

PUBLIC REDACTED

DIRECT TESTIMONY

OF

JIM AGNEW

Consumer Policy Analyst
Consumer Services Division
Illinois Commerce Commission

Citizens Utility Board, Citizen Action/
Illinois and AARP

vs.

Illinois Energy Savings Corp.,
d/b/a U.S. Energy Savings Corp.

Complaint as to marketing practices in Chicago, Illinois

Docket No. 08-0175

October 24, 2008

1 **Q. Please state your name and business address.**

2 A. My name is Jim Agnew, and my business address is 527 East Capitol Avenue,
3 Springfield, Illinois 62701.

4
5 **Q. By whom are you employed and in what capacity?**

6 A. I work for the Illinois Commerce Commission (“ICC”) as a Consumer Policy
7 Analyst in the Consumer Services Division (“CSD”).

8
9 **Q. Please describe your educational and occupational background.**

10 A. I earned a Bachelor of Arts degree in Rhetoric from the University of Illinois at
11 Urbana/Champaign in 1992. From 1992 to 1993, I worked in commission sales
12 for a major department store. From 1993 to 1996, in the Illinois Governor’s
13 Office of Citizens Assistance, I worked on policy issues covered by a variety of
14 State of Illinois agencies, boards and commissions, including the ICC. From
15 1996 to 2008, I worked for the ICC as a Consumer Counselor. In 2008, I was
16 promoted to my current position. As an expert witness on consumer issues, I
17 have testified in cases before the ICC and at legislative committees before the
18 Illinois General Assembly.

19

20 **Q. What have been your responsibilities at the ICC?**

21 A. I have provided consumer education and dispute resolution services between

22 regulated companies and their Illinois customers through the informal complaint
23 process. Using my casework experience and knowledge, I previously worked
24 with CSD Management to facilitate the Division's policy efforts. In my current
25 position, I carry out many of the same duties outlined above, and in addition I
26 analyze complaint trends, advise Management and work with utilities and
27 consumer advocacy groups to resolve concerns and implement new policies to
28 address problems.

29

30 **Q. What is the purpose of your testimony?**

31 A. I will describe the concerns of ICC Staff ("Staff") regarding the management
32 practices of Illinois Energy Savings Corp., d/b/a U.S. Energy Savings Corp.,
33 ("USESC" or "Company"), in particular, its management of its utility customer
34 sales, customer service and complaint handling operations in Illinois. I will
35 describe the experience of Staff in handling consumer complaints and provide
36 analysis of the Company's responses to the interrogatories of the Citizens Utility
37 Board, Citizens Action/Illinois and AARP (collectively the "Consumer Groups" or
38 "CG") and Staff. Finally, I will outline the minimum remedies which Staff believes
39 the Commission should order in response to this complaint case.

40

41 **Q. Please describe the general duties of the Consumer Services Division**
42 **(CSD) of the ICC.**

43 A. CSD provides a variety of services to both consumers and companies, based
44 primarily upon incoming contact from consumers. Those contacts are received
45 by telephone, e-mail, traditional mail, fax, referral from third parties and in-person
46 office visits. The majority of contacts are received by telephone through our toll
47 free number 1-800-524-0795. Companies are required to provide this contact
48 information to consumers on all written disconnection notices and any time their
49 supervisory staff is unable to satisfy a customer's inquiry or concern. Contacts
50 generally fall into one of three topical categories, with some overlap: questions,
51 comments and informal complaints. Overlap occurs because customers may
52 have questions or comments in addition to proceeding with an informal complaint
53 to be submitted to the company for resolution. Contacts that are purely to ask a
54 question or leave a comment are typically not submitted to the company
55 individually for answer, but all informal complaint records are sent to the
56 company.

57

58 **Q. Please describe the informal complaint process.**

59 A. Although any party may file an informal complaint against another party, the vast
60 majority are consumer complaints against companies. CSD records and
61 processes all informal complaints received. CSD Staff responsible for
62 processing informal complaints is comprised of a team of Consumer Counselors,
63 specially trained in dispute resolution with expert knowledge of the ICC

64 regulations and the Illinois Public Utilities Act (“PUA”). The Counselors receive
65 consumer contacts, interview the consumers to determine what has occurred,
66 and then submit a written informal complaint on behalf of the consumer with the
67 company. The written informal complaint outlines the customer’s position and
68 the relief they are seeking. Most written informal complaints are sent to the
69 companies electronically, and most companies respond back to CSD
70 electronically. The company must respond to the informal complaint within
71 fourteen (14) days, and typically the company contacts the consumer in order to
72 negotiate a resolution prior to filing their response with CSD. CSD Staff then
73 reviews the informal complaint response and may follow up with both parties if
74 further information or discussion towards resolution is needed. At the
75 culmination of the informal complaint, CSD Staff contacts the consumer to
76 review the final outcome. The full record of the informal complaint goes into
77 CSD’s Automated Complaint Tracking System (“ACTS”), which also contains all
78 other contacts (including questions and opinions) from consumers.

79
80 **Q. Since the beginning of 2005 to the present, has CSD Staff received as many**
81 **contacts from consumers regarding other natural gas suppliers as it has**
82 **for USESC?**

83 **A.** No. The number of ACTS entries recorded by CSD for all natural gas suppliers
84 since the beginning of 2005 to mid-October is 1,991. Of that number, USESC

85 accounts for 1,336, or approximately 67%, of the consumer contacts regarding
86 natural gas suppliers that CSD Staff has recorded in ACTS.

87

88 **Q. Of all the contacts from consumers regarding USESC, how many have**
89 **been submitted to the Company as informal complaints?**

90 A. In total, CSD Staff has handled 1705 consumer contacts regarding USESC from
91 February 2004 through the first two weeks of October 2008. Of that number, at
92 least 1236 were submitted to the Company as informal complaints through CSD
93 Staff.

94

95 **Q. Did you personally handle any of the contacts from consumers regarding**
96 **USESC?**

97 A. Yes. In my prior role as a Consumer Counselor, I was responsible for 56 entries
98 regarding USESC, including 47 that were sent to the Company as informal
99 complaints. In this manner, I have direct knowledge of the types of allegations,
100 concerns and opinions expressed by USESC's customers, as well as the
101 process by which the Company and the ICC attempt to resolve those concerns
102 informally.

103

104 **Q. Please describe the general trends found in the consumer contacts**
105 **handled by CSD Staff regarding USESC?**

106 A. Consistent with the Consumer Groups' allegations set forth in the docketed
107 complaint which were based on the separate CUB records of the Citizens Utility
108 Board ("CUB"), CSD Staff also recorded a large number of reports from
109 consumers against USESC indicating that they were promised or otherwise led
110 to believe that they would save money on their natural gas bills by agreeing to
111 take service with the Company. For example in 452 of the total 847 consumer
112 contacts CSD received regarding USESC between January 2007 and March
113 2008, consumers told Staff that "savings" was emphasized at the point of sale.
114 Likewise, CSD Staff received and recorded a large number of customer contacts
115 (476 of the 847 USESC consumer contacts handled between January 2007 to
116 March 2008) stating that the Early Termination Fee ("ETF") assessed by USESC
117 was either not discussed at the point of sale or was much higher than expected.
118 In some instances the customers reported that the ETF acted as a disincentive
119 to the customer cancelling the contract. Moreover, CSD Staff recorded contacts
120 from consumers stating that USESC sales agents misrepresented themselves to
121 be employees of a utility (155 of the 847 handled January 2007-March 2008) or
122 misrepresented themselves to be employees of a government agency (18 of the
123 847). As with the CUB complaints, CSD Staff recorded many consumer contacts
124 (96 of the 847) stating that differences between the language spoken by the
125 salesperson and that spoken by the customer led to confusion and possible
126 deception in the sale. Many consumers (136 of the 847) reported that they could

127 not get USESC to cancel the service, despite reporting that they had made
128 repeated attempts to do so, or that they experienced long delays in achieving
129 cancellation. A large number of customers (112 of the 847) challenged the
130 overall validity of the sale, with some of these reporting that slamming had
131 occurred.

132

133 **Q. Do you have concerns about the volume and content of the consumer**
134 **contacts regarding USESC handled by CSD?**

135 A. Yes. Large volume by itself can simply arise as a byproduct of market share,
136 and in such instances is likely to be associated with a variety of topics. Likewise,
137 negative consumer contacts in isolated instances may not be an indication of a
138 developing trend or concern. However, when heavy volume (relative to the
139 particular industry or market) is paired with a repeated set of specific and similar
140 allegations over a sustained period of time, the situation raises concerns of a
141 systemic failure that needs to be identified and addressed on a system-wide
142 rather than an individual basis.

143

144 **Q. Do you agree with the concept that for every consumer who contacts Staff**
145 **regarding an issue, there are many more who do not?**

146 A. Yes. As Consumer Group Witness Barbara Alexander correctly observes in her
147 testimony (CG Ex. 1, pages 4-5, lines 88-94, footnote 1), it is an accepted

148 occupational truth in complaint escalations that only a relatively small number of
149 aggrieved consumers will have the time, energy and persistence to follow the
150 chain of escalations through layers of customer service, supervisory referrals,
151 advocacy, legal assistance and regulatory entities. In the relatively young market
152 for competitive natural gas supply where most billing is bundled with the
153 distribution utility, residential and small business consumers often experience yet
154 another layer when they contact the distribution utility to voice their concerns with
155 the bill. Twenty (20) customers of USESC felt aggrieved enough to not only
156 submit an informal complaint against USESC, but then to go on to file a formal
157 complaint with the Commission regarding their individual concern. I also agree
158 with CG Witness Alexander's description in her testimony of the "complaint chain
159 or pyramid" (*Id.*) indicating that for each allegation raised to the level of a
160 regulatory body, there are many more consumers who did not actively pursue
161 their problem all the way up the chain. Our office has received a large volume of
162 complaints against USESC dealing with very similar consumer concerns over a
163 sustained period of nearly four (4) years. Taking into account the probability that
164 many other consumers had similar concerns but did not pursue them, the
165 allegations raised by the CSD complaints are cause for concern. Furthermore,
166 the fact that CUB and other consumer advocates have received similarly large
167 numbers of the same types of consumer contacts regarding USESC is further
168 cause for alarm. I would expect a company receiving such persistent, high

169 volume attention from advocates and regulators to take active steps to reduce
170 this flow and create new self-monitoring policies to ensure continuing compliance
171 by its sales force and customer service.

172

173 **Q. Do you believe that USESC is taking proper steps to fix the problems?**

174 A. No. Based upon its testimony and responses to data requests, I believe that
175 USESC's management has little permanent presence in Illinois, and has instead
176 chosen to rely upon tiers of independent contractors to police their sales force
177 through written contracts and other materials provided by USESC, including the
178 independent contractor's contracts, the customer sales contracts and sales
179 training documents. While these efforts appear tangible in that they are visible
180 items that can be shown to consumer advocates and regulators, they do not in
181 themselves take the place of the active managerial oversight that is necessary to
182 prevent deceptive behavior in a door-to-door sales environment where the fine
183 print in sales materials takes an extremely diminished role in the sale and agents
184 with no field oversight can disregard or otherwise stray from the scripts and
185 instructions in their written training manuals. The volume and content of
186 consumer contacts regarding USESC continues despite whatever efforts the
187 Company may have already taken to try to address the concerns. More work is
188 necessary in order to make sure that the Company's sales force consistently
189 communicates accurately the terms of service reflected in the written materials.

190
191 **Q. You mentioned the potential for door-to-door salespersons failing to follow**
192 **their training manuals. Wouldn't the Company's commission structure,**
193 **involving continuing pay for customer retention and "claw back" penalties**
194 **for lost customers, encourage a salesperson to follow USESC's written**
195 **sales scripting?**

196 A. Considering the commission structure, or compensation by itself, perhaps but
197 other policies of the Company make it less likely that this structure will
198 discourage salespeople from using inappropriate sales techniques. As I
199 mentioned above, USESC charges an early termination fee (ETF) that
200 discourages customer cancellations. For example, in ****BEGIN CONFIDENTIAL**
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202 XXX
203 XXX
204 XXX
205 XXX
206 XXX
207 XXX
208 XXXXXXXXXXXXXXXXXXXXXXXXXXX**END CONFIDENTIAL**** Furthermore, as I also
209 indicted above, even if the customer is not intimidated by the ETF and pursues
210 cancellation, many consumers contacted Staff to complain that they had a

211 difficult time even getting the service cancelled. So USESC's independent
212 contractor salesperson would tend to be less affected by any potential deception
213 at the point of sale because they can count on systemic barriers to a customers'
214 attempts to cancel their contract.

215
216 **Q. But what about the Company's agreement in early 2008 to lower the ETF to**
217 **\$75/year for each year remaining on the contract? Doesn't that remove**
218 **some of this concern?**

219 A. It's a start, but, for example, that would still leave a \$300 exit fee for a customer
220 who wants to cancel with 4 years remaining on his contract. Even though this is
221 potentially lower than previous ETF's charged by USESC, I believe it is still
222 enough of a disincentive to cancellation. I also noticed that the Company has
223 begun selling carbon offsets to its customers in tandem with the natural gas
224 commodity supply, under a program it calls "GEOgas." Based upon my review of
225 the GEOgas addition to the contract, it appears that a customer who enrolls in
226 the program but cancels the contract before the full term will have to pay USESC
227 \$4.00 for every unit of GEOgas they had committed to purchasing multiplied by
228 the number of full or partial years remaining on the customers term contract with
229 USESC in addition to the \$75/month regular ETF. I calculated that a consumer
230 who had committed to buying 5 units of GEOgas per month from USESC would
231 have to pay the company an additional \$80 in early termination fees if they left

232 the program with 4 years remaining on their contract. (5 units X \$4.00 X 4 years
233 = \$80). When Staff asked USESC for clarification on this, the Company refused
234 to explain by contending that it “is not relevant to the allegations in the
235 Complaint.” (Co. Response to CSD 5.35, page 11 of October 10, 2008 data
236 request response). Because the ETF can act as a retention tool, I believe that
237 anything which effectively raises the ETF a customer must pay to leave USESC
238 is directly related to the allegations raised by the CG in this complaint. If my
239 analysis of the GEOgas cancellation policy in the contract is correct, USESC
240 needs to reconsider its use of full term early exit fees for the GEOgas program
241 on any bills submitted through the respective distribution utility, and I believe it
242 should refrain from finding any further alternative means of increasing the agreed
243 upon \$75/year maximum for its early termination fees. I am not arguing that the
244 company should be unable to protect itself contractually from losses. But the
245 fact that the ETF can significantly discourage even an aggrieved customer from
246 leaving means that the Company needs to be even more vigilant in its attempts
247 to ensure that the initial sale occurs without deception or confusion and that the
248 existing ETF structure not go any higher.

249
250 **Q. Do you also have concerns about USESC’s internal handling of complaints**
251 **and disputes?**

252 **A.** Yes. Based upon the Company’s responses to CSD 2.06, CUB 2.23 and CSD

253 4.06, USESC does not sort, categorize or track incoming complaints it receives
254 directly from its customers. Any managerial review of its customer service
255 records which would attempt to identify trends of concern would have to be
256 performed in an exhausting and time intensive manual basis or through
257 anecdotal interviews with its staff, and thus the Company is severely hindered in
258 any attempt to efficiently identify and respond to these troubles.

259

260 **Q. Do you also have concerns about the company's handling of disputed**
261 **portions on a customer's bill?**

262 A. Yes. In its answer to CSD 4.13, the Company seems to indicate a lack of
263 understanding of the requirements under Illinois Administrative Code Title 83,
264 Part 551, Section 551.70 b) 6). This regulation states in part that, "...while the
265 dispute is pending, the customer shall pay the undisputed portion of the bill or an
266 amount equal to last year's bill at the same location for the same period,
267 normalized for weather, whichever is greater. Any disputed amount in excess of
268 last year's bill for the same address adjusted for weather shall not be included in
269 the amount that must be paid by the due date." A supplier using the distribution
270 utility for billing should have in place a process where it can have the distribution
271 utility set aside a disputed portion of the bill while the supplier looked into the
272 matter. When asked in CSD 4.13 how USESC could ensure that disputed
273 portions are not included in the bill, the Company states in part, "the bill would

274 precede the dispute and therefore this request is unclear.” USESC avoids
275 answering the question with a response that renders such a set aside impossible
276 by asserting that the customer would have to somehow know about the dispute
277 before the billing happened in order to have the Company properly address the
278 question.

279

280 **Q. Do you have concerns about USESC’s management of its regional offices?**

281 A. Yes. In CSD 5.12, Staff asked USESC if it had any special training materials
282 specific to its Regional Distributors. The Company simply answered that “there
283 are no materials in addition to those already provided.” Beyond the requirements
284 of the independent contracts in place with the Regional Distributors and the
285 regular training materials which USESC provides to all contractual sales agents, I
286 could find no specific set of practical instructions from USESC to its Regional
287 Distributors on how to manage the offices and other independent contractors. If
288 none truly exist, then this is problematic because the Regional Distributors
289 appear to be USESC’s sole form of permanent local oversight for all of its other
290 salespersons. Whether the Company has given the Regional Distributors any
291 effective power of oversight at all comes into question when Staff reviewed the
292 Company’s contracts with its Regional Distributors. For example, in response to
293 CUB 3.01d) asking about service agreements, ****BEGIN CONFIDENTIAL**
294 XXX

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296 XX
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300 XX
301 XX
302 XX **END CONFIDENTIAL****

303

304 **Q. You mentioned permanent local oversight. Does USESC have any of its**
305 **own employees located permanently at the local sales offices in Illinois?**

306 A. Yes. In response to CUB 4.35, asking USESC to “Identify the USESC employees
307 who work in and supervise or manage the individual sales offices,” USESC
308 provided the names and locations of five (5) “Receptionists” and five (5)
309 “Recruiters” with one Receptionist and one Recruiter working at each of the five
310 (5) sales offices. Furthermore, in response to CSD 5.01 question about the role
311 of the Regional Distributors, USESC responded that “Distributors are the people
312 or companies with whom Energy Savings Marketing Corp. (“ESMC”) contracts to
313 operate the sales offices.” The Company has acknowledged that the Regional
314 Distributors are not employees of the Company. Taking the responses to these
315 requests together, it appears to Staff that USESC’s own management must

316 apparently travel from locations outside Illinois to visit the USESC sales offices in
317 Illinois, as all of USESC's management personnel are located physically in
318 Ontario Canada.

319
320 **Q. Do you have further concerns regarding USESC's management of these**
321 **offices?**

322 A. Yes. Based upon the Company's responses to CSD 5.28 and CSD 5.29, which
323 data requests sought information on possible misconduct by Independent
324 Contractors operating out of the local sales offices, the Company informed Staff
325 that the sole repository for any information on "possible breaches by contractors"
326 at those offices is "Ms. Findley," who is "currently on leave but will review her
327 records upon her return." Ms. Findley filed testimony on behalf of USESC on
328 September 25, 2008, but now is unavailable for review of this important question.
329 This illustrates that the Company apparently has no centralized system for
330 documenting, reporting and tracking managerial concerns with its sales force
331 and independent contractors in order for the Company to review its operations.
332 Ms. Findley appears to be the sole repository of important managerial records.
333 The Company also appears to rely entirely on its independent contractors to act
334 and conduct themselves in accordance with their contracts and the law.
335 Although individual accounts of circumstances brought to management on a
336 voluntary basis can certainly play a role in policy, proper management of sales

337 and customer service operations requires much more than this. It requires
338 reporting systems and recording of information in databases for periodic review
339 by those in charge. Without regular documented reporting and categorization of
340 management issues, the Company is relying solely on individual managers to
341 obtain this information from their employees. If Ms. Findley decides to leave the
342 Company, USESC will apparently have lost this important information about
343 potential breaches of its contractual policies for its sales force in Illinois.

344

345 **Q. Do you have further concerns about the Company's ability to monitor its**
346 **sales force in the field?**

347 A. Yes. Based upon the Company's response to CSD 1.06, the Company "does
348 not monitor performance by attending at doors with contractors." When pressed
349 for more details in CSD 4.02, the Company conceded that "some affiliate
350 employees and Illinois Energy Savings Corp. ("IESC") officers have attended 'in
351 the field' to better understand how the sale of the product occurs." Based on the
352 Company's responses, it would appear that the Company does not provide any
353 direct oversight for the purpose of monitoring or enforcing its contractual control
354 over its sales force. Rather, the incidental attendance in the field by the affiliate
355 employees and IESC officers appears to be for the purpose of educating those
356 same employees and officers, not for exercising managerial control over the
357 Company's sales force. Certainly management should attempt to learn new

358 things about evolving markets from its sales force. But in light of complaints of
359 misrepresentations by the sales force, Staff would have expected that the
360 Company exercise some managerial control by auditing and correcting incidents
361 of inappropriate sales tactics or representations.

362

363 **Q. What conclusion do you reach when comparing the complaints recorded**
364 **by CSD, the Company's responses to data requests and the Company's**
365 **testimony?**

366 A. The sustained, high volume pattern of similar contacts from USESC consumers,
367 coupled with a lack of appropriate and effective complaint tracking and handling
368 procedures, indicates that the Company is not properly managing its sales force
369 to better ensure that its customers understand and agree to the offered service
370 without potential deception or misrepresentations. Without this vital self-
371 monitoring, the Company cannot effectively ensure that disputed portions of bills
372 are set aside and that requests for cancellation are immediately honored. There
373 appears to be no system in place, other than the incidental and voluntary
374 offerings of information to management from its complaint handling staff, who
375 may have no motivation to report negative news, which would help the Company
376 identify and address rising concerns.

377

378 **Q. Based upon this conclusion, what recommendations would you make to**

379 **the Commission?**

380 A. In Staff's view, the Company has failed to continue to comply with its managerial
381 requirements for certification as required by Section 19-115(b)(2) of the PUA.
382 Consequently, I believe that the Commission should fully consider the
383 recommendations of CG Witness Barbara Alexander, including her
384 recommendation to compel USESC to conduct an independent audit aimed at its
385 management oversight efforts (CG Ex. 1, page 46, lines 945-946). At a
386 minimum, pursuant to Section 19-120(c)(1) of the PUA, the Commission should
387 order USESC to cease and desist, or correct, 1) any patterns of deceptive sales
388 practices and misrepresentations by its independent contractors, and 2) failures
389 to have sufficient managerial resources and abilities to exercise control over the
390 Company's sales, marketing, recruiting, and training. The Commission should
391 also order USESC to cease and desist, or correct, any other violations of
392 applicable laws and rules that the Commission may find, pursuant to Section 19-
393 110(e)(5). At the same time, pursuant to Section 19-120(c)(3), the Commission
394 should also alter the Company's certificate to require the Company to stop door-
395 to-door sales until 1) it has implemented new managerial policies to effectively
396 address the problems raised by Staff and CG, and 2) it has commenced an
397 independent audit and auditor, approved by Staff. In addition, USESC needs to
398 implement tracking systems to permit management to identify and correct trends
399 reflected in consumer complaints before they become major issues with its

400 consumers, requiring escalation to regulators and advocates. If USESC wishes
401 to maintain its practice of door-to-door neighborhood sales, it needs to establish
402 a stronger managerial presence in Illinois that does not rely heavily upon tiers of
403 independent contractors to police themselves. A hands-on sales technique
404 requires more hands-on management than technology based sales systems,
405 such as online sales and telemarketing, where management can more easily use
406 remote monitoring to fully capture and coach the narrative of the transaction.
407 USESC's management needs to implement a system of independent contractor
408 field monitoring and training to ensure that independent contractors do not
409 deceive customers or misrepresent themselves. USESC must commit to taking
410 affirmative responsibility for the actions of its independent contractors.

411

412 **Q. Does this conclude your testimony?**

413 **A. Yes.**