



December 16, 2020

BY MAIL

Debra Howard
Executive Secretary
New Hampshire Public
Utilities Commission
21 South Fruit Street
Suite 10
Concord, NH 03301-2429

David K. Wiesner
Director Of Legal Division &
Senior Hearings Examiner
21 South Fruit Street
Suite 190
Concord, NH 03301-2429

RE: The AOBA Alliance, Inc.
Notice And Waiver Request

Dear Ms. Howard and Mr. Wiesner:

By this letter, the AOBA Alliance, Inc. (the "Alliance") respectfully requests a waiver of the Commission's rules governing a "buyer's aggregator."

The Alliance, pursuant to Puc 2003.05 of the New Hampshire Code of Administrative Rules, hereby respectfully notifies the Commission of the Alliance's intent to do business as a "buyer's aggregator" in the State of New Hampshire. Simultaneously with this notice, and pursuant to Puc 201.05, the Alliance also respectfully requests that the Commission waive the registration and related requirements applicable to a buyer's aggregator as set out in the Commission's "Competitive Electric Power Supplier and Aggregator Rules."

The Alliance was formed in 2000 by members of the Apartment and Office Building Association of Metropolitan Washington ("AOBA"). The purpose of the Alliance was – and is – to negotiate a contract specifically tailored to meet the electric supply requirements of buildings and properties owned or operated by Alliance participants in the Washington, D.C. metropolitan region. Pursuant to these negotiations, the Alliance entered into a contract with Constellation NewEnergy, Inc. ("Constellation") to act as a "single supplier" of electric supply service for Alliance participants. Alliance participants continue to receive electric supply service in the Washington, D.C. region from Constellation pursuant to this single supplier contract. The Alliance received a Certificate of Authority to transact business from the State of New Hampshire Department of State (Business ID 837930).

With the continued deregulation of the electric industry, Alliance participants wanted to use the single supplier contract with Constellation to purchase electric supply

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for service to member buildings and properties located outside the Washington, D.C. metropolitan region. Alliance participants have done so, using the single supplier contract with Constellation to secure electric supply in several states, including New Hampshire. In each instance, Constellation is responsible for all marketing, sales, supply and customer contact. The contract for electric supply, moreover, is between Constellation and the local customer.

The Alliance's participation, in contrast, is limited to the use of the form of the supplier contract with Constellation. The Alliance is not a party to any contract between Constellation and a local customer seeking electric supply. There is no membership fee to purchase electric supply pursuant to the contract. The Alliance does receive compensation for use of the contract form by Constellation and, it is the acceptance of this compensation for use of the contract *form* that qualifies the Alliance as a buyer's aggregator under the Commission's rules.

The Alliance acknowledges and accepts this finding; the Alliance is a buyer's aggregator under the Commission's rules. The Alliance respectfully submits, however, that a waiver of the rules applicable to a buyer's aggregator is warranted and in the public interest. Specifically, Puc 201.05(a) authorizes the Commission to waive "any of its rules . . . if the Commission finds" that (1) the waiver "serves the public interest" and (2) the waiver "will not disrupt the orderly and efficient resolution of matter before the Commission." In "determining" the public interest, subpart (b) of Rule 201.05 provides that the Commission "shall" waive a rule if: (1) compliance with the rule "would be onerous or inapplicable given the circumstances of the affected person" or (2) the "purpose of the rule would be satisfied by an alternative method proposed."

Here, the Alliance respectfully submits that the fact that the Alliance is not a party to any contract between Constellation and a local party seeking electric supply *and* the fact that the Alliance will not undertake any marketing, sales or related activity in New Hampshire compels a finding that compliance with the registration and related requirements applicable to a buyer's aggregator would be onerous. A contrary finding would require the Alliance to register and comply with all rules applicable to a buyer's aggregator – even though the Alliance's only nexus with the State of New Hampshire is the fact that Constellation utilizes the contract form initially developed for and executed by Constellation and the Alliance.

The Alliance further respectfully submits that these same facts – non-party contract status and the absence of any commercial connection with New Hampshire customers – compel an additional finding that the rules governing a buyer's aggregator are inapplicable. As noted, with the exception of the contract form, the Alliance has no commercial or corporate presence in New Hampshire. The rules governing a buyer's aggregator, therefore, have no substantive application to the Alliance.



Thus, although the Alliance acknowledges that the compensation received for use of the contract form qualifies the Alliance as a buyer's aggregator, the incidental nature of this compensation would make application of the Commission's rules onerous and inapplicable. The requested waiver, therefore, is in the public interest. The Alliance also pledges that, if the Commission does not grant the requested waiver, it will comply with all registration and substantive obligations set out in the Commission's rules.

In closing and on behalf of the Alliance, I thank you in advance for your time and consideration of this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'KDS', is positioned above the printed name of the signatory.

Kevin D. Carey
Vice President of Operations