

**PROPOSED REGULATION OF THE PUBLIC UTILITIES**

**COMMISSION OF NEVADA**

**LCB File No. R171-99**

October 19, 1999

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

AUTHORITY: §§1-19 and 21, NRS 703.025 and 704.977; §20, NRS 703.025, 704.977 and 704.979.

**Section 1.** Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 21, 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 electricity or services related to the provision of electricity in the United States and which controls, is controlled by or is under common control with any other entity.*

**Sec. 4.** *“Aggregation service” has the meaning ascribed to it in NRS 704.966.*

**Sec. 5.** *“Alternative seller” has the meaning ascribed to it in NRS 704.967.*

**Sec. 6.** *“Distribution service” means the service provided over the physical distribution plant of delivery from the transmission system to the end-use customer.*

**Sec. 7.** *“Electric distribution utility” has the meaning ascribed to it in NRS 704.970.*

**Sec. 8.** *“End-use customer” means a retail customer of a potentially competitive service.*

**Sec. 9.** *“Generation service” has the meaning ascribed to it in NRS 704.972.*

**Sec. 10.** *“Potentially competitive service” has the meaning ascribed to it in NRS 704.974.*

**Sec. 11.** *“Provider of last resort” means the entity designated by the commission pursuant to 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.*

**Sec. 12.** *“Residential and small commercial customer” means any customer who:*

- 1. Receives residential electric service; or*
- 2. Has an average monthly energy usage of less than 3,500 kilowatt-hours over the last 12 months.*

**Sec. 13.** *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.*
- 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 electric distribution utilities 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 those 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 generation or aggregation services, evidence of creditworthiness showing that the applicant is capable of complying with section 14 of this regulation.*

*17. If the applicant is currently providing, or has provided in the previous 5 years, any generation, aggregation or other potentially competitive service 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 electricity and services relating to the provision of electricity in those jurisdictions; and*

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

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*If the applicant is not currently providing, and has not provided in the previous 5 years, any generation, aggregation or other potentially competitive service 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 is applying to provide any generation, aggregation or other potentially competitive service to residential and small commercial customers:*

*(a) A statement of intent that the applicant will provide security to the electric distribution utility from which the alternative seller will be obtaining generation, aggregation or other potentially competitive services in an amount and of a type specified by the applicable regulations of the commission; and*

*(b) A statement of intent that the applicant will provide to the commission copies of all brochures, labels and other informational statements as required by the applicable regulations of the commission.*

*20. If the applicant or any of its affiliates has ever engaged in the provision of any electric service in this or any other state, a report of all instances of lapses in the 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 or any organization established to ensure the reliability of the electric system 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.*

*21. 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. 14. 1.** *Except as otherwise provided in subsection 2, an alternative seller that provides generation or aggregation 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 generation or aggregation 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 Investors Service or BBB or higher from Standard & 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 by a provider of last resort to provide service to the customers of the alternative seller for 2 months, except that the initial security deposit required is the greater of \$250,000 or an amount calculated by using the rates for service if provided by a provider of last resort multiplied by a good faith estimate of the expected load 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 load of electricity it provided to its customers during that 6-month period.*

**Sec. 15. 1.** *At least 10 business days before requesting or accepting any fees, deposits or other payments of any kind from any residential and small commercial customer located in Nevada, a licensed alternative seller must file with the commission proof that the electric distribution utility serving the territory in which the alternative seller intends to provide service has authorized the alternative seller to file service request forms for distribution service pursuant to the distribution tariff of the electric distribution utility. 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. 16.** *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 21, inclusive, of this regulation.*

**Sec. 17.** *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 electric system, including:*

- (a) The Western System Coordinating Council;*
- (b) The Western Regional Transmission Association;*
- (c) The Southwest Regional Transmission Association;*
- (d) The North American Electric Reliability Council;*
- (e) The Federal Energy Regulatory Commission; and*
- (f) Any other similar entity identified by the commission; and*

*2. Obligations that the commission may impose to ensure sufficient availability of capacity of the alternative seller pursuant to subsection 2 of NRS 704.988.*

**Sec. 18.** *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, unless the service which the alternative seller is providing is from another alternative seller licensed to provide that service in this state.*

**Sec. 19.** *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. 20. 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 704.965 to 704.990, 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 relating to the provision of electric service;*

*(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;*

*(e) 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 nationally or regionally accepted standard relating to the reliability of the electric system; or*

*(f) 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 704.965 to 704.990, 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, the commission may order a licensed alternative seller that violates any applicable provision of NRS 704.965 to 704.990, inclusive, or any applicable regulation of the commission, to abide by specific conditions ordered by the commission or to pay:*

*(a) Compensation for individual complaints which are specific to the case against the alternative seller;*

*(b) Restitution to all customers harmed;*

*(c) A monetary fine in an amount intended to negate any profits made as a result of the violation of any provision of NRS 704.965 to 704.990, inclusive, or any applicable regulation of the commission, by the alternative seller; or*

*(d) Compensation to the appropriate provider of last resort for an appropriate share of the cost of procuring capacity and energy incurred by the provider of last resort for customers of the alternative seller.*

*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, until such time as the alternative seller submits the required information.*

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*4. The commission will include in the notice which it issues for a hearing to be held pursuant to this section notification to:*

*(a) The alternative seller that all electric distribution utilities from which the alternative seller obtains distribution service has been advised that they may be ordered to discontinue service to the alternative seller; and*

*(b) The provider of last resort that the customers of the alternative seller may be transferred to the provider of last resort.*

*5. 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.*

*6. 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.*

*7. 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.*

*8. Any person aggrieved by any violation by an alternative seller of any applicable regulation of the commission may pursue any civil relief that may be available under state or federal law, including, without limitation, private actions for enforcement of the applicable regulations of the commission, without regard to or first pursuing any remedies provided by the commission.*

**Sec. 21.** *1. An application for a license as an alternative seller must be signed by an officer of the applicant who has appropriate authority, under penalty of perjury, attesting 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.*