BEFORE THE NEW YORK PUBLIC SERIVCE COMMISSION

ON BEHALF OF INFINITE ENERGY, INC., d/b/a

INTELLIGENT ENERGY (INFINITE ENERGY),

IN THE MATTER OF CASES 15-M-0127, 12-M-0476, AND 98-M-1343

TESTIMONY OF DARIN R. COOK

SUBMITTED SEPTEMBER 15, 2017

TABLE OF CONTENTS

INTRODUCTION AND QUALIFICATIONS

1. Please describe your background, position, and relevant expertise?

My experience in the competitive energy industry began when I worked as a natural gas buyer for Gainesville Regional Utilities ("GRU") and a consortium of cities called Florida Gas Utility. In 1994, my business partner and I started the company known as Infinite Energy to take advantage of the deregulation of the natural gas industry. Under our leadership, the company started with two employees and earned 14 million in revenue in its first year of business. Infinite Energy has gone on to be profitable every year since its inception and has grown to over 300 employees. We were deeply involved in the formation of Georgia's competitive natural gas market, and work closely with Atlanta Gas Light and the Georgia Public Service Commission to refine and improve both the retail and wholesale/operational sides of that market to this day.

In addition to providing retail natural gas service in Florida, Georgia, New York, and New Jersey, Infinite Energy does wholesale natural gas trading throughout the southern and eastern states, as well as Canada, serving industrial and utility customers in over fifteen states. We also provide electric retail service in Texas through two affiliates – Infinite Electric and Veteran Energy. Infinite Energy has been recognized many times as one of the "Best Companies to Work For" by Florida Trend and Outside magazines.

As co-CEO of Infinite Energy, I oversee all operations of the company, including the development of our in-house Customer Information and Billing System and our natural gas wholesale and utility operations desk. Additionally, since spring of 2016, I have been a member of the GRU Advisory Board, a group of local energy experts, business people, attorneys, and others which was formed to assist the Gainesville City Commission with major decisions regarding the management and operation of GRU.

PURPOSE AND OUTLINE OF TESTIMONY

2. What is the purpose of your testimony in these proceedings?

To address the concerns raised by the New York Public Service Commission (the "Commission") in these proceedings, as well as to provide a framework by which the New York retail energy market can be restructured so that New York customers see the same benefits as customers in fully restructured states.

3. Can you summarize the key points of your testimony?

The New York State retail energy market benefited from early policy decisions designed to jump-start the market. Those decisions establishing few protective rules and minimal registration requirements along with consolidated utility billing ("CUB") and the utility purchase of receivables from ESCOs ("Utility POR") never should have become long-term policy standards, and to the extent that they did, the energy market in New York has become a hybrid of regulated and restructured markets, which inevitably suffers from all the disadvantages of both designs while benefiting from neither. The Commission is faced with a choice: throw away the incalculable investment made by the Commission itself, as well as all the other market participants, by returning to the fully-regulated market structure which resulted in some of the highest costs for ratepayers in American history – the very market structure that the Commission undertook to escape when it instituted competition twenty years ago – or undertake the actions needed to fully restructure the New York energy market to the benefit of consumers, the utilities, and the State of New York.

4. Can you provide an outline of how your testimony is organized?

Yes. My testimony is organized as a response to the way the Commission has focused its ire on end-use commodity pricing – an understandable public policy item, but one which can only be cured by addressing the underlying issues in the market itself. To truly fix the market – and to be clear, the market is broken and in need of fixing – decisions must be made that will be painful in the short-term but will benefit all New York energy consumers in the long-term. Specifically, my testimony focuses on five key points to this end.

First, ESCOs must be licensed and, when necessary, sanctioned for violating reasonable customer protection rules. Second, the market must be organized in a manner that ensures that all entities, whether buyers or sellers, are paying the appropriate costs and clearly aware of who they are doing business with. Third, the utilities should specifically have unbundled and transparent cost structures. Fourth, customer-focused comparison shopping tools should be created to give customers greater access to and better information about competitive retail electricity and natural gas markets.

Finally, the Commission should take whatever steps necessary to move the New York energy market towards full restructuring. As a short-term solution, to the extent that the New York State utilities are required to provide commodity service under current New York law, Infinite Energy believes that all utility merchant and commodity functions should be established under an arm's length "regulated provider" subject to the same operational rules and costs as any other commodity provider (ESCO) in the state. As a long-term solution, the Commission and other market participants should work together to change the Public Service Law to allow utilities to fully exit the merchant function or, at the utility's option, to form a fully separate affiliated ESCO.

NEW YORK PUBLIC SERVICE COMMISSION OVERSIGHT OF ESCOS

5. Can you describe the extent to which the New York Public Service Commission provides effective oversight of ESCOs in New York?

The Commission does not provide effective oversight of ESCOs in New York. The state now has approximately 200 registered ESCOs, but the registration process is extraordinarily simple; registering requires minimal experience in the industry and financial commitment to the market. Infinite Energy is not aware of any request for ESCO licensure being rejected or held due to lack of technical or financial qualifications, or due to violations of customer protections in other markets. The Commission surely knows that this is a complex, vital industry that merits a greater initial commitment and stronger continuing guarantees from every one of its participants, and yet few ESCOs have faced any individual scrutiny, even though the Commission already has the power it needs to exercise basic regulatory oversight in New York.

6. What are the effects of this lack of effective oversight in New York?

The Commission's policies regarding CUB and Utility POR have allowed bad actors to thrive in New York's retail energy market. This lack of oversight means that these bad actors can abuse customers by engaging in deceptive practices without having to fear the minimal enforcement which the Commission has committed to so far.

7. Should the regulations by which the New York Public Service Commission applies the New York Public Service Law to ESCOs be modified in any way to address enforcement mechanisms, to implement new registration requirements, or to otherwise deter customer abuses?

Yes, and none of these modifications require any new authority. The Commission already has the authority necessary to oversee, regulate, and penalize ESCOs under the Public Service Law, including the power to require higher certification standards and the authority to remove an ESCO from the market. Tightening ESCO registration standards would address this problem, as would financial assurances geared at protecting customers. High standards for ESCO certification will help New York's retail energy market, and should be based on a combination of credit requirements, financial assurances, technical capabilities, and industry experience. This will protect customers and reestablish public trust. There is no need to scale technical capabilities and industry experience as all ESCOs participating in the market should meet the same high standards, whether through their own permanent employees or through contractual commitments with appropriate service providers. Financial assurances, however, should be scaled appropriately to ESCOs' customer counts and system share, so that ESCOs of all sizes have an equal opportunity to serve New Yorkers and add value to the New York market.

8. Should the New York Public Service Commission oversee ESCO pricing structures?

No. Even if the Commission had the authority to oversee ESCO pricing structures – and to be clear, we do not believe it does– price controls would not fix the market design problems that plague the market today, nor would they address the historical ratemaking problems that drove up New York's retail natural gas and electricity prices before competitive restructuring was introduced in the 1990s.

If implemented, price controls will prove to be an ineffective distraction from solving the actual problems with the New York retail energy market. Competitive markets, when properly designed, bring prices down, and if they are failing to do so, the structure of those markets must be corrected. Price controls would force a number of bad actors out of the market, but so would performance bonding or other methods of requiring ESCOs to demonstrate financial and technical capability. Price controls would chill the development of products whose prices cross artificial thresholds. All the while, they would not address the fact that New York utility delivery bills are the highest in the continental United States, and that it is the current market design which keeps New York's retail energy market from lowering these prices.

Additionally, neither limiting ESCOs to the sale of renewable products and energy-related value-added services, nor providing a definition of energy-related value-added services which ESCOs are permitted to offer, will prevent New Yorkers from paying too much for energy, because it is again market design which has driven the price of ESCO commodity service up. These additional limitations and definitions will chill innovation without addressing the deeper market design problems which have given rise to them – namely the continued presence of the incumbent utilities in the commodity sales function, the lack of real enforcement by the Commission of its existing rules, the persistence of CUB and Utility POR, and the continuing lack of transparency in utility pricing.

Most critically, however, is that any ESCO price control mechanisms designed to compare ESCO commodity prices to current utility commodity prices will be flawed on its face. As I will discuss in more detail below, this is due to the fact that utility commodity prices in New York are neither appropriately designed for a competitive market nor appropriately charged to customers in a manner where charges – and credits – follow the customer.

9. Has Infinite Energy asked for more effective oversight in New York, and if so, what was the Commission's response?

We have attended many Commission workshops and meetings to make the case for stronger enforcement, and we have argued for stronger enforcement in many of the filings we've submitted to the Commission in a number of cases regarding the New York retail mass market[1]. To date, the Commission has never substantively improved its oversight, and it continues to focus on trying to control ESCO prices. The limited responses received from the Commission and its staff – usually in the form of proclamations made with little supportive data – consist of broad statements that paint all ESCOs with the same brush and the initiation of new proceedings which do little to advance the discussions which have been constant since 2012 and fervent since the polar vortex in 2014. Responses to Infinite Energy's comments have consisted of dismissals of our comparisons to other, hugely successful markets (primarily Texas and Georgia) and resistance to any suggestion for improvements with the refrain that substantive changes would require utility rate cases. The only substantive action taken has been to expand the requirements in the Uniform Business Practices ("UBP") to the point of

[1] Please see Infinite Energy's Comments on the Commission's Efforts to Improve the New York State Retail Energy Markets, filed in cases 12-M-0476, 98-M-1343, 06-M-0647, 98-M-0667, and 14-M-0101, on June 2nd, 2014, which summarizes in detail our suggestions to correct the fundamental issues in the New York retail energy market.

making it nearly impossible to enroll a customer – without any evidence that such additional requirements will solve the problems raised. Regarding ESCO licensing, the Commission states in its Reset Order that "ESCOs are not required to obtain any certificate, permit or any other approval required by law… Rather than grant licenses, the Commission has created utility tariffs governing ESCO access to utility distribution systems."[2] However, the Commission has and has frequently exercised the ability to modify its UBP to include financial, technical, and other requirements for ESCOs to participate in CUB, interact with utilities through Electronic Data Interchange ("EDI"), and to operate as poolers on utility systems. Unlike direct regulation of ESCO prices, licensure of ESCOs is a power the Commission has without any need for a change in law.

CONSOLIDATED UTILITY BILLING AND THE PURCHASE OF RECEIVABLES

10. Can you describe the background of New York's CUB and Utility POR programs?

[2] Order Resetting Retail Energy Markets and Establishing Further Process, February 23, 2016, in Cases 15-M-0127, 12-M-0476, and 90-M-1343 ("Reset Order"), at 10-11.

Yes. Under New York's CUB program, utilities issue a single consolidated bill that includes their own charges and also the charges of ESCOs, so that ESCO customers receive a single bill from the utility for both utility delivery and ESCO commodity charges. To do this, the New York utilities purchase ESCO receivables – the charges which would otherwise be billed directly to the customer by the ESCO – at a discount of roughly two percent under. The utilities issue these bills and then attempt to collect on them from customers directly, without further involvement from the ESCO.

CUB was intended to help grow the market quickly. Back in 2000, as today, New York had the highest energy bills in the continental United States. CUB was intended to help ESCOs avoid overhead and quickly focus on competitive rates. The idea was that with few protective rules and with minimal registration requirements for ESCOs– as well as referral programs, wherein customers would choose or be randomly assigned to ESCOs under a short-term teaser rate – retail competition would flourish and customers would see fast relief from high bills. The original goal was for utilities to stop supplying energy and instead focus on delivery. Gradually, ESCOs would fully replace utilities as suppliers, taking on their billing and service roles as they had in other states. Welcoming rules and large incentives were meant to temporarily speed the transition to competition, but as the years have passed, they have come to permanently define the market.

11. Do these programs benefit natural gas and electricity customers in New York?

No, they do not. CUB and Utility POR give ESCOs little reason to charge competitive prices. Combined with the minimal standards for ESCOs in New York, many ESCOs have only one clear incentive – to quickly sign up as many customers as possible. If the goal is to grow a competitive market quickly, this makes sense. But entrenched as a long-term feature in the market, CUB has two opposite but equally damaging effects: in the case of good players, CUB limits product offerings, interactions with the customer, and the ability to provide additional services; in the case of bad players, it almost guarantees temptation to take advantage of customers. When an ESCO is reduced to a single line item on an eight page utility bill, it ceases to be a competitive service provider because most customers will either forget they are doing business with that ESCO or forget that the ESCO's rate is one they can choose not to accept – the ESCO rate becomes as unavoidable as the monopoly utility's rate.

12. Do these programs benefit ESCOs?

In the short term, yes – they allow ESCOs to earn guaranteed money without having to take on the costs and risks of doing their own billing. But over the long term, they do not benefit ESCOs. Instead, CUB and Utility POR limit ESCO opportunities by preventing them from establishing a direct billing relationship, or any relationship, with customers. This has made it very difficult to communicate with customers about additional products and value-added services, and customers generally continue to view the incumbent utilities as the company serving them.

Furthermore, the severe limitations of utility billing systems and of the utility invoices themselves – designed as they are for rate-regulated charges – prevent ESCOs from offering innovative products, customized pricing, and energy-related information to customers. And while ESCOs can choose not to participate in CUB, its very existence has a chilling effect on mass-market customer's interest in separate ("Dual") billing. Thus, ESCOs such as Infinite Energy end up paying two costs: one to maintain the training and EDI functionality needed to participate in CUB (as well as the discount paid to the utility to cover its cost of billing and uncollectables), and one to maintain its own billing system for savvy customers who are willing to deal with an additional invoice each month for the sake of taking advantage of the ESCO's customized rates and other value-added services.

13. Do these programs benefit utilities?

Yes. In response to the problems that CUB and Utility POR programs have posed for New York, Infinite Energy and several other ESCOs have argued to end CUB and shift all of the risk of billing customers to ESCOs. But the investor-owned utility monopolies have opposed this reform effort because they benefit from these programs. Under the status quo, the utilities typically purchase ESCO receivables and then attempt to collect them directly from the original customer. If a utility cannot collect, the balance becomes bad debt. The utilities have no motivation to reform this system – they are guaranteed to recover this bad debt because it is redistributed between their paying customers when the Commission sets their rates.

Whether from the customers, from tax refunds, or from higher bills on everyone they serve, the utilities always collect on consolidated bills. As a result, while utilities recover nearly all of their losses in the long term, the CUB and Utility POR programs also permit the utilities to derive many of the benefits of serving customers without having to take on any of the short-term risks and difficulties of actually serving them, because they ultimately recover everything in the long-term. In effect, CUB has forced – or allowed – the utilities to enter a new industry which the Public Service Law never intended them to engage in: namely, as a collection agency for ESCO receivables.

14. Does Infinite Energy participate in these programs?

Yes. Most customers generally prefer a single monthly bill, and so Infinite Energy and other ESCOs use CUB even when they are willing and able to do their own billing and collections. Infinite Energy, however, has limited its marketing efforts in New York severely for many years due to our realization that CUB – in addition to other issues addressed below – hobbles the New York retail energy market. .

15. Should the CUB and Utility POR programs be modified?

Yes. These programs should be completely eliminated by the Commission on a statewide basis. Tightening ESCO registration standards would address many problems, as would new financial assurances geared at protecting customers. But to eliminate some of the most harmful incentives in New York's retail electricity and natural gas markets, the Commission must finally end the Utility POR program and require all ESCOs to be responsible for their own billing, giving them real incentives to compete on prices that they will then be fully responsible for billing and collecting at their own expense. Moreover, the Commission should prioritize Consolidated ESCO Billing ("CEB") as the exclusive model for ESCO service in New York State. ESCOs should be capable of billing not only their own charges but those of the utility – as they do in Georgia and Texas. Doing so centers the ESCO as the service provider, ensuring that the customer knows exactly who they are doing business with and under what pricing and terms. Doing so will eliminate the issues raised above, and dramatically lower the overhead borne by the market in maintaining and updating CUB programs across the multiple utilities.

To be clear: Infinite Energy is not aware of any other segment of the retail electricity and natural gas industry in which the seller can defer its risk and collection costs – let alone its identity, buried in a so-called competitor's invoice – to a rate-regulated monopoly provider that is guaranteed a return. As a company that operates widely on the interstate natural gas market, as well as the fully-restructured retail markets in several states, Infinite Energy does not understand the Commission's stance on supporting a system where utilities – and more critically, ratepayers subject to socialized bad debt – subsidize the existence of retailers who are unable to bill or collect their own receivables.

16. Has Infinite Energy ever asked the New York Public Service Commission to eliminate these programs, and if so, what was its response?

We have raised this issue often because of how simple it would be for the Commission to force ESCOs to do their own billing and to take on the risk of collecting their bills from customers. For example, if the Commission is worried about high prices, requiring ESCOs to do their own billing and collections would make it much harder for bad actors to charge high prices because those charges would be highlighted on the ESCO bill instead of buried on the utility bill, and ESCOs would be unable to charge and collect excessive amounts when the utilities are not purchasing their receivables. While the Commission led a promising collaborative workshop to investigate the issue in 2015, it promptly terminated its work with the Reset Order it issued in February of 2016. The Commission has said nothing substantive about the issue since then.

DELIVERY COSTS, CAPACITY RELEASES, AND UTILITY PRICING TRANSPARENCY

17. Given New York's current retail market structure, is it possible for an ESCO to consistently offer lower prices on an annual basis compared to the incumbent utility while still making a profit?

Under the current market structure, no – it is unlikely that most, let alone many, ESCOs would be able to provide prices lower than those of the utility. This is primarily due to the fact that utility prices in New York State are not true pass-through prices. As discussed in more detail further below, the Commission has consciously created rate-regulated utility commodity prices which are not based on a cost-to-serve. Not only are utility commodity rates socialized in an inappropriate manner, but they are not provably unbundled from utility delivery rates and from credits siphoned from unavoidable charges assigned to ESCOs that do not represent actual operational costs. Until utilities are required to play by the same rules as ESCOs, there is no competition – let alone apples-to-apples comparison of prices – between ESCOs and utilities.

18. How do the utilities' delivery costs relate to the prices offered by ESCOs in New York?

The fact is that many ESCOs serving customers in New York – aside from the bad players which would be quickly addressed through licensure requirements, the elimination of CUB, and enforcement action – are already competitive with each other. To the extent that ESCOs appear uncompetitive compared to the utilities, it is because utility rates are not fully unbundled and because utility commodity prices are subsidized in a number of ways, including charges imposed on ESCOs and the socialization of costs across the utility rate base. Even without retail competition, wherever monopoly infrastructure is involved, consumers benefit when supply costs are fully unbundled from delivery costs. This lack of full unbundling means that for a number of reasons, the utilities' commodity prices appear artificially low, which makes ESCOs prices appear artificially high.

19. Can you discuss some of the elements that go into utility prices charged to New York customers?

ESCOs cannot know for certain how utility prices are structured without a proceeding dedicated by the Commission toward fully investigating the issue. But it appears from the text of the Commission’s 2004 Statement of Policy on Unbundling, and its maintenance of that statement ever since, that a significant part of the utilities’ commodity costs have been rolled into utility delivery charges as a matter of policy. For example, ESCO customers may not be paying for the same “retailing costs” twice, but by the Commission’s own words, these customers have long been paying for them more than once. As long as the Commission’s policies treat the utilities as integrated monopolies, utility delivery and commodity rates will suffer from a lack of transparency. While it is true that New York law imposes an obligation to serve on utilities, it is not clear that the law requires that the two functions of service – delivery and commodity – must be provided by a single integrated entity within a given utility’s franchise area. Every utility could divest its merchant functions (including commodity procurement, operational costs, customer service, and billing) into an arm’s length “regulated provider” that, while still regulated by the commission and still owned and operated by the utility, is treated as an

ESCO insofar as any costs it incurs as a commodity provider. The distribution utility would still maintain – and provide to ESCOs on a pro-rata market share basis, at a similar pro-rata market share cost – whatever assets are necessary to procure commodity or ensure system reliability. This distribution utility would have minimal contact with customers on a daily basis, while customers would choose – from the onset of their need for service – the competitive entity (ESCO or regulated provider) that would provide their service and interact with the distribution utility to meet their needs. No costs or credits would be shared between the distribution utility and its affiliated regulated provider – each would be required, on its own merits and in its own accounting – to meet the Commission's expectations regarding costs. And the regulated provider would be required, under New York Law, to be the utility for all purposes related to obligatory service, providing a regulated rate that any ratepayer could choose as an alternative to ESCO service.

20. Do utilities benefit in any way from the lack of pricing transparency that you've described?

Yes – and you can see this in the utilities' high delivery charges. While ESCOs should be held accountable for any abuses that are truly attributable to them, the Commission should regulate all abuses under their watch, including those caused to the retail market by utility market power. Until the fully-integrated utility no longer serves commodity, no consumer can be certain that they are paying a rate that is "fair and just" for the monopoly delivery service that the Commission is responsible for regulating. Without full restructuring, the ratepayers of New York are inevitably abused as a result of the fact that tariff rates are not fully and transparently unbundled.

21. How do utilities' delivery costs, capacity release advantages, and lack of transparency affect ESCOs' competitiveness in New York?

ESCOs have committed a great deal of time and money toward consumer education, assisting the utilities in developing better systems and processes, participating in countless initiatives and discussions with Staff, and striving under current market conditions to develop better products, programs, and prices for customers. But ESCOs' commitment to customers will remain ineffectual where the Commission and the utilities have failed to meet their own commitment to New York ratepayers to fully unbundle utility rates. Utility ratepayers who buy into the system do not see a proper return on their investment except on a statistical basis, and as delivery charges in New York continue to subsidize utility supply costs, they are negatively incentivized to conserve energy. ESCO customers who choose to purchase supply from a supplier other than the utility are denied the credits they are entitled to because those credits are improperly assigned to the utility's supply charges. As a result of these problems with the utilities' costs, advantages, and lack of transparency, ESCO prices appear higher than utility rates. In other words, customers electing ESCO service are subject – insofar as their ESCO charges – to a properly competitive "cost follows service" model; each customer is appropriately treated as a unique entity which makes its own rational decisions and benefits or pays for those decisions, as the case may be.

Meanwhile, insofar as both utility delivery and utility commodity rates, costs are socialized over time. As long as there is any overlap between utility delivery and commodity rates, and as long as any utility charges do not follow the customers who incurred them, there can be no comparison or competition between ESCOs and utilities. A customer who makes a rational decision to elect ESCO service (lower price, fixed price, etc.) can retrospectively see their decision become irrational because the utility's ability to blend services and socialize costs result in a lower utility rate despite their ESCO's best efforts.

A customer who dutifully paid overestimated utility commodity rates, who then switches to an ESCO fixed rate, will not receive the credit from the utility for prior-period overpayments during the time they remain with the

ESCO. This is not an example of ESCO rates being higher than utility rates; it is an example of utilities not being required to play by the same rules as competitive suppliers. The customers who remain on utility service will see an incremental decrease in their rates – not necessarily equivalent to the amount they overpaid, since the credits are spread across some or all of the rate base – but those who chose to shop for competitive choice will never receive the credit to which they are entitled. Meanwhile, an ESCO that overcharges will be required to not only refund each individual customer the amount they overpaid, but incur a much higher overhead in identifying those individual customers and their individual credits (as opposed to the comparatively simple arithmetic involved in reducing their rates overall).

22. How should the New York Public Service Commission address utilities' delivery costs, capacity release advantages, and utility pricing transparency in the future?

It should initiate a proceeding to unbundle utility rates and introduce full price transparency as soon as possible, and should simultaneously remove the utilities from the commodity/merchant function.

23. Has Infinite Energy ever brought this information to the New York Public Service Commission's attention, and if so, what was its response?

We have attended several Commission workshops and meetings and made these arguments before Staff, but they have typically gone without any substantive response. In almost every filing we have made before the Commission from the onset of these discussions in 2012, we have raised these issues in writing and at length.

The Commission has acknowledged, but has not addressed these issues substantively, since 2004. In fact, in 2014, after Infinite Energy and other ESCOs raised these issues in these proceedings, the Commission deemed them all beyond the scope of these proceedings, and cited a policy statement from 2004 as the controlling authority with respect to its decisions on utility rates today. That remains its last word on any changes to the unbundling methodology or utility rates, which it has insisted must be addressed in individual utility rate cases.

COMPARISON SHOPPING TOOLS

24. Are there any publicly available tools that New York energy customers can use to do comparison shopping for natural gas and electricity, or to obtain reliable information about relative natural gas and electricity prices and offerings of either ESCOs or regulated utilities?

Yes. New York Power to Choose does make it possible to compare prices between utilities and ESCOs. But it is ineffective for several reasons. First and foremost, it prioritizes the incumbent utilities irrespective of the way in which its results are shown. It provides a great deal of data, but provides only minimal organization for that data. Finally, it provides no way to screen out certain types of undesirable rates or search for value-added services beyond renewable electricity offers.

25. Should the New York Public Service Commission provide better comparison shopping and customer education tools to customers?

Yes. In addition to all the benefits of customer education, improving these websites would give the Commission the ability to better oversee the marketplace in New York. For example, we have suggested that they design a portal which identifies so-called "teaser rates," where a customer agrees to a very low initial rate that will increase substantially after a short period. By identifying these products on the website and allowing customers to choose to screen them out, customers who do not want teaser rates could benefit from being able to screen them out by name, while sophisticated shoppers who might sometimes find value in these rates could still find them.

It is Infinite Energy's experience that a properly designed, Commission-managed shopping portal (Texas, www.PowerToChoose.org) or pricing list (Georgia, http://www.psc.state.ga.us/content.aspx?c=/gas-marketer-pricing/) provides the regulators multiple opportunities to oversee the market. As the central market for energy commodity shopping, such shopping portals ensure that the Commission is able to review pricing and terms, hold competitors to reasonable standards of transparency, and take immediate action if one or more marketers are violating the market rules.

26. What are some examples of successful comparison shopping and customer education tools available to natural gas and electricity customers in other competitive retail energy markets?

The strongest example of an official shopping portal comes from Texas at PowerToChoose.org. By using it, shoppers can effectively narrow a wide range of hundreds of different options to a few simple choices. Texas also links its portal to an actively maintained official energy saving tool, PowerToSaveTexas.org, which is as clear and direct as its shopping portal. Visitors can calculate savings, track energy usage, find out how to save energy, and join in energy savings contests.

27. Has Infinite Energy ever shared this information with the New York Public Service Commission, and if so, what was its response?

Yes. On March 27, 2017, we provided a report to the Commission for the purpose of helping it improve New York Power to Choose. Similar information was included in our 2014 comments referenced above. We received no response. The Commission has updated the look of its website since then, but its functionality has been only marginally improved.

SUMMARY AND CONCLUSIONS

28. Could you summarize your conclusions?

There is no long-term solution to creating a fully-effective partially-restructured market because these markets simply do not exist in a long-term sustainable manner – successful competition requires full restructuring. New

York's hybrid system means its customers pay disproportionately high delivery costs, and these put a major drain on the entire market. At this stage in the development of the New York energy market it is impossible to deny the relationship between the Commission's policies, the utilities' market power, and the effect of these on ESCOs. Only by fully restructuring the market – getting the utilities out of the merchant function once and for all – can a clear delineation of costs and responsibilities eliminate the lack of price transparency which has given New York some of the highest energy prices in America today. To summarize, the New York retail energy market will continue to fail until the following steps are taken:

1. Institute appropriate licensing requirements, including technical/operational, financial, and customer-protection requirements, for all ESCOs.
2. Begin an immediate review of all ESCOs operating in the New York market to ensure that they meet the licensing requirements mentioned above in light of their track record in the New York market.
3. Without delay, institute rigorous compliance enforcement.
4. With a strict time limit until CEB is established, set a deadline for the elimination of CUB; ensure that ESCOs are able to meet billing

requirements for dual billing commensurate with standards for utility commodity billing.

5. Set a deadline to establish CEB; ensure that ESCOs are able to meet billing requirements commensurate with standards for CUB; ensure that CEB is mandatory for customers electing ESCO service.

6. Without delay, require utilities to create arm's length merchant-function entities ("Regulated Providers") which are subject to the same requirements – and costs – as ESCOs. All such costs should be commensurate with actual costs incurred by the Regulated Providers and should be borne by customers electing service from that entity, when appropriate, or distributed across all ratepayers unless a cost can be clearly assigned to the commodity provider or customer who incurred it. Regulated Providers' rates would still be regulated by the Commission and subject to all the principles and requirements in the current Public Service Law, until that time which the law can be changed to allow utilities full exit of the merchant function.

7. Without delay, institute utility ratemaking policies which ensure that each customer's costs follow service, regardless of whether

that customer is still receiving utility delivery service (in the case of delivery costs) or utility commodity service (in the case of commodity costs). Limit socialized costs and credits to those that are (a) set by policy and (b) apply to all delivery rate payers (within the same rate class or utility service area) equally.

8. Completely rebuild the New York shopping portal, and ensure that all entities providing commodity supply are presented equally thereon.