix or environmental characteristics, supporting data must be filed with the Commission prior to the service being offered;

Section 11. The following rules shall apply to the printed advertisements in general circulation newspapers and periodicals, direct mail marketing materials, and Internet advertisements of Alternative Sellers that are directed at residential or small commercial customers:

1. In advertisements and marketing materials that make any claims regarding price or cost competitiveness, a bold font box labeled "Electricity Facts" must be displayed which contains, at a minimum, information items (a), (g), and (h) as required in Section 10.2 and conforming to the requirements in Section 10.3. The Electricity Facts box shall measure no less than 3 inches in width and 2 inches in height.
2. No label shall be required in printed advertisements that are sized less than 6.5 inches in width in general circulation newspapers and periodicals, but such advertisements shall carry the statement: "For a copy of important standardized

information and contract terms regarding this [or these] product[s] call [phone number of Alternative Seller or Alternative Seller's agent].@ A terms of service brochure as required in Section 10 shall be provided in response to calls.

3. Advertisements and marketing materials that are targeted exclusively or primarily to either residential or small commercial customers need disclose only price and policy information for the targeted customer class.

Section 12. Each Alternative Seller shall include the following statement in any television or radio advertisement that makes claims about price or cost competitiveness for an electricity product: "You can obtain an Electricity Facts Label that will allow you to compare the price and terms of this product with others. Call _____ for your Electricity Facts Label." The complete Electricity Facts label as required in Section 10.2 shall be provided in response to calls.

Section 13. Any printed or electronic communication from an Alternative Seller, or from any agent of any Alternative Seller, to any residential or small commercial customer that informs the customer about the current amount due on a current account or that confirms an automated billing transaction:

1. shall be issued no less frequently than monthly;
2. shall list the cost of noncompetitive services according to the actual charges that the Alternative Seller is paying to the Electric Distribution Utility;
3. shall include on the front of every printed electric services bill or the first section of any electronically communicated electric services bill:

- (a) the name and address of the Alternative Seller and the Alternative Seller's PUCN license number;
 - (b) the customer's service address and account number;
 - (c) the name of the Alternative Seller's product or price plan that the customer is being charged for;
 - (d) the service period for which the bill is rendered;
 - (e) the date the bill was rendered;
 - (f) the date payment must be received by the Alternative Seller to avoid a late charge or other collection action;
 - (g) the type of meter in use by the customer and meter identification number;
 - (h) whether the bill is based on the Alternative Seller's reading, the customer's reading, or an estimated reading of the meter. If estimated, the disclosure of this fact must be conspicuous;
 - (i) meter readings at the beginning and end of the service period;
 - (j) total current charges, balance on the immediately preceding bill, payments made since that bill, and balance due; and
 - (k) a conspicuous notice of any services or products that have been added since the previous bill.
4. unless provided on the front page of the printed bill, shall include on the back of the first page or on the front of the next separate page of the printed bill and in all electronic communications:

- (a) a statement describing the Alternative Seller's policies with respect to past due payments, applicable late fees, methods by which the customer can make payments and disputed bills;
- (b) a statement of the consequences of nonpayment, specifying the time at which events occur, including, but not limited to, when deposit requirements will be triggered and when a notice of cancellation of the contract will be mailed. In addition, the Alternative Seller shall disclose whether the customer can negotiate a payment arrangement or qualify for additional billing options;
- (c) a statement of charges for which the bill is rendered, including an itemization of each element of the pricing structure or product showing the rate, charge, and provider for each element, and the total of all current charges, which enables the customer to recreate each itemized charge and total charges;
- (d) total kilowatt-hours used and, if rates vary according to time of use, usage profile;
- (e) a box or other typographically separated graphic labeled "Billing Facts" which contains:
 - i. the customer's average daily usage in the month being billed for and the same month of the previous year if customer is at the same location;

- ii. the average unit price of the current electricity charges reflecting all recurring charges and not including any nonrecurring credits, expressed as cents per kilowatt-hour rounded to the nearest one-tenth of a cent, for the current billing period;
 - iii. a statement concerning the term of the contract and a reference to any applicable early termination charges; and
 - iv. a statement whether the contract price is fixed or variable. If the price is variable, the basis for price changes must be stated, such as time of day or seasonal pricing or price that varies with some published index. If the price of electricity is fixed, the end of the fixed-price term must be stated.
- (f) a toll-free telephone number the customer can call during specified hours for inquiries and complaints about the bill, in a bold type font;
 - (g) a toll-free telephone number the customer can call 24 hours per day to report power outages and concerns about power system safety; and
 - (h) a statement that refers the customer to the Terms of Service brochure for further information.
5. shall include brief public service announcements as required by the Commission, included either on the billing statement or as a bill insert or via electronic media, as specified by the Commission.

Section 14. All printed advertisements, electronic Internet advertising, direct marketing materials, billing statements, and Terms of Service brochures shall disclose information according to the following guidelines:

1. all disclosures must be clear and understandable;
2. all disclosures must be written in plain, easily understood English (or foreign language in foreign language materials). This includes the following requirements:
 - (a) short words, sentences, and paragraphs;
 - (b) everyday words using commonly understood meanings, with no technical terms, Latin or other foreign words, except in materials written in a foreign language, or words used with obsolete meaning;
 - (c) simple and active verb forms;
 - (d) personal pronouns to refer to contracting parties;
 - (e) no double negatives; and
 - (f) no sentence with more than one condition.
3. all required disclosures must be in a type size of at least 10 points and in a color that clearly contrasts with all background colors.
4. must, upon receipt of a license number from the Commission, include the license number.

Section 15.

1. If a customer disputes any bill, charge, or service, the Alternative Seller shall promptly investigate the matter and report its determination to the customer. If

the customer so requests, the report must be made in writing. Whether or not a written report is requested, the Alternative Seller shall inform the customer of his right to file a complaint with the division.

2. If the customer is not satisfied with the determination made by the Alternative Seller, he may file a complaint with the division.
3. If a complaint is filed with the division, unless the Alternative Seller agrees to waive the requirement at the request of the division, the customer may be required by the Alternative Seller to pay any disputed amount to the Alternative Seller pending resolution of the complaint.
4. Any complaints shall be addressed as set forth in NRS 703.310.

Section 16.

1. Each failure to disclose information to each customer pursuant to sections 2 to 16, inclusive, of this regulation is a separate violation.
2. Repeated violations of the provisions of sections 2 to 16, inclusive, of this regulation, may result in revocation of an Alternative Seller's license, after notice and opportunity for hearing.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In Re Investigation of issues to be)
considered as a result of restructuring) Docket No. 97-8001
of electric industry (pursuant to NRS 704.965)
to 704.990, inclusive).)

INFORMATION STATEMENT

(Filed in accordance with NRS 233B.066.)

In August of 1997, the Commission entered an “Order Instituting Investigation” in Docket No. 97-8001, an investigation of issues related to the restructuring of the electric industry. These issues include regulations which address consumer protection.

In April 1998, the Commission conducted a workshop to discuss this issue. A hearing was held during the week of September 14, 1998. As a result of the comments filed and those made on the record, the Commission revised its proposed regulation, re-issued it for further comment and hearing, held another hearing on November 5 and, 1998, and, at a duly-noticed agenda meeting held on November 13, 1998, voted to adopt a temporary regulation. This temporary regulation consists of the requirements for consumer protection which relate to alternative sellers of electric service.

Solicitation of Comments from the Public and from Affected Businesses

The Commission’s notices which were issued in this docket were published in several newspapers of general circulation, mailed to numerous entities which appear regularly before

the Commission, mailed to city and county clerks, mailed to the Attorney General's Office, Bureau of Consumer Protection/Utility Consumers Advocate ("UCA"), and mailed to all persons who requested inclusion on the Commission's service list. Copies of this informational statement may be obtained by contacting either of the Commission's offices at:

Office of the Public Utilities Commission
1150 East William Street
Carson City, Nevada 89701-3109

(702) 687-6007

or

Office of the Public Utilities Commission
Sawyer Office Building
555 East Washington Avenue, Suite 4500
Las Vegas, Nevada 8910

(702) 486-2600

Summary of Comments

The Commission's first hearing on this regulation were held during the week of September 14 and 15, 1998. The comments filed and those made on the record at the hearing focused on the propriety of distinguishing among customers based on their past credit histories, redlining, whether potential customers are entitled to automatically receive reasons from alternative sellers regarding denials of service, the type of information which should appear on brochures given by alternative sellers to customers, whether alternative sellers should be prohibited from contacting potential customers by telephone during certain times of the day, and the type of information that should be provided with respect to an alternative seller's fuel mix.

The hearing held on September 16 and 17, 1998 was attended by approximately 28 persons; approximately 17 persons placed comments on the record. Approximately 12 different entities filed written comments. After consideration of the written comments and of those made on the record during the hearing, the Commission revised its proposed regulation, re-issued it for further comment and hearing, and held a second hearing on November 5 and 6, 1998. The hearing held on November 5 and 6, 1998 was attended by approximately 29 persons, approximately eight persons placed comments on the record. Written comments were filed by approximately nine entities.

Economic Effect of the Regulation

On Affected Businesses

This regulation is specifically required by the provisions of NRS 704.665 to 704.990, inclusive; the Commission does not anticipate any adverse economic effects which cannot be avoided while at the same time conforming with the law to result from these regulations.

On the Public

The Commission expects the public to benefit from retail competition in electric services and to particularly benefit from the degree of consumer protection which this regulation affords. The Commission does not anticipate any adverse effects on the public to result from these regulations.

Estimated Cost to the Agency for Enforcement

The Commission does not anticipate any increased costs associated with enforcement of these regulations.

Duplication with other Regulations

This regulation does not overlap or duplicate those of other state or government agencies.