

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

IN THE MATTER OF)	
COMMISSION REGISTRATION)	
OF ENERGY BROKERS AND)	
CONSULTANTS PURSUANT TO)	CASE NO. 23-M-0106
PUBLIC SERVICE COMMISSION)	
LAW SECTION 66-t)	
)	
IN THE MATTER OF)	
REGULATION AND OVERSIGHT)	CASE NO. 15-M-0180
OF DISTRIBUTED ENERGY)	
RESOURCE PROVIDERS)	
AND PRODUCTS)	
)	
IN THE MATTER OF)	
RETAIL ACCESS)	CASE NO. 98-M-1343
BUSINESS RULES)	

**MOTION FOR CLARIFICATION
OF THE AOBA ALLIANCE, INC.**

The AOBA Alliance, Inc. (the “Alliance”), pursuant to Section 3.6 of the Rules of Procedure of the New York State Public Service Commission, the “Declaratory Ruling and Order on Rehearing” the (“Rehearing Order”)¹ and the “Notice Extending Deadlines,”² hereby respectfully provides the “full understanding” of the Alliance’s “relationship to its members” requested by the Commission in the above-captioned proceedings³ Based on the full understanding provided herein, the Alliance respectfully requests that the Commission clarify that the recently issued regulations governing energy broker and energy consultant registration do not apply to the Alliance. Specifically, the Alliance respectfully requests that the Commission clarify

¹ The Rehearing Order was issued in the above-referenced proceeding on April 18, 2024.

² The Notice Extending deadlines was issued in the above-referenced proceeding on June 10, 2024.

³ See Rehearing Order at 41. (“[A]t this time, the Commission is unable to make a . . . judgment regarding utilization of the of Alliance’s form of service agreements in New York absent a full understanding of the Alliance’s relationship to its members.”).

that the relationship between the Alliance and Alliance participants⁴ is *not* sufficient to trigger application of the broker/consultant registration requirements.

I. SUMMARY

AOBA Alliance, Inc. (“the Alliance”) was formed in Washington, D. C. on March 27, 2000 by the trade association the Apartment and Office Building Association of Metropolitan Washington with the specific purpose of helping its membership obtain a favorable energy contract form (a blank template), tailored specifically for building owners and property managers in the nascent electric deregulation industry. Energy contracts vary widely and their language is complex and favorable to the supplier. The goal of the Alliance was to provide a form that was understandable by Alliance participants and provided more favorable terms. The Alliance prepared the contract form that would be used exclusively by its members with a single electric supplier in the Washington, D.C. area, (i.e., The District of Columbia, Maryland, Virginia, and Pennsylvania). The AOBA Alliance Board of Directors determines the single electric supplier, as well as the length of the contract with the supplier.

As electric deregulation progressed to other states, our Alliance participants wanted the opportunity to purchase their energy supply using key contract provisions from the Alliance contract form where the members had additional properties outside of the Washington D.C. metro area.

In those other jurisdictions (such as New York) our single supplier, Constellation NewEnergy, handles all marketing and sales and the Alliance's involvement is strictly limited to allowing the use by Constellation of key contract provisions from the contract form. There is no

⁴ In order to alleviate any confusion between members of the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) and the specific member companies that comprise the Alliance – the Alliance companies shall be referred to hereinafter as “participants.”

membership fee to purchase energy supply through the Alliance. The Alliance is compensated by Constellation for the permission granted to Constellation to use key contract provisions from the contract form and there is a statement of that effect in the supply contract. However, there is no additional fee that is added to the participants cost of supply, the fee is NOT additive. The Alliance is not a party to the electric supply contract, that contract is solely between Constellation and the building owner or property manager. All terms and conditions, including price, price structure and term of agreement are negotiated between the customer and Constellation. The Alliance does not offer any additional services currently in New York.

II. BACKGROUND

The background information germane to the requested clarification is readily summarized.

A. The Alliance

As noted elsewhere,⁵ the Alliance was formed for the sole purpose of developing a contract form specifically tailored to meet the energy supply requirements of buildings owned or operated by Alliance participants in the Washington, D.C. metropolitan region, i.e., the District of Columbia, Maryland, Virginia and Pennsylvania. The Alliance drafted and entered into a contract with Constellation NewEnergy, Inc. (“Constellation”), under which Constellation would act as the single supplier of electric supply service for Alliance participants in the Washington, D.C. metropolitan region, using the contract form of the Alliance. Later, with the advent of industry deregulation, the Alliance granted Constellation permission to use key contract provisions from the contract form negotiated with Constellation to provide energy supply service to buildings located outside the Washington, D.C. metropolitan region.

⁵ See August 4, 2023 “Letter” from the Alliance to Kelly O’Donovan, Commission Legislative Counsel (the “Alliance August 4 Letter”); “Comments of the AOBA Alliance,” submitted November 6, 2023 (the “Alliance November 6 Comments”).

Importantly for purposes of this clarification request, it should be noted that:

- (i) the Alliance is not a party to any energy supply contract between Constellation and a customer seeking electric supply in New York;
- (ii) Constellation is responsible for all marketing, sales, energy supply and customer contact; and
- (iii) Alliance participants neither receive nor pay any fee for the purchase of energy supply pursuant to the contract form.

It should also be noted that, while the Alliance receives a fee from Constellation, that fee is based on the Alliance granting Constellation permission to use key contract provisions from the contract form. Pursuant to a provision set out in the supply contract, the fee paid by Constellation to the Alliance is not additive and therefore does not increase the cost of providing electric supply service to New York customers.

B. This Proceeding

On December 23, 2023, Governor Hochul signed Public Service Commission Law §66-t (“Section 66-t”) directing the Commission to, *inter alia*, adopt a registration process for energy brokers and energy consultants doing business in the State of New York. Section 66-t also provided a definition of an energy broker and an energy consultant⁶ and imposed a \$5,000 penalty on any entity that acts as a broker or consultant without first registering with the Commission.⁷ Section 66-t further mandated that brokers and consultants “demonstrate financial accountability” by “bond or other method.”⁸

The Commission responded to Order 66-t by issuing an “Order Adopting Energy Broker and Energy Consultant Registration Requirements” on June 23, 2023 (the “June 23 Order”). As

⁶ See Section 66-t, 1(c), (d).

⁷ Section 66-t, 5.

⁸ Section 66-t, 3.

required by Section 66-t, the June 23 Order established the requisite registration process. The June 23 Order also imposed an annual \$500 registration fee and directed brokers and consultants to provide an irrevocable standby letter of credit of \$100,000 and \$50,000, respectively.⁹ Definitions of energy broker and energy consultant were also specified.¹⁰

By the Alliance August 4, 2023 Letter, the Alliance requested clarification that the Alliance was neither an energy broker nor energy consultant as specified in the June 23 Order. Specifically, the Alliance August 4, 2023 Letter explained:

FIRST, because the Alliance “does not perform any energy management or procurement functions,” the Alliance “is not (and cannot be) an Energy Broker as defined by the Regulations” and

SECOND, because the Alliance “does not solicit, negotiate or advise on electric or gas contracts on behalf of third-parties” and does not “act as an agent for an ESCO,” the Alliance “is not (and cannot be) an Energy Consultant under the Regulations.”¹¹

The Alliance August 4, 2023 Letter also explained that, if the Commission disagreed with the Alliance’s interpretation of the broker and consultant definitions, the Alliance “will register as a Consultant and pay any accompanying fees.”¹²

Requests for rehearing of the June 23, 2023 Order were next submitted and in a response thereto, the Alliance submitted the November 6, 2023 Comments. Substantively, the Alliance November 6, 2023 Comments again explained that, as defined by the regulations, the Alliance was not an energy broker or energy consultant:

[B]ecause the definition of Energy Consultant requires the solicitation, negotiation or advice on an electric or natural gas contract – an entity, like the Alliance, which simply utilizes a form of service agreement, cannot be properly defined as an Energy Consultant. Likewise, because the definition of Energy Broker requires the

⁹ June 23 Order at 20, 22-23.

¹⁰ June 23 Order at 8-11.

¹¹ Alliance August 4 Letter at 2-3.

¹² Alliance August 4 Letter at 1.

performance of energy management or procurement functions – an entity, again like the Alliance, which simply utilizes a form of service agreement, cannot be properly defined as an Energy Broker.¹³

In closing, the Alliance asked that the Commission “construe the definition of Energy Broker and Energy Consultant to exclude entities whose only nexus to the sale of electricity or natural gas in the State of New York is the utilization of key contract provisions from a form of service agreement.”¹⁴

The Commission addressed the rehearing requests and related comments in a “Declaratory Ruling and Order on Rehearing” issued April 18, 2024 (the “April 18 Rehearing Order”). With respect to the Alliance’s November 6, 2023 Comments, the Commission opined that “it appears likely that the Alliance would not be subject to registration requirements” if: (i) Alliance participants “use the precise form of contract that was originally negotiated by Alliance for use in other states” and (ii) the Alliance “receives nothing as a result of the transactions of its member[s].”¹⁵ The Commission did not rule on the Alliance request to be excluded from the registration process, explaining:

[A]t this time, the Commission is unable to make a blanket or conclusive judgment regarding utilization of the Alliance’s form of service agreements in New York *absent a full understanding of Alliance’s relationship to its members.*¹⁶

By this Motion, the Alliance presents the requested “full understanding.”

III. DISCUSSION

THE RELATIONSHIP BETWEEN THE ALLIANCE AND ITS PARTICIPANTS PROVIDES NO NEXUS FOR APPLICATION OF THE BROKER/CONSULTANT REGISTRATION REQUIREMENTS

¹³ Alliance November 6 Comments at 6.

¹⁴ Alliance November 6 Comments at 6.

¹⁵ April 16 Rehearing Order at 41.

¹⁶ April 16 Rehearing Order at 41 (emphasis added).

The Alliance respectfully submits that the requested full understanding provided in this Motion is indicative of no basis for application of the broker/consultant registration requirements to the Alliance. To begin, the Alliance has no employees or offices in New York. Nor does the Alliance have any contact with Constellation's customers in New York. As agreed to by and between the Alliance and Constellation, the Alliance contract form initially and exclusively applied to participants who owned or operated buildings in the District of Columbia, Maryland, Virginia and Pennsylvania and the terms and conditions set out therein were (and remain) favorable to Alliance participants.

With the advent of deregulation, Constellation requested permission from the Alliance to use key provisions from the Alliance contract form and in particular customer favorable provisions from the Alliance contract form in jurisdictions outside the Washington metropolitan area. Like the Alliance participants, customers utilizing key contract provisions from the Alliance contract form receive favorable terms and conditions for the electric supply provided by Constellation. Non-Alliance customers, thus, receive a benefit for using key contract provisions from the Alliance contract form., The Alliance receives a small fee from Constellation for the permission granted to use those key contract provisions from that contract form. The use by Constellation (not the Alliance) of those key contract provisions is the only indirect involvement (if that) the Alliance has with the State of New York.

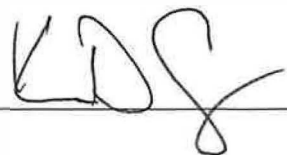
And this , the Alliance respectfully submits, is inconsistent with the scope and breadth of the broker/consultant regulations. As noted, the Alliance neither performs energy management or procurement functions on behalf of customers doing business in New York nor does the Alliance act as a broker in soliciting, negotiating or advising any electric or natural gas contract. The Alliance, therefore, is not – and cannot be – an energy broker or energy consultant as defined by

the Uniform Business Practices. Nor does the Alliance have any in-person or telephone contact with New York customers and, for this reason, the Alliance is not – and cannot be – providing “marketing” services in New York. It is simply unreasonable, lastly, to ask the Alliance to post a bond or other method of financial accountability when the Alliance’s, at best, indirect involvement with New York is the adoption – by Constellation – of key contract provisions from a contract form that provides favorable terms and conditions to New York customers. A full understanding of the relationship between the Alliance and New York customers of Constellation, in short, does not support application of the energy broker and energy consultant regulations.

IV. CONCLUSION

WHEREFORE, in view of the foregoing, the Alliance respectfully requests that the Commission exclude the Alliance from the definition of energy broker or consultant and from compliance with the energy broker and energy consultant registration requirements. If the Commission has any questions, please contact me at kcarey@aoba-metro.org or 202 296-3390, ext 767.

Respectfully submitted,



Kevin D. Carey
Vice President of Operations
AOBA Alliance, Inc.