



July 31, 2012

Ms. LuAnn Scherer
Ms. Honor Kennedy
Department of Public Service
3 Empire Plaza
Albany, New York 12223

Luthin Associates was founded to offer energy management services to large consumers in the deregulated utility market. Our clients include leading academic and medical institutions, and large real estate management firms. We offer these comments regarding possible changes in the Uniform Business Practices applicable to ESCOs and the licensing of brokers and independent advisors. Our focus is on large customers, and how the UBP affects their purchasing opportunities.

First, we support standards or a mandatory code of conduct for marketing agents, particularly those whose services include mass marketing, telemarketing or similar contact with residential customers, and we can support a reasonable licensing or certification process to insure that those standards are followed. However, the licensing process must not disrupt current business. Typical electricity and fossil fuel contracts may have a term of several months or even several years. Absent a finding of harmful practices, all entities must be allowed to continue to administer and/or take commissions and fees on any contracts that are executed prior to the implementation of licensing. Further, the licensing process should include a deadline for the licensing agency to act, and an appeals process. Finally, licenses issued by other States for similar service should be accepted in New York until a license is issued.

At a minimum, all licensed entities should be required to have a Dunn & Bradstreet rating. While brokers who do not take title to energy need not have a specific line of credit, a D&B rating is an easily accessible measure of a firm's credibility and its ability to conduct business. It is also important to recognize the complexity of business practices that have developed in New York's energy markets. Our consulting business has grown rapidly as customers see the need for expert advice on complex transactions. Our clients are large, successful organizations, who are sophisticated enough to understand when they need professional advice. To offer such advice to our end-user clients, it is essential that we remain independent of ESCOs.

All of our services are performed under contract to energy buyers, and our fees are a matter of negotiation with each of our clients. In some cases, our clients agree to fees to be collected from ESCO sellers, and we believe that this has become a common practice among other consultants as well. We believe that payment arrangements between end-users and their consultants should generally not be publicly disclosed. Our concern is that the strawman proposal would define independent advisors as brokers if they accept such payments directly from ESCOs. To avoid that possibility, we propose to add the following exclusion to any licensing rule:

A consultant under contract to a buyer is not a Broker under the meaning of these rules, provided that the consultant discloses to the buyer/client any payments made by an ESCO to the consultant.

It is important to allow buyers to contract for professional advisory services in the complex and changing energy markets. Treating these advisors as brokers will compromise the independence of those advisors, to the detriment of the entire market.

Finally, the strawman's "Full Disclosure of Payment Terms" includes these provisions:

- Additional information should be provided on the terms and conditions of payments made to third parties for greater customer understanding (e.g., who is paying whom, inclusion of broker fees in kWh rate or per-therm basis, one-time finder's fee). **The general consensus is full transparency that the broker will receive some form of compensation is necessary.**
- Requirement to maintain updated information, after licensing or registration, sources of known or planned compensation.

While we agree that the *basis* of fees should be disclosed to buyers, we do not believe the *amount* should be reported to regulators or made public (except of course in extreme cases that involve fraudulent activities). Further, the Commission should not require disclosure or reporting of sources of revenue, or especially "planned revenue." This is proprietary and sensitive business information, and public disclosure will have disastrous effect on the competition among brokers, ESCOs and other parties.

Thank you for this opportunity.

Sincerely,

Catherine Luthin

President