

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>Citizens Utility Board and AARP</b>	)	
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	)	
vs.	)	
	)	<b>No. 08-0175</b>
<b>Illinois Energy Savings Corp., d/b/a U.S. Energy Savings Corp.</b>	)	
	)	
	)	
<b>Complaint as to marketing practices in Chicago, Illinois</b>	)	

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**CITIZENS UTILITY BOARD AND AARP  
BRIEF ON EXCEPTIONS**

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**Dated:** January 25, 2010

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ILLINOIS COMMERCE COMMISSION**

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**CITIZENS UTILITY BOARD AND AARP'S  
BRIEF ON EXCEPTIONS**

NOW COMES the Citizens Utility Board (“CUB”) and AARP, through their counsel, pursuant to 83 Illinois Administrative Code Sections 200.830 and the schedule adopted by the Administrative Law Judge (“ALJ”), hereby submit their Brief on Exceptions in the above-captioned proceeding.

The Proposed Order prudently finds several violations of law relating to U.S. Energy Savings Corp.’s (“USESC” or the “Company”) mismanagement of its sales force, failure to respond to thousands of similar complaints regarding misleading marketing, specific fraudulent sales activity, and use of misleading marketing materials. CUB/AARP appreciate the well-reasoned and thoughtful analysis and conclusions the Proposed Order provides. The record in this proceeding is extensive and fact-intensive and this is essentially a case of first impression for the Illinois Commerce Commission (“Commission”). However, CUB/AARP believe the remedies in the Proposed Order do not go far enough to address the egregious nature of the

violations and protect consumers from further harm. The Commission's failure to adequately demonstrate its intolerance of such fraudulent behavior and unacceptable management against an Alternative Gas Supplier ("AGS") in a burgeoning competitive energy market will send the wrong message to the Company – and to other alternative energy suppliers – that such behavior warrants only a slap on the wrist.

CUB/AARP take exception with several issues in the Proposed Order. First, CUB/AARP strongly believe that the record in this proceeding supports revocation of USESC's certificate of convenience. The record demonstrates that USESC management has systematically failed to recognize, analyze or make serious attempts to eradicate the consistent trend of misleading and fraudulent marketing tactics of its sales agents. While defending itself in several lawsuits and complaints, the Company has had many chances to address these inadequacies and improve management of its sales force. It has chosen, however, to turn a blind eye to the complaints that have been the subject of these suits. Furthermore, because the Company was and still is well aware of thousands of allegations of sales contractor misconduct, this management failure is inexcusable. USESC has not demonstrated the managerial fitness to continue to operate in a lawful manner in Illinois, as demonstrated conclusively by the serious nature of the violations found by the Proposed Order. The Commission should therefore avail itself of the most severe remedy available to it: revocation of USESC's certificate of service authority.

Second, the Commission should impose additional fines for the management failures identified by the Proposed Order to make the punishment commensurate with the harm caused by those failures. The fines recommended in the Proposed Order are insufficient and will do nothing to motivate corrective action by the Company.

Third, the Proposed Order fails to provide an analysis of the significant record evidence regarding the Company's targeted marketing of low-income, senior and non-English speaking consumers. The Company's management failures are clearly revealed in its pattern of targeting its product to those most vulnerable to suggestions of savings. The evidence demonstrates that USESC violated the Public Utilities Act ("PUA") prohibition against targeted marketing based on race or income, (220 ILCS 19/110(e)(1)), and further corroborates and supports the Proposed Order's findings of management failures. This analysis should be included in the Commission's Order.

Fourth, although CUB/AARP believe an audit is an important remedial component if the Commission does not revoke the Company's certificate and the Company is going to continue to sell its product door-to-door, certain clarifications to the structure of the audit are necessary to ensure it will provide meaningful results.

Fifth, the Proposed Order's corrective measures regarding the Company's verification process do not go far enough to protect consumers against the influence of the sales agent on the porch. A more reasonable and appropriate measure would be to require the verification of the sale to be completed at no less than one to three days after the sale occurred, to remove any influence of the sales agent's presence at or near the point of sale.

Sixth, while the Proposed Order's limitation on commission-based compensation for supervisors of sales agents is a good first step, it does not go far enough to address the problem of misrepresentation. The limitation should be extended to all sales contractors.

Seventh, an additional mandate regarding the Company's printed marketing material must be included in order to provide complete and accurate pricing information for consumers.

**EXCEPTION 1: THE RECORD SUPPORTS REVOCATION OF USESC’S AGS CERTIFICATE**

CUB/AARP will not restate the entirety of argument or the extensive record evidence that supports revocation of USESC’s certificate of service authority to operate as an AGS. CUB/AARP refer the Commission to their Initial and Reply Briefs for the legal and factual support for revocation. In fact, the Commission need not supplement the Proposed Order in order to reach this conclusion, because – as it stands – the Proposed Order provides sufficient bases to warrant revocation of USESC’s certificate of convenience. The Proposed Order finds 24 violations of the Alternative Gas Supplier Law (“AGSL”), eight violations of the Consumer Fraud Act/AGSL, seven violations of the Uniform Deceptive Trades Practices Act /AGSL, and one violation of Nicor’s Standards of Conduct. While CUB/AARP dispute the calculation of the occurrences attributable to USESC’s management failures (detailed in Exception 2 below), the egregious nature and far-reaching impact of these management failures fully justifies the “substantial and repeated violations” requirement in the PUA and therefore provides the Commission with the proper authority to revoke USESC’s certificate of service authority. 220 ILCS 5/19-120(c)(3).

USESC’s history of refusing to undertake actions on its own accord and its refusal to provide information sought by the parties in a complete and timely manner provide little assurance to the Commission that the Company can be trusted to make the necessary changes regarding the management of its sales force to prevent further marketing abuses. Its long and persistent history of management failure and questionable marketing activity, which prompted several law suits, along with a record replete with evidence regarding the Company’s own recognition of and failure to act on deceptive and misleading marketing activity speaks volumes to this Commission. Considering that the Company has persisted in denying any management

failure throughout this proceeding and believes it has always been in full compliance with the law, it has demonstrated no ability to recognize and address management failure. There is no evidence in this record that allowing this Company another chance to try to “clean up its act” is a reasonable course.

CUB/AARP propose the Commission delete the “Corrective Measures” language on pages 50-53 of the Proposed Order and replace it with the following language:

USESC’s history of refusing to undertake actions on its own accord and its refusal to provide information sought by the parties in a complete and timely manner provide little assurance to the Commission that the Company can be trusted to make the necessary changes regarding the management of its sales force to prevent further marketing abuses. Its long and persistent history of management failure and questionable marketing activity, which prompted several law suits, along with a record replete with evidence regarding the Company’s own recognition of and failure to act on deceptive and misleading marketing activity speaks volumes to this Commission. There is no evidence in this record that allowing this Company another chance to try to “clean up its act” is a reasonable course. The Commission therefore finds the violations herein to be “substantial and repeated” pursuant to 220 ILCS 5/120(c)(3), and therefore revokes USESC’s certificate of service authority.

Should the Company attempt to reapply for such certification with this Commission, the Commission will consider, as it is obligated to by statute, the Company’s managerial resources and abilities, prior complaints to the Commission and the ability of the Company to manage the issues raised by complaints and the resolution of those complaints (220 ILCS 5/19-112(a)(2)).

**EXCEPTION 2: THE COMMISSION SHOULD IMPOSE ADDITIONAL FINANCIAL PENALTIES FOR USESC’S MANAGEMENT FAILURE TO BE COMMENSURATE WITH THE HARM CAUSED**

CUB/AARP recommend the Commission increase the fines imposed to a level commensurate with the harm caused. The Proposed Order recommends that, since management

insufficiency persisted throughout the relevant time frame (January 1, 2007 through the filing of the Complaint, March 3, 2008), that there were 15 occurrences suitable for penalty, one for each month of the Complaint period. PO at 49-50. However, since the impact of the Company's incompetent management tainted each and every contract signed during the relevant period, a more reasonable and appropriate calculation of occurrence should be based on every contract signed during this period, since each of those contracts were impacted by the Company's insufficient and incompetent management of its sales force. The Company signed 130,000 contracts during 2007 and 85,000 during 2008. Though the record does not reveal how many contracts were entered into during the first quarter of 2008, the Commission could reasonably estimate the number at 21,250. The Commission should – at a minimum – penalize the Company for each of those contracts entered into during the relevant complaint period, 151,250, a fine of \$100. 220 ILCS 5/19-120(c)(2).

CUB/AARP propose the following replacement language for the Commission Conclusion on the bottom of page 49 and the top of page 50 of the Proposed Order:

~~The Commission does not construe 15 months of management to constitute a single violation within the meaning of subsection 19-120(c)(2). That would create an incentive to perpetuate failure, since a persistent management failure would receive no more penalty than a brief one, thereby rendering the remedial statute ineffective. On the other hand, it would not be reasonable to impose penalties for increments of time that are disproportionate to the problem. Management sufficiency of the kind here cannot be restored overnight. Therefore, we conclude that every additional month of management inadequacy is another violation within the meaning of the AGSL.~~

In this proceeding, complaints reached their pinnacle in the last three months of the relevant time frame, so the Commission finds that there was no improvement during the 15 months. Since the impact of the Company's incompetent management tainted each and every contract signed during the relevant period, a reasonable

and appropriate calculation of occurrence should be based on every contract signed during this period, since each of those contracts were impacted by the Company's insufficient and incompetent management of its sales force. The Company signed 130,000 contracts during 2007 and 85,000 during 2008. Though the record does not reveal how many contracts were entered into during the first quarter of 2008, the Commission reasonably estimates the number at 21,250, for a total of 151,250 contracts signed during the relevant period. Thus, we find 15 occurrences suitable for penalty. Because of the importance, magnitude and duration of the management deficiency, which affected many all individual customers contracts signed and sowed confusion in the competitive retail gas market, we impose ~~the a~~ \$10,000 ~~maximum~~ penalty for each occurrence, totaling ~~\$150,000~~15,125,000.

**EXCEPTION 3: THE PROPOSED ORDER FAILS TO FIND THAT USESC UNLAWFULLY TARGETS SENIORS, NON-ENGLISH SPEAKERS AND LOW-INCOME AREAS, DESPITE AMPLE RECORD EVIDENCE SUPPORTING SUCH A FINDING**

Except for a brief mentioning of the issue, (PO at 21), the Proposed Order largely ignores the evidence that demonstrates the Company unlawfully targets seniors, non-English speakers and low-income areas. The evidence shows that USESC is in violation of the PUA prohibition against establishing “any difference as to prices, terms, conditions, products, facilities, or in any other respect, whereby such denial or difference is based upon race, gender or income,” 220 ILCS 5/19-115(e)(1), but also demonstrates additional managerial incompetence in violation of 220 ILCS 5/19-110(e)(1). There is no discussion or analysis of the significant record evidence addressing this issue in the Proposed Order. The evidence establishes that USESC differentiates among income and race in its marketing efforts, exhibiting a preference for selling to certain classes of customers: those consumers who are least able to understand the nature of the contract, most vulnerable to claims of savings, and least able to afford paying a premium for “price stability.” CG Ex. 1.0 at 38, LL. 779-784; see also CG Exhibit 2.0 at 15, and Exhibit 2.2. It is important to include an analysis of this issue in the Commission’s Order, because the Company’s

failure to adequately manage its sales force has a disproportionate impact on the most sensitive populations who are desperate to save money on their monthly bills.

Though the Company denied that it targets its door-to-door marketing efforts to non-English speakers and senior citizens in its Answer (para. 20) and in testimony, (IESC Ex. 3.0 at 9; IESC Ex. 4.0 at 5-6), the evidence demonstrates the contrary. The Company repeatedly alleged that it does not direct contractors to market in specific areas and in fact does not know where its agents market until it reviews where contracts have been signed, but it was later revealed –after the filing of a motion to compel – that the Company communicates with Illinois utilities weekly regarding where its sales agents market *before* the marketing actually occurs. CG Ex. 2.0 at 15, and CG Ex. 2.2. The Company revealed in discovery that its corporate office sends weekly emails to the utilities detailing the marketing locations, by specific towns, neighborhoods and zip codes, that will be marketed in either that week or the following week. CUB Cross Ex. 1; Tr. at 88/5-8 (Hames).

Mr. Hames, a Regional Distributor for the Company's Chicago Loop sales office, claimed in testimony that he does not determine where sales agents market and does not know where contractors market until after the fact. IESC Ex. 4.0 at 5, L. 97. But he testified on cross-examination, after being asked about CUB Cross Ex. 1, that crew coordinators actually inform him of areas sales agents are likely to market the upcoming week. Tr. at 90/4 (Hames). Crew coordinators are experienced sales agents who essentially assist the Regional Distributor in contractor-related marketing services. CG Ex. 2.0 at 16, LL. 312-314. Crew coordinators supervise sales agent sales activity and report to the Regional Distributor that heads their sales office. Tr. at 83/21 (Hames); Tr. at 84/8 (Hames). Information regarding sales agent's planned marketing activity is communicated to Regional Directors first, then to the corporate office in

Ontario, Canada, and in turn to the utilities. Tr. at 88/14 (Hames). Since crew coordinators and Regional Distributors each operate pursuant to an independent contractor agreement and are agents of the Company, USESC cannot divorce itself from their marketing strategies.

The Company's attempts to refute the evidence of its targeted marketing efforts actually further substantiate the fact that it unlawfully targets areas with high populations of low-income, seniors and/or non-English speakers. Mr. Hames, Regional Contractor for the Chicago Loop office, suggests that sales are heaviest in the areas where the contractors live or on the way to or from the sales office. IESC Ex. 4.0 at 5, LL. 100-101; *Id.* Mr. Hames provides a map that attempts to document this correlation between location of customers and contractors. IESC Ex. 4.3 (Hames). However, when asked on cross-examination if crew coordinators tend to organize marketing efforts in areas close to sales agents' residences, he stated that he simply did not know. Tr. at 91/8 (Hames). One would expect that, because Mr. Hames is informed by crew coordinators where marketing is likely to be occurring, he would have personal knowledge of the correlation between marketing locations and sales agents' residences, if such a correlation actually existed. Nonetheless, Mr. Hames' testimony averring such a correlation should be disregarded, based on his testimony at trial.

Ms. Alexander refutes Mr. Hames' conclusions that sales agents market near their own residences after examining the evidence herself. Ms. Alexander produced her own map using Company data showing the zip codes with the highest number of USESC contracts and the residences of USESC sales agents. CG Ex. 2.2 (Alexander). This map shows the opposite of the Company's conclusion; that contractors clearly market in low-income neighborhoods and not necessarily in their own towns or neighborhoods. CG Ex. 2.0 at 14, LL. 279-82. Ms. Alexander concluded that "[i]t is only when the contractor is a resident of a lower income neighborhood that

he or she markets in that area.” *Id.* at 14, LL. 283-84. A close examination of Mr. Hames Ex. 4.3 and Ms. Alexander’s Ex. 2.2 reveals that the incidence USESC contracts clearly relates to the income of the neighborhood and not the residence of the contractor.

CUB witness Bryan McDaniel further corroborates Ms. Alexander’s analysis by presenting his own analysis of where sales agents plan marketing activity. Mr. McDaniel mapped the City of Chicago zip codes provided in the weekly email communications between the sales offices and the Ontario corporate office in CUB Cross Exhibit 1. There are 13 zip codes that were targeted by USESC’s sales agents more than 30 times, and more than any other zip codes in Chicago, from February 2007 until December of 2008. CUB Ex. 8.0 at 7, LL. 161-163. Mr. McDaniel mapped these zip codes, which shows that USESC’s marketing efforts during 2007 and 2008 predominantly targeted the south and west sides of Chicago, which consists largely of low-income, minority communities. CUB Ex. 8.3. Mr. McDaniel’s map shows the 10 poorest and the 10 richest zip codes in Chicago and the number of USESC marketing efforts within those zip codes. The data shows that there were significantly more marketing efforts in the poorest ten zip codes compared to the richest ten zip codes. CUB Ex. 8.0 at 7, LL. 168-71; CUB Ex. 8.3.

The expert analysis of complaint files in this record substantiates Mr. McDaniel’s and Ms. Alexander’s analyses. Ms. Alexander’s review of CUB Complaints showed 104 instances in which the complaint record identifies the customer as “elderly” and 408 instances in which the customer is identified as a “senior.” CG Ex. 1.0 at 36-7, LL. 750-753. Ms. Alexander noted over 600 instances of individuals referenced as “Spanish.” Ms. Jodlowska, for the Better Business Bureau (“BBB”), testified that many of the complainants she was familiar with were minorities, particularly Spanish speakers. CUB Ex. 1.0 at 6, LL. 119-120. She also noticed that

certain areas were targeted by U.S. Energy workers, specifically the South Side of Chicago. *Id.* Many of the complainants appeared to come from lower income areas. *Id.* Based on her observations, she opined that the Company targeted those people who are most vulnerable to misrepresentation. CUB Ex. 1.0 at 7, LL. 122-125.

Further evidence of the Company's targeting of low-income communities can be found in an analysis of the Company's credit acceptance ratios. As Ms. Alexander explained, there is a significant disparity between the number of customers who sign contracts with USESC and those remain customers with USESC – primarily because of rejection for unsatisfactory credit. CG Ex. 2.0 at 21, LL. 434-38. The Company's own data responses show that approximately 28% of signed contracts since 2005 were rejected for credit reasons. *Id.* In discovery, USESC also provided a document labeled "Illinois Gas-Credit Acceptance Ratios," which shows the percentage of contracts accepted by zip code. CUB Cross Ex. 11. The credit acceptance ratios reported by the Company range from a high of 97.79 percent to a low of 31 percent, with the most concentrated marketing efforts (based on CUB Cross Ex. 1) taking place in the lowest credit areas. An analysis of the Company's credit acceptance ratios, (as detailed in CUB Cross Exhibit 11) shows that in the 13 zip codes identified by Mr. McDaniel, the ratios range from a high of 53.70% to a low of 31.54%, the lower half of the credit acceptance ratio range. CUB Cross Ex. 7. When asked about the above analysis, USESC witness Potter could not refute it. Tr. at 447/4 (Potter). This is likely because the Company itself recognized this pattern. In CUB Cross Ex. 11, an internal note discusses the methodology and review of the credit acceptance ratios, and states the following:

It appears that the bulk of the contracts signed since July are from lower Credit Areas. We need to make sure that the IL Regionals are pushing their agents away from these lower credit areas, so we can improve our Conversion ratios. Since the bulk of all Contracts

are from Chicago, I think we need to use Mappoint to plot out the good Chicago Areas from the bad.

CUB Cross Ex. 11 at 18.

This evidence shows that – at a minimum – the Company knew a significant portion of its contracts were coming from areas that have a very high ratio of contracts being rejected for credit unworthiness. It further shows that, contrary to USESC’s repeated claims, the Canadian corporate office is indeed providing guidance to Regional Distributors regarding marketing efforts, who then relate this guidance to sales agents. Notably, there is no record evidence to demonstrate that the Company actually acted to correct this recognized problem. The evidence does, however, demonstrate that the Company is well-aware of its agents’ marketing intentions before the fact, and that these marketing efforts concentrate in low-credit, low-income and minority neighborhoods. Thus, the Company is demonstrating managerial incompetence by not acknowledging the clear pattern of marketing to Illinois’ most vulnerable populations, and not acting to correct the problem it did explicitly recognize.

CUB/AARP therefore believe the evidence supports an additional finding a violation of 220 ILCS 5/19-115(e)(1). Additionally, this evidence provides further support for the violations regarding management failure already found by the Proposed Order (220 ILCS 5/19-115(e)(1)), and further substantiates CUB/AARP’s exception regarding the calculation of occurrence. The Proposed Order found that “management insufficiency persisted throughout the relevant time frame.” PO at 49. CUB/AARP believe a key part of USESC’s management insufficiency was not properly recognizing or addressing the targeted marketing of the most vulnerable violations of 220 ILCS 5/19-115(e)(1).

CUB/AARP propose that the following language be inserted on page 21, before the last paragraph in that section, after the sentence “Consumer Groups ascribe USESC’s torrent of

similar complaints to a deliberate policy of targeting elderly, low-income, non-English-speaking or other minority customers. CG IB at 41.”

Indeed, the evidence establishes that USESC does differentiate among income and race in its marketing efforts, exhibiting a preference for selling to certain classes of customers: those consumers who are least able to understand the nature of the contract, most vulnerable to claims of savings, and least able to afford paying a premium for “price stability.” CG Ex. 1.0 at 38, LL. 779-784; see also CG Exhibit 2.0 at 15, and Exhibit 2.2.

Despite disavowing any knowledge of its sales agents’ marketing plans, the Company revealed that its corporate office communicates weekly with utilities detailing the marketing locations, by specific towns, neighborhoods and zip codes, that will be marketed in either that week or the following week. CUB Cross Ex. 1; Tr. at 88/5-8 (Hames). The Regional Distributors get this information from crew coordinators, who organize areas in which to market. Though one Company witness suggests that sales are heaviest in the areas where the contractors live or on the way to or from the sales office, the same witness could not testify this observation correlated with reality, because he did not know whether crew coordinators organized marketing efforts in areas near sales agents’ residences. And Complainants’ witness Alexander purports to show that the incidence USESC contracts clearly relates to the income of the neighborhood and not the residence of the contractor.

CUB witness McDaniel mapped the City of Chicago zip codes provided in the weekly email communications between the sales offices and the Ontario corporate office in CUB Cross Exhibit 1, which showed that USESC’s marketing efforts during 2007 and 2008 predominantly targeted the south and west sides of Chicago, which consists largely of low-income, minority communities. CUB Ex. 8.3. Mr. McDaniel’s map shows the 10 poorest and the 10 richest zip codes in Chicago and the number of USESC marketing efforts within those zip codes. The data shows that there were significantly more marketing efforts in the poorest ten zip codes compared to the richest ten zip codes. CUB Ex. 8.0 at 7, LL. 168-71; CUB Ex. 8.3.

The expert analysis of complaint files in this record substantiates Mr. McDaniel’s and Ms. Alexander’s analyses. Ms. Alexander’s review of CUB Complaints showed 104 instances in which the complaint record identifies the customer as “elderly” and 408

instances in which the customer is identified as a “senior.” CG Ex. 1.0 at 36-7, LL. 750-753. Ms. Alexander noted over 600 instances of individuals referenced as “Spanish.” Ms. Jodlowska, for the BBB, testified that many of the complainants she was familiar with were minorities, particularly Spanish speakers. CUB Ex. 1.0 at 6, LL. 119-120. She also noticed that certain areas were targeted by U.S. Energy workers, specifically the South Side of Chicago. *Id.* Many of the complainants appeared to come from lower income areas. *Id.* Based on her observations, she opined that the Company targeted those people who were most vulnerable to misrepresentation. CUB Ex. 1.0 at 7, LL. 122-125.

Further evidence of the Company’s targeting of low-income communities can be found in an analysis of the Company’s credit acceptance ratios. There is a significant disparity between the number of customers who sign contracts with USESC and those remain customers with USESC – primarily because of rejection for unsatisfactory credit. The Company’s own data responses show that approximately 28% of signed contracts since 2005 were rejected for credit reasons. In discovery, USESC also provided a document labeled “Illinois Gas-Credit Acceptance Ratios,” which shows the percentage of contracts accepted by zip code. CUB Cross Ex. 11. The credit acceptance ratios reported by the Company range from a high of 97.79 percent to a low of 31 percent, with the most concentrated marketing efforts (based on CUB Cross Ex. 1) taking place in the lowest credit areas. An analysis of the Company’s credit acceptance ratios, (as detailed in CUB Cross Exhibit 11) shows that in the 13 zip codes identified by Mr. McDaniel, the ratios range from a high of 53.70% to a low of 31.54%, the lower half of the credit acceptance ratio range. CUB Cross Ex. 7. When asked about the above analysis, USESC witness Potter could not refute it. Tr. at 447/4 (Potter). This is likely because the Company itself recognized this pattern.

In CUB Cross Ex. 11, an internal note discusses the methodology and review of the credit acceptance ratios, and suggests that the Company was well-aware of its sales agents’ targeting of low-credit areas. There is no record evidence to demonstrate that the Company actually acted to correct this recognized problem. The evidence does, however, demonstrate that the Company is well-aware of its agents’ marketing intentions before the fact, and that these marketing efforts concentrate in low-credit, low-income and minority neighborhoods. Thus, the Company is demonstrating managerial incompetence by not acknowledging the clear pattern of marketing to Illinois’ most vulnerable populations, and not acting to correct the problem it did explicitly recognize.

The evidence therefore supports an additional finding a violation of 220 ILCS 5/19-115(e)(1). Additionally, this evidence provides further support for the violations regarding management failure already found herein (220 ILCS 5/19-115(e)(1)).

**EXCEPTION 4: THE LANGUAGE REGARDING THE AUDIT SHOULD BE CLARIFIED TO ENSURE IT PROVIDES MEANINGFUL RESULTS**

Although CUB/AARP believe that an audit is a necessary remedial measure, if the Company is allowed to continue marketing its products in Illinois, the audit must be structured in a way that maximizes its effectiveness. The audit should contain monthly compliance measures of the implementation and effectiveness of (a) the Company's complaint tracking and review process, (b) sales training process, including the implementation and effectiveness of the Sales & Compliance Manager (pursuant to the AG Settlement), (c) analysis of complaint patterns, (d) the third-party verification process, and (e) sales agent compliance with the Code. The Order should make clear that the auditor should be instructed to use all means possible, including monitoring and shadowing of sales agents in the field, to measure the Company's performance.

In order to reduce the possible influence of the Company over the auditor, audit results should first be communicated to the Commission and CUB. In order to allow time for selecting the auditor, developing the audit plan, and to gather sufficient data to provide meaningful results, the timeframe for audit results must be extended to at least December 1, 2010.

Accordingly, the last paragraph on page 51 should be modified as follows:

First, the Commission requires USESC to undergo an independent audit of its sales program, with a focus on hiring, training, solicitation procedures and performance, compensation, sales verification, complaint tracking and reporting, discipline, and other compliance practices. The objective is to substantially reduce customer complaints and violations of the AGSL. The audit should identify impediments to that objective and recommend effective solutions. The audit should contain monthly compliance measures of the implementation and effectiveness of (a) the Company's complaint tracking and review process, (b) sales

training process, including the implementation and effectiveness of the Sales & Compliance Manager (pursuant to the AG Settlement), (c) analysis of complaint patterns, (d) the third-party verification process, and (e) sales agent compliance with the Code. The Order should make clear that the auditor should be instructed to use all means possible, including monitoring and shadowing of sales agents in the field, to measure the Company's performance. The Company shall act in good faith and cooperate with the auditor in connection with the auditor's performance of its responsibilities set forth in the auditor contract, and Company shall promptly respond to any auditor requests for information related thereto.

The auditor and audit plan shall be developed and approved by Staff and CUB, with input from USESC. The Company will be responsible for the cost of the audit. Audit results should be submitted to Staff and USESC by ~~September~~December 1, 2010 and included in the record in this proceeding. Unless USESC voluntarily agrees to implement the audit's recommendations, a docket shall be promptly opened to review the audit's recommendations and USESC's responses and enter an appropriate implementation Order.

**EXCEPTION 5: THE PROPOSED ORDER'S SUGGESTED CHANGES TO THE VERIFICATION PROCESS SHOULD BE IMPROVED**

The Proposed Order's corrective measures regarding the Company's verification process do not go far enough to protect consumers against the influence of the sales agent on the porch. A more reasonable and appropriate measure would be to require the verification of the sale to be completed at no more than three days after the sale occurred, to remove any influence of the sales agent's presence at or near the point of sale. As the evidence presented by CUB/AARP and Staff shows, the real problem occurs on the front porch, where sales agents find it necessary to mislead consumers and either promise or imply savings in order to make a sale. CG Ex. 1.0 at 16; Staff Ex. 1.0 at 9. In accordance with this recommendation, the Commission should change the following paragraph on page 52 to the following:

Verification calls must be performed without the salesperson being present. Specifically, the verification call cannot take place until at least one 24 hour period following the time of sale. ~~the~~

~~salesperson cannot be visible to the customer or able to hear the customer's conversation with the verifier during the call. The salesperson may be present with the customer after the call is completed and the phone connection disengaged.~~

**EXCEPTION 6: SALES AGENTS SHOULD NOT WORK ON COMMISSION**

The Proposed Order's attempted limitation on commission-based compensation for *supervisors* of sales agents does not go far enough. The ban on commission-based compensation needs to be extended to the sales agents in order to curb the temptation for misrepresentation. Absent a ban on door-to-door sales, in order to curb the temptation for sales agents to obtain contracts based on misleading statements, (CG Ex. 1.0 at 17, LL. 331-333), restricting sales agents from receiving volume-based commission compensation should go a long way toward removing the perverse incentives inherent in the commission-based door-to-door sales model.

In accordance with this recommendation, the Commission should change the first full paragraph on page 53 to the following:

~~Fourth, no USESC employee or agent, with supervisory or disciplinary authority over~~ Illinois distributors, contractors or other sales personnel shall be compensated through commissions associated with the sale of USESC products. An incentive structure for such employees or agents that rewards reduction of complaints and non-compliances is permissible.

**EXCEPTION 7: THE CHANGES TO MARKETING MATERIALS SHOULD BE CLARIFIED TO PROVIDE THE MOST ACCURATE PRICE COMPARISON FOR CONSUMERS**

The Proposed Order properly recognizes one problem with the Company's marketing brochures, but does not go far enough to correct the problem. The Proposed Order is correct that "It is vital that those materials are completely accurate and free of distorted information." An important component to accurate and complete price information is how USESC's offered rate has historically compared to the utility PGA rate. CUB/AARP recommend the last paragraph on page 52 be modified as follows:

In printed materials utilized during in-person sales contacts at or near a residence or business premises, any price comparison between USESC and a gas utility shall be limited to the utility serving the area in which the residence or business is located. All depictions of utility prices shall display at least three years of data in no greater than quarterly increments, and shall also include data points for the Company's offered price at the corresponding time period in the same time increments.

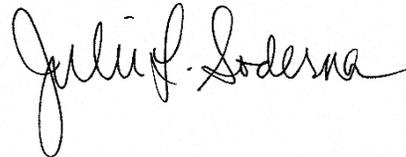
## I. CONCLUSION

WHEREFORE, CUB/AARP respectfully request that the Commission grant the relief requested herein, revoke the certificate of convenience of USESC, and accept the proposed replacement language by CUB/AARP.

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Respectfully submitted,

CITIZENS UTILITY BOARD



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