

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

LCB File No. R029-20

November 30, 2020

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

AUTHORITY: §§1-5, NRS 704B.200 and 704B.315; §6, NRS 704B.200 and 704B.315, and section 26 of Senate Bill No. 547, chapter 556, Statutes of Nevada 2019, at page 3531.

A REGULATION relating to providers of new electric resources; establishing provisions relating to licensure as a provider of new electric resources; requiring a provider to report certain information to the Public Utilities Commission of Nevada; authorizing the Commission to deny an application for licensure or to revoke, suspend, limit or place on probationary status a license as a provider; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes certain customers of an electric utility to apply to the Public Utilities Commission of Nevada for approval to purchase energy, capacity and ancillary services from a provider of new electric resources. (NRS 704B.310) Existing law prohibits a provider of new electric resources from selling energy, capacity or ancillary services to any person or governmental entity in this State unless the provider holds a license to do so issued by the Commission. (NRS 704B.300) **Section 2** of this regulation establishes the information which must be included in an application for such a license and provides that the Commission will approve or deny an application within 60 days after it is filed with the Commission. **Section 2** also authorizes an applicant to request that certain commercially sensitive information included in an application be treated as confidential.

Section 3 of this regulation requires a provider of new electric resources to report certain changes in the information included in its application for a license to the Commission.

Section 4 of this regulation authorizes the Commission to deny an application or to revoke, suspend or limit a license or place a license on probationary status under certain circumstances. **Section 4** provides that, if the Commission determines that there is probable cause to believe that a provider has violated certain provisions of law, the Commission will hold a public hearing on the matter and issue a decision. **Section 4** authorizes a provider whose license has been revoked to file an application for a new license.

Section 5 of this regulation requires a provider of new electric resources to notify the Commission if it intends to abandon its license.

Existing law requires a provider who sold energy, capacity or ancillary services to one or more eligible customers before June 12, 2019, which is the effective date of the requirement to hold a license to engage in such activities, to be issued a license by the Commission authorizing the provider to sell energy, capacity or ancillary services to such customers if the provider submits an application for a license not later than 30 days after a date established by the Commission by regulation. (Section 26 of Senate Bill No. 547, chapter 556, Statutes of Nevada 2019, at page 3531) **Section 6** of this regulation establishes the information which must be included in an application for a license submitted under such circumstances and requires that the application be submitted not later than 30 days after the effective date of this regulation.

Section 1. Chapter 704B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *Each application filed pursuant to NRS 704B.315 must include:*

(a) The legal name of the applicant.

(b) The current telephone number, electronic mail address, mailing address and physical street address of the applicant.

(c) The type of business entity that the applicant is organized as and the date on which, and the place where, the applicant was so organized.

(d) 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.

(e) A list and description of all affiliates of the applicant which provide retail electric service in the United States.

(f) The names and business addresses of:

(1) Three senior officers, directors or partners of the applicant; or

(2) The members of the applicant, if the applicant is a limited-liability company.

(g) The telephone number of the department or person responsible for providing customer service for the applicant and a telephone number through which the applicant is available 24 hours per day.

(h) The name, title, telephone number and electronic mail address of the person or persons who act as the regulatory contact for the applicant.

(i) The name, title and address of the registered agent of the applicant in Nevada for service of process.

(j) The most recent annual report filed with the Securities and Exchange Commission, if any, or the most recently audited financial statement of the applicant, if any.

(k) A disclosure of all:

(1) Civil, criminal, administrative and regulatory sanctions and penalties imposed within the immediately preceding 5 years pursuant to any state or federal law or regulation relating to consumer protection which were imposed on:

(I) The applicant or any affiliate thereof;

(II) Any officer, director or partner of the applicant, or any affiliate thereof; and

(III) If the applicant is a limited-liability company, any member of the applicant; and

(2) Felony convictions within the immediately preceding 5 years that relate to the provisioning of or the business of providing electric service of:

(I) Any officer, director or partner of the applicant or any affiliate thereof; and

(II) If the applicant is a limited-liability company, any member of the applicant.

(l) The date on which the applicant expects to begin selling energy, capacity or ancillary services to an eligible customer.

(m) A demonstration of the ability of the applicant to sell energy, capacity or ancillary services to an eligible customer, including, without limitation, evidence:

- (1) Of continuous business operations over a period of at least 3 years;*
- (2) Of prior experience in the provision of retail electric service;*
- (3) Of technical competence, financial capability and financial responsibility;*
- (4) That the applicant is in compliance with or will comply with NRS 704.78213; and*
- (5) That the applicant will provide energy, capacity or ancillary services to its eligible customers from new electric resources including, without limitation, a statement identifying the generation assets the applicant intends to use to serve its eligible customers and a description of the opportunities available to the applicant to make market purchases.*

(n) A signed statement of an officer of the applicant who has appropriate authority attesting, under penalty of perjury, that all information supplied in the application is true and correct and that, once licensed, the provider of new electric resources will comply with all applicable regulations of the Commission. The signature of the officer on the statement further constitutes a representation that:

- (1) The person signing the statement has read the application;*
- (2) To the best of his or her knowledge and belief, there are good grounds to support the application; and*
- (3) To the best of his or her knowledge and belief, the information contained in the application is true.*

2. The applicant may request from the Commission a protective order to protect the confidentiality of any information contained in the application that the applicant believes to be commercially sensitive. The Commission will grant the protective order if it determines that

the requested information is commercially sensitive and requires confidential treatment under Nevada law.

3. The Commission will approve or deny the application not later than 60 days after the application is filed with the Commission.

Sec. 3. *1. A provider of new electric resources shall inform the Commission of any change in its name, including the name under which it conducts business in this State, address or telephone number, and of any change of its registered agent in Nevada for service of process, not later than 20 business days after the change occurs.*

2. A provider of new electric resources shall update the information contained in its application submitted pursuant to NRS 704B.315 not later than 20 business days after a change in the information if the change:

(a) Materially reduces the financial condition or technical capabilities of the provider; or
(b) Involves any civil, criminal, administrative or regulatory sanctions or penalties related to consumer protection that have been imposed by any state or involves felony convictions related to the electric service business.

Sec. 4. *1. After notice and opportunity for hearing, the Commission may deny an application submitted pursuant to NRS 704B.315 or, if a license has been issued to the provider of new electric resources, revoke, suspend or limit the license, or place the license on probationary status if:*

(a) The provider provides information in its application that is materially incomplete, false or misleading, or fails to update the application in a timely manner;

(b) The provider or any affiliate, officer, director, partner or member thereof violates any applicable provision of chapter 704B of NRS or any applicable regulation or order of the Commission;

(c) The provider or any affiliate, officer, director, partner or member thereof violates any state, federal, administrative or regulatory law relating to consumer protection or the provision of electric service, or is convicted of a felony related thereto; or

(d) The provider possesses physical or financial resources that are or have become inadequate to ensure compliance with all of its responsibilities pursuant to chapter 704B of NRS, or any applicable regulation or order of the Commission.

2. In addition to any other penalties that may apply, a provider that violates any applicable provision of chapter 704B of NRS 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 a provider in accordance with NRS 233B.127 if the provider 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,
↪ until such time as the provider submits the required information.*

4. If the Commission finds that there is probable cause that a provider has violated any provision of chapter 704B of NRS or any regulation adopted thereto, the Commission will:

(a) Notify the provider 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 provider pending expedited proceedings for revocation of the license or other action to be taken against the provider.

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

Sec. 5. *A provider of new electric resources that wishes to abandon its license to sell energy, capacity or ancillary services in Nevada shall file a notice with the Commission not later than 60 days before the planned abandonment.*

Sec. 6. This regulation, LCB File No. R029-20, is hereby amended by adding thereto the following transitory language which has the force and effect of law but which will not be codified in the Nevada Administrative Code:

1. Notwithstanding the provisions of section 2 of this regulation, an application filed pursuant to NRS 704B.315 not later than 30 days after the effective date of this regulation by a provider of new electric resources who, before June 12, 2019, sold energy, capacity or ancillary services to one or more eligible customers that were approved to purchase energy, capacity or ancillary services from the provider pursuant to NRS 704B.310, as that section existed before June 12, 2019, is only required to include the following:

(a) The legal name of the applicant.

(b) The current telephone number, electronic mail address, mailing address and physical street address of the applicant.

(c) The names and business addresses of:

(1) Three senior officers, directors or partners of the applicant; or

(2) The members of the applicant, if the applicant is a limited liability company.

(d) The telephone number of the department or person responsible for providing customer service for the applicant and a telephone number through which the applicant is available 24 hours per day.

(e) The name, title, telephone number and electronic mail address of the person or persons who act as the regulatory contact for the applicant.

(f) The name, title and address of the registered agent of the applicant in Nevada for service of process.

(g) A demonstration of the ability of the applicant to sell energy, capacity or ancillary services to an eligible customer, including, without limitation, evidence:

(1) That the applicant is in compliance with or will comply with NRS 704.78213; and

(2) That the applicant will provide energy, capacity or ancillary services to its eligible customers from new electric resources including, without limitation, a statement identifying the generation assets the applicant intends to use to serve its eligible customers and a description of the opportunities available to the applicant to make market purchases.

(h) A signed statement of an officer of the applicant who has appropriate authority attesting, under penalty of perjury, that all information supplied in the application is true and correct and that, once licensed, the provider of new electric resources will comply with all applicable

regulations of the Commission. The signature of the officer on the statement further constitutes a representation that:

- (1) The person signing the statement has read the application;
- (2) To the best of his or her knowledge and belief, there are good grounds for the application; and
- (3) To the best of his or her knowledge and belief, the information contained in the application is true.
 - (i) An affidavit signed by an officer of the applicant who has appropriate authority certifying that the applicant is a provider of new electric resources who, before June 12, 2019, sold energy, capacity or ancillary services to one or more eligible customers that were approved to purchase energy, capacity or ancillary services from the provider pursuant to NRS 704B.310, as that section existed before June 12, 2019, and listing the eligible customers to whom the applicant was authorized to sell energy, capacity or ancillary services.

2. Notwithstanding the provisions of subsection 1 of section 4 of this regulation, the Commission will issue a license to a provider of new electric resources who, before June 12, 2019, sold energy, capacity or ancillary services to one or more eligible customers that were approved to purchase energy, capacity or ancillary services from the provider pursuant to NRS 704B.310, as that section existed before June 12, 2019, if the provider submits an application pursuant to subsection 1 not later than 30 days after the effective date of this regulation. A license issued pursuant to this section authorizes a provider to sell energy, capacity and ancillary services only to those eligible customers who were listed in the affidavit submitted pursuant to paragraph (i) of subsection 1.

3. The Public Utilities Commission of Nevada will take action on an application filed pursuant to this section not later than 60 days after the effective date of this regulation.