

LCB File No. R103-99

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

PUCN Docket No. 97-8002 (Licensing Requirements for Alternative Sellers)

LCB File No. R103-99

AUTHORITY: NRS 703.025, 704.998.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 12, inclusive, of this regulation.

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

“Affiliate” means any entity which provides natural gas or natural gas-related services in the United States and that controls, is controlled by or is under common control with any other entity.

“Alternative Seller” has the meaning ascribed to it in NRS 704.994.

“Discretionary Service” means the sale of natural gas to end-use customers eligible to be served under either a commission-approved transportation tariff or a schedule or contract pursuant to NAC 704.518.

“Distribution service” means the service provided over physical distribution plant of delivering natural gas from the city gate to the end user.

“End-Use Customer” means a retail consumer of a potentially competitive service as that term is defined by NRS 704.996.

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

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

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

“Local Distribution Company” means the public utility providing distribution service within a certificated service territory.

“Potentially Competitive Service” has the meaning ascribed to it in NRS 704.996.

“Residential and Small Commercial Customer” means any customer other than a generating, industrial, or large commercial customer.

Section 3. *An applicant may obtain a license to provide service to generating, industrial, or large commercial customers by submitting to the commission an affidavit which states the applicant will only provide discretionary service.*

Section 4. *Sections 5 through 12 of this regulation apply to applications for a license to provide a potentially competitive service.*

Section 5. *An applicant for an Alternative Seller's license to provide a potentially competitive service shall provide the following information to the commission:*

- 1. legal name and any other names under which the entity is doing business in Nevada and other states;*
- 2. current telephone number, mailing address, and physical street address;*
- 3. type of business entity, date of formation of the entity, and where formed;*
- 4. copy of Nevada business license and Secretary of State certificate, as appropriate;*

5. *list and description of all affiliates of the applicant which provide natural gas or services related to natural gas in the United States;*
6. *name and business address of all officers, directors, partners, or members of a limited liability company;*
7. *telephone number of customer service contact person;*
8. *name, title and telephone number of regulatory contact person;*
9. *name, title and address of registered agent in Nevada for service of process;*
10. *the annual report filed with the Securities and Exchange Commission, if any;*
11. *disclosure of any (a) civil, criminal, or regulatory sanctions or penalties imposed within the five previous years against the company, any of its affiliates, or any officer, director, partner, or member of a limited liability company or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (b) felony convictions within the previous five years which relate to the business of the company or to an affiliate thereof of any officer, director, partner or member of a limited liability company;*
12. *a listing 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 service, and the date on which the applicant expects to begin the provision of each service;*

13. *name of local distribution companies in whose service territories applicant intends to market its services;*
14. *a demonstration of the ability to perform the services proposed in the application, such as prior experience in the provision of the services or the qualifications of executive and management level technical personnel 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 the types of such services and the customer groups to whom such services will be marketed; and (b) the name and telephone number of the contractor and a contact person employed by such contractor;*
16. *If applying to provide any gas supply or retail procurement services, evidence of creditworthiness, which evidence shall consist of satisfying and maintaining one of the requirements in subsection (a) or (b) below:*
 - (a) *A long-term bond (or other senior debt) rating of at least BBB- or an equivalent rating as determined by Standard & Poor's or another recognized U.S. or Canadian debt rating service;*
 - (b) *submit to the commission proof of a security deposit payable to the commission as of commencement of service in an amount equal to the revenue required to provide service to the applicant's customers for two months of service pursuant to NRS 704.999. The initial security deposit shall be calculated by using the rates for service pursuant to NRS 704.999 and a good faith estimate of*

the applicant's expected throughput or \$250,000, whichever is greater. The security deposit shall be updated six months after the date on which service is first provided to customers and every six months thereafter using the average load for the period.

Security deposits must be in the form of either:

- (i) a renewable surety bond issued by a major insurance company, or*
- (ii) a guarantee with a guarantor possessing a credit rating of Baa2 or higher from Moody's or BBB or higher from Standard and Poor's, Fitch, or Duff & Phelps, unless the commission determines that a material change in the guarantor's creditworthiness has occurred.*

- 17. if applying to provide potentially competitive services, (a) a list of all applicable certificates, registrations or licenses and associated document numbers currently held or held in the previous five years in other U.S. jurisdictions for the provision of natural gas services, if any; and (b) a brief description of the services provided in each such jurisdiction;*
- 18. if applying to provide potentially competitive services, a toll-free telephone number for customer service;*
- 19. (a) Each licensed alternative seller shall, at least ten business days before filing its first service request form with the local distribution company, post a cash security deposit of \$10,000 with the local*

distribution company, 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.

(b) 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 local distribution company. No additional deposits shall be required after the thousandth customer is enrolled. Upon request, a licensed alternative seller must provide customer count information to the local distribution company in a timely manner.

20. if applicant or any of its affiliates has engaged in the provision of any natural gas service, in Nevada or any other state, a report of all instances of lapses of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: a description of the event, its duration, its cause, the number of customers affected, any reports, findings or issuances by regulators, any penalties imposed, and whether and how the problem has been remedied; and

21. *name, contact person and telephone number of all companies whose services the Applicant plans to use to solicit individual customers on its behalf, in person, by telephone or electronically.*

Section 6. *At least ten business days prior to requesting or accepting any fees, deposits, or other payments of any kind from any Nevada residential or small commercial customer, an Alternative Seller:*

1. *licensed to provide service shall file with the commission proof that the Local Distribution Company serving the territory in which the Alternative Seller intends to provide such service has authorized the Alternative Seller to file Service Request Forms pursuant to the Local Distribution Company's Distribution Tariff,*
2. *licensed to provide any potentially competitive service shall file with the commission any other documentation which the commission has determined from time to time to be required of such Alternative Seller.*

These requirements do not preclude a licensed Alternative Seller from advertising, or accepting enrollments, for any services that it has been licensed by the commission to sell prior to satisfying the requirements of this section.

Section 7. *Any contract entered into by an Alternative Seller with a customer shall be conditioned on the Alternative Seller's compliance with sections 2 to 12, inclusive, of this regulation.*

Section 8. *Alternative Sellers shall:*

1. *abide by any applicable rule or procedure of any institution charged with ensuring the reliability of the natural gas system; and*

2. *comply with any obligations that the commission may impose to ensure sufficient availability of capacity.*

Section 9. *Alternative Sellers which apply to provide any potentially competitive service shall comply with generally accepted technical protocols and regulations applicable to the particular industry as required by the commission.*

Section 10. *A licensed alternative seller shall inform the commission of any change in its name, address and telephone numbers and of any change of its registered agent in Nevada for service of process within 20 business days of the change or changes. A licensed alternative seller shall update within twenty business days any information contained in its application that has changed, when such change (a) materially reduces the financial condition or technical capabilities of the Alternative Seller; or (b) involves any civil, criminal, or regulatory sanctions or penalties that have been imposed in any state, or any felony convictions in any state. 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.*

Section 11.

1. *After notice and opportunity for hearing, an Alternative Seller's application for a license may be denied, or a license may be limited, suspended, placed on probationary status, or revoked, if:*

- (a) *the company, or any officer, director or executive of the company, provides materially incomplete, false or misleading information in the license application, or fails to update its application in a timely manner;*

- (b) the company or any affiliate thereof, or any officer, director or executive of the company or its affiliates, violates any applicable provision of NRS 704.993 to 704.999, inclusive, or any commission regulation;*
- (c) the company, or any affiliate thereof, has engaged in any activities which are inconsistent with effective competition;*
- (d) the company, or any affiliate thereof, or any officer, director, partner, or member of a limited liability company or any affiliate thereof violates any state or federal consumer protection laws or is convicted of a felony related to the business of the company or any affiliate thereof;*
- (e) the company possesses physical or financial resources that are inadequate to ensure compliance with all its responsibilities under any applicable provision of NRS 704.993 to 704.999, inclusive, or any commission regulation; or the services being provided by the company under its license or its ability to perform the services which are the subject of its application are inadequate.*

- 2. A licensed Alternative Seller that violates any applicable provision of NRS 704.993 to 704.999, inclusive, or any commission regulation, may also be subject to penalties pursuant to NRS 703.380.*
- 3. The failure of a licensed Alternative Seller to submit any information required by the commission's regulations or to submit any relevant*

information ordered by the commission may result in a suspension of the Alternative Seller's license, after notice and opportunity for hearing, until such time as the Alternative Seller submits the required information. The commission may suspend any license of an Alternative Seller in accordance with the provisions of NRS 233B.127.

4. If the commission finds that there is probable cause that the Alternative Seller has violated commission regulations, the commission shall:

(a) notify the Alternative Seller by certified mail and describe the commission's evidence;

(b) issue a public notice for a hearing;

(c) hold the hearing; and

(d) issue a decision imposing any penalties based on the findings of fact and the evidence presented at the hearing.

5. If the commission finds, pursuant to NRS 233B.127(3), that public health, safety or welfare imperatively require emergency action, it may order a summary suspension of the Alternative Seller's license pending expedited proceedings for revocation or other action.

6. Alternative Sellers whose licenses have been revoked may file a new license application and attempt to demonstrate the company's fitness and ability to comply with all applicable rules of the commission.

Section 12. The license application shall be signed by an officer with appropriate authority, under penalty of perjury that all information supplied on the application form is true and correct, and that, if licensed, applicant will abide by all applicable regulations of the

commission. A signature on an application shall constitute a representation of the provisions of NAC 703.560(4)(a), (b), and (c).

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In Re Investigation into alternative form)
of regulation (pursuant to NRS 704.993)
to 704.999, inclusive) for natural gas local) Docket No. 97-8002
distribution companies and alternative)
sellers of natural gas, and related matters.)

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

In August 1997, the Public Utilities Commission of Nevada (“Commission”) opened an investigation to explore the issues surrounding the changing natural gas industry. NRS 704.998 requires the Commission, by regulation, to establish the procedures and conditions that alternative sellers must satisfy before obtaining a license to sell potentially competitive services in this state. The issue of licensing was discussed at various workshops and hearings conducted between September 1997 and November 1998. On December 21, 1998, the Commission held a workshop and hearing expressly for the purpose of discussing a proposed regulation which consists of licensing requirements. At a duly-noticed agenda meeting held on December 31, 1998, pursuant to NRS 233B.063(3), the Commission voted to adopt a temporary regulation.

Solicitation of Public Comment

The Commission’s notices which were issued in this docket were published in several newspapers of general circulation, mailed to public utilities, mailed to city and county clerks, issued as press releases, mailed to the Attorney General’s Bureau of Consumer Protection/Utility Consumers Advocate, and mailed to all those entities which requested inclusion on the service list.

Written comments were filed by the Regulatory Operations Staff of the Commission and Sierra Pacific Power Company. These comments generally supported the regulation as proposed and proposed only non-substantive modifications. The hearing held on December 31, 1998 was attended by approximately six persons, all of whom made oral comments.

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

Economic Effects

The Commission does not envision any adverse economic effects, either immediate or long-term, to result from this regulation, for the regulated utilities or other businesses affected by it. No adverse economic effects, either immediate or long-term, are expected to inure to the public. Beneficial economic effects, both immediate and long-term, which may result from this regulation, are difficult to quantify, but may include benefits related to the standardization of the licensing process. The public may also benefit from this standardization.

Cost of Enforcement and Duplication of Other Regulations

The Commission does not anticipate any increased costs associated with enforcement of these procedural regulations. These regulations do not overlap or duplicate any other state or local government regulations.