

LCB File No. T004-99

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

(Adopted as temporary regulation December 31, 1998.)

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

LCB File No. T004-99

AUTHORITY: NRS 703.025, 704.977, 704.979, 704.985.

Section 1. Chapter 704 of NAC is hereby amended by adding thereto the provisions set forth as Sections 2 to 10, inclusive, of this regulation.

Section 2. As used in sections 3 to 10, 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 energy or energy-related services in the United States and that controls, is controlled by or is under common control with the applicant.

"Aggregation Service" has the meaning ascribed to it in NRS 704.966.

"Alternative Seller" has the meaning ascribed to it in NRS 704.967.

"Distribution Service" means the service provided over physical distribution plant of delivering electricity from the transmission system to the end user.

"Electric Distribution Utility" has the meaning ascribed to it in NRS 704.970.

"End-Use Customer" means a retail consumer of a potentially competitive service as that term is defined by NRS 704.974.

"Generation Service" has the meaning ascribed to it in NRS 704.972.

"Potentially Competitive Service" has the meaning ascribed to it in NRS 704.974.

"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. An applicant for an Alternative Seller's license 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 in the United States;
6. name and business address of all officers, directors, partners, or members of an LLC;
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 an LLC 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 or any officer, director, partner or member of an LLC;
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 Electric Distribution Utilities 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 electric 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 generation or aggregation 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 Provider of Last Resort service. The initial security deposit shall be calculated by using the rates for Provider of Last Resort service and a good faith estimate of the applicant's expected load 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 aggregation, generation or any other 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 electric services, if any; and (b) a brief description of the services provided in each such jurisdiction;
18. if applying to provide aggregation, generation or any other potentially competitive services, a toll-free telephone number for customer service;
19. if applying to provide aggregation or generation services to residential and small commercial customers:
 - a. a statement of intent to provide security pursuant to Section 4 of the Consumer Protection Requirements for Alternative Sellers specifying the type of security that the applicant plans to post; and
 - b. a statement of intent to provide a copy of the "Terms of Service" brochure and "Electricity Facts" labels pursuant to Section 10 and subsections 10.2 and 11.1, respectively, of the Consumer Protection Requirements for Alternative Sellers;
20. if applicant or any of its affiliates has engaged in the provision of any electric 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 or electric system reliability organizations relating to the instance, 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 4. 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 generation or aggregation service shall file with the Commission proof that the Electric Distribution Utility 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 such Electric Distribution Utility'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 5. Any contract entered into by an Alternative Seller with a customer shall be conditioned on the Alternative Seller's compliance with sections 2 to 10, inclusive, of this regulation.

Section 6. Alternative Sellers shall:

1. abide by any applicable rule or procedure of any institution charged with ensuring the reliability of the electric system, including the Western System Coordinating Council, the Western Regional Transmission Association, the Southwestern Regional Transmission Association, the Northwest Regional Transmission Association, the North American Electric Reliability Council, the Federal Energy Regulatory Commission, and any other entity identified as such by the Commission from time to time; and
2. comply with any obligations that the Commission may impose to ensure sufficient availability of capacity pursuant to the provisions of NRS 704.988(2).

Section 7. 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, except for any service it is providing from another alternative seller licensed to provide that service in Nevada.

Section 8. 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 9.

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 704.965 to 704.990, inclusive, or any Commission regulation;
 - (c) the company, or any affiliate thereof, has engaged in any activities which are inconsistent with effective electric service competition;

- (d) the company, or any affiliate thereof, or any officer, director, partner, or member of an LLC, 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, or any affiliate thereof, or any officer, director, partner of the company, or member of an LLC, or any affiliate thereof, violates any electric system reliability standards; or
- (f) the company possesses physical or financial resources that are inadequate to ensure compliance with all its responsibilities under any applicable provision of NRS 704.965 to 704.990, 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 704.965 to 704.990, inclusive, or any Commission regulation, may also be subject to the following penalties:

- (a) case-specific compensation for individual complaints;
- (b) restitution to all customers harmed;
- (c) monetary fines sized to negate any profits made as a result of violating any provision of NRS 704.965 to 704.990, inclusive, or any Commission regulation;
- (d) specific conditions ordered by the Commission; and

- (e) compensation to the Provider of Last Resort for an appropriate share of the cost of procuring capacity and energy for customers of such Alternative Seller.
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. The notice to the alternative seller shall include notification that all electric distribution utilities from which the alternative seller obtains distribution service have been advised that they may be ordered to discontinue service and shall include notification to a provider of last resort that the alternative seller's customers may be transferred to the provider of last resort.
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. An alternative seller whose license has been revoked may file a new license application to demonstrate the company's fitness and ability to comply with all applicable rules of the Commission.
7. Any person aggrieved by a violation of these regulations may pursue any civil relief that may be available under state or federal law, including, without limitation, private actions for enforcement of these regulations, without regard to or first pursuing the remedies available from the commission hereunder.

Section 10. 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 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 licensing of alternative sellers.

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, and held another hearing on November 5 and , 1998. The Commission further revised its proposed regulation, re-issued it for comment and hearing, held a final hearing on December 21, 1998, and, at a duly-noticed agenda meeting held on December 31, 1998, voted to adopt a temporary regulation. This temporary regulation consists of the requirements that alternative sellers of electric services must meet in order to obtain and maintain licenses.

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 was 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 appropriate creditworthiness requirements for potential alternative sellers, which entity or entities should hold deposits, the appropriate amount of any bonds, appropriate sanctions, whether an alternative seller should have to demonstrate its ability to obtain certain types of service, and access to books and records.

The hearing held on September 15, 16 and 17, 1998 was attended by approximately 28 persons; approximately 16 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 15 persons placed comments on the record. Written comments were filed by approximately nine entities. The hearing held on December 21, 1998 was attended by approximately 13 persons, nearly all of whom made oral comments. Written comments were filed by four 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, either immediate or long-term, which cannot be avoided while at the same time conforming with the law to result from this regulation

On the Public

The Commission expects the public to benefit from retail competition in electric services and to particularly benefit, both immediately and in the long term, from the requirements that the regulation imposes on entities which wish to obtain and maintain a license to provide potentially competitive services. The Commission does not anticipate any adverse effects, either immediate or long-term, 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.