

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>CITIZENS UTILITY BOARD</b>	)	
<b>AND AARP</b>	)	
	)	<b>DOCKET NO. 08-0175</b>
<b>-VS-</b>	)	
<b>ILLINOIS ENERGY SAVINGS CORP.</b>	)	
<b>D/B/A U.S. ENERGY SAVINGS CORP.</b>	)	
<b>COMPLAINT PURSUANT TO</b>	)	
<b>220 ILCS 5/19-110 OR 19-115.</b>	)	

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**SURREBUTTAL TESTIMONY OF**  
**BARBARA R. ALEXANDER**  
**ON BEHALF OF**

**THE CITIZENS UTILITY BOARD**  
**AARP**  
**(“Consumer Groups”)**

**CONSUMER GROUPS EXHIBIT 3.0**

**January 28, 2009**

**PUBLIC VERSION**

1 Q. **PLEASE STATE YOUR NAME AND IDENTIFY FOR WHOM YOU ARE PROVIDING**  
2 **TESTIMONY.**

3 A. My name is Barbara R. Alexander. I submitted Direct Testimony on August 28, 2008 and Rebuttal  
4 Testimony on November 13, 2008 in this proceeding. I am now submitting Surrebuttal Testimony on  
5 behalf of the Citizens Utility Board (“CUB”) and AARP (collectively, “Consumer Groups”).

6 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my Surrebuttal Testimony is to respond to Mr. Gord Potter’s Rebuttal testimony on behalf  
8 of U.S. Energy Savings Corporation (“USESC”) filed on December 17, 2008. I will also respond to the  
9 Illinois Commerce Commission Staff (“Staff”) Rebuttal testimony filed on January 13, 2009 by Mr. Jim  
10 Agnew. My testimony also reflects my review of data responses submitted by USESC, including those that  
11 were subject to CUB’s Motion to Compel, which were received subsequent to my Rebuttal Testimony in  
12 November 2008.

13 Q. **BASED ON THE REBUTTAL TESTIMONY SUBMITTED BY MR. POTTER ON BEHALF OF**  
14 **USESC, DO YOU HAVE ANY CHANGES WITH RESPECT TO THE UNFAIR AND IMPROPER**  
15 **MARKETING PRACTICES THAT YOU IDENTIFIED IN YOUR TESTIMONY AND YOUR**  
16 **RESULTING CONCLUSIONS AND RECOMMENDATIONS?**

17 A. No. I will explore Mr. Potter’s Rebuttal Testimony in more detail below, but I continue to maintain that the  
18 overall conclusions and recommendations as set forth in my prior testimony and summarized in this  
19 Surrebuttal testimony should be adopted by the Commission. USESC’s Direct Testimony by its four  
20 witnesses submitted in September 2008 generally took the position that its stated policies were sufficient  
21 and that its management and oversight of its sales and marketing practices were reasonable. Mr. Potter’s  
22 Rebuttal testimony filed in December 2008 continues this theme, but he now describes revisions to  
23 USESC’s prior practices and policies which were implemented in early 2008 that he alleges have resulted  
24 in fewer complaints and compliance with Illinois law and regulations. My Surrebuttal Testimony will  
25 discuss these alleged “reforms” and provide further factual information that supports my conclusions and  
26 recommendations. Furthermore, the additional information that I have reviewed in the form of data

27 responses and exhibits from USESC in response to more recent CUB and Staff data requests only confirms  
28 my original findings and supports my overall conclusions. I note, as well, that the testimony of Mr. Agnew  
29 on behalf of the Staff confirms my findings and conclusions.

30 Q. **PLEASE DESCRIBE HOW YOUR REBUTTAL TESTIMONY IS ORGANIZED.**

31 A. I will summarize Mr. Potter's Rebuttal testimony and his response to the testimony of the Consumer  
32 Groups, CUB and Staff. I will demonstrate how USESC's so-called reforms have not and should not be  
33 viewed as resolving the serious defects and misconduct that I have documented throughout this proceeding.  
34 I will also discuss any changes to my recommendations with respect to the licensing status of USESC in  
35 light of the Staff's recommendations. As a result, my testimony is organized by the following topics or  
36 issues relating to my investigation of USESC's marketing and contract activities in Illinois:

- 37 • USESC's marketing practices are at odds with the Company's stated policies and contractual terms and  
38 are generally designed to hide the likely adverse result of entering into a 4- or 5-year fixed price  
39 contract that is, in almost all cases, higher than the prices charged by utilities for regulated natural gas  
40 supply service. The suggestion by Mr. Potter that a tiny number of Illinois residential customers who  
41 entered into a five-year fixed price contract with USESC in 2004 saw an average savings of \$198 over  
42 the life of the contract, in comparison to the overwhelming number of customers who have paid more –  
43 in many cases significantly more – than they would have had they stayed with the utility, conclusively  
44 demonstrates that price information provided by many USESC's sales agents is misleading. In my  
45 opinion, the additional disclosures included in USESC's contracts that were added in 2008 do not  
46 change the result for the thousands of customers who have entered and continue to enter into these

47 long-term fixed price obligations that require a significant early termination or exit fee to cancel and  
48 return to utility natural gas supply service.

- 49 • USESC has charged unfair and unreasonable early termination fees and has applied its contractual  
50 terms for this fee in a discriminatory manner. The reduction in the exit fee in May 2008, at the request  
51 of the ICC Staff, still requires the customer to pay \$75 for each remaining year of the contract or, in  
52 some cases, as much as \$375 Furthermore, USESC routinely forgives this exit fee for certain  
53 categories of customers who complain and seek to cancel outside the cancellation period window based  
54 on criteria designed to avoid adverse publicity, while continuing to impose this charge on unknowing  
55 customers who do not pursue their concerns to third parties, such as CUB and the Commission.
  
- 56 • USESC operated throughout 2007 and into early 2008 without any effective management of its sales  
57 agents to prevent misconduct, without any analysis of customer complaints, without any method of  
58 tracking “failed” verification calls, and without any hands-on oversight or monitoring of sales offices in  
59 Illinois by the parent company owners. Furthermore, I am not convinced -- and the evidence does not  
60 show -- that USESC’s changes implemented in early 2008 are sufficient to prevent the historical  
61 pattern of misrepresentation and abusive marketing practices. It appears that USESC turned a “blind  
62 eye” to marketing abuses, misrepresentation, and other unfair and deceptive practices that are reflected  
63 in the large volume of complaints. Given USESC’s conduct in this case, the promises as reflected in  
64 Mr. Potter’s Rebuttal Testimony should be given very little weight by the Commission.
  
- 65 • USESC has marketed its contracts in a discriminatory pattern to low-income, elderly and non-English  
66 speaking residential customers. USESC’s attempts to avoid this conclusion are without merit.  
67 Furthermore, contrary to long-standing denials during the course of discovery in this proceeding,

68 USESC now admits that it does inform the natural gas utilities where its sales agents intend to focus  
69 their marketing efforts in routine communications. Therefore, USESC’s attempt to link its marketing  
70 efforts to the residences of its sales agents and not the income and ethnicity of the neighborhoods  
71 should be ignored.

- 72 • USESC has failed to implement a proper level of management oversight of its sales agents in Illinois,  
73 and therefore lacks sufficient managerial resources and abilities to maintain its certificate of service  
74 authority. Recent changes to respond to formal action by the Commission may have some positive  
75 impact, but they are insufficient in themselves and the Commission cannot be assured that these  
76 “reforms” will continue in the future.

77 **Q. PLEASE SUMMARIZE MR. GORD POTTER’S REBUTTAL TESTIMONY.**

78 A. Mr. Gord Potter states that USESC’s “management has taken numerous proactive steps to implement  
79 comprehensive changes to its business processes and managerial oversight of sales contractors and  
80 Regional Distributors.” [Potter Rebuttal at 2] He points to the “significant reduction in complaints  
81 associated with business conducted after the changes” were implemented. [Ibid.] Specifically, Mr. Potter  
82 describes “daily communication between Ontario-based Sales and Marketing personnel and the Regional  
83 Distributors,” “weekly communication between the Ontario based Consumer and Corporate Relations  
84 (CCR) group and the Regional Distributors concerning any allegations about the conduct of sales  
85 contractors.” [Potter Rebuttal at 5-6] Mr. Potter claims that the “permanent managerial presence” in  
86 Illinois consists of five Regional Distributors and one Regulatory Manager. He testifies that the Regional  
87 Distributors, who are not employees of USESC, but rather sales agents with contracts to perform the  
88 Distributor function, act as “managers” of the five Illinois sales offices.

89 Mr. Potter describes visits by the Sales and Marketing Department in Ontario to the Illinois sales  
90 offices, claiming that the frequency of these visits increased in 2008 “as part of the effort to provide greater  
91 direction and oversight of sales practices.” [Potter Rebuttal at 7] According to Mr. Potter, these visits have  
92 expanded in scope to include compliance and code of conduct training, field training and shadowing, and  
93 other compliance process documentation. While Mr. Potter is not responsible for supervision of the sales  
94 and marketing function or the Distributors, he claims that he is familiar with these functions and can testify  
95 as to the role that CCR plays in oversight of the sales contractors. Mr. Potter states that the CCR office in  
96 Ontario is responsible for investigating allegations of wrongful or improper conduct by sales agents based  
97 on its complaint log and its disciplinary actions.

98 With regard to customer complaints, Mr. Potter states that an “extensive framework of systemic  
99 modifications” was put in place to respond to individual complaints and “to address how those complaints  
100 as a group affect sales and marketing practices on a system-wide basis.” [Potter Rebuttal at 10]

101 Mr. Potter also criticizes the CUB and Staff analysis and evaluation of USESC’s customer  
102 complaints and states that the criticisms fail to take market share into account and points to complaint rate  
103 calculations that are publicly available at the Public Utility Commission of Texas and Ontario Energy  
104 Board websites.

105 Mr. Potter then discusses my prior statements concerning USESC’s discriminatory marketing and  
106 the targeting of low-income customers. He claims that I have failed to take into account the need for credit  
107 checks and the use of credit scoring prior to accepting a contract for enrollment. [Potter Rebuttal at 18-19]  
108 Mr. Potter also attempts to discredit my analysis of where USESC actually targets its door-to-door sales  
109 activities, claiming that his analysis of signed contracts and household income by zip code shows no  
110 correlation between the level of sales activities and income level.

111 Mr. Potter discusses his view that the USESC long-term fixed price contracts provide “value” to  
112 customers. He criticizes CUB’s Gas Market Monitor and its calculations of customer bill impacts reflected  
113 in this web-based tool. Mr. Potter then presents an analysis of the savings/losses of all USESC residential  
114 customers in Illinois that have completed the full term of their contract. This analysis reflects [BEGIN  
115 CONFIDENTIAL] XX [END CONFIDENTIAL] residential customers and shows that 98% of those  
116 customers saved on average \$198.55. [Potter Rebuttal at 23-24] Mr. Potter again states that customers  
117 value price certainty and points to the recommendations in another proceeding by a witness who supports  
118 long-term contracts as part of a natural gas utility’s supply portfolio because of the benefit of price stability.  
119 Mr. Potter then defends the graph that is included in USESC’s customer materials that reflects an average  
120 of the historical supply prices of the three Illinois natural gas utilities. He states that the fact that [BEGIN  
121 CONFIDENTIAL] XXXX [END CONFIDENTIAL] Illinois customers have “voluntarily” chosen  
122 USESC’s fixed price product is a reflection of the decision to purchase price stability as an alternative to  
123 the utility’s variable rate. [Potter Rebuttal at 26]

124 Mr. Potter points to the reduction in customer complaints that has occurred since the modifications  
125 he describes were implemented in February 2008. Mr. Potter states that these changes were implemented  
126 because “through its continuous analysis of informal complaints and customer inquiries from both internal  
127 and external sources, USESC recognized an increased level of complaints.” [Potter Rebuttal at 28] Mr.  
128 Potter states that USESC “recognized” that some complaints involved allegations of misrepresentation of  
129 price, savings, or identity of the sales contractor and that some complaints were a recognition of customer  
130 confusion, others reflected concern about USESC’s cancellation policy and the resulting exit fees, and  
131 some were a reflection of lack of understanding of USESC’s prices compared to the utility’s default service  
132 price. [Potter Rebuttal at 30] Mr. Potter also alleges that many of the “customer inquiries” did not involve

133 allegations of wrongdoing, but were merely questions about USESC's policies and customer choice in  
134 general. Mr. Potter then explains that the "majority" complaints received by USESC in early 2008 came  
135 from customers who claimed they were promised savings if they purchased the USESC fixed price  
136 contract, which was a contravention of USESC policy. Claiming that these complaints resulted in "swift  
137 action," Mr. Potter describes the changes that were implemented in February 2008 to correct these  
138 problems with respect to reforms to the customer contract and a reduction in the exit fee to \$75 per year  
139 remaining on the contract; changes to the customer verification process through a voice-recorded  
140 verification or a signed and returned letter from the customer; changes to the customer Welcome Letter  
141 (which includes a price comparison between the USESC fixed rates and the utility's historical variable  
142 rates) and a new 3-day cancellation window.

143 Finally, Mr. Potter describes changes in the managerial oversight of USESC's sales agents,  
144 including a revised sales manual, a retraining program, implementation of a "three strike" rule for failed  
145 verifications; and a document control process for all materials, as well as instituting a background check on  
146 all sales agents.

147 As a result of all these changes, Mr. Potter describes a reduction in informal complaints received  
148 from the ICC and CUB, alleging a 26% reduction from 2007 to 2008 for ICC complaints and a 19%  
149 reduction in CUB complaints.

150 Mr. Potter concludes by asking the Commission to reject the recommendations of the Staff and the  
151 Consumer Groups with regard to USESC's license and allow it to continue to provide services. He also  
152 testifies that any mass transition of USESC's customers to the natural gas utility would be costly and have  
153 an impact on utility systems and utility gas supply portfolios.

154 Q. **PLEASE DISCUSS YOUR VIEWS OF MR. POTTER’S STATEMENTS WITH REGARD TO**  
155 **USESC’S “PERMANENT MANAGERIAL PRESENCE” IN ILLINOIS.**

156 A. Mr. Potter’s attempt to make it appear that the five Regional Distributors and the Regulatory Manager  
157 constitute a “managerial presence” in Illinois should be rejected. The Regional Distributors have a contract  
158 with USESC in which their duties are set forth. None of those duties includes management oversight of the  
159 sales agents, assuring compliance with the Code of Conduct, reporting violations or misconduct,  
160 conducting field visits to assure compliance, or taking any independent actions to assure compliance with  
161 Illinois law, regulations, or its license conditions. When asked to explain the duties of Distributors in  
162 response to discovery by the Staff, USESC stated that Distributors have entered into contracts with Energy  
163 Savings Marketing Corp. “to operate sales offices.”<sup>1</sup> When asked to describe the functions of Distributors,  
164 USESC stated that the “organize sales offices, including assisting with or managing recruiting and orienting  
165 or training of contractors, offering meetings, distributing checks, and coordinating with head office.”<sup>2</sup> Mr.  
166 Steven Hames, a Regional Distributor, filed testimony on behalf of USESC on September 25, 2008. He  
167 described his duties as involving recruiting and training sales agents, and “running the office.” He stated,  
168 “I am responsible for implementing any actions set out by head office and, when an issue comes to my  
169 attention directly, advising head office of that issue so that actions can be implemented.”<sup>3</sup> The “Regulatory  
170 Manager” has not appeared in this proceeding and his or her duties are unclear. Furthermore, the actions of  
171 that individual are not mentioned in any discovery documents relating to actions taken with respect to

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<sup>1</sup> USESC Response to CSD 5.01

<sup>2</sup> USESC Response to CSD 5.02.

<sup>3</sup> Testimony of Steven Hames, USESC Exhibit 4.0, page 1.

172 complaints and allegations against Illinois sales contractors. It is clear that whatever supervisory role  
173 exists to assure compliance with Illinois law, regulations, USESC Code of Conduct, and USESC's  
174 licensing conditions with respect to Illinois sales agents emanates from OESC in Ontario, Canada, and the  
175 individuals who report to Mr. Potter. Therefore, any evaluation of USESC's management structure and the  
176 effectiveness of that management structure must start from the proposition that whatever substantive  
177 management oversight exists concerning the conduct of the Illinois sales agents and compliance with  
178 Illinois laws and regulations is a function of the Canadian office of OESC. While I agree that this  
179 organizational structure is not defective on its face, in order for it to work, the managers located in Ontario,  
180 Canada must have the policies, procedures, and management oversight functions in place and those  
181 policies, procedures and oversight functions must actually be implemented.

182 Q. **DOES MR POTTER DEMONSTRATE THAT THIS APPROACH TO MANAGEMENT**  
183 **OVERSIGHT OF ILLINOIS SALES AND MARKETING ACTIVITIES ACTUALLY "WORKS"?**

184 A. No. Mr. Potter relies, in part, on descriptions of field visits by OESC employees to the Illinois sales offices  
185 and states that these field visits are intended, among other things, to "implement new policies, conduct  
186 audits, provide sales support, ensure compliance, execute changes required by tariff, rule and law and  
187 generally assist the sales office in their day-to-day operations." [Potter Rebuttal at 8] Mr. Potter also  
188 attached as Ex. 5.1 a list of OESC employees that had traveled to Illinois between January 2007 through  
189 September 2008 and a blank "check list" that he stated reflects the outline of actions investigated during  
190 visits by head-office personnel. His clear intent with these materials is to suggest that all these visits were  
191 done pursuant to a management oversight function and the use of the "checklist." However, his description  
192 of the purpose of these field visits and oversight by OESC employees is belied by the facts reflected in the  
193 actual documentation that reflects the frequency and results of these visits. When asked to provide

194 documentation of when these visits occurred and how the functions described by Mr. Potter actually  
195 occurred, USESC produced copies of completed “check lists.”

196 Q. **WHAT DO THESE “CHECK LISTS” SHOW?**

197 A. USESC’s materials show that, during the 21-month period cited in his testimony, only three visits were  
198 conducted in which the “checklist” was used or completed, in April 2008, June 2008 and November 2008.  
199 The checklists that reflect these visits indicate that there was no uniform way in which the compliance  
200 phase of the visit was evaluated or noted on these forms. Several of the checklists note “n/a” next to the  
201 categories of “code of conduct” and “compliance process documentation.” Other checklists leave these  
202 categories blank. Other checklists affirmatively check off every category on the list. Others leave blanks  
203 or symbols that reflect the author’s own approach.<sup>4</sup> As a result, in the key categories that reflect the  
204 managerial presence and oversight that is crucial to this proceeding, USESC has failed to provide any  
205 documentation that supports Mr. Potter’s statements with respect to field visits and compliance actions  
206 taken as a result of these visits by OESC employees. I attach as CG Exhibit 3.1 these checklists as  
207 provided by USESC in response to CUB 8.10.

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<sup>4</sup>USESC Response to CUB 8.10 and Ex. 8.10.

212 Q. **DID USESC PROVIDE EVIDENCE THAT IT HAS REVIEWED THE PERFORMANCE OF**  
213 **SALES AGENTS IN THE FIELD?**

214 A. When asked to document that head office representatives have accompanied sales agents into the field,  
215 USESC replied that no such member of management had done so since January 2007.<sup>5</sup> Nor can USESC  
216 document any changes in its training policies, procedures, or materials as a result of these field visits.<sup>6</sup>

217 Q. **WHAT TYPE OF COMMUNICATIONS DOES THE CANADIAN OFFICE HAVE WITH THE**  
218 **LOCAL ILLINOIS SALES OFFICES?**

219 A. The “daily” communications between the Illinois sales agents and the Canadian office consists primarily of  
220 determinations of where sales agents will market or the transmittal of disciplinary communications from  
221 the Corporate and Consumer Relations Department (or CCR) to the Distributors and sales agents. It is  
222 important to note that it appears many of the communications issued to contractors from USESC’s affiliate,  
223 The Energy Savings Group, (Agent Complaint Feedback Letters), detail allegations of customer complaints  
224 that were forwarded from third parties such as CUB and the ICC, rather than a result of USESC  
225 management’s determination or the Company’s own internal complaint procedure. I will further discuss the  
226 Company’s own evidence of agent misconduct below.

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<sup>5</sup> USESC Response to CUB 4.24 (Supplemental). It is important that this record reflect the fact that the a USESC Senior V.P. of Sales did visit the Illinois sales offices and document clear violations of Illinois law as well as USESC’s own stated policies was terminated by USESC and offered payment of significant value in the termination agreement. USESC has not provided any substantive reason for the termination of this individual. I included the results of this office visit in my Direct Testimony. I attach USESC’s termination agreement with this individual as CG Exhibit 3.2(Confidential).

<sup>6</sup> USESC Response to CUB 4.24(f).

228 Q. **WHAT IS YOUR VIEW OF MR. POTTER'S STATEMENTS THAT USESC MADE REFORMS**  
229 **TO ITS SALES PRACTICES AND ITS OVERSIGHT OF SALES CONTRACTORS BEGINNING**  
230 **IN FEBRUARY 2008 AS A RESULT OF ITS ANALYSIS OF COMPLAINTS?**

231 A. It does appear that certain actions were taken by USESC in early 2008 to reform its customer contracts,  
232 revise its internal Code of Conduct, monitor verification calls more closely, and document disciplinary  
233 actions with respect to Illinois sales agents. However, the record and the Company's own discovery  
234 responses throughout this proceeding clearly demonstrate that USESC did not undertake any reforms as a  
235 result of its own analysis of complaints or as a result of its own internal initiative. Nor do these changes  
236 adequately address the substantial problems identified in this case.

237 During the entire period of 2007 and early 2008 USESC did nothing to respond to the avalanche of  
238 complaints that alleged the same misconduct that Mr. Potter claims was the basis for its reaction in early  
239 2008. Rather, contrary to Mr. Potter's Rebuttal testimony, USESC consistently stated that it did not have  
240 any evidence of an analysis of customer complaints by management, that its customer complaint database  
241 could not provide categories of Illinois complaints or provide the means by which a trend analysis could be  
242 conducted.<sup>7</sup> In fact, USESC's own testimony in this proceeding, filed on September 25, 2008, never  
243 mentioned any of these alleged reforms or described these changes at all even though Mr. Potter now  
244 claims that they occurred in February 2008. Based on my review of USESC's testimony and discovery in  
245 this proceeding, it is my opinion that USESC undertook changes in response to litigation, the threat of

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<sup>7</sup> Ms. Findley's, the Manager of CCR, filed testimony in September 2008, but she did not provide any factual information concerning the complaint tracking system, the database that documented allegations of misconduct against Illinois sales agents, nor did she mention any of the "reforms" that Mr. Potter outlined in his Rebuttal testimony. In fact, when requested to provide any complaint analysis that Ms. Findley had relied upon to prepare her testimony, USESC responded that no such analysis existed. USESC Response to CUB 6.02. Nor did Mr. Hames, a Distributor, analyze or review any specific complaints in providing his testimony. USESC Response to CUB 6.37.

246 litigation, and the fear of public exposure to adverse publicity. These motivations are not those of a  
247 business that has built into its daily operations the means to prevent fraud, misrepresentation, slamming,  
248 and high-pressure sales conduct by its sales agents, activities that obviously reflect an economic desire to  
249 earn commissions for selling USESC's contracts.

250 **Q. PLEASE DESCRIBE HOW USESC TRACKS CUSTOMER COMPLAINTS.**

251 A. USESC does not track customer complaints per se.<sup>8</sup> USESC's call center handles all incoming customer  
252 calls. If a customer disputes a bill, questions a charge, complains about the price, or generally indicates  
253 dissatisfaction with USESC's services or its contract terms, the customer service representative will attempt  
254 to resolve the customer's problem. The representative has the ability to waive an otherwise applicable exit  
255 fee under certain conditions. The representative can attempt to avoid an escalation of the complaint by  
256 offering the customer a lower price and extend the terms of the contract. Customer feedback received by  
257 the call center is logged in a call center database, called GBASS ("General Billing and Settlement  
258 System"). This database does not, however, track complaints and there is no management level report  
259 which CUB has been able to obtain that reflects any ongoing analysis of this database. A separate group of  
260 individuals under Mr. Potter handle "third party" and escalated complaints that allege wrongdoing by a

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<sup>8</sup> On January 22, 2009, USESC submitted its Third Supplemental Response to CUB's Second Set of Data Requests. In this response, USESC supplements CUB 2.23 by stating that, effective January 15, 2009, USESC has implemented procedures for receiving and addressing complaints related to billing and other matters unrelated to individual sales agents by its customer call center. The additional documents referenced in this response were not served with the electronic copy of the data response. As a result, I have not yet had an opportunity to review and evaluate this response. Nonetheless, this response confirms my prior statements in this regard concerning the lack of any internal method to track customer complaints.

261 USESC sales contractor. This is the Consumer and Corporate Relations (“CCR”) group, of which Ms.  
262 Findley is the manager. The CCR is responsible for resolving complaints that are referred to USESC by  
263 CUB, the Commission, the Attorney General, the City of Chicago, the Better Business Bureau, other third  
264 party entities and also certain complaints forwarded by the customer call center itself. After extensive  
265 discovery attempts, USESC recently revealed that it does track “allegations” by type of complaint or  
266 allegation against sales contractors.

267 In my Rebuttal testimony filed on November 13, 2008, I recited CUB’s attempts to obtain any  
268 USESC analysis of Illinois complaints or how the database tracks complaints and allegations of misconduct  
269 starting with CUB’s Fourth Set of Data Requests (CUB 4.02). USESC resisted every attempt to obtain the  
270 specific information sought concerning this database. However, after CUB filed a Motion to Compel,  
271 which was granted with respect to requests regarding the customer feedback database, USESC filed  
272 supplemental answers on December 5, 2008. In this response, USESC for the first time provided monthly  
273 totals of its Illinois customer complaints derived from its “compliance database.” This database is  
274 maintained by CCR and contains all logged “allegations” and feedback concerning the actions of sales  
275 contractors that has been received from third parties.

276 Q. **PLEASE SUMMARIZE THE INFORMATION DERIVED FROM THIS DATABASE**  
277 **CONCERNING ILLINOIS CUSTOMER COMPLAINTS ABOUT SALES AGENT**  
278 **MISCONDUCT.**

279 A. According to Ex. 4.02(b)(i) provided by USESC in December 2008, there were a total of **[BEGIN**  
280 **CONFIDENTIAL]** XXX **[END CONFIDENTIAL]** “allegations” or entries in the CCR compliance  
281 database reflecting Illinois customers and sales agents in 2007 and **[BEGIN CONFIDENTIAL]** XXX  
282 **[END CONFIDENTIAL]** for the months of January through November 2008. The total for 2008 was  
283 updated in USESC’s response to CUB 8.06 in Ex. 8.06(11)-(14), which shows that a total of **[BEGIN**

284 **CONFIDENTIAL]** XXXXX **[END CONFIDENTIAL]** such allegations occurred in 2008 (through  
285 December). In Ex. 4.02(b)(iii) USESC provided the complaint categories, indicating that USESC had the  
286 means to track and report information on a wide variety of **[BEGIN CONFIDENTIAL]**  
287 **XX**  
288 **[END CONFIDENTIAL]** among other categories. Information regarding the total number of complaints  
289 received through written notice, phone calls or email was requested by Staff in May 2008, to which the  
290 Company previously responded that it “does not log customer contacts by category. USESC does not know  
291 of any reasonable methods to obtain this information.” (USESC response to Staff DR CSD 2.06). CUB  
292 was never provided the actual compilation of the Illinois customer complaints as reflected in this database  
293 for each complaint category until January 21, 2009 in response to CUB 8.20.

294           The exhibits attached to CUB 8.11 and 8.20 present the monthly “allegations” by category and by  
295 the source of the complaint. For example, during the period January through June 2008, USESC’s database  
296 reflects 2,003 “allegations” by source and by type of allegation: 545 from the Illinois Attorney General,  
297 180 from the Better Business Bureau, 17 from the City of Chicago, 427 from CUB, 245 from the  
298 Commission, 480 from “internal” (referrals from the call center), 30 referred from USESC’s verification  
299 agent (C4 Solutions) relating to failed verification calls, and 79 from the natural gas utilities. The volume  
300 of these allegations that was entered into the CCR database dropped in the second half of 2008 to a total of  
301 778. But the pattern of a reduced level of complaints and allegations in the second half of the year  
302 compared to the first half of the year is typical. In 2007, the allegations totaled 1,487 in January through  
303 June and 1,107 in July through December. Similar to the Staff’s conclusions about this trend, I conclude  
304 that the return of warmer weather and lower bills probably contributes to an overall reduction in complaints  
305 because it is only when the winter utility bills for natural gas are high that customers might be more aware

306 of the nature of the USESC charges and the disparity between their USESC contract price and that charged  
307 by the utility.

308 While USESC has failed to prepare any management report or summary of these categories, I have  
309 prepared an exhibit that reflects the 2007 and 2008 complaint totals from Illinois customers by complaint  
310 categories as CG Exhibit 3.3. According to USESC's own data, USESC received 2,664 allegations from  
311 Illinois customers in 2007 and 2,966 in 2008 for a total of 5,630 for the two-year period. Of this total,  
312 1,814, or 32%, alleged misrepresentation in several different forms. In fact, the incidence of  
313 misrepresentation increased in 2008 compared to 2007 and showed a significant increase in December  
314 2008 after several months of fewer misrepresentation complaints or allegations.

315 **Q. DID USESC CHANGE ITS EXIT FEE TO \$75 FOR EACH YEAR OF THE REMAINING**  
316 **CONTRACT TERM IN RESPONSE TO CUSTOMER COMPLAINTS AND ITS OWN**  
317 **INITIATIVE AS MR. POTTER CLAIMS IN HIS REBUTTAL TESTIMONY?**

318 **A.** No. Mr. Potter's attempt to portray USESC's change to its outrageous and unsupported exit fee policy was  
319 not done because of USESC's review of its complaints. Rather, USESC's change to a reduced exit fee was  
320 done in response to pressure from the Staff of the ICC, as previously confirmed by USESC.<sup>9</sup> This pattern  
321 in which USESC only reacts to formal complaints and investigations by state governmental authorities is  
322 not limited to Illinois. USESC recently entered into an Assurance of Discontinuance with the New York  
323 Attorney General in which USESC agreed to lower exit fees, a 30-day cancellation window, background

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<sup>9</sup> USESC Response to CUB 2.49.

324 checks for its sales agents, and other reforms that are similar to those USESC is now claiming it initiated in  
325 Illinois due to its own analysis of complaints.<sup>10</sup>

326 Q. **DID MR. POTTER RESPOND TO YOUR EVIDENCE OF DISCRIMINATORY APPLICATION**  
327 **OF THE EXIT FEE POLICY IN ITS CONTRACTS?**

328 A. No. His Rebuttal testimony describes the new termination fee of \$75 per remaining year of the contract  
329 and the extended cancellation without penalty period of 30 days. I never questioned that these changes  
330 were implemented. It is my opinion that the change in the exit fee was not done based on any internal  
331 decision that the new fee structure was a revised calculation of USESC's actual losses. Rather, the  
332 evidence shows that USESC made this change in an attempt to avoid more formal action by the ICC Staff  
333 and the potential for adverse publicity. The point in my Rebuttal testimony was that USESC continued to  
334 enforce the larger termination fees reflected in contracts signed by customers prior to this change, a result  
335 that I do not believe Mr. Potter would contest. Second, my testimony was intended to demonstrate that  
336 USESC has adopted a policy of voluntarily refusing to charge exit fees even when applicable under the  
337 terms of the contract in order to respond to individual customer complaints, particularly those referred by  
338 CUB and presumably those referred by other third parties. This approach results in discriminatory  
339 treatment because customers who fail to complain or who fail to pursue their complaints to third parties end  
340 up paying the termination fees reflected in their contracts. The matrix that I referenced in my Rebuttal  
341 testimony confirms that certain classes and categories of Illinois customers are allowed to cancel without  
342 the imposition of exit fees and Mr. Potter never responded to these statements.

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<sup>10</sup> In the Matter of U.S. Energy Savings Corp. doing business as U.S. Energy Savings, Attorney General of the State of New York, Buffalo Office, AOD #08-84 (June 2008). This Assurance is available at: [http://www.pulp.tc/US\\_Energy\\_AOD\\_9-5-08.pdf](http://www.pulp.tc/US_Energy_AOD_9-5-08.pdf).



365 concern that customers who know enough to call and seek cancellation of their contract are being given  
366 special treatment in which their exit fee is being waived.

367 Finally, the response to CUB data request 2.69 shows that termination fees in the amount of  
368 [BEGIN CONFIDENTIAL] XXXXXXXX [END CONFIDENTIAL] were billed to Illinois customers  
369 from January 1, 2007 through December 1, 2008, [BEGIN CONFIDENTIAL] XXXXXXXX [END  
370 CONFIDENTIAL] of which was billed to Illinois residential customers. USESC then reported in its  
371 response to CUB data request 2.70 that it actually collected [BEGIN CONFIDENTIAL] XXXXXXXX  
372 [END CONFIDENTIAL] from Illinois customers for the same time period, [BEGIN CONFIDENTIAL]  
373 XXXXXXXX [END CONFIDENTIAL] of which was from residential customers. Clearly, USESC bills its  
374 termination fee pursuant to the underlying contract, but then practices a policy of forgiveness of the fee in  
375 certain situations.

376 Q. **DO YOU AGREE WITH MR. POTTER THAT THE CUSTOMER COMPLAINT VOLUME**  
377 **CONCERNING USESC MARKETING AND CONTRACT TERMS IN ILLINOIS HAVE BEEN**  
378 **UNFAIRLY PRESENTED BY THE CONSUMER GROUPS AND STAFF IN THIS**  
379 **PROCEEDING?**

380 A. Absolutely not. The volume of complaints filed by Illinois residential customers against USESC is  
381 unprecedented. No other Illinois natural gas marketer has caused this level of complaint and concern to be  
382 registered with CUB, which has maintained a well-publicized customer complaint function for many years.  
383 I agree that customer complaint volume alone is not the whole story and that it is important to consider the  
384 volume of complaints in light of the volume of business conducted by the marketer. However, Mr. Potter's  
385 suggestion that USESC's complaint volume can be explained away by comparing complaint rates among  
386 all gas marketers is not relevant to this proceeding. It is the pattern of allegations of misrepresentation and  
387 misleading sales tactics, slamming, unfair contract terms, and high termination fees that accompanies this

388 high volume of complaints that is the basis for my concerns. This investigation was opened, in part,  
389 because of the high volume of complaints filed against USESC by CUB, individual customers, the Staff,  
390 the Attorney General, and other entities. However, it was the fact pattern and themes that were reflected  
391 substantively in these complaints that suggested a serious potential for consumer fraud and  
392 misrepresentation. Mr. Potter cannot divert attention to the mechanics of calculating complaint ratios in  
393 light of the overwhelming volume of customer complaints and the substantive nature of these complaints  
394 that has accompanied USESC's marketing activities in Illinois for years.

395 And despite the fact that the company is embroiled in litigation and alleges that the significant  
396 changes it has implemented should result in allowing USESC to continue marketing in Illinois, these  
397 complaints continue today. For the 12-month period of February, 2008 through January, 2009, CUB  
398 received 689 complaints against USESC. While the rate of complaints decreased in late 2008, the nature of  
399 the complaints themselves continue to reveal the same pattern of misrepresentation of savings, identity, and  
400 customer confusion about USESC's contract terms. I attach a copy of the 24 customer complaints against  
401 USESC received by CUB in December 2008 as CG Exhibit 3.4 (Confidential). Illinois consumers continue  
402 to allege that USESC's sales agents have:

- 403 • taken advantage of elderly gas customers who are confused as to the identity of the USESC  
404 sales agent, (see complaint of [BEGIN CONFIDENTIAL] XXXXXX [END CONFIDENTIAL] on  
405 behalf of her 90-year old mother);
- 406 • led customers to believe that the price of gasoline was an indicator of the future price of  
407 natural gas (see complaint of [BEGIN CONFIDENTIAL] XXXXXXXXXXXX [END CONFIDENTIAL]);

408                   •       led customers to believe that the gas utility's prices were going to increase beyond the  
409 USESC fixed price, thus resulting in savings for the customer (see complaint of [BEGIN  
410 CONFIDENTIAL] XXXXXXXX [END CONFIDENTIAL]);

411                   •       obtained the agreement to enter into a five-year fixed price contract for \$1.28 per therm  
412 from an individual who is handicapped with a learning disability and less than an 8<sup>th</sup> grade education (see  
413 complaint of [BEGIN CONFIDENTIAL] XXXXXX [END CONFIDENTIAL]); and

414                   •       led customers to believe the USESC was related to the gas company (see complaint of  
415 [BEGIN CONFIDENTIAL] XXXXXXXXXXXX [END CONFIDENTIAL]).

416 Q.       **PLEASE DISCUSS YOUR VIEW OF THE CCR COMPLIANCE DATABASE AND THE SYSTEM**  
417 **USED TO INVESTIGATE ALLEGATIONS OF MISCONDUCT BY ILLINOIS SALES AGENTS**  
418 **AND THE DISCIPLINARY ACTIONS ORDERED BY CCR AS A RESULT OF ITS**  
419 **INVESTIGATIONS.**

420 A.       I agree that CCR in Ontario, Canada apparently has the responsibility and the authority to investigate  
421 complaints that allege misconduct by sales contractors and order disciplinary action. The question is then  
422 whether this function has, in fact, been properly exercised and implemented in light of the significant  
423 volume of customer complaints and allegations concerning USESC's sales tactics and contract terms that  
424 are reflected in the CCR compliance database throughout 2007 and 2008. In my opinion, USESC's  
425 management turns a blind eye to a significant volume of misconduct from its sales agents and fails to take  
426 prompt action to prevent repeated occurrences of misconduct. Furthermore, there is clear evidence that this  
427 pattern was established in 2007 and continues today.

428

429

430 Q. PLEASE EXPLAIN USESC'S DISCIPLINARY PROCEDURES, POLICIES, AND PENALTIES IN  
431 ITS SUPERVISION OF SALES CONTRACTORS.

432 A. [BEGIN CONFIDENTIAL] XXX  
433 XXX  
434 XXX  
435 XXX  
436 XXX  
437 XXX  
438 XXX  
439 XXXXXXXXXXXXXXX<sup>11</sup>

440 XXXXXXXXXXX<sup>12</sup>XX  
441 XXX  
442 XXX  
443 XXX  
444 XXX  
445 XXX  
446 XXX  
447 XXX  
448 XXX

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<sup>11</sup> See Ex. 5.8(3) attached to Mr. Potter's Rebuttal Testimony.

<sup>12</sup> USESC Response to CUB 2.29, Ex. 2.29, Bates Nos. 008417-008419. I attach as CG Exhibit 3.5 (Confidential) these excerpts from USESC sales training materials, labeled, **"US Energy Savings Method of Handling Complaints."**





487 contractors were cited for various infractions in 2007 and 2008. Of these, [BEGIN CONFIDENTIAL]  
488 XXX [END CONFIDENTIAL] found valid instances of “misrepresentation” of price, savings, the nature  
489 of the agreement, or the relationship between USESC and the natural gas utility. Based on these materials,  
490 of the contractors issued confirmation of valid allegations, only [BEGIN CONFIDENTIAL] XX [END  
491 CONFIDENTIAL] received any “consequences” at all: [BEGIN CONFIDENTIAL] XX [END  
492 CONFIDENTIAL] were terminated, [BEGIN CONFIDENTIAL] XX [END CONFIDENTIAL] was  
493 suspended, [BEGIN CONFIDENTIAL] XX [END CONFIDENTIAL] was required to undergo field  
494 shadowing, [BEGIN CONFIDENTIAL] XXX [END CONFIDENTIAL] were fined \$25, [BEGIN  
495 CONFIDENTIAL] XX [END CONFIDENTIAL] was required to undergo a refresher training session,  
496 [BEGIN CONFIDENTIAL] XXX [END  
497 CONFIDENTIAL] were given a monetary fine or consequence that was not documented. Based on this  
498 information, I believe that USESC’s disciplinary policy is insufficient and fails to properly respond to a  
499 repeated pattern of misrepresentation in the marketing of its five-year fixed price contracts.<sup>17</sup>

500 Furthermore, there is a significant conflict surrounding USESC’s responses with respect to the  
501 impact of its disciplinary policies on agents. The information derived from CUB 2.53 and 6.32, which I  
502 summarized above for 2007 and 2008, conflicts with USESC’s other statements that its disciplinary  
503 structure resulted in the termination of 19 contractors, 10 were required to receive remedial training, and  
504 four contractors were required to undergo remedial training more than once (one agent for five times; one

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<sup>17</sup> This data is a summary of the data provided by USESC regarding contractor allegations in its response to CUB discovery requests 2.53 and 6.32. A summary of the aggregated data is presented in CG Exhibit 3.6 (Confidential).

505 agent for four times; and two agents for three times).<sup>18</sup> Furthermore, in another response USESC stated  
506 that 30 contractors were terminated for misconduct in 2007.<sup>19</sup> As a result, it is not clear exactly how  
507 USESC has documented the enforcement of its disciplinary policy.

508 Another new disciplinary structure was put in place in February 2008 strictly for “failed”  
509 verification calls. These are instances in which USESC’s third party agent that now handles customer  
510 verification of agreement at the time of the sale documents that the customer answers “no” or refuses to  
511 complete the verification call script. Effective February 4, 2008, the first valid complaint of a failed  
512 verification call will result in a fine of \$25, a warning letter and a meeting with the head office. The second  
513 valid complaint will result in a fine of \$50, a final warning letter and a meeting with head office. The third  
514 valid complaint will result in termination, with or without pay. No contractor has yet been terminated  
515 under these provisions, even though the volume of failed verification calls grew substantially late in 2008,  
516 as I will present later in my testimony.<sup>20</sup>

517 Q. **IN YOUR OPINION, IS USESC’S DISCIPLINARY POLICY WITH RESPECT TO ILLINOIS**  
518 **SALES AGENTS APPROPRIATE AND REASONABLE?**

519 A. No. Contractors are allowed to accumulate points for a wide variety of improper conduct and verified  
520 incidents of misrepresentation of identify and savings to customers without any serious disciplinary action.

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<sup>18</sup> USESC Response to CDS 5.45.

<sup>19</sup> See USESC Response to CUB 8.02. All of the reasons listed for these terminations relate to the verification process, e.g., the use of fictitious Fixed Price Reservation Codes, forgery of signature, and fictitious contracts. None of these terminations relate to misrepresentation or high pressure tactics or other conduct that is covered by the disciplinary policy put in place in July 2007.

<sup>20</sup> USESC provided copies of the letters to sales agents documenting one or more violations under this policy in its response to CUB 8.11 (i).

521 Contractors can repeat adverse and improper behavior many times and pay token fines or penalties and  
522 only when the repeated offenses reach massive proportions is the contractor threatened with termination or  
523 suspension of sales activities. The only Tier 2 complaint that can result in immediate termination relates to  
524 disputed and falsified signatures. I certainly do not object to termination for this type of conduct.  
525 However, the disciplinary structure as a whole is inadequate and tolerates improper conduct. This  
526 disciplinary procedure does not root out conduct that is clearly a violation of USESC's licensing conditions  
527 and should not be tolerated, particularly when the allegations and complaints against the same contractor  
528 occur more than once. This disciplinary structure and failure to take swift and firm action in light of  
529 serious allegations that are repeated in CUB's complaint files and documented in USESC's own  
530 compliance database is the clearest example of why this gas marketer should not be allowed to continue  
531 selling its product in Illinois.

532 Q. **PLEASE DISCUSS MR. POTTER'S PRICE COMPARISON CHARTS AND HIS ASSERTIONS**  
533 **THAT CUSTOMERS HAVE "VOLUNTARILY" ENTERED INTO THESE FIVE-YEAR FIXED**  
534 **PRICE CONTRACTS BECAUSE THEY VALUE PRICE STABILITY.**

535 A. As I documented in my direct and rebuttal testimony, USESC consistently and repeatedly stated that it had  
536 not done an analysis of prices charged for its Illinois contracts compared to those charged by Illinois gas  
537 utilities. Instead, USESC relied on a study of its fixed price contracts in Canada for its statements in sales  
538 training manuals that "Energy Savings Group customers have collectively saved millions of dollars over  
539 the terms of their agreements" and that the Company "Has saved the average household \$505 for those who  
540 completed their 5-year natural gas agreements in 2005."<sup>21</sup> Since contractors are trained to think of the  
541 USESC fixed price product as producing savings to customers, it is no wonder that contractors use this

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<sup>21</sup> These statements are contained in USESC's Independent Contractor Sales Manual, attached as Exhibit 5.8 (Part 1) to Mr. Potter's rebuttal testimony at Bates Nos. USE 000014 and USE 000015.

542 information in marketing to Illinois customers, even though USESC attempts to protect itself with contract  
543 disclosures that it does not in fact promise any savings. Clearly, the analysis of CUB complaints (reflected  
544 in my Direct Testimony) and the analysis of USESC's own record of allegations found to be valid against  
545 Illinois sales contractors which I have documented in this Surrebuttal Testimony confirm that USESC's  
546 sales agents in fact mislead and promise savings to customers during the course of the door-to-door sale on  
547 many occasions.

548 Mr. Potter's Rebuttal contained statements that for the first time reflect an analysis of prices  
549 charged to Illinois customers. He also criticizes the CUB Gas Market Monitor which compares the prices  
550 charged by all natural gas suppliers with the underlying utility gas supply price on a historical basis. CUB  
551 is presenting Surrebuttal testimony of Mr. Bryan McDaniel to further address Mr. Potter's unfounded and  
552 incorrect statements about the accuracy or value of the Gas Market Monitor. I believe, however, that Mr.  
553 Potter is simply wrong when he states that it is inappropriate to evaluate a contract in mid-term. Although  
554 it is true that the ultimate savings and losses cannot be calculated on a 5-year long-term contract until the  
555 end of that contract term, it is very dangerous to suggest that customers need not or should not compare  
556 USESC's contract offer with the rate they would otherwise pay the utility, or the historical record of  
557 USESC's offers against the utility's rate.

558 Q. **DO USESC CONSUMER DISCLOSURES FAIRLY AND ACCURATELY PORTRAY THE**  
559 **COMPARISON OF USESC FIXED PRICE CONTRACTS TO THE UTILITY'S HISTORICAL**  
560 **GAS SUPPLY PRICES?**

561 A. No. I have previously criticized USESC's brochure which is given to every prospective customer that  
562 includes a graph that shows the historical average price paid by Illinois natural gas utilities. Customers do  
563 not pay this price. This brochure was attached to Mr. Potter's Direct Testimony as Ex. 1.5. USESC also  
564 provides another graph in its "welcome letter" to customers in which the historical price of the customer's  
565

566 utility is compared to the fixed price reflected in the USESC contract. A sample of this letter was attached  
567 to Mr. Potter's Direct Testimony as Ex. 1.6. I believe that this welcome letter attached to Mr. Potter's  
568 Direct Testimony is very misleading and perhaps inaccurate. First, the letter is date July 14, 2008, but the  
569 graph included in the letter shows Nicor Gas prices from May 2003 through August 2008. It would not be  
570 possible for an accurate presentation of Nicor Gas' prices for August 2008 to be reflected in a letter to a  
571 customer dated July 2008. Second, the graph in this Exhibit shows Nicor Gas' price heading straight up in  
572 the summer of 2008, including the August 2008 price point. USESC then superimposed on this graph the  
573 contract price reflected in this customer's USESC's contract equal to \$1.17 per therm. The manner of this  
574 presentation is designed to show the customer that the USESC fixed price is lower than the current rate  
575 being charged by Nicor Gas at the time of the sale. I attach as CG Exhibit 3.7 a copy of USESC's response  
576 to CUB 8.06(3) in which CUB sought the documentation of USESC's historical presentation of Illinois  
577 natural gas utility prices. Their chart for Nicor Gas included in this exhibit clearly shows that Nicor Gas'  
578 price in August 2008 was \$1.08, lower than the price charged to this customer in July 2008. While I agree  
579 that the USESC price was lower than Nicor Gas' price in July 2008, the fact that USESC wanted  
580 consumers to think that prices would continue escalating was misleading and was an incorrect projection of  
581 natural gas prices after the high point in gas prices in the summer of 2008.

582 Q. **HAS MR. POTTER'S REBUTTAL RESPONDED TO YOUR EVIDENCE THAT USESC**  
583 **TARGETS LOW INCOME, ELDERLY, AND SPANISH SPEAKING HOUSEHOLDS IN ITS**  
584 **MARKETING EFFORTS?**

585 A. Mr. Potter attached Exhibit 5.7 to his Rebuttal which he claims demonstrates that USESC's marketing  
586 efforts are not aimed at low income households. This chart reflects contracts actually signed. Furthermore,  
587 his chart attempts to link a zip code with the percent of the City's population, a connection that does not  
588 appear relevant to the issues at hand. I continue to suggest that my prior exhibits that link USESC's

589 contracts with zip codes with a high population of low income and elderly households are more dispositive.  
590 More importantly, in my opinion, is that USESC targets its marketing efforts to those areas as now  
591 confirmed by USESC's revelation that it does in fact establish specific areas in which to conduct its door-  
592 to-door marketing. In its response to CUB 4.05 and CUB 4.06, USESC revealed the communications to  
593 utilities that provide the locations in which USESC's sales agents will market before the marketing actually  
594 occurs. Besides the fact that this information was repeatedly requested in CUB's discovery and to which  
595 USESC repeatedly stated that it does not tell its sales agents where to market, this information was  
596 analyzed by Mr. McDaniel and his Surrebuttal testimony contains clear documentation that USESC targets  
597 its marketing to lower income neighborhoods. His testimony and exhibits provide dramatic evidence that  
598 the highest volume of marketing efforts occur in the poorest zip codes in Chicago.

599 Q. **HAVE THE CHANGES IN USESC VERIFICATION PROCESS RESPONDED TO YOUR**  
600 **EARLIER CRITICISMS?**

601 A. Prior to 2008, USESC used its office in Mississauga, Ontario, Canada (OESC) to talk with customers and  
602 obtain their oral verification of the signed contract at the time of the sale. Furthermore, not all contracts  
603 were accompanied by a voice-recorded verification. Some customers were simply issued a welcome letter  
604 telling them they were enrolled. In these cases, it was up to the customer initiate a cancellation or dispute  
605 about their status.<sup>22</sup> As a result, there was no independent third party verification of customer agreements  
606 used by USESC in 2007. Starting in early 2008, OESC signed a contract with C4 Direct Solutions to  
607 provide this function. It is my opinion that the use of OESC to provide this function in 2007 was  
608 inappropriate and contributed to the misunderstanding and confusion of customers as revealed in the  
609 customer complaint data that I described in my Direct Testimony. Mr. Potter did not rebut my Rebuttal

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<sup>22</sup> Potter Rebuttal at 32.

610 Testimony and description of the transcript of verification calls provided in response to CUB 5.02. Rather,  
611 he focused on the changes associated with the hiring of the third party verification agent. However, in my  
612 opinion USESC's verification script is designed to "lead" the customer and suggests the proper response.  
613 Mr. Potter's Rebuttal states that the script for the verification calls was attached to his direct testimony as  
614 Ex. 1.7. This Exhibit, however, still contains scripts that reflect a customer's direct communication with  
615 USESC's customer service representative. Assuming that the scripts in use by C4 Solutions are the same  
616 as those attached as Ex. 1.7 to Mr. Potter's direct testimony, my criticisms of these scripts contained in my  
617 Rebuttal remain valid. These scripts clearly attempt to "sell" the product and describe the fixed price  
618 contract as one that "...does not promise savings, however it does offer peace of mind, stability, and  
619 protection against volatile energy prices."<sup>23</sup> These scripts tell the customer that "I'd like to confirm you  
620 agree to have U.S. Energy Savings Corp. protect your Natural gas price for the next \_\_\_\_ years at \_\_\_\_  
621 per them by responding with the word "YES." I have previously testified that the use of the term "fixed  
622 price reservation code" also attempts to detract from the verification purpose of the call and contribute to  
623 the attempt to make this call and the underlying transaction something "official" or relating to a "regulated"  
624 service. Certainly, there is no underlying business purpose relating to the transaction of selecting an  
625 alternative gas supplier that suggests that a "reservation code" is required.

626 Nonetheless, USESC is now tracking the number of "failed" verification calls as recorded and  
627 reported by C4 Solutions, which is a step forward from its previous practice of relying on allegations of

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<sup>23</sup> Bates No. USE 000216, as part of Ex. 1.7, attached to Mr. Potter's Direct Testimony.

628 slamming or forged verification calls through its CCR “allegation” process. These are calls in which the  
629 customer fails to give the proper answer to one or more of the questions that USESC asks for a “yes”  
630 response. In response to CUB’s request to document the volume of failed verification calls by month since  
631 October 2007, USESC reported that there were 0 failed verification calls from October 2007 through  
632 January 2008. In February 2008, 30 calls were recorded as failed. From February 2008 through December  
633 2008, a total of 613 calls were rejected or failed either because the customer did not answer “yes” to the  
634 question about USESC’s lack of affiliation to the natural gas utility or the question concerning the lack of  
635 guarantee of savings. Contrary to Mr. Potter’s attempt to demonstrate that USESC’s performance  
636 significantly improved beginning in February 2008, the trend for these failed verification calls reflects the  
637 largest number of call failures in the fall of 2008 in which 53 were noted in September 2008, 85 in October  
638 2008 and 77 in November 2008.

639 Furthermore, this record also demonstrates that my earlier criticism of the lack of oversight and  
640 detection of inappropriate verification calls in 2007 is confirmed, since USESC itself detected no failed  
641 verification calls until February 2008.

642 Q. **DO YOU HAVE ADDITIONAL EVIDENCE OF SLAMMING AND OTHER IMPROPER**  
643 **BEHAVIOR ASSOCIATED WITH THE VERIFICATION PROCESS BEYOND THAT**  
644 **REFLECTED IN YOUR PRIOR TESTIMONY?**

645 A. Yes. CUB requested the verification call records for a number of customers who had complained to CUB  
646 that they were “slammed” or that they had not, in fact, signed up with USESC. I reviewed these scripts for  
647 14 customers and found that seven of them concerned contracts entered into prior to 2007. Of the seven  
648 who had entered into contracts in 2007, four of the scripts, when read in concert with the underlying CUB  
649 complaint, clearly show evidence of customer confusion or fraud. I attach the transcript of these four  
650 verification calls to my testimony as CG Exhibit 3.8 (Confidential). The verification call for **[BEGIN**



674 retail sales activities until certain conditions are met since USESC's market model relies almost exclusively  
675 on door-to-door sales.

676 Mr. Agnew's Rebuttal testimony contains a number of potential corrections or improvements that  
677 USESC should consider to avoid penalties or additional actions by the Commission. These  
678 recommendations are directed to third party verifications, sales agent background checks, managerial  
679 presence and internal complaint database. I do not necessarily disagree with these recommendations.  
680 However, I do not consider it appropriate to identify at this time the specific improvements or changes that  
681 USESC should develop in order to retain its right to market its product to Illinois consumers, particularly  
682 since we have not yet had a Commission finding and order. It is the purpose of this proceeding to  
683 determine whether the evidence provided in my and Staff's testimony supports the allegations of the  
684 Complaint that initiated this proceeding. Therefore, I recommend that any compliance actions undertaken  
685 by USESC to correct the violations and other deficiencies that I and the Staff have identified be handled in  
686 a separate compliance phase of this proceeding. I recommend that the Commission focus initially on its  
687 findings of fact and order USESC to halt marketing in Illinois as a preliminary matter. This is necessary to  
688 prevent harm to Illinois consumers.

689 Mr. Agnew then recommends how USESC could document that it had complied with any future  
690 order of the Commission, stating, "I would recommend that the Commission establish a process whereby  
691 the Company would submit evidence to the Commission when the Company believes it has complied with  
692 the Commission's order," suggesting that this evidence might consist of the results of an independent  
693 auditor report or "it might include commitments from the Company to maintain identified changes to its  
694 managerial resources and evidence demonstrating that those identified changes are, and will continue to be,  
695 effective in avoiding and resolving the problems identified in this proceeding." [Agnew Rebuttal at 8]

696 These specific recommendations should be considered in a compliance phase after the Commission has  
697 issued its preliminary order and after the solicitation of the views of all the parties on what specific steps  
698 could result in the renewal of USESC's license in Illinois.

699 Finally, I object to the suggestion that a process other than an independent audit should be relied  
700 upon to allow USESC to document the reforms and actions that any compliance phase of this proceeding  
701 may identify. USESC's history of refusing to undertake actions on its own accord and its refusal to provide  
702 information sought by the parties in a full and complete and timely manner suggest that the Company  
703 simply cannot be trusted with such a responsibility. At the very least, any compliance phase and evaluation  
704 of USESC's statements and promises should allow for all the parties to this proceeding to participate in  
705 evaluation and reporting to the Commission. In addition, the independent audit should not be a one-time  
706 event, but rather should include multiple follow-ups – including random spot-checks – to ensure continued  
707 compliance.

708 As a matter of convenience, I repeat my recommendations:

- 709 • I recommend that the Commission immediately halt USESC's right to seek new customers in Illinois  
710 by revoking its certificate of service authority. The Commission should enjoin USESC from  
711 marketing, selling, or otherwise entering into contracts with all customers in Illinois. This injunction  
712 should be in effect permanently or, at a minimum, until an independent audit of USESC's management  
713 and oversight of its marketing and sales activities has been completed and reviewed by the parties to  
714 this proceeding and the Commission can assure the public that this Company can conduct its business  
715 in Illinois in a fair and lawful manner.

- 716 • I recommend that the Commission prohibit USESC from charging any early termination fees for its  
717 current contracts in Illinois. As a result, customers who seek to cancel their current contracts should be  
718 allowed to do so upon contacting USESC. USESC should be prohibited from attempting to “retain”  
719 these customers by marketing a new contract price. The Commission should work with the Staff,  
720 Consumer Groups and USESC to notify all existing customers of this right.
- 721 • I recommend that the Commission pursue its rights to assess penalties on USESC for violations of its  
722 certification and other applicable Illinois laws.

723 Q. **DOES THIS COMPLETE YOUR TESTIMONY?**

724 A. This completes my testimony at this time based on the materials and information that USESC has provided  
725 to date.