

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

LCB FILE NO. R042-22I

**The following document is the initial draft regulation proposed
by the agency submitted on 04/01/2022**

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

LCB File No. R102-19

September 11, 2020

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

AUTHORITY: §§1-5, NRS 703.025, 704.210, 704.997 and 704.998.

A REGULATION relating to utilities; establishing certain requirements for an alternative seller that wishes to discontinue service in this State; revising the items of information required in an application to be an alternative seller; revising provisions governing bond ratings or a security deposit which must be maintained by an alternative seller; repealing certain requirements for securities established by a licensed alternative seller; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this regulation establishes certain requirements which must be satisfied by a seller of a competitive, discretionary or potentially competitive component of natural gas service that wishes to discontinue service in this State.

Existing regulations set forth certain items of information which a person who wishes to provide a potentially competitive service as an alternative seller must include in an application to be an alternative seller. (NAC 704.79527) **Section 3** of this regulation revises certain items of information the applicant must include in the application.

Existing regulations require an alternative seller that provides gas supply or retail procurement service to: (1) have and maintain a long-term bond rating, or other senior debt rating, that meets certain standards; or (2) maintain a security deposit that is made payable to the Public Utilities Commission of Nevada in an amount established pursuant to a specified calculation. (NAC 704.79529) **Section 4** of this regulation instead requires the alternative seller to: (1) have and maintain an investment grade credit rating; or (2) maintain a security deposit in an amount established pursuant to a revised calculation.

Section 5 of this regulation repeals certain provisions requiring a licensed alternative seller to establish certain securities.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If an alternative seller wishes to discontinue service in this State, the alternative seller must:

(a) File an application with the Commission; and

(b) Provide notice of the discontinuation of service to all of its customers not less than 30 days before the deadline by which an end-use customer eligible to be served under a tariff for transportation service must notify a local distribution company of the customer's desire to elect service as prescribed in the tariff of the local distribution company.

2. The Commission will issue an order approving or denying an application filed pursuant to subsection 1 not later than 90 days after receipt of the application.

3. The Commission will approve an application filed pursuant to subsection 1 only if the Commission determines that the alternative seller has complied with the requirements set forth in subsection 1.

4. An alternative seller shall not discontinue service until all of its customers receive service from:

(a) A local distribution company in accordance with the tariff of the local distribution company; or

(b) Another alternative seller.

Sec. 2. NAC 704.79525 is hereby amended to read as follows:

704.79525 The provisions of NAC 704.79527 to 704.79545, inclusive, *and section 1 of this regulation* apply to alternative sellers of potentially competitive services.

Sec. 3. NAC 704.79527 is hereby amended to read as follows:

704.79527 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 electricity* or services related to the provision of natural gas *or electricity* 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, *electronic mail address* 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 *or the manipulation of a market in utilities, energy or securities* 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}~~ *The* date on which the applicant intends to begin marketing activities associated with the provision of ~~{each such}~~ *any* service and the date on which the applicant expects to begin providing ~~{each such}~~ *that* 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 NAC 704.79529.

17. If the applicant is currently providing, or has provided in the previous 5 years, any services relating to the provision of natural gas *or electricity* 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 *or electricity* and services related to the provision of natural gas *or electricity* in those jurisdictions; and

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

↪ 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 *or electricity* 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 *or electricity* 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.

21. A list of any enforcement actions initiated against the applicant or any of its affiliates by a regulatory agency of any state, the Federal Energy Regulatory Commission or the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation, including, for each such action, any docket number or other number assigned for the tracking of the action and the amount of any penalty or fine levied against the applicant or affiliate, as applicable.

Sec. 4. NAC 704.79529 is hereby amended to read as follows:

704.79529 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}~~ *an investment grade credit* rating as determined by ~~{Standard & Poor's Ratings Services or another}~~ a 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}~~ *investment grade credit* 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}~~ 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 *twice* the revenue required to provide service to the customers of the alternative seller for ~~{2 months pursuant to NRS 704.999,}~~ *the month with the highest revenue in the immediately preceding calendar year*, 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 *twice* the *revenue which is* expected ~~{volume of natural gas}~~ *to be required to provide* service to ~~{be provided by}~~ *the customers of* the alternative seller during ~~{its first 2 months of operation.}~~ *the month which is projected to have with the*

highest revenue in the next calendar year. The alternative seller shall, ~~every 6 months after the date on which it first provides service to customers, update~~ *at the time the alternative seller furnishes its annual report to the Commission pursuant to NRS 703.191:*

(a) *Update the amount of the* security deposit ~~based on the average volume of natural gas provided by the alternative seller to customers during that 6-month period.~~ ; and

(b) *Report the updated amount of that security deposit in the annual report.*

Sec. 5. NAC 704.79531 is hereby repealed.

TEXT OF REPEALED SECTION

704.79531 Acceptable securities: Amounts; adjustments. (NRS 703.025, 704.210, 704.997, 704.998)

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.