

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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COMMERCE COMMISSION

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Citizens Utility Board, Citizen Action/  
Illinois and AARP )  
)  
)

vs. )  
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No. 08-0175

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

Complaint as to marketing practices  
in Chicago, Illinois )  
)

CHIEF CLERK'S OFFICE

IESC Exhibit 5.0

REBUTTAL TESTIMONY OF

GORD POTTER

ON BEHALF OF

ILLINOIS ENERGY SAVINGS CORP.  
(PUBLIC VERSION)

December 16, 2008

Corrected October 13, 2009

1 **Q: Please state your name and identify for whom you are providing testimony.**

2 A: My name is Gord Potter, and I am Senior Vice-President of Regulatory Affairs. I am  
3 testifying on behalf of U.S. Energy Savings Corp. (USESC), the Respondent in this matter.

4 **Q. Are you the same Gord Potter that filed direct testimony in the instant proceeding?**

5 A: Yes.

6 **Q: What is the purpose of your testimony?**

7 A: The purpose of my testimony is to address the Direct Testimony of Illinois Commerce  
8 Commission Staff (“Staff”) witness James Agnew and the Rebuttal Testimonies of Citizens  
9 Utility Board Witnesses Barbara Alexander and Sandra Marcelin. I respond on behalf of all  
10 USESC witnesses.

11 **Q: Based on the testimony submitted by the Complainants and by the ICC Staff, does  
12 your prior testimony change with regard to USESC’s marketing efforts and its efforts to  
13 address customer complaints?**

14 A: No. I stand by my earlier assertions that USESC has improved in the past, and continues  
15 to improve its policies and practices with regard to marketing and customer service. USESC has  
16 worked closely with regulators and other entities like CUB in pursuing these goals, addressing  
17 both specific customer allegations and implementing new measures to try to ensure that any  
18 reported problems do not recur.

19 **Q: How is your rebuttal testimony organized?**

20 A: I first discuss how USESC is in compliance and has remained in compliance with the  
21 managerial requirements for certification as an Alternative Gas Supplier. I then discuss the ways  
22 in which USESC’s organizational structure facilitates effective management of its sales force and  
23 reflects the realities of modern corporate organization. Following that, I will discuss USESC’s

24 compliance programs and the interaction with the management of its sales practices. I will then  
25 show that CUB and Staff's evaluation of informal complaints is flawed leads to improper  
26 conclusions because it fails to consider the market share and business activity of USESC relative  
27 to other Alternative Gas Suppliers. Next, I will explain how the marketing of USESC's products  
28 is undertaken in a non-discriminatory basis and that the inferences CUB draws from data is  
29 flawed. Following that I will provide testimony demonstrating that USESC's long-term fixed  
30 price products are competitive options that provide value to customers. I will then describe in  
31 detail the significant measures USESC has taken to implement implemented comprehensive  
32 changes to its business processes and how those changes have resulted in dramatic reduction in  
33 complaints and other positive results. Finally, I will conclude by discussing how the remedies  
34 Staff and the Consumer Groups seek are unwarranted, unnecessary given changes already  
35 implemented, disruptive to consumers and workers, and generally anti-competitive.

36 **Q: Please summarize your position.**

37 A: USESC's management has taken numerous proactive steps to implement comprehensive  
38 changes to its business processes and managerial oversight of sales contractors and Regional  
39 Distributors. The changes have been extremely effective at reducing informal complaints in  
40 general and allegations of misconduct by USESC's sales force. Staff and CUB fail to recognize  
41 the significant reduction in complaints associated with business conducted after the changes to  
42 business processes and managerial oversight of independent contractors were implemented.  
43 Staff and CUB's recommendation for the Commission to order USESC to cease and desist door-  
44 to-door marketing and CUB's recommendation for the Commission to revoke USESC's  
45 certificate would have a devastating impact on USESC's business, USESC's customers, and  
46 competitive markets in general. CUB and Staff's recommendations would leave more than

47 130 Illinois residents out of work.  
48 Revoking USESC's certificate would require a mass transition of  
49 100,000 customers to utility service – a consequence that is not even  
50 mentioned in Mr. Agnew or Ms. Alexander's testimony. The Commission should fully consider  
51 the positive actions already taken by USESC, which dramatically reduced the level of informal  
52 complaints against USESC in Illinois, and reject the shortsighted recommendations of CUB and  
53 Staff.

54 I. USESC Continues to Meet the Managerial Requirements for Certification as  
55 an Alternative Gas Supplier.

56  
57 **Q: Mr. Agnew and Ms. Alexander speculate that USESC does not exercise proper**  
58 **managerial control over its sales force because of the organizational structure of USESC,**  
59 **its affiliates, and contractual relationships. How do you respond?**

60 A: Mr. Agnew (ICC Staff Ex. 1.0, pp. 8-9), and Ms. Alexander in particular (CUB Ex. 2.0,  
61 p. 28), suggest that USESC's organizational structure is somehow nefarious because it relies on  
62 support from affiliates and contractual relationships to perform all of the functions necessary to  
63 provide natural gas supply to residential and small commercial customers in Illinois. I am aware  
64 of no laws or regulations prohibiting USESC to employ the use of affiliates and contract entities  
65 in the sales and provision of natural gas supply to residential and small commercial customers in  
66 Illinois. In fact, such organizational arrangements are commonplace in the energy industry.

67 **Q: Does USESC purposefully attempt to distance itself from the sales contractors as**  
68 **Ms. Alexander suggests (CUB Ex. 2.0, p. 17)?**

69 A: No, USESC and OESC have structured their relationships for business efficiency  
70 purposes and not as a means of inhibiting contact with or oversight of Regional Distributors and  
71 sales contractors. As I describe more specifically below, there is frequent meaningful

72 communication between USESC's management personnel and the Regional Distributors and  
73 sales contractors.

74 **Q: In her rebuttal testimony Ms. Alexander argues that the Commission was somehow**  
75 **misled about the organizational and management structure of USESC when it applied for**  
76 **certification to do business in Illinois. (CUB Ex. 2.0, p. 27, Conf.) Is there any merit to Ms.**  
77 **Alexander's allegations?**

78 A: No. Ms. Alexander's allegations are based on a limited reading of selected excerpts of  
79 the application without any mention or regard of the remainder of the application, much of which  
80 contradicts her allegations. Her position is either based on a haphazard review or is restricted in  
81 a way that presents an incomplete and prejudicial impression.

82 **Q: Were the officers of Illinois Energy Savings Corp. and their direct reports**  
83 **accurately disclosed in USESC's application for certification as an alternative gas supplier?**

84 A: Yes.

85 **Q: Did USESC's application include any other organizational charts?**

86 A: Yes. It included the organizational chart for the Energy Savings Income Fund (ESIF),  
87 which disclosed the relationships between Energy Savings (Illinois) Corp. (the certified entity in  
88 Illinois), Ontario Energy Savings Corp. (OESC) and ESIF.

89 **Q: Did the application disclose that USESC would rely on OESC employees to fulfill**  
90 **the technical and managerial requirements for certification?**

91 A: Yes. The application repeatedly discloses that USESC would rely upon the expertise of  
92 OESC employees to meet the technical and managerial requirements. As an example, the  
93 Technical Requirements section of the application specifically states as follows,

94

95 The applicant and its affiliate, OESC, have entered into a Services Agreement pursuant to  
96 which OESC will provide a range of services to the applicant. These services will  
97 include, without limitation, sales and marketing, operations, customer service, finance  
98 and accounting, legal and regulatory services.  
99

100 A copy of the Services Agreement was attached as part of the application. (Docket No. 03-0720,  
101 Application) There is no mention of this explicit disclosure in Ms. Alexander's testimony.

102 **Q. Has the relationship between USESC and OESC changed since USESC received its**  
103 **certificate of service authority?**

104 A. No. USESC still relies on OESC to provide services and expertise in the areas of  
105 customer service, supply and risk management, operations, finance and accounting, complaint  
106 handling and resolution, sales and marketing, compliance, and legal and regulatory, which is  
107 consistent with the initial statements and clear disclosures to the Commission in USESC's  
108 application.

109 **II. USESC's Organizational Structure Facilitates Effective Management of Its**  
110 **Sales Force and is Reflective of Modern Corporate Organization.**

111  
112 **Q: Mr. Agnew, while not calling into question the corporate organization of ESIF, is**  
113 **nevertheless under the impression that USESC's management of its sales force is lacking**  
114 **and that USESC relies solely on "tiers of independent contractors" to ensure compliance**  
115 **through sales training documents and standard form customer agreements. (ICC Staff**  
116 **Exhibit 1.0, p. 8). Likewise, Ms. Alexander alleges "...there is little interaction in the**  
117 **nature of management or compliance oversight by [USESC witnesses] and the Canadian**  
118 **owners." (CUB Ex. 2.0, p. 24, CONFIDENTIAL) Are these claims of a lack of**  
119 **management and compliance oversight accurate?**

120 A: Absolutely not. As stated before and as our data responses to CUB 6.30 and 6.32  
121 illustrate, there is daily communication between Ontario-based Sales and Marketing personnel

122 and the Regional Distributors. There is also at least weekly communication between the  
123 Ontario-based Consumer and Corporate Relations (“CCR”) group and the Regional Distributors  
124 concerning any allegations about the conduct of sales contractors.

125 **Q: Does USESC have a permanent managerial presence in Illinois?**

126 A: Yes, there are five Regional Distributors and one Regulatory Manager.

127 **Q: What reason do Mr. Agnew and Ms. Alexander offer to support their assertions that**  
128 **the Regional Distributors, who live in Illinois and manage the Illinois sales offices, do not**  
129 **provide proper managerial oversight of the Illinois sales force?**

130 A. Mr. Agnew and Ms. Alexander seem to believe that Regional Distributors cannot perform  
131 any part of the management function because their services are provided through contract rather  
132 than through direct employment by OESC or USESC (ICC Staff Ex. 1.0, pp. 14-15; CUB Ex.  
133 2.0, pp. 25-26). Mr. Agnew’s recommendation, with which Ms. Alexander concurs, is that  
134 USESC be forced to directly employ regional sales office managers rather than hire them  
135 through a contractual agreement. However, they fail to explain why a contractual relationship  
136 automatically disqualifies the Regional Distributors from carrying out managerial duties. The  
137 Regional Distributors live in Illinois, report to work sites in Illinois, and oversee a sales force  
138 comprised mainly of Illinois residents.

139 **Q: Please describe the Illinois sales force and the management role of the Regional**  
140 **Distributors.**

141 A: USESC has five sales offices in Illinois and each sales contractor works out of one of  
142 those offices. The sales offices are located in Oak Brook, Westmont, Downtown Chicago,  
143 Lincoln Park, and adjacent to O’Hare International Airport.

144 Approximately 130 sales contractors are currently selling USESC

145 long-term fixed price natural gas supply and green energy products out of the Illinois sales  
146 offices. Five Regional Distributors manage the Illinois sales offices. The Regional Distributors  
147 are responsible for recruitment, interviewing, and training of sales contractors. Regional  
148 Distributors also conduct sales meetings and presentations, oversee the continuing development  
149 of sales contractors, implement directives from the CCR group and the Sales and Marketing  
150 department, and handle day-to-day office issues.

151 **Q: Does the Sales and Marketing department provide management and oversight of**  
152 **USESC's sales force in Illinois?**

153 A: Yes. Staff from the Sales and Marketing department have always traveled to the Illinois  
154 offices on a regular basis and conducted general reviews of the practices and materials at each  
155 office. In 2008, the frequency of these visits increased as part of the effort to provide greater  
156 direction and oversight of sales practices. The scope of their reviews has expanded over time,  
157 and currently involves the availability of promotional and motivational material, effectiveness of  
158 orientation tools and venue, availability and accuracy of the do not solicit list, compliance  
159 process documentation, availability of only approved and current sales materials, compliance and  
160 code of conduct training, field training and shadowing, industry knowledge, municipal tracking  
161 lists and even the cleanliness of the office and the appearance of the sales contractors and  
162 Regional Distributors.

163 **Q: Do other OESC employees travel to the Illinois sales offices?**

164 A: Yes. Attached to my rebuttal testimony as Exhibit 5.1 is a list of all OESC employees  
165 and executives that have traveled to the Illinois sales offices between January 2007 through  
166 September 2008. Executives and OESC employees from Sales and Marketing, Operations, and  
167 Regulatory (including CCR), visit the Illinois sales offices on a regular basis to introduce new

168 products, implement new policies, conduct audits, provide sales support, ensure compliance,  
169 execute changes required by tariff, rule and law, and generally assist the sales offices in their  
170 day-to-day operations.

171 **Q. Ms. Alexander refers to a statement of yours that sales and marketing “is not [your]**  
172 **area of responsibility,” and says that this is a “strange statement” for the person in charge**  
173 **of regulatory compliance (CUB Ex. 2.0, p. 7). What is your response to that?**

174 A. It is not at all a strange statement. The statement when read in context, as it should be,  
175 indicates that I do not have direct responsibility for the day-to-day oversight of the sales and  
176 marketing functions. The suggestion or implication that as Senior Vice President of Regulatory  
177 Affairs I should be present at each location monitoring sales activity is not reasonable in any  
178 business context. Ms. Alexander improperly extrapolates from that statement to imply that I  
179 therefore have no knowledge of any sales and marketing activities and cannot speak to those  
180 issues. As demonstrated throughout my Direct Testimony and here as well, I have substantial  
181 knowledge of those functions and they are connected closely with the regulatory functions as  
182 shown below.

183 **Q: You mentioned that Regional Distributors and the Sales and Marketing department**  
184 **provide management and oversight of USESC’s Illinois sales force. Are the Regional**  
185 **Distributors and Sales and Marketing personnel responsible for determining whether sales**  
186 **contractors have failed to comply with USESC internal policies and other applicable**  
187 **tariffs, rules and laws?**

188 A: No. While compliance issues occasionally may come to the attention of the Regional  
189 Distributors and the Sales and Marketing department from sources other than from the CCR  
190 group, the responsibility of determining whether a sales contractor is in compliance with internal

191 policies and other regulatory or legal requirements is the central function of the CCR group.  
192 CCR communicates on a regular basis with Regional Distributors and sales contractors at  
193 USESC's regional sales offices, logs and investigates informal complaints from all internal and  
194 external sources, monitors and scores the performance of each individual sales contractor, and  
195 imposes fines or suspends, or terminates the contractual relationship with sales contractors if  
196 necessary. The Manager of the CCR group reports directly to me, and I report directly to the  
197 President and CEO.

198 **Q: On page 12 of her rebuttal testimony, Ms. Alexander notes that the CCR group**  
199 **sends the Regional Distributors information concerning allegations against independent**  
200 **contractors and the determination of consequence by the CCR group. Ms. Alexander**  
201 **states, "It is clear from this statement that Mr. Nicholson has no role in the determination**  
202 **of the consequence." Is Ms. Alexander's concern consistent with her other positions in this**  
203 **proceeding?**

204 **A:** No. First, Ms. Alexander asserts that USESC's compensation structure is flawed because  
205 [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] gives  
206 Regional Distributors an incentive to ignore compliance issues, which is untrue. (CUB Ex. 2.0,  
207 pp. 12-13). Aside from being untrue, this is entirely inconsistent with her testimony that these  
208 same Regional Distributors have no hand in deciding penalties for non-compliance. (CUB Ex.  
209 2.0, pp. 12, 26-27). Similarly, Ms. Alexander states that USESC should be faulted because  
210 OESC does not actively oversee operations in Illinois (CUB Ex. 2.0, pp. 25-26), which is untrue,  
211 and then later states that OESC has too active of a role in setting the consequences for  
212 compliance failures. Ms. Alexander's positions are internally inconsistent and should be given  
213 no weight.

214 **Q. On page 10 of her rebuttal testimony, Ms. Alexander states “It would appear that**  
215 **USESC would prefer to handle allegations and disputes in a manner that makes the**  
216 **individual customer’s problem disappear instead of taking affirmative action to determine**  
217 **the root cause.” On a similar note, she also dismisses the role of the CCR department as**  
218 **doing nothing more than “forgiving exit fees.” How do you respond to this?**

219 A. There are two components to management and response to customer complaints. The  
220 first is in responding directly to individual customers’ concerns, because they deserve a  
221 meaningful inquiry and response. Ms. Alexander suggests that there is something pernicious  
222 about seeking to resolve a customer’s concerns by characterizing this as a making a problem  
223 “disappear.” (CUB Ex. 2.0, pp. 9-10). That is not at all what happens. The purpose is to provide  
224 a response and result for customers with valid concerns. All companies do that and there is  
225 nothing improper about doing that.

226 The second component is what Ms. Alexander ignores. The vast majority of this rebuttal  
227 testimony sets forth the extensive framework of systemic modifications that USESC has put in  
228 place not only to respond to individual complaints, but also to address how those complaints as a  
229 group affect sales and marketing practices on a system-wide basis. As shown throughout this  
230 testimony, USESC has implemented numerous changes to the contract language, the training  
231 materials, the verification calls, the re-affirmation letters sent to customers, the imposition and  
232 amounts of termination fees, the remedial and disciplinary measures for contractors, the review  
233 and approval of materials used for marketing, extended cancellation periods, use of third-party  
234 verification service, increased frequency of reporting about problem verifications, and so forth.  
235 There is absolutely a great deal more than making sure that problems disappear. USESC has  
236 devoted countless hours and enormous resources to taking the remedial and reparative actions

237 necessary to prevent problems from appearing in the first place. Ms. Alexander simply chose not  
238 discuss this aspect of the company's response.

239 In addition, the CCR group does much more than just forgiving exit fees, and the  
240 documents and evidence available to Ms. Alexander throughout this proceeding demonstrate  
241 that. First of all, when CCR does receive complaints there is a procedure in place to notify not  
242 only the contractor involved but also the distributor. Attached as Exhibit 5.2 are samples of  
243 letters sent to contractors notifying them of allegations, and the consequences for those  
244 allegations. Attached as Exhibit 5.3 are samples of email notifications to the distributors to  
245 inform them about the allegations with regard to contractors who they oversee and directing  
246 them to address the matter directly with the contractors as well.

247 **Q: How do you ensure that the Regional Distributors are made aware of and abide by**  
248 **the consequences imposed by the CCR group?**

249 A: In any instance where the CCR group issues direction for remedial or disciplinary action,  
250 the sales contractor is required to acknowledge the penalty by signing the penalty and then  
251 giving the signed penalty letter to the Regional Distributor who in turn is required to return the  
252 signed letter to the CCR group. An example of this is attached as Exhibit 5.4.

253 **Q: Throughout their testimony, Mr. Agnew and Ms. Alexander suggest that**  
254 **compliance oversight is lacking because the CCR group is not physically located at or near**  
255 **the Illinois sales offices. (Staff Ex. 1.0, p. 18; CUB Ex. 2.0, pp. 12, 26-27). Do you agree**  
256 **with their assessments?**

257 A: No, in my opinion, both Ms. Alexander and Mr. Agnew's recommended approach to  
258 management is naïve, outdated in today's technological world, and fails to comprehend the  
259 practical aspects of managing roughly 130 sales contractors

260                   who sell to approximately three million customers across the entire northern  
261 half of the State of Illinois. They fail to recognize that the CCR group is in a better position to  
262 investigate complaints and track the actions of sales contractors from a centralized location with  
263 enhanced technologies and the support of hundreds of OESC employees. The efficiencies of  
264 centralized oversight and compliance would be lost if USESC was required to deploy its CCR  
265 employees to remote sales offices across North America. In addition, the costs of replicating the  
266 technological and human resource components of the compliance functions in each and every  
267 physical location in which USESC does business would be prohibitive, and would unnecessarily  
268 result in added price increases to consumers for unnecessary and inefficient duplication of  
269 resources that are better utilized in a central location. It seems as if the only thing that would  
270 satisfy Ms. Alexander is if there was a senior manager following each sales contractor to every  
271 door and every business where they market USESC products. Obviously, such a situation is  
272 untenable.

273                   **III. CUB and Staff's Evaluation of Informal Complaints Fails to Consider the**  
274                   **Market Share and Business Activity of USESC relative to other Alternative**  
275                   **Gas Suppliers.**  
276

277 **Q: On page 6 of his Direct Testimony, Mr. Agnew states, "Large volume [of informal**  
278 **complaints] by itself can simply arise as a byproduct of market share, and in such instances**  
279 **is likely to be associated with a variety of topics." Do you agree with Mr. Agnew?**

280 **A: Yes. Market share will have a direct impact on the volume of informal complaints.**

281 **Q: Does Mr. Agnew consider market share and other business activity in his evaluation**  
282 **of informal complaint patterns related to USESC?**

283 **A: No. In fact, after acknowledging that a large volume of complaints can simply arise as a**  
284 **product of market share, Mr. Agnew never mentions USESC's market share or the level of**

285 business conducted by USESC on an ongoing basis. This is unfortunate because, based on my  
286 knowledge of our customer base and other publicly available reports on market share,  
287 USESC is serving more residential customers than any other supplier in  
288 Illinois.

289 **Q. Are there other considerations that should be taken into account when evaluating**  
290 **the volume of informal complaints a supplier receives?**

291 A. Yes. In addition to market share, it is appropriate to consider other levels of business  
292 activity. For example, some methods of marketing, such as door-to-door sales, result in a  
293 significant number of direct contacts with consumers, which are not reflected in a strict  
294 comparison of market share. Further, a supplier may undertake customer retention and contract  
295 renewal efforts in order to prevent customer attrition, provide added value by offering new  
296 products and services, and to further long-standing business relationships with existing  
297 customers.

298 **Q: Do regulators in other deregulated energy markets post informal consumer**  
299 **complaint information as a percentage of market share or level of business activity?**

300 A: Yes. The Public Utility Commission of Texas (“PUCT”) posts a Retail Electric Provider  
301 Scorecard on its Power to Choose website. The PUCT also posts a summary of complaint  
302 statistics by category for each Retail Electric Provider (“REP”). The Ontario Energy Board  
303 (“OEB”) also posts a quarterly comparison of natural gas supplier complaint levels on its website  
304 entitled, “Low Volume Consumer Issues Received by the OEB in Relation to the Business  
305 Activities of Natural Gas Marketers.” I have attached copies of the most recent reports from the  
306 PUCT and OEB to my rebuttal testimony as Exhibit 5.5.

307 **Q: Please explain how the PUCT and OEB compare complaint rates of suppliers.**

308 A: The PUCT's REP Complaint Scorecard ranks each REP on a scale of one to five where  
309 one represents the lowest complaint rate and five represents the highest complaint rate.  
310 Rankings are determined by first calculating a REPs monthly complaint rate by dividing the  
311 REPs complaints for the month by the number of customers served by the REP. The REPs  
312 complaint ratio is then determined by dividing the REPs individual complaint rate by the  
313 complaint rate for the entire market. The REP complaint ratio for the most recent six months is  
314 then averaged to minimize the effects of a single month where a REP may have received a  
315 disproportionately high or low level of complaints. REPs are then distributed equally into five  
316 different groupings depending on their average complaint ratio resulting in the scale of one to  
317 five listed above.

318 The OEB's Low Volume Consumer Issues Received by the OEB in Relation to the  
319 Business Activities of Natural Gas Marketers comparison measures complaint rates by  
320 comparing the number of consumer issues raised relative to the number of new and renewed  
321 contracts. This ratio is then converted to a complaint rate per thousand sales. The OEB's  
322 comparison considers business activities that may result in complaints but would not necessarily  
323 be reflected in a strict comparison of market share only. For example, a renewed contract would  
324 not increase a supplier's total market share but represents business activity that could result in  
325 additional consumer issues. Likewise, the new contracts measurement captures business activity  
326 that may not result in the addition of a new customer and therefore would not factor into a strict  
327 market share comparison.

328 **Q: Do complaint rate scorecards and comparisons such as those prepared by the PUCT**  
329 **and OEB provide a useful tool for a supplier to measure their performance against other**  
330 **suppliers in the market and identify areas that may require additional attention?**

331 A: Yes. Without such a comparison, a supplier can only guess how its experiences rank  
332 relative to other suppliers that are providing similar services in the market. The PUCT and OEB  
333 websites allow a supplier to identify trends in complaints, target specific areas for improvement,  
334 and, most importantly, understand whether their complaint rates are in line with other suppliers  
335 providing similar products and services.

336 **Q: Isn't it the supplier's own responsibility to identify and to address any areas of**  
337 **underperformance in its operations?**

338 A: Absolutely, and I believe that this testimony demonstrates how seriously USESC accepts  
339 that responsibility. I also believe that if such a measuring stick were available in Illinois, it  
340 would currently show the significant improvement in USESC's complaint rates that has occurred  
341 since the comprehensive changes were made in February 2008.

342 **Q: On pages 2-3 of her rebuttal testimony, Ms. Marcelin unsuccessfully attempts to**  
343 **calculate USESC's complaint rate. Please explain the mathematical error in Ms.**  
344 **Marcelin's calculation of USESC's complaint rate and other problems associated with her**  
345 **calculation?**

346 A: According to Ms. Marcelin, USESC's complaint rate for the period of January 1, 2007  
347 through September 30, 2008 was 19%. Ms. Marcelin derived this complaint rate by dividing  
348 what she refers to as USESC "complaints" for the period from January 1, 2007 to September 30,  
349 2008 by the total number of customers served by USESC as of May 2008. According to Ms.  
350 Marcelin, USESC had a total of 1,900 "complaints" between January 1, 2007 and September 30,  
351 2008. USESC had approximately 100,000 customers  
352 as of May 2008. So, using Ms. Marcelin's methodology, USESC's  
353 complaint rate would be 1.9% (1,900 /100,000=1.9%)

354                   rather than the 19% rate that was improperly calculated in Ms. Marcelin's  
355 rebuttal testimony.

356 **Q:     Despite the computational error in Ms. Marcelin's rebuttal testimony, do you have**  
357 **any other concerns about Ms. Marcelin's methodology for determining USESC's complaint**  
358 **ratio?**

359 A:     Yes. First, Ms. Marcelin's calculation ignores the level of USESC's business activity  
360 during that period by considering only the number of USESC's flowing customers as of May  
361 2008 without also adding the total number of other contracts that were submitted for enrollment  
362 during that same time frame but did not flow. Also, her calculation does not appear to account  
363 for the fact that sales contractors also contacted thousands of other individuals who declined our  
364 offer. Without taking those numbers into account, the calculated ratio fails to accurately measure  
365 the rate at which the conduct of USESC's contractors was generating complaints. Second, Ms.  
366 Marcelin uses a time frame that includes the period during which CUB filed the complaint at  
367 issue in the instant proceeding, the Illinois Attorney General filed a lawsuit against USESC, and  
368 the local television news in Chicago ran numerous negative stories on USESC including one  
369 major story aired on CBS. A review of customer complaint volumes reveals a significant  
370 increase in the months that those events occurred and the months immediately following those  
371 events. Third, Ms. Marcelin's calculation neglects to mention that throughout the 19-month  
372 timeframe underlying her calculation, CUB has regularly disseminated negative information  
373 regarding choice in the natural gas industry and USESC in particular through a number of  
374 different media outlets, including both the radio and Spanish language television. (See Exhibit  
375 5.6). In my opinion, each of these factors is significant because each can be expected to have the  
376 effect of increasing the number of complaints made about our sales contractors.

377 **Q: On pages 2-3 of her rebuttal testimony, Ms. Marcelin compares the level of USESC**  
378 **complaints to complaints filed against Illinois gas utilities. Is this a valid comparison?**

379 A: In my opinion, this is not a valid comparison. Customers on utility supply in Illinois have  
380 likely remained on utility supply ever since they initiated service with the utility. As the default  
381 supplier, a utility is never in the position of having to actively market to customers in order to  
382 provide them with supply service. Furthermore, because Illinois gas utilities are prohibited from  
383 earning a profit on commodity service, they are indifferent as to whether a customer chooses an  
384 alternative gas supplier or remains on utility default supply. Illinois utilities have the benefit of  
385 long-established relationships with customers and strong brand recognition due to their franchise  
386 status granted through the regulatory process.

387 Alternative gas suppliers face an entirely different set of circumstances. Suppliers like  
388 USESC must develop brand recognition without the support of a franchise agreement, approved  
389 regulated rates, and a guaranteed rate of return. In order to remain financially viable, alternative  
390 gas suppliers have to provide products and services that provide added value to customers such  
391 that they take the affirmative step of switching suppliers. Unlike utilities that can passively  
392 provide supply without contacting the customer, alternative gas suppliers must establish contact  
393 with customers in order to market their products and obtain a verified authorization to switch.  
394 Complicating matters further, many customers in Illinois have little or no experience in making  
395 choices concerning their natural gas supply and in some cases are entirely unaware that they are  
396 able to purchase their commodity from alternative gas suppliers. The lack of customer education  
397 in Illinois is well documented by Ms. Alexander and is no fault of USESC.

398 In light of the difference between utilities and alternative gas suppliers and the lack of  
399 education regarding choice, it is not surprising that the ratio of complaints to number of

400 customers served by alternative gas suppliers is greater than the ratio of the number of  
401 complaints to number of customers served by Illinois gas utilities.

402 **IV. USESC Markets its Product on a Non-discriminatory Basis.**

403 **Q: Throughout her direct and rebuttal testimonies, Ms. Alexander asserts that**  
404 **USESC's sales contractors target low-income neighborhoods to market USESC products**  
405 **(CUB Ex. 2.0, p. 14). Is there any validity to this allegation?**

406 A: No. Ms. Alexander employs faulty analyses, which fail to take into account critical  
407 information, in order to arrive at her conclusion.

408 **Q: What critical information does Ms. Alexander ignore?**

409 A: First, Ms. Alexander fails to recognize that USESC uses credit scoring in determining  
410 whether to offer USESC's long-term fixed price products to potential customers. Second, she  
411 fails to track the areas in which door-to-door marketing is prohibited or otherwise restricted by  
412 the municipality and the effects thereof on the sales activity of the contractors.

413 **Q: Why does USESC perform credit checks before they sign up customers?**

414 A: Utility tariffs that govern choice programs in Illinois allow customers to switch from the  
415 service of an alternative gas supplier back to the utility or to another supplier without paying the  
416 remaining balance on their bill for natural gas supply. Partial payments are always allocated to  
417 the utility portion of the bill first. So, a customer can continue to make partial payments and  
418 have gas delivered by the gas supplier without any payment remitted to the supplier. Suppliers  
419 also have to give notice before dropping a customer for non-payment and some amount of time  
420 usually elapses before a customer reverts to utility supply. These rules favor the utility and  
421 create a situation that can result in suppliers incurring bad debt. Credit checking is used in an

422 attempt to sign only customers that have demonstrated a track record of paying bills in a timely  
423 manner.

424 **Q: Do low-income customers always have low credit scores?**

425 A: No. Credit scores primarily reflect whether or not a person has a history of paying bills  
426 on time. While, income levels factor into this, timely bill paying is largely a product of proper  
427 budgeting.

428 **Q: Is there anything wrong with selling competitive products and services to low-**  
429 **income customers?**

430 A: No. In fact, it is unfortunate that the design of natural gas choice programs in Illinois  
431 provide an incentive to perform credit checks. Choice programs in other states are designed to  
432 socialize bad debt, which allows all customers to avail themselves of the benefits of competitive  
433 markets regardless of their credit score. Indeed, a program that would have similar effect was  
434 approved by the Illinois legislature for retail electric market.

435 **Q: On pages 14-15 of her rebuttal testimony, Ms. Alexander describes an analysis that**  
436 **was prepared by a CUB employee under her guidance in an attempt to discredit Mr.**  
437 **Hames and Mr. Nicholson's assertions that the sales contractors market either in and**  
438 **around their own neighborhoods or in neighborhoods in the path between their homes and**  
439 **the USESC sales offices. Did you identify any problems with Ms. Alexander's analysis?**

440 A: Yes. Again, that analysis fails to take into account that USESC uses employs credit  
441 checking. In addition, her analysis considers the addresses of only  
442 77 current sales contractors even though USESC's current customer  
443 base includes contracts obtained by contractors who are no longer active. Even so, Ms.  
444 Alexander asserts that "only" 36 current sales contractors



468 [REDACTED]

469 [REDACTED] [END CONFIDENTIAL]

470 **Q: Does USESC have any customer-specific information regarding household income?**

471 A: No. USESC does not gather that information.

472 **V. USESC's Long-term Fixed Price Products are a Competitive Option that**  
473 **Provide Value to Customers.**

474

475 **Q: Please describe the long-term fixed price product that USESC offers residential and**  
476 **small commercial customers?**

477 A: USESC offers four and five-year fixed price natural gas supply and green energy  
478 products in Illinois. The price for natural gas supply is known with certainty at the time the  
479 customer enters into the agreement and never changes for the entire four or five year term.

480 [BEGIN CONFIDENTIAL] [REDACTED]

481 [REDACTED] [END CONFIDENTIAL] The green energy product consists  
482 of carbon credits to offset the carbon emitted into the atmosphere from natural gas consumption.

483 **Q: Throughout her direct and rebuttal testimony, Ms. Alexander argues that USESC's**  
484 **five-year fixed-price product provides little or no value to customers. How does Ms.**  
485 **Alexander arrive at this conclusion?**

486 A: It appears that the sole basis for her claim is her reliance on the "Gas Market Monitor" on  
487 CUB's web site. (CG Ex. 1.0, p. 20)

488 **Q: Please explain your understanding of how suppliers' offers are evaluated on CUB's**  
489 **Gas Market Monitor?**

490 A: Alternative Gas Suppliers' products are measured against the variable utility rates offered  
491 by Nicor Gas Company ("Nicor"), Peoples Gas Light and Coke Company ("Peoples"), and  
492 North Shore Gas Company ("North Shore"). My understanding is that balancing charges are

493 added to supplier rates to arrive at a price to compare against the utilities' variable rates. The  
494 rates are then applied to CUB's estimate of weather normalized usage for an average residential  
495 customer. The difference between the two amounts is recorded as savings or losses and added to  
496 a running total.

497 **Q: Does the methodology used to calculate savings in the Gas Market Monitor properly**  
498 **account for all of the charges, credits and taxes that should be included in such an analysis?**

499 A: I do not know. USESC asked CUB to provide the methodology used to calculate the  
500 results of the Gas Market Monitor in IESC data request 2.3, but CUB failed to provide the  
501 necessary information to evaluate the accuracy of the estimates. However, I believe that the Gas  
502 Market Monitor fails to capture critical differences between the charges and credits assessed to  
503 customers on supplier and utility service. For example, Peoples and North Shore both charge  
504 lower delivery charges to choice customers to offset bad debt costs associated with utility supply.  
505 Nicor issues a Transportation Service Credit to choice customers only. The City of Chicago's  
506 Municipal Tax is different for choice customers than customers on utility supply. Most  
507 municipalities in North Shore's service territories assess a tax to utility supply only but not  
508 supply purchased from alternative suppliers. Likewise, many municipalities in Nicor's service  
509 territory assess a tax only to utility supply customers and not to supply purchased from an  
510 alternative supplier. I do not believe these differences, which would largely produce better  
511 results for alternative gas suppliers, are included in CUB's Gas Market Monitor.

512 **Q: If CUB's Gas Market Monitor included all of the charges necessary to produce an**  
513 **accurate price comparison between supplier and utility rates, would you consider it a**  
514 **valuable tool for consumers?**

515 A: No. A comparison of variable prices to fixed prices is an “apples-to-oranges”  
516 comparison. The critical flaw with the Gas Market Monitor is that it fails to capture the value  
517 that customers place on price certainty.

518 **Q: Ms. Alexander claims that customers pay “exorbitant” premiums on USESC’s fixed**  
519 **price supply. How does she arrive at this conclusion?**

520 A: I am not absolutely sure, but it appears she relies solely on CUB’s Gas Market Monitor  
521 and also compares the prices offered by USESC to the utility price at the time of the offer.

522 **Q: Is it appropriate to evaluate a contract in mid-term to make a determination**  
523 **whether customers pay a premium on USESC’s five-year fixed price product?**

524 A: No. At any point in time, the utility’s variable rate could drop below USESC fixed rate.  
525 The actual “savings” or “losses” cannot be known until the contract term is completed.

526 **Q: Have any USESC customers gone through the full term of their contract in Illinois?**

527 A: Yes. USESC began marketing in Illinois in February 2004. Customers that signed up for  
528 USESC’s four-year fixed price product between February and December 2004 completed the full  
529 term of their original agreement.

530 **Q: Have you calculated savings/losses for Illinois customers that have completed the**  
531 **full term of their contract?**

532 A: Yes. An analysis of the savings/losses of all USESC residential customers in Illinois that  
533 have completed the full term of their contract was prepared under my direction. At the present  
534 time, there are [BEGIN CONFIDENTIAL] ■ [END CONFIDENTIAL] residential customers in  
535 Illinois who have completed the full term of their contracts. 98% of those customers saved  
536 money relative to the utility rate. The maximum loss was \$23.96 over the life of the contract.

537 The maximum savings was \$558.95 over the life of the contract. The average savings per  
538 residential customer was \$198.55.

539 **Q: Does USESC have experience from other markets in which customers have**  
540 **completed the full term of their contracts?**

541 A: Yes. USESC began selling five-year fixed price natural gas supply in Ontario in 1997.  
542 So, customers who signed up in 2002 and earlier and did not cancel the contract have completed  
543 the full contract term. On average, customers saved \$229 if they signed in 1997, \$822 if they  
544 signed in 1998, \$952 if they signed in 1999, \$505 if they signed in 2000, and \$297 if they signed  
545 in 2002. Customers who signed up in 2001 paid \$135 more, on average. (Savings and losses in  
546 Ontario are measured in Canadian dollars.)

547 **Q: On page 4 of her rebuttal testimony, Ms. Alexander takes issue with your statements**  
548 **that customers are willing to pay a premium for price certainty. Are you aware of anyone**  
549 **else who believes that customers are willing to pay a premium for price certainty?**

550 A: Yes. Ironically, in another proceeding, CUB seems to share my opinion that customers  
551 are willing to pay a premium for price stability. In Commonwealth Edison's Proposal to  
552 Implement a Competitive Procurement Process, CUB witness Steinhurst proposes that more 5-  
553 year forward contracts be included in the auction process. In support of his recommendation, he  
554 states, "...standard 5-year products exist in many commodity markets including, most  
555 importantly, natural gas markets. Indeed, natural gas forward contracts can be less expensive five  
556 years ahead than one year ahead." (Docket No. 05-0519, CUB-CCSAO Ex. 2.0, p. 31) CUB  
557 witness Steinhurst goes on to say, "I would expect any premium for the longer-term contracts to  
558 be offset by the financial benefits (price stability) that consumers receive from the longer-term  
559 contracts."

560 **Q: On pages 9-10 of her rebuttal testimony, Ms. Alexander claims that it is difficult for**  
561 **consumers to evaluate USESC's five year fixed price product because utilities do not**  
562 **provide customers with long-term price forecasts. Is it easy for customers to evaluate the**  
563 **utility's price?**

564 A: No. One of the benefits of USESC's five-year fixed price products is that customers  
565 know the price with certainty on a going forward basis for an extended period of time. All they  
566 have to do to determine their price for natural gas is consult the front of their customer  
567 agreement.

568 **Q: Is there any way that a customer can determine what they will pay if they remain on**  
569 **the utility's variable rate?**

570 A: No. It is virtually impossible for a customer to determine what the utility's rate will be  
571 next month let alone next year.

572 **Q: Ms. Alexander suggests that the graph in USESC's brochure attached to your**  
573 **Direct Testimony as Exhibit 1.5 is misleading because it averages North Shore, Peoples and**  
574 **Nicor's prices. (CG Ex. 2.0, p. 5) Is the variable pricing listed in the graph misleading?**

575 A: No. The fact that the three utilities' rates are averaged is expressly disclosed in the  
576 brochure. The purpose of the graph is to demonstrate the variable nature of the utilities' rates.

577 **Q: In general, Ms. Alexander suggests that customers do not derive value and are not**  
578 **willing to pay a premium USESC's long-term fixed price supply products. Do you have**  
579 **any other information to demonstrate that customers are willing to pay a premium for**  
580 **price certainty and stability?**

581 A: Yes. One hundred thousand

582 customers have voluntarily chosen to purchase USESC's fixed price product as an alternative to  
583 the utility's variable rate.

584 **Q: Why do you believe that price stability is a reason that customers choose a fixed**  
585 **price contract like USESC's product?**

586 A: I think it is clear that customers do not choose our fixed price products in order to achieve  
587 immediate price savings because as even Ms. Alexander acknowledges at page 10 of her rebuttal  
588 testimony, at the time USESC markets a particular fixed price, the current utility prices are  
589 usually lower. In that way, the relationship between our fixed price contracts and variable utility  
590 rates is similar to the relationship between fixed rate mortgages and variable rate mortgages. In  
591 my opinion, this difference in price supports that conclusion that customers are willing to pay a  
592 premium for certainty.

593 **Q: But overall, Ms. Alexander disputes that mortgages are a useful analogy. How do**  
594 **you respond?**

595 A: At page 10 of her rebuttal testimony, Ms. Alexander agrees that "most variable rate  
596 mortgages are offered at rates that are, at least initially, lower than the fixed rate." Her  
597 conclusion, however, appears to confuse the products that are comparable. In the natural gas  
598 context, the utility price is usually lower than fixed price that USESC is offering at that point in  
599 time. Thus, while a fixed price gas contract will almost certainly cost more initially, it will also  
600 never change, just like a fixed rate mortgage. In that way, the fixed price gas contract is  
601 comparable to the fixed rate mortgage (willingness to pay a premium at least initially for  
602 certainty), not the other way around.

603           Consequently, Ms. Alexander's assertion that USESC should be required to make  
604 additional disclosures is equally misguided. In the mortgage context, TILA disclosures are  
605 required to apprise customers that their rates may rise unexpectedly. USESC's product does not  
606 present that risk and so no such disclosures would be required. Thus, Ms. Alexander has this  
607 issue backwards.

608 **Q:    Other than customers voluntarily choosing the product and the actual savings that**  
609 **customers have incurred, is there any additional evidence that the premium paid for**  
610 **USESC's five-year fixed price product is reasonable?**

611 A:    The market for natural gas supply in Northern Illinois is a competitive market with 15  
612 alternative gas suppliers certified to serve small commercial and residential customers. If  
613 USESC was earning excessive profits as Ms. Alexander suggests, then one of USESC's  
614 competitors would undercut USESC's price.

615 **Q:    Are you aware of any other supplier currently offering five-year fixed price natural**  
616 **gas supply products in Illinois?**<sup>1</sup>

617 A:    No.

618           **VI.    USESC Has Implemented Comprehensive Changes to its Business Processes**  
619           **with Positive Results.**

620  
621 **Q:    Ms. Alexander and Mr. Agnew suggest that USESC has done nothing to address the**  
622 **nature and level of informal complaints in Illinois other than lower the Early Termination**  
623 **Fee ("ETF") in USESC's customer agreement. (Staff Ex. 1.0, p. 10; CG Ex. 2.0, p.22, lines**  
624 **452 to 454) Is this an accurate description of the actions USESC has taken in order to**  
625 **mitigate the level and nature of informal complaints and improve customer satisfaction?**

---

<sup>1</sup> <http://www.icc.illinois.gov/utility/list.aspx?type=altgas>



648 complaints. In addition, USESC received a substantial amount of negative publicity primarily  
649 directed by CUB. The negative publicity was widespread, including interviews and stories on  
650 local radio, television and in the print media and on CUB's own website. The negative publicity  
651 was punctuated by public statements made by CUB regarding the complaint filed in the instant  
652 proceeding, public statements made by the Attorney General related to lawsuit filed against  
653 USESC, and a two-part news story on the local CBS television station. Furthermore, many  
654 Illinois consumers are not properly educated on customer choice issues, the role of alternative  
655 gas suppliers, and the availability of new energy-related products and services made available  
656 through competitive markets.

657 **Q: What trends had USESC identified by early 2008?**

658 A: Of the customer inquiries that could be categorized as informal complaints, USESC  
659 recognized that some involved allegations of misrepresentation of price, savings, or identity of  
660 the sales contractor. Some customer inquiries were not allegations of misrepresentation but  
661 rather were indicative of customer confusion regarding the role of alternative gas suppliers and  
662 USESC's products. Other informal complaints related to USESC's cancellation policy.  
663 Customers complained that the normal 3-day cancellation window did not allow them enough  
664 time to opt out of their contracts before being obligated to pay exit fees in the event they sought  
665 cancellation. Some customers claimed they did not comprehend the difference in pricing  
666 between USESC's products and their local utility's default supply prior to enrolling with  
667 USESC. Others complained that the exit fee calculation was not easily understood or resulted in  
668 a high exit fee.

669 **Q: Were there customer inquiries in 2007 and early 2008 that involved something other**  
670 **than alleged wrongdoing by USESC?**

671 A: Yes. Many of the customer inquiries involved no allegations of wrongdoing whatsoever  
672 but were nevertheless recorded both internally and by outside parties such as the ICC, CUB, and  
673 the Illinois Attorney General. These types of customer inquiries included, but were not limited  
674 to, questions relating to USESC's certification, nature of service, competition, natural gas prices,  
675 contract terms and conditions, cancellation rights, billing and straight-forward cancellation  
676 requests.

677 **Q: Can you describe in more detail informal complaints related to misrepresentation?**

678 A: Yes. The majority of complaints that USESC received by early 2008 came from  
679 customers who reported being under the impression that USESC's fixed-price long-term supply  
680 product would result in savings relative to their local utility's supply charges. Any promises of  
681 savings made by sales contractors were not in compliance with USESC's policies and training.  
682 Even in 2007, USESC policies and training stressed that sales contractors cannot promise  
683 savings and explain that USESC's program offers price stability in comparison to local utilities'  
684 variable pricing. A copy of USESC's Sales Manual is attached as Exhibit 5.8. Other customers  
685 were under the impression that the sales contractors were acting on behalf of local utilities or  
686 some governmental body. This behavior would at all times be a contravention of USESC policy.

687 **Q: Did USESC take any actions to mitigate the type of misrepresentation and customer**  
688 **confusion identified in your previous response?**

689 A: Yes. USESC took swift action in response to the increased level of customer inquiries  
690 with a special focus on the reports of misrepresentation. USESC implemented significant  
691 changes in February 2008 to its contract terms and conditions, enrollment processes, sales  
692 practices, and management and compliance oversight of the sales contractors.

693 **A. Changes to Contract.**

694 **Q: Please describe the changes to USESC's residential and small commercial customer**  
695 **contract in February 2008.**

696 A: The contracts introduced in February 2008 were attached to my Direct Testimony as  
697 Exhibit 1.2. That version of the contract implemented the following changes:

698 • A box was added on the front of the contract stating,  
699 **"CUSTOMER UNDERSTANDS THAT U.S. ENERGY SAVINGS CORP. IS AN**  
700 **INDEPENDENT ENERGY SERVICES COMPANY THAT IS NOT AFFILIATED**  
701 **WITH CUSTOMER'S LOCAL UTILITY AND THAT THE AGREEMENT**  
702 **OFFERS PRICE STABILITY (AT THE PRICE SET OUT BELOW) AND DOES**  
703 **NOT GUARANTEE SAVINGS".**

704  
705 The customer is required to sign this box.

706  
707 • The exit fee for residential customers was capped at a flat fee of \$75 per year for each  
708 remaining year on the contract. Like the contract in effect prior to February 2008, a  
709 sample calculation of the exit fee was provided and the customer is required to initial a  
710 box immediately following the exit fee disclosure paragraph on the front of the contract.

711 • The cancellation window to avoid an exit fee was extended from the statutory three-day  
712 minimum to thirty days after issuance of the customer's first bill. This effectively  
713 provides the customer with approximately 45 to 70 days to cancel their contract and  
714 avoid exit fees.

715 • As was the case with the previous contract, customers were required to initial  
716 acknowledgement that the sales contractor was wearing a USESC photo ID badge and  
717 identified that he/she was representing USESC, an independent natural gas supplier.

718 • Like the previous contract, all of the material terms and conditions, including price, term,  
719 exit fee, cancellation rights, and changes in assessed utility charges associated with

720 switching were included on the front of the contracts. An authorized signature agreeing  
721 to the terms of the contract is required.

722 **Q: Has USESC made any changes to its residential customer contract since February**  
723 **2008?**

724 A: Yes. USESC introduced a “plain language” contract in July 2008, which avoids the use  
725 of legalese, employs 12 pt. font, and moves all of the essential agreement information to a single  
726 box in the middle of the front page of the contract. Our current plain language contract is  
727 attached as Exhibit 5.9.

728 **B. Changes to Reaffirmation.**

729 **Q: You mentioned that USESC changed its reaffirmation policies and reaffirmation**  
730 **scripts as a response to the increase in customer inquiries. Please explain the term**  
731 **reaffirmation and the changes to USESC’s reaffirmation policy and process that were**  
732 **implemented in 2008.**

733 A: Reaffirmation is the process of obtaining an additional verification of the customer’s  
734 agreement to switch suppliers through either voice-recorded verification or a signed and returned  
735 letter verifying the customer’s agreement to switch suppliers. Reaffirmation is in addition to  
736 obtaining the customer’s “wet ink” signature on a contract.

737 Prior to February 2008, USESC’s policy was to attempt to execute voice-recorded  
738 verifications of all signed contracts. However, if a voice-recorded verification could not be  
739 executed, then USESC would send the customer a welcome letter informing the customer that  
740 they were enrolled on service with USESC. The utility also sends a letter to the customer  
741 confirming that they have switched suppliers.

742 In February 2008, USESC changed its policy on reaffirmations to the current policy of  
743 requiring 100% reaffirmations on signed contracts. Under this policy, USESC will not switch a  
744 customer unless it obtains either a voice-recorded verification conducted by a third party or a  
745 signed and returned reaffirmation letter verifying consent to the material terms of the contract. I  
746 have attached a copy of the reaffirmation letter as Exhibit. 5.10. The scripts used for inbound  
747 and outbound Spanish and English voice recorded verification calls were attached to my Direct  
748 Testimony as Exhibit 1.7.

749 Reaffirmations protect customers from unauthorized switching, ensure that customers  
750 understand the price and other material terms of the contract before they are switched and  
751 provide the supplier with additional assurances that the customer understands the terms and  
752 conditions of the contract and agrees to be switched.

753 **Q: Please describe the information captured in a voice recorded verification.**

754 A: [BEGIN CONFIDENTIAL] [REDACTED]  
755 [REDACTED]  
756 [REDACTED]  
757 [REDACTED]  
758 [REDACTED]  
759 [REDACTED]  
760 [REDACTED]  
761 [REDACTED]  
762 [REDACTED]  
763 [REDACTED]  
764 [REDACTED]

765 [REDACTED]

766 [REDACTED]

767 [REDACTED]

768 [REDACTED]

769 [REDACTED] [END

770 CONFIDENTIAL]

771 **Q: Is there a requirement in Illinois to conduct voice-recorded verifications of signed**  
772 **contracts?**

773 A: No. There is no legal or regulatory requirement in Illinois for alternative gas suppliers to  
774 conduct any type of voice-recorded verification, let alone a third-party voice-recorded  
775 verification. [BEGIN CONFIDENTIAL] [REDACTED]

776 [REDACTED]

777 [REDACTED]

778 [REDACTED]

779 [REDACTED]

780 [REDACTED] [END CONFIDENTIAL]

781 **Q: If the same level of customer protection can be provided by either internal**  
782 **verification or third-party verification, then why did USESC switch to third-party**  
783 **verification?**

784 A: [BEGIN CONFIDENTIAL] [REDACTED]

785 [REDACTED]

786 [REDACTED]

787 [REDACTED] [END CONFIDENTIAL]

788 **Q: Are you aware of any other alternative gas supplier that discloses all of the material**  
789 **terms of the contract in a voice-recorded reaffirmation call?**

790 A: No.

791 **C. Changes to Welcome Letter.**

792 **Q. Please describe the welcome letter that you send to customers once they have**  
793 **switched to USESC?**

794 A. USESC sends each new customer a welcome letter after enrollment and just before  
795 receiving the first bill. This is in addition to the switch notification letter that is sent by the  
796 utility. The welcome letter discloses the price, term, start date, end date, and reminds the  
797 customer of the cancellation window. We also enclose an illustrated comparison of our current  
798 fixed price per therm to the historical variable rates charged by the customer's utility. Copies of  
799 English and Spanish residential welcome letters were attached to my Direct Testimony as  
800 Exhibit 1.6.

801 **Q: How much time does the customer have to cancel without incurring exit fees after**  
802 **the welcome letter is received?**

803 A: The customer will still have more than 30 days to cancel service with USESC without  
804 penalty as the welcome letter clearly indicates.

805 **Q: Are you aware of any other alternative gas supplier that discloses the rates of its**  
806 **largest competitor in its welcome letter?**

807 A: No.

808 **Q: Is USESC required to provide a price comparison between its fixed price and the**  
809 **utility's variable rates?**

810 A: No. USESC provides this price comparison voluntarily to ensure customers understand  
811 the difference between fixed and variable prices while still providing them with ample  
812 opportunity to cancel their agreement with USESC and avoid the assessment of early termination  
813 fees should they reconsider their earlier decision.

814 **D. Addressing the Increased Level of Complaints through Early 2008.**

815 **Q: How did the changes to USESC's contract, reaffirmation policy and process, and**  
816 **welcome letter address the complaints of misrepresentation of price?**

817 A: [BEGIN CONFIDENTIAL] [REDACTED]  
818 [REDACTED]  
819 [REDACTED]  
820 [REDACTED]  
821 [REDACTED]  
822 [REDACTED] [END CONFIDENTIAL]

823 **Q: How did the changes to USESC's contract, reaffirmation policy and process and**  
824 **welcome letter address complaints related to misrepresentation of savings over the utility's**  
825 **price for natural gas and the failure of customers to comprehend the difference between**  
826 **the utility's variable rate and USESC's fixed price?**

827 A: The contract now discloses to customers in writing that financial savings are not  
828 guaranteed, so communication of this fact is not left to the oral sales presentation. In addition,  
829 customers are required to affirm orally in the third-party verification call (or in writing in the  
830 reaffirmation letter) that they understand that savings are not promised. Finally, the customer is  
831 provided a chart that shows a stable USESC fixed price and a variable utility rate disclosing that  
832 utility rates are subject to movement while USESC's price remains fixed.

833 **Q: How did the changes to USESC's contract, reaffirmation policy and process and**  
834 **welcome letter address complaints related to misrepresentation of identity?**

835 A: In the voice recorded reaffirmation process, customers are now required to affirmatively  
836 respond that they understand that USESC is not affiliated with their utility. In addition, the first  
837 page of the contract has always disclosed that USESC is not affiliated with the local utility and is  
838 an independent natural gas supplier. The welcome letter, in addition to the brochure provided to  
839 the customer by the sales contractor, has always provided background information on USESC  
840 and its business as a competitive energy supplier.

841 All sales contractors have been, and will continue to be, required to wear identification  
842 badges clearly indicating their affiliation with USESC in order to eliminate any impression that  
843 they might be approaching customers on behalf of local utilities or government entities. Sales  
844 contractors are also required to clearly explain their affiliation and make sure the customer  
845 understands that they are not representing the utility or government body. The verification call  
846 now serves as an immediate check on the sufficiency of sales contractors' disclosures of their  
847 affiliation with USESC because customers are required to respond to whether the actual identity  
848 and affiliation of the sales contractor was disclosed to them.

849 **Q: Were there any other changes not identified above that may have helped eliminate**  
850 **customers' misimpression of the identity of sales contractors?**

851 A: There was one additional change. The badges worn by sales contractors used to include  
852 language identifying USESC as certified in Illinois Commerce Commission ("ICC") Docket No.  
853 03-0720. We removed this language from the badge at the request of Staff. At the time, Staff  
854 informed USESC of one or two informal complaints in which the consumer was under the  
855 impression that the sales contractor represented the ICC. We do not believe that inclusion of the

856 certification information had a negative impact because we are required to include that  
857 information in many other markets. Nevertheless, we were happy to oblige the Staff's request.

858 **Q: How did you address complaints concerning exit fees?**

859 A: [BEGIN CONFIDENTIAL] [REDACTED]  
860 [REDACTED]  
861 [REDACTED]  
862 [REDACTED]  
863 [REDACTED]  
864 [REDACTED]  
865 [REDACTED] [END

866 CONFIDENTIAL]

867 USESC now charges a flat fee of \$75 per year for each remaining year left on the  
868 contract at cancellation. We also provide a sample calculation on the front page of the contract  
869 demonstrating how the exit fee would be calculated if the customer terminated in prior to  
870 contract expiration. The new flat amount per year gives the customer an exact dollar value of the  
871 cost to terminate the agreement. The amount of the exit fee is also disclosed in the reaffirmation.  
872 The extended cancellation window provides customers with a substantial amount of time to  
873 terminate the contract without incurring exit fees, and the customer is reminded of the  
874 cancellation window on the front page of the contract, in the voice recorded verification or  
875 reaffirmation, and the welcome letter.

876 **Q. Ms. Alexander mentions that of 620 complaints received by CUB 28 relate to**  
877 **attempts to collect large exit fees and that exit fees were imposed as late as May 2008 (CUB**  
878 **Ex. 2.0, p. 24). What is your response to that testimony?**

879 A. First, the fact that only 4.5% of those complaints (less than 1 out of 20) relate to exit fees  
880 is significant and shows that USESC has made effective efforts to address concerns about exit  
881 fees as they arose. Second, Ms. Alexander misinterprets the timing of the complaints to  
882 conclude that exit fees were still charged in May 2008. (CG Exh. 2.4). Beginning on February  
883 4, 2008, USESC implemented a new contract that charges a reduced and very easily calculable  
884 fee of \$75 per remaining year. The latest complaint in CG Exh. 2.4 is from April 14, 2008. That  
885 complaint (p. 29) states that the termination fee was imposed and paid off in four installments  
886 long before the date of the complaint. Similarly, a complaint dated April 11, 2008 (p.28)  
887 actually refers to a termination fee imposed one year earlier. (Contract entered into "last year"  
888 and customer called to cancel "the next day"). Most of those complaints refer to incidents long  
889 before the actual date of the complaint. Moreover, 23 of the 28 complaints are in February and  
890 March of 2008. Only 5 of the 620 complaints related to allegations of termination fees in April,  
891 which is less than 1%. There is no basis for drawing the very misleading conclusion that  
892 termination fees were continually assessed through May of 2008.

893 **E. Changes to USESC's Managerial Oversight of its Sales Force.**

894 **Q: What changes has USESC implemented with regard to management of its sales**  
895 **force in 2008?**

896 A: In February 2008, USESC implemented several changes designed to improve its  
897 oversight of, and to ensure greater compliance by, the Regional Distributors and sales  
898 contractors.

899 **Q: Can you summarize the changes that were made?**

900 A: Yes. [BEGIN CONFIDENTIAL] 

901 

902 [REDACTED]  
903 [REDACTED]  
904 [REDACTED]  
905 [REDACTED]  
906 [REDACTED]  
907 [REDACTED]  
908 [REDACTED]  
909 [REDACTED]  
910 [REDACTED]  
911 [REDACTED]  
912 [REDACTED]  
913 [REDACTED]  
914 [REDACTED]  
915 [REDACTED]  
916 [REDACTED]  
917 [REDACTED] [END CONFIDENTIAL]

918 **Q: Please describe sales materials that are approved by USESC and provided to sales**  
919 **contractors when marketing USESC products in Illinois.**

920 **A:** Approved sales materials include customer contracts, USESC brochures for our fixed  
921 price supply products and green energy products, and cancellation notices attached to the  
922 customer contracts. (Exhibit 5.12 (GEO Brochure) Potter DT, Ex. 1.2 and Ex. 1.5). Sales  
923 contractors also carry documents which identify the contractor by name and ID number, provide  
924 contact information for USESC including a toll-free number, e-mail address, internet website and

925 hours of operation, standard or approved sample bills and historical pricing information.  
926 (Exhibit 5.13).

927 **Q: Does USESC track documents to ensure they are current?**

928 A: Yes. USESC implemented a Document Control Management Process. All documents  
929 are date-stamped and, if applicable, contain expiry dates. Changes to documents are tracked,  
930 recorded and date-stamped. Copies of all documents are maintained in accordance with  
931 regulatory and legal requirements. Hard copies of documents that have been replaced or expired  
932 are destroyed.

933 **Q: You mentioned that USESC implemented stronger consequences for**  
934 **misrepresentations identified through the voice-recorded verification process. Please**  
935 **explain the three strikes rule.**

936 A: [BEGIN CONFIDENTIAL] [REDACTED]  
937 [REDACTED]  
938 [REDACTED]  
939 [REDACTED]  
940 [REDACTED]  
941 [REDACTED] [END  
942 CONFIDENTIAL]

943 **Q. Are there any improvements to the monitoring of sales contractor activity?**

944 A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]  
945 [REDACTED]  
946 [REDACTED]  
947 [REDACTED]

948 [REDACTED]

949 [REDACTED]

950 [REDACTED]

951 [REDACTED]

952 [REDACTED]

953 [REDACTED]

954 [REDACTED]

955 [REDACTED] [END CONFIDENTIAL]

956 **Q: What other checks exist to monitor the activity of independent contractors in the**  
957 **field in Illinois?**

958 **A: [BEGIN CONFIDENTIAL] [REDACTED]**

959 [REDACTED]

960 [REDACTED] [END

961 CONFIDENTIAL]

962 **Q. Has there been any change in 2008 with respect to the senior managers responsible**  
963 **for overseeing sales and marketing operations in Illinois?**

964 **A. Yes. [BEGIN CONFIDENTIAL] [REDACTED]**

965 [REDACTED]

966 [REDACTED]

967 [REDACTED]

968 [REDACTED] [END CONFIDENTIAL]

969 **F. Changes to USESC's Business Processes and Managerial Oversight**  
970 **Have Proven to be Extremely Effective and are now Time Tested.**  
971

972 **Q: You detailed a number of significant changes to USESC's business processes and**  
973 **managerial oversight that were implemented in response to the increase in customer**  
974 **inquiries and informal complaints in early 2008. Have the changes translated into**  
975 **demonstrable results?**

976 A: Yes. In 2007, USESC received 461 informal complaints and customer inquiries from the  
977 ICC. Through November 2008, USESC received 333 informal complaints from the ICC.  
978 Assuming December 2008 informal complaints from the ICC equal the 2008 monthly average,  
979 then the year over year reduction in ICC informal complaints is 26%  $(=(461-364)/461)$ .

980 In 2007, USESC received 689 informal complaints from CUB. Through November  
981 2008, USESC received 509 informal complaints from CUB. Assuming December 2008 informal  
982 complaints from CUB will equal the 2008 monthly average, then the year over year reduction in  
983 CUB informal complaints for 2008 is 19%  $(=(689-555)/689)$

984 **Q: Do you believe that the publicity surrounding the filing of the CUB complaint at**  
985 **issue in the instant proceeding and the Illinois Attorney General lawsuit have negatively**  
986 **impacted complaint levels in 2008.**

987 A: Yes. The year-over-year percentage reductions in informal complaints at the ICC and  
988 CUB occurred despite the negative publicity surrounding USESC in early 2008. Of the 333  
989 informal complaints received from the ICC in 2008, 206 of those complaints were from the  
990 period of January 1 through April 30. This period roughly corresponds with the negative press  
991 leading up to and following the filing of the CUB and Attorney General actions.

992 Likewise, of the 509 informal complaints received from the CUB in 2008, 399 of those  
993 complaints were received between January 1 and April 30. Only 110 informal complaints have  
994 been received from CUB in the last seven months.

995 **Q: Are you able to isolate data in the CCR database to track the effectiveness of the**  
996 **changes to business processes and managerial oversight of sales contractors.**

997 A: Yes. I can query informal complaints logged in the CCR database by the date that a  
998 customer contract was signed and reaffirmed. Most of the above-described changes were  
999 implemented by February 4, 2008, so I queried complaints related only to contracts signed on  
1000 February 4, 2008 through November 30, 2008.

1001 **Q: What was the result of your query?**

1002 A: There were only 42 informal complaints at the ICC associated with contracts signed after  
1003 February 4, 2008.

1004 **Q: How many of those 42 complaints were related to the conduct of USESC's**  
1005 **independent contractors?**

1006 A: Only 15 of the ICC informal complaints related to contracts signed after February 4,  
1007 2008, were related to the conduct of independent contractors.

1008 **Q: Were the results similar when you performed the same query for informal**  
1009 **complaints received from CUB for contracts signed after February 4, 2008 through**  
1010 **November 31, 2008?**

1011 A: Yes. There were only 27 informal complaints at CUB associated with contracts signed  
1012 after USESC implemented the changes to our business processes and managerial oversight  
1013 described above.

1014 **Q: Of those, how many were related to the conduct of sales contractors?**

1015 A: Only 11 were related to the conduct of sales contractors.

1016 **Q: How many contracts were signed and reaffirmed during the period of February**  
1017 **through November 2008?**

1018 A: 61,216 contracts were signed

1019 during that period and many more consumers were contacted by USESC's sales contractors but  
 1020 decided not to purchase any products from USESC.

1021 **Q: Were the 26 contractor-related informal complaints from CUB and ICC related to**  
 1022 **any particular individual?**

1023 A: Two sales contractors had 2 complaints each, and one sales contractor had three  
 1024 complaints. The remaining 19 complaints were associated with 19 separate individuals.

1025 **Q: Please summarize your findings.**

1026 A: In early 2008, management acted quickly to evaluate business processes and oversight of  
 1027 sales contractors with an eye toward identifying and correcting the practices underlying the  
 1028 increased level of complaints that USESC was experiencing. . In less than two months, USESC  
 1029 management, in an across the board effort, implemented comprehensive changes to its business  
 1030 processes and managerial oversight of sales contractors. During the ten months since those  
 1031 changes, overall complaints have dropped off significantly. Further, informal complaints from  
 1032 the ICC and CUB alleging misconduct by sales contractors related to contracts signed after  
 1033 February 4, 2008 number less than thirty over the past 10 months. During this same time, there  
 1034 have been at least 90 and as many as 130

1035 contractors regularly marketing USESC products on a daily basis in Illinois and  
 1036 61,216 customers have signed contracts with

1037 USESC. In addition to the 61,216  
 1038 customers that have signed contracts so far this year, tens of thousands more have had contact  
 1039 with USESC's sales force, and all of that sales activity has generated only 26 contractor-related

1040 complaints to the CUB and ICC. Over one hundred of the sales contractors have not had a single  
1041 informal complaint filed against them for misconduct at either the CUB or the ICC.

1042 **Q. On pages 21 and 22 of her rebuttal testimony, Ms. Alexander testifies that the rate**  
1043 **of cancellations of customer contracts reflects negatively on USESC. How do you respond?**

1044 A. First, I do not believe that there is necessarily a correlation between the level of  
1045 cancellations and customer satisfaction because there are numerous reasons why a customer  
1046 might cancel. Even if there were a correlation, I note that the rate of cancellations has decreased  
1047 dramatically in the past year. In 2007, there were 25,000  
1048 cancellations, which is roughly 2,000 per month. Between January and December 15, 2008,  
1049 there have only been 9,315 cancellations total, which is roughly 810 per month.

1050 That is a decrease of almost 60%.

1051 **Q: On page 12 of her rebuttal testimony, Ms. Alexander states, “Neither Mr. Nicholson**  
1052 **nor Mr. Hames provided any documentation of the supposed success of their training**  
1053 **programs....” Are you able to respond on behalf of Mr. Hames and Mr. Nicholson?**

1054 A. Yes. The success of Mr. Hames’ and Mr. Nicholson’s training programs are reflected in  
1055 the results above. The results speak for themselves.

1056 **VII. Conclusion - The Commission Should Reject Staff and Consumer Groups’**  
1057 **Recommendations**

1058  
1059 **Q: Does USESC have a position concerning what actions the Commission should take**  
1060 **with respect to its operations in Illinois?**

1061 A: Yes. USESC’s position is that the recommendations of Ms. Alexander and Mr.  
1062 Agnew are unwarranted. USESC continues to maintain the necessary managerial resources and  
1063 abilities for certification as an alternative gas supplier in Illinois. The comprehensive changes  
1064 that USESC has implemented are evidence of the sufficiency of its managerial resources and

1065 abilities. USESC has demonstrated that it is committed to the development and improvement of  
1066 its operations and most importantly, to the service it provides to Illinois customers. The positive  
1067 results from these changes, namely a dramatic decrease in informal complaint levels,  
1068 demonstrate the effectiveness of USESC's managerial resources. As a result, USESC urges the  
1069 Commission to reject the recommendations of the other parties and to allow USESC to continue  
1070 to provide service in Illinois.

1071 **Q: What is your response to Ms. Alexander's recommendations?**

1072 A: Obviously, Ms. Alexander's recommendations are of great concern to USESC. Her  
1073 recommendations are flawed in at least three ways. First, her recommendations seem to have  
1074 been made in vacuum that entirely ignores the comprehensive changes that USESC has already  
1075 made to its business processes and managerial oversight of the sales contractors and the effects  
1076 of those changes. Second, her recommendations seem to be made without any regard to their  
1077 practical implications, such as the mass transition of more than  
1078 100,000 customers back to utility default supply. Third, her  
1079 recommendation reflects her clearly slanted view of long-term fixed price products and general  
1080 disdain for the competitive market.

1081 Apparently, Ms. Alexander's position is that an increase in complaints calls for the  
1082 Commission to take drastic action by abrogating nearly 100,000  
1083 contracts and removing those customers from a competitive rate that  
1084 they voluntarily chose as an alternative to the utility and other suppliers. Some of those  
1085 customers are not only receiving the benefit of long-term price certainty but are also paying less  
1086 than they would if they were returned to utility default supply.

1087 **Q: Did Ms. Alexander disregard any major issues in her recommendations?**

1088 A: Yes. Ms. Alexander cavalierly recommends that the Commission revoke USESC's  
1089 certificate (CUB Ex. 2.0, p. 27) without bothering to mention the mass transition of nearly  
1090 100,000 customers that would have to  
1091 return to utility supply service if USESC's certificate was revoked. Tens of thousands of  
1092 customers returning to utility default supply would have a significant impact on utility systems,  
1093 USESC systems, and, most importantly, the supply price of all the customers that are currently  
1094 on utility service. Peoples, Nicor, and North Shore would all need to enter into new supply  
1095 arrangements to serve their current customers and the customers that were returned in the mass  
1096 transition. The utilities' Purchase Gas Adjustment clauses would be impacted because utilities  
1097 would have to purchase new pipeline and storage capacity and arrange for new commodity  
1098 contracts. Those additional gas costs would flow through the utilities PGA and have a direct  
1099 impact on the rates of current customers. Apparently, these concerns are secondary to the  
1100 Consumer Group's goal of running USESC out of business in Illinois.

1101 **Q: Please state your concerns with Mr. Agnew's recommendation in the instant**  
1102 **proceeding.**

1103 A: Mr. Agnew's recommendations are somewhat unclear because he states that "...the  
1104 Commission should fully consider the recommendations of CG Witness Barbara Alexander,  
1105 including her recommendation to compel USESC to conduct an independent audit aimed at its  
1106 management oversight efforts (CG Ex. 1, page 46, lines 945-946)." (ICC Staff Exhibit 1.0, pp.  
1107 17-18) To the extent that Mr. Agnew recommends all of the remedies in Ms. Alexander's  
1108 recommendations, then he too would be recommending that the Commission revoke USESC's  
1109 certificate and all of the same concerns would apply.

1110 Even Mr. Agnew's scaled back recommendations are problematic for several reasons.  
1111 First, the recommendation fails to account for the comprehensive changes to USESC's business  
1112 processes and managerial oversight of its sales force. Second, Mr. Agnew's analysis looked at  
1113 raw numbers of informal complaints without any dynamic analysis to track changes in  
1114 complaints related to changes implemented by USESC.

1115 It is difficult to understand why, at this point, Mr. Agnew would recommend that the  
1116 Commission order USESC to cease and desist marketing in Illinois when only 26 contractor-  
1117 related complaints related to business conducted since February 2008 have been logged at the  
1118 ICC and CUB. His recommendation would leave 130

1119 Illinois residents out of work when the vast majority of those cannot even be  
1120 traced to a single informal complaint at either the ICC or CUB.

1121 **Q: Does this conclude your testimony?**

1122 **A:** Yes.