STATE OF NEW YORK
BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION

In the Matter of the Commission to Regulate Energy Services Company Home Warranty Product Offerings.	CASE 24-M-0324

COMMENTS OF CINCH HOME SERVICES, INC. AND HOMESURE OF AMERICA, INC. IN RESPONSE TO THE DEPARTMENT OF PUBLIC SERVICE STAFF WHITE PAPER ON ENERGY SERVICE COMPANY HOME WARRANTY PRODUCTS (SAPA No. PSC-26-24-00002-P)

Since commencing its efforts to course-correct the Retail Energy Market for electricity and natural gas, starting in 2016, the Public Service Commission ("PSC") has undertaken an expansive review and regulation of the market participants, with a particular focus on ensuring that energy services companies ("ESCO") provide sufficient competition and innovation to properly serve New Yorkers.[1] One focus of the PSC in revamping the ESCO market has been on the provision of "value-added" services or enhancements to the commodities supplied by the ESCOs to consumers.[2] These value-added products refer to bundled services – a commodity plus some additional product or service.[3] Specifically, the PSC has recognized that such value-added bundled services, including home warranty services, have the potential to provide benefits to consumers.[4] However, in the recent Department of Public Service Staff ("DPS" or "Staff") White Paper on Energy Service Company Home Warranty Products (the "White Paper"), Staff recommend home warranty services "be offered only in conjunction with a guaranteed savings product, or a fixed rate with 5% price cap product to ensure that the consumer is not being overcharged for the commodity price."[5] Staff further expressed concern over the ESCOs use of third-parties to provide home warranty services, observing that a consumer may have to deal with

[1] *PSC Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process*, Case 15-M-0127 (issued and effective Dec. 12, 2019) at 2-3.
[2] *Id*. at 51.
[3] *Id*.
[4] *Id*. at 52.
[5] White Paper at 9.

more than one entity – the ESCO and the home warranty provider – which Staff believe decreases transparency in value and pricing. Even more specifically, Staff mention law suits brought against Amazon Home Warranty, LLC and CHW Group Inc. d/b/a Choice Home Warranty as evidence that some home warranty companies have been the subject of regulatory complaints in Ohio and Arizona, respectively.[6] Staff then unfairly conflate their descriptions of the Amazon Home Warranty and Choice Home Warranty regulatory actions with Cinch Home Services,[7] an unrelated company that is also a third-party provider of home warranty services in New York.[8] Staff appear to have based its inapt comparison on a small number of nationwide complaints to the Better Business Bureau.[9] Indeed, it would be a mistake to conflate two different home warranty providers, and to base decisions on market regulation on on-line reports and reviews submitted to the BBB without any due process or even rudimentary fact-checking. In fact, third-party home warranty providers such as Cinch have for many decades provided value to consumers, including ESCO customers who purchase home warranty service products. Cinch submits the following comments on the White Paper and the questions posed in the Notice in order to better educate the PSC and Staff on the value that Cinch Home Services brings to its customers, including those who purchase products with ESCO commodities. Eliminating the ESCOs ability to provide home warranty services through third-party providers like Cinch would prevent consumers from accessing valuable products and would be a misguided policy decision made on flawed data and an erroneous analysis.

I. Company Overview and History with PSC

A. Company Overview

Cinch is headquartered in Boca Raton, Florida. Cinch Home Services was founded in 1978 and has over 45 years of home services expertise. Cinch Home Services has been recognized with 28 *Stevie Awards for Sales & Customer Service*[10] since 2020. In 2024, Cinch Home Services also received four awards in *ConsumerAffairs* inaugural *Buyer's Choice Awards,* including awards for

[6] *Id.* at 12.

[7] Cinch Holdings, Inc. (formally, Cross Country Home Holdings, Inc.) is the parent company of HomeSure of America, Inc. ("HomeSure"), which is a licensed service contract provider and the only entity within its corporate organization that issues home service contracts in New York; and of Cinch Home Services, Inc., which provides administration and marketing distribution services for HomeSure, including staffing customer service centers, administering claims, managing service provider networks, collecting fees, disbursing refunds and claim credits to consumers, and providing technology support. HomeSure and Cinch Home Services are collectively referred to herein as "Cinch" or "Company".

[8] *Id.* at 13.

[9] *Id.*

[10] The Stevie® Awards are global business awards, which were created in 2002 to honor and generate public recognition of the achievements and positive contributions of organizations and working professionals worldwide. There are eight Stevie Awards programs, one of which is the Stevie Awards for Sales & Customer Service that recognizes the achievements of contact center, customer service, business development and sales professionals worldwide. https://stevieawards.com/

Best Claims Handling, Best Coverage Options, Best Technicians, and Best Value for Price.[11] Cinch Home Services was also ranked among the top 10 Best Home Warranty Companies of 2024 by U.S. News & World Report for its fast response times and 180-day workmanship guarantee.

B. Cinch Provides Value Added Services to ESCO Products

Though the PSC does not directly regulate Cinch (Cinch is not an electric, gas, steam, water, or telecommunication company), since the PSC issued the *Commission Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process* ("2019 Order"),[12] Cinch has worked with the PSC to provide information and feedback on its regulation of the ESCO market. As Staff noted in the White Paper, ESCOs may enroll or renew enrollment for residential customers for gas and/or electric services where at least one of the following conditions are met: "(1) enrollment includes a guaranteed price savings over the utility price . . . (2) enrollment is for a fixed rate commodity product that is priced no more than 5% greater than the trailing 12-month average utility supply rate; (3) enrollment is for a renewably sourced commodity product . . ."[13] or the enrollment includes a home warranty product included as an additional energy-related value-added product.[14]

Following the PSC's orders, Cinch home service contract plans were specially designed to enable ESCOs to meet the criteria established in its orders. Cinch created three separate programs to be added as a benefit in an ESCO product (the "Cinch Plans"):

1) HVAC Protect
2) HVAC Protect + Surge
3) Plumbing Protect

For customers of ESCOs offering Cinch Plans, these programs are available to all energy customers when purchasing the ESCO energy product. Customers retain their Cinch Plan for as long as they are enrolled with the ESCO unless they opt to cancel and switch to a different benefit or plan offered by the ESCO. These home service contract benefits protect against the unexpected cost of home repair with additional industry leading benefits. Many of the Company's products were designed to support more energy efficient HVAC systems and help contribute to the electrification of home heating and cooling, and the reduction of carbon emissions from heating and cooling systems, an added value that is consistent with New York's nation-leading policy

[11] The ConsumerAffairs Buyer's Choice Awards chooses winners based on emotional decoding of consumer reviews collected during an award period, which spans 12 months. ConsumerAffairs analyzed reviews to determine topics that consumers cared most about, then evaluated them to determine if the consumer's experience was positive or negative. ConsumerAffairs then compared each brand's reviews with overall category reviews. Those that provided the best experiences as defined by consumers were selected as winners. https://www.consumeraffairs.com/awards/

[12] *See* fn. 1*, supra.* The 2019 Order was further expanded upon with the PSC's issuance of the PSC *Order Addressing ESCO Petitions Requesting Authorization to Provide Additional Products and Services*, Case 15-M-0127 (issued and effective January 25, 2021) ("2021 Order").

[13] *Id.*

[14] 2021 Order at 3.

goals.[15]

Following the 2019 Order and 2021 Order, from December 2021 to February 2022, Cinch worked with Staff to ensure that the Cinch Plans addressed issues raised by the PSC in the course of the PSC's review of proposed sale agreements and home service contract plans submitted by ESCOs. On February 2, 2022, the PSC advised Cinch that it "has completed its review of Cinch's agreements and find the changes satisfactory. Staff is not requesting any further edits to the agreement[s]…" Cinch committed to the PSC that it would only sell to ESCOs the approved Cinch Plans and would not deviate from the terms and conditions it presented to the PSC. The Company has upheld this promise and has not made any changes to the previously approved terms of its home service contract plans.

The Company has engaged in good faith with Staff to ensure that its products, when sold with ESCO services, complied with the regulatory criteria established by the PSC. Cinch was surprised to learn the Staff has ongoing concerns about home warranty products. Though the Company received feedback from ESCOs in May 2024 regarding specific objections raised by Staff on its previously approved terms and conditions, Cinch first heard of the greater scope of concerns in the White Paper, which was issued without consultation with Cinch or other stakeholders. Given that the Company had opened a direct line of communication with the PSC and had congenially worked with the PSC on requested changes to its home service contracts being offered by ESCOs, the Company was surprised at Staff's apparent discontent following its blanket approval of Cinch's home service contract plans. As one of the nation's leading home warranty companies, Cinch takes great pride in providing value to its customers and takes very seriously its obligations to its customers.

II. Regulatory Overview

A. Service Contract Definition and Scope of Coverages

Service contracts, the most commonly used term for what the PSC refers to as home warranty products, are regulated on a state-by-state level. The National Association of Insurance Commissioners ("NAIC") voted to adopt the Service Contract Model Act ("Model Act") in 1995, which has been codified in state statutes to various degrees by most states in the country. While the Model Act explicitly notes that service contracts are not insurance, through its adoption by the NAIC, the Model Act advocates for the regulation of service contracts by the insurance regulatory system. The Model Act has the following definition for service contract:

> "Service contract" means a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement or maintenance of property or indemnification for repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship

[15] *See* The Climate Leadership and Community Protection Act, L. 2019, Ch. 106, § 4 ("CLCPA"). The CLCPA, *inter alia*, mandates the economy-wide reductions in greenhouse gas emissions to 85% below 1990 levels by 2050.

> or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements.

In New York, the definition of service contract differs slightly from the Model Act, but the core definition is similar:

> "Service contract" means a contract or agreement, for a separate or additional consideration, for a specific duration to perform the repair, replacement or maintenance of property, or indemnification for repair, replacement or maintenance, due to a defect in materials or workmanship or wear and tear, with or without additional provision for indemnity payments for incidental damages, provided any such indemnity payment per incident shall not exceed the purchase price of the property serviced. Service contracts may include towing, rental and emergency road service, and may also provide for the repair, replacement or maintenance of property for damage resulting from power surges and accidental damage from handling. Service contracts may also include contracts to repair, replace or maintain residential appliances and systems…
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> N.Y. Ins. Law § 7902(k).

Appliances and systems are also defined as follows:

> "Appliances" may include but are not limited to electrical or mechanical appliances sold separately or included with the sale of residential real property such as refrigerators, stoves, ovens, clothes washers and dryers and dishwashers.
> …
> "Systems" means plumbing, electrical, heating, cooling, ventilation, and other systems used in residential real property, including without limitation:
>
> (A) plumbing systems which include gas supply lines and fittings, water supply, waste and vent pipes and their fittings, septic tanks and their drain fields, water, gas and sewer service piping, and their extensions to the tie-in of a public utility connection, or on-site well and sewage disposal system;
>
> (B) electrical systems which include all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection; and
>
> (C) heating, cooling and ventilation systems which include all duct work, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.
>
> N.Y. Ins. Law § 7902(a),(k)(1).

Importantly, a service contract provides coverage to a consumer when there is a failure to the product (typically for a home service contract, either an appliance or system). The failure must be caused either by a defect in materials and workmanship, or due to normal wear and tear. Maintenance agreements, which do not provide coverage for product failures but rather just provide ongoing maintenance to a product, are expressly not within the scope of service contract coverage (N.Y. Ins. Law§ 7901(2)). The PSC appears to commingle a service contract with a maintenance agreement in the White Paper:

> As stand-alone entities, home warranty companies offer consumers a service ***resembling a pre-paid service contract functioning similarly to an insurance policy***. According to New York State insurance law, home warranties are subject to the same regulations as any other extended service contract or warranty. New York State insurance law states that the service consists of a contract or agreement of limited duration that provides for scheduled maintenance of property where service performance functions to repair, replace, or maintain property. From the perspective of DPS Staff, home warranty services relate to maintenance service being performed by, or in conjunction with, ESCOs, rather than through a separate home warranty company that specializes in the provision of home warranty services.
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> White Paper at 9-10 (emphasis added).

As a threshold matter, home services contracts are significantly different than pre-paid maintenance contracts. As noted above, these contracts are more analogous to an insurance policy, and for coverage under the service contract to be effective, there must be a triggering failure of the underlying product. This is different than a pre-paid maintenance contract where the benefit afforded is simply that of preventative maintenance and not associated with a breakdown. On the contrary, most maintenance contracts do not extend repair or replacement service to the item being maintained. An insurance policy provides an apt comparison. As with insurance, a service contract only provides coverage if a fortuitous event (i.e., product breakdown) occurs that is not excluded by any contractual limitation, as well as payment of an agreed upon deductible for such claim coverage. A service contract is fundamentally different than a pre-paid maintenance contract since there must be a product breakdown to claim coverage under the service contract. Staff should reassess home service contracts in light of this key distinction.

B. Regulatory Requirements for Service Contract Providers

Providers of home service contracts are highly regulated in New York and other states. They must comply with licensing, financial responsibility, contractual disclosures, claim adjudication requirements, and trade practices regulations to lawfully offer home service contracts to consumers. In total, twenty-eight states, including New York, require home service contract providers to hold a license to offer home service contracts. Cinch, HomeSure, and its other affiliate companies, maintain licenses in all such states where required to operate as a national provider of home service contracts. For most of these states, the state department of insurance is the agency

overseeing such licensure. This is the case with New York as well, where the New York Department of Financial Services ("DFS") regulates service contract providers.

The Company agrees with Staff that entities providing home service contract benefits should be licensed by and in compliance with DFS's regulatory requirements. As Staff noted in the White Paper, home warranties are subject to the same regulations as any other extended service contract or warranty. DFS's license is not easily attained and maintaining such license subjects licensees to heightened regulatory scrutiny. Applicants for a license must respond to not only questions posed to the prospective licensee, but also personal questions directed to a company's officers and directors, including civil and criminal history, and even child support obligations. DFS may deny an application if the applicant is not trustworthy or would not promote the health, safety and welfare of the public.[16] Once a license is issued, the licensee has an ongoing obligation to notify DFS of any material changes to the information on file and must bi-annually renew the service contract provider license. Upon a review of the licensing records of the DFS, it appears that there are several ESCOs that do not partner with a third-party home warranty company, including Agway Energy Services, that do not hold the required license to offer home service contracts to energy customers. Some of these ESCOs may be noncompliant with DFS licensing requirements, which would subject them to administrative action and substantial fines.

To obtain and maintain a service contract provider license, companies must satisfy various application requirements and demonstrate proof of financial responsibility. Most commonly, providers may satisfy its financial obligations by use of one of the following methods: 1) place in trust with the state regulator a security deposit having a value of not less than five percent (5%) of the gross consideration received on the sale of in force service contracts in the state, less claims paid thereunder, but not less than $50,000, and maintain a funded reserve account for its obligations, with such reserve having a value of not less than forty percent (40%) of the gross consideration received on the sale of in force service contracts in the state, less claims paid; 2) insure the service contract obligations under a service contract reimbursement insurance policy issued by a qualified insurer (the definition of qualified varies based on the state); or 3) demonstrate that the provider, either alone or together with its parent company, maintains a net worth of at least $100,000, verified either by audited financial statements or annual reports filed with the Securities and Exchange Commission.[17] The Company satisfies this financial requirement in the state of New York by using the deposit/reserve method as permitted by section 7903 of the New York Insurance Code. In doing so, the Company files its audited financial statements with the New York DFS annually wherein the regulator reviews the financial position of the company to affirm compliance.

In addition to heightened licensing and financial requirements for service contract providers, there are also certain contractual disclosures that must be included within the terms of the service contract as stipulated in the Model Act. The contractual disclosures include information ranging from basic contract terms, including a description of property covered, existence of

[16] § 7907(d) N.Y. Ins. Law
[17] § 7903(c) N.Y. Ins. Law

deductible, the name and address of the contract holder and name and address of the service contract provider, to more descript terms regarding coverage, such as the use of non-original manufacturers' parts, transferability of the contract, how to file a service claim under the contract, and whether the contract includes or excludes coverage for consequential damages or preexisting conditions. Section 7905 of the New York Insurance Code identifies the required contractual disclosures for the state of New York, which also include requirements for cancellation, such as a full refund period for purchasers of service contracts, in addition to restrictions for cancellation by the service contract provider. These contractual disclosures provide contract holders with additional safeguards.[18]

In addition to the administrative and form requirements discussed above, there are also claim adjudication requirements that the Company abides by. Though there are not any express requirements in New York, the Company follows heightened claim adjudication requirements adopted by other states for all its claims nationally.[19]

An additional regulatory requirement for service contract providers is compliance with general consumer protection acts, including unfair trade practices statutes. These acts typically prohibit false advertising, deceptive marketing, or fraudulent methods for conducting business. This is another statutory tool that safeguards consumers.

C. Industry Standards for Home Service Contracts

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[18] Many states also require service contract providers to file a copy of any service contract it seeks to offer in a state, which contract is then subject to substantive review for compliance with the state's underlying contractual disclosure requirements.

[19] Adhering to best practices, Cinch follows the most stringent regulatory standards even where a given state may not require such adherence. For example, other states, such as Florida, maintain safeguards to police unfair claim settlement practices:

> a) Attempting to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the warranty holder;
> b) Making a material misrepresentation to the warranty holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided in, and contemplated by, such contract; or
> c) Committing or performing with such frequency as to indicate a general business practice any of the following practices:
> 1. Failure to properly investigate claims;
> 2. Misrepresentation of pertinent facts or contract provisions relating to coverages at issue;
> 3. Failure to acknowledge and act promptly upon communications with respect to claims;
> 4. Denial of claims without conducting reasonable investigations based upon available information;
> 5. Failure to affirm or deny coverage of claims upon written request of the warranty holder within a reasonable time after proof-of-loss statements have been completed; or
> 6. Failure to promptly provide a reasonable explanation to the warranty holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.
>
> § 634.336(5), Fla. Stat.

The Notice requests information on industry standards for home service contracts for New York or otherwise. In addition to the state regulatory oversight discussed above, there are also trade associations within the home service contract industry that serve as an avenue to monitor and work with legislators across the country to understand certain legislative initiatives and changes, as well as oversee those providers in the industry to ensure minimum business standards are met. The Company is a member of both the Service Contract Industry Council ("SCIC") and the National Home Service Contract Association ("NHSCA"). The SCIC works closely with state legislators across the country to develop fair and uniform regulations to protect consumers and is an advocate for the regulation of the service contract industry. In addition to monitoring legislation, the NHSCA maintains a formal program of compliance and standards within the home service contract industry via its accreditation program for home service contract providers. There are several core purposes for the accreditation program, including to provide legislators, regulators, the media and consuming public with standards and assurance that home service contract providers meet certain qualitative and quantitative standards, help eliminate bad actors within the industry, and foster and promote better compliance with existing laws and regulations. To be accredited, companies must provide an array of information, including financial statements, complaint resolution procedures, emergency service procedures, information on the company's code of conduct, call center operations, local contractor agreements, and compliance with sales tax requirements. The accreditation program is a thorough and rigorous vetting process, and Cinch has obtained and maintained this accreditation.

In the White Paper, Staff identified two regulatory actions featuring third-party home warranty programs and distastefully and improperly analogizes these actions to Cinch's business practices. The administrative actions took place in Arizona and Ohio, well beyond the boundaries of New York. The actions identified do not involve Cinch in any way, and the attempt to impute the actions of an unrelated company to Cinch or the home warranty industry as a whole is fundamentally flawed. Cinch has never been a party to a regulatory action in New York for "a pattern of misleading tactics" or "a pattern of misrepresentation of its service offerings." The White Paper's assertion that these regulatory actions in other jurisdictions against companies that are unrelated to Cinch is misleading. Indeed, Staff did not and cannot assert that the companies that were subject to the civil actions cited in the White Paper currently partner with any ESCOs in New York. Those actions simply have no evidentiary value with respect to any other home warranty company, including Cinch. It is important to note that, as with any industry, there are a range of different types of actors. Some actors are good, reputable, and prioritize their customers' interests, while others may act to the detriment of the consumer. However, as discussed above, New York's robust regulation of the industry provides more than sufficient guardrails for the home warranty industry. The PSC should not, as a knee-jerk reaction to regulatory actions against other actors in other jurisdictions, premise its ESCO regulation on such a flawed datapoint. Nor is it of any evidentiary value to cherry-pick on-line complaints from consumers, as Staff does in pointing to a small number of online complaints relative to Cinch's nationwide customer base; these are grievances that have not been investigated or tested in any legal or administrative proceeding, nor have they been subject to any due process whatsoever. To rely on such rudimentary factfinding in support of sweeping regulatory action would flout due process and result in misguided

policymaking. Cinch has been in operation for over forty-five (45) years, demonstrating that it is a sound enterprise. We serve customers nationwide (excluding Alaska and Hawaii), maintain best practices across all jurisdictions, including New York, and meet and exceed all of the legal and regulatory requirements placed upon our company. Grouping all third-party home warranty companies together in a negative light is an over-generalized position and one to which we strongly object.

III. Cinch's Products and Practices

A. Home Service Contracts in New York

The Company and its affiliates offer a broad portfolio of service contracts with multiple service fee options, coverage levels, and price points to address the unique needs and preferences of consumers nationwide, including New York State. Product offerings can cover up to twenty-two (22) separate items in the home at different prices and service fee levels to provide consumers with the choice that best meets their needs. In general, the coverage options include: (1) systems protection that covers air conditioning, heating, inside plumbing and inside electrical ("Systems Products"); (2) appliances protection that covers refrigerator, stove, range, oven, built-in microwave, dishwasher, and washer/dryer ("Appliance Products"); and (3) our whole home plan that combines system and appliance protection ("Whole Home Products").

The sale of home service contracts to ESCOs represents a small percentage of the consumers who have Cinch products. Specifically for New York ESCO customers, Cinch created three separate programs to be added as a benefit in an ESCO product. These Cinch Plans only cover HVAC, Plumbing and Surge protection. These benefits protect against the unexpected cost of home repair with additional industry leading benefits. Many of our products were designed to support the running of a more energy-efficient home. It is important to note ESCOs also sold a Surge plan but ceased selling that product when the PSC determined that the product did not meet its regulatory requirements. These Cinch Plans are only sold through ESCOs. Consumers can purchase other Cinch plans, which cover additional units and have different limitations.

B. Marketing to Consumers

Consumers do not purchase the ESCO plans from Cinch. ESCOs offer the Cinch Plans to consumers as part of or as a benefit to their energy product. Cinch charges the same price to each ESCO. ESCOs determine what costs, if any, are passed on to customers in their energy product and how to market and explain such different pricing to consumers. Cinch does not price or market the ESCO products, and we take no position on the issue of transparent pricing.

Even though ESCOs determine marketing and pricing, Cinch ensures that the ESCOs and consumers understand the Cinch Plans. Before an ESCO can sell Cinch Plans, Cinch provides each ESCO training material that describes the coverage, deductible due at the time of claim, plan limitations, and details on how to make a claim. Cinch also reviews the ESCO energy product terms and conditions to ensure the section describing the Cinch Plans is accurate and correct.

Lastly, Cinch reviews the ESCO third-party verification scripts to ensure the customer understands that a Cinch Plan is included in the energy product and that it is described correctly. Upon enrollment, Cinch sends an email to the customer confirming their enrollment, providing information about their Cinch Plan, and advising them how to view their terms and conditions. After enrollment, the Company sends consumers a welcome fulfillment kit via mail confirming their enrollment in the Cinch Plan and stating the Plan's specific details, including terms and conditions.

In order to ensure the PSC has correct data, please note the following:

- Beginning January 2021, 15 ESCOs sold Cinch Plans. As of July 31, 2024, only five ESCOs are actively selling energy products that include a Cinch Plan in New York: American Power & Gas, IDT Energy, Kiwi Energy, Resident Energy, and Verde Energy.
- From January 1, 2021 to July 31, 2024, [REDACTED] consumers enrolled in Cinch Plans, which includes enrollments in a Surge product, which was disapproved later by the PSC.[20] As of July 31, 2024, [REDACTED] customers were active and enrolled in Cinch Plans.

C. Terms and Conditions

After enrollment, Cinch sends consumers a welcome fulfillment kit via mail confirming their enrollment in the Cinch Plan and stating the Plan's specific details, including terms and conditions. As stated, from December 2021 to February 2022, Cinch worked with Staff in the Legal Department and the Office of Consumer Services at the Department of Public Service to ensure that the Cinch Plans addressed any issues Staff raised. On February 2, 2022, Staff advised Cinch that it "has completed its review of Cinch's agreements and find the changes satisfactory. Staff is not requesting any further edits to the agreement[s]…" Cinch committed to Staff that it would only sell to ESCOs the approved Cinch Plan and would not deviate from the approved terms and conditions.

The welcome kits that include the terms and conditions are sent by first-class mail. The terms and conditions specify covered and non-covered items and clearly identify the systems included in the Cinch Plan that was purchased. Limits of liability are clearly stated in boldface text to draw the consumer's attention to those terms. General exclusions and limitations are also clearly defined and address non-covered situations outside of normal wear and tear. Cancellation information, dispute resolution, and renewal details are also clearly defined for consumers. Terms and conditions of the Cinch Plans are also available in the Company's online portal. In response to the White Paper, starting October 1, Cinch will begin sending to customers enrolled in a Cinch Plan a quarterly coverage summary communication, reminding customers of the benefits of their plan.

In addition, the Coverage Summary Page, which was also previously approved by Staff, is included with the detailed terms and conditions to highlight the following:

[20] White Paper at 6.

- The amount of deductible a customer must make when filing a claim.
- The Plan limitation on claims (typically $1,000[21]).
- The units that are covered.
- Advises the customer that the Cinch Plan will automatically renew as long as they have their energy product with the ESCO and if the customer wants to cancel the Cinch Plan it would need to also cancel the energy product.
- States to see the terms and conditions for specific exclusions and noncovered charges.

Regarding deductibles, the White Paper suggests that there is a difference between service fees and deductibles. For our purposes, these terms are used interchangeably within the service contract industry. Cinch chooses to use the word deductible as it is easy for the customer to understand that it is the portion of the claim they must pay when making a service claim. All materials used in the Cinch Plan refer to deductible, and they are not inconsistent. The Company agrees with Staff that any messaging related to a deductible should be clear and consistent to deter customer confusion.

The Cinch Plans do not have a 30-day waiting period before consumers can file a claim, as is typical in many home service contracts. A customer can file a claim immediately if it has a Cinch Plan provided by an ESCO. This immediate access to home service contract benefits provides assurance and peace of mind to consumers that, if a covered item were to breakdown after enrollment, the consumer would have coverage under the home service contract subject to the terms and conditions of the Cinch Plan.

Staff acknowledge that the Cinch Plans set forth factors that disqualify service and that it is reasonable to do so long as "*these factors must be grounded in reality such that a reasonable level of circumstantial understanding is attained by the consumer."*[22] It is important to note the following:

- These factors were set forth in the Cinch Plan terms that were approved by the PSC after meeting with the PSC to discuss these factors.
- Any plan exclusions are set forth in the terms and conditions delivered to customers. Customers can cancel the energy plan immediately and enroll in a different energy product if the terms do not meet the customers' needs.
- Many of the "disqualifying factors" are required under service contract law. Cinch does not provide insurance or reimbursement policies, only service contracts. Coverage cannot be extended to fortuitous events outside of a breakdown of a product caused by normal wear and tear or defects in materials in workmanship. Without certain "disqualifying factors", the Company would run afoul of insurance regulations, which seems likely to be an unintended consequence of the Staff's proposal in the White Paper.

[21] The White Paper notes on page 5 that $1,000 is the most common cap for home service contracts sold by ESCOs, which is also the cap on coverage for HVAC and electrical coverage provided by Agway Energy Services (page 3 of the White Paper). Cinch's coverage cap is consistent with the industry.
[22] White Paper at 16.

- ESCOs can also ask some initial qualifying questions at the time of sale to ensure that customers are eligible for coverage before they are enrolled in an energy program that includes a Cinch Plan. For example, if a customer is a renter and is not responsible for their plumbing or HVAC system, a Cinch Plan would not be a program that would be appropriate for such customer. If a consumer is operating a commercial enterprise (i.e., daycare), a Cinch Plan would not be appropriate since the Cinch Plans are designated for noncommercial use. These qualifying criteria are stipulated in the section describing Cinch Plans as part of the ESCO's purchase agreement.

On the note of qualifying questions identified above, the White Paper suggests a new policy that ESCOs perform a site visit within five business days of enrollment to ensure that an appliance is eligible for coverage under a home service contract. We believe such a process would be unduly burdensome because it would require a consumer to be at their residence within five days of such purchase to authorize access to the property. Staff acknowledges scheduling complexities when consumers request claim service. Such complexities would also be present for coordinating a site visit in such a short period of time, and may deter consumers from opting for home service contract coverage. In lieu of an on-site confirmatory visit, we suggest verifying with the consumer at the time of sale or at the time of the third-party verification of the sale that the consumer's property is eligible for coverage. As discussed, Cinch Plans cover HVAC and plumbing components of a residence. The Company has a very limited set of eligibility criteria for these items and could simply ask for confirmation as part of the onboarding process. The following questions would be posed to confirm if an item would be eligible for coverage under Cinch's home service contract plans:

1) Is the residence any of the following:
    a. A manufactured home not permanently secured to the ground or constructed more than 10 years from the date of this call?
    b. A mobile home?
    c. A multi-family residential property of more than two units?
    d. Any dwelling used in whole or in part for commercial purposes, including non-profit organizations?
    e. A home listed or registered in any historical register, including without limitation the National Register of Historic Places?
2) If covering HVAC: Is the HVAC unit 5-ton capacity or smaller?

We are confident that a consumer would rather answer these five simple questions at the time of sale than coordinate a time to be at their residence for an in-person verification that would simply confirm the same questions.

Even though Staff previously approved the Cinch Plans, in March 2024 and again in May 2024, we learned that Staff provided comments to ESCOs that filed the previously approved terms and conditions of the Cinch Plans as part of their energy program filings. Cinch reached out to Staff with a request for a meeting to better understand the comments raised by the PSC and to work with Staff to make requested changes, but the Company has not been able to schedule a meeting.

D. Claims Process and Service

The White Paper erroneously asserts that consumers are better suited to deal directly with the ESCO for home service contract claims. Staff propose this preference on the premise that consumers should only need to make a single call to place a home service contract claim and "address any other matters related to their energy service." When a consumer's air conditioning fails or they have a leak in their plumbing system, it seems unlikely that a consumer will want to discuss their energy program while filing a claim for service for their home system. Further, in seeking a solution where a single call is made to the ESCO, Staff's proposal would do a disservice to consumers who would otherwise be able to obtain claim service online, as is the case with Cinch's claim process. Many consumers prefer to use an online portal for claim service, which many customers find more convenient than making a phone call. The online portal is not the only way for a consumer to make a claim: consumers can call the 800 number on their home service contract, can submit claim information online, or use our interactive voice response system ("IVR"). Once the consumer contacts Cinch using one of the prescribed methods to file a claim for service, their claim is reviewed and assigned to a local service provider. The White Paper notes on page 11 that a consumer must first contact their ESCO which then contacts the third-party home warranty company for a claim. This is simply inaccurate and not representative of the actual process involved in initiating a claim, which does not entail the additional step of going through the ESCO to initiate service.

The White Paper notes that a third-party home warranty model lacks transparency over service issues. A third-party model is not a novel concept and in fact is routinely recognized and utilized in similar sectors. In the context of insurance, which again is analogous to home service contract benefits, third party administrators are commonly utilized by insurance companies to adjudicate insurance claims and benefits. Insurance regulators have created a regulatory regime for these third-party administrating companies. These types of administrators are specially trained in contract coverage, claim adjudication, and customer service processes. Ignoring the recognition and benefits of a third-party system where the third-party specializes in their role is to the harm of the consumer. Third-party administrators are also a recognized concept in service contract regulation. Some states require administrators to be licensed while other states maintain general oversight. It is important to note that, as there are requirements in New York for service contract providers to be licensed with DFS, there are also requirements for administrators of service contracts. Administrators, which include those entities that adjudicate claims on behalf of providers, are subject to the regulations codified by DFS and notice of any administrators must be filed with DFS in advance of their operation with a given service contract provider.[23] This is again proof that in the heightened context of an insurance regulator, a third-party model is deemed acceptable.

The White Paper states that third-party home warranty companies rarely have certified employees on staff to perform the covered service aspects of the home service contracts, and that

[23] § 7907(a)(4) N.Y. Ins. Law

even third-party companies often utilize a list of independent certified maintenance professionals to perform the work. Again, this is an oversimplification to the point of inaccuracy. At Cinch, supervisors in our authorizations department must have technical training and have spent time in the field themselves as a technician to qualify for the supervisor role. This ensures that our supervisors have the technical knowledge to review and adjudicate claims. Cinch then utilizes a network of independent service providers for the majority of the field work. Rather than a detriment to consumers, consumers benefit from a large network of skilled technicians as there is more availability for service and options afforded to consumers. If a consumer requests a different service provider than the one originally assigned, Cinch honors the request and will assign a different service provider during the claim cycle. If a network service partner is experiencing delays in sourcing the part, Cinch will step in to assist and will have an alternate parts sourcing team secure the required part. Further, Cinch oversees its network of service providers and has the ultimate decision power in all claims adjudications to ensure our network of professionals is providing quality service in accordance with our home service contract terms. It would not be practical, nor a benefit to consumers nationwide, for a home warranty company to directly employ a limited number of service technicians within a limited geographic area. By partnering with independent providers across a large geographic area, Cinch can better address claims expeditiously and professionally. It is also worth noting that some of those ESCOs that are seemingly operating their own home service contract program utilize a network of independent professionals based on publicly available marketing materials.

Claims are serviced by a network of service providers, including plumbing and cooling and heating service repair companies and individuals. Cinch actively monitors the compliance of our service providers to ensure that all service providers are licensed and insured pursuant to trade regulations. For compliance, we verify service providers' trade licenses, certificates of insurance, and background checks and require all our service providers to enter into a contract requiring background checks and licenses. If any service provider reflects an expired status for license, insurance or background check, then we reach out to the service provider to obtain updated information to ensure the service provider meets our minimum business requirements to be part of our active service network. Cinch has associates dedicated to managing the service network's performance and authorizing service claims and ensuring customer support. In the state of New York, we have [REDACTED] service providers in our service network that can support HVAC and plumbing service requests with each service provider having one or more technicians that perform service calls.

If there are delays in securing a service provider, or if the Company cannot provide one within its network, Cinch allows the consumer the opportunity to utilize their own service provider. Cinch reviews the service provider's diagnosis and authorizes any covered repairs or replacement for any covered work under the terms of the contract. The customer receives instructions on how to submit documentation when using their own service provider, describes other steps in the process and instructions on how to receive reimbursement. In the case when a customer may use their own service provider, details of the diagnosis and costs are based on the documents provided by the customer and recorded by the agent in the notes of the claim system. The timing of the

claims paid depends on the time it takes for the consumer to submit sufficient documentation of a diagnosis. In the payments system, payments to the consumer in this process are deemed a claim credit. The reimbursement to the customer for parts or equipment is based on estimated retail costs. Determinations are subject to the customer contract exclusions and cap limitations

Cinch Home Services, as the administrator for HomeSure, works with the consumer to have their covered repair or replacement completed as quickly as possible. To do this, Cinch Home Services locates a service provider using various criteria, including availability, technical knowledge, trade specific service needs, and performance. At this point in the process, the applicable service fee is collected from the consumer and a service date is scheduled with the service provider to investigate and repair the covered item at the earliest possible time based on availability, and at the convenience of the consumer. The initial date is subject to availability and confirmation. The service provider visits the home to diagnose the issue.

Claims are reviewed and assessed in accordance with the terms and conditions of the consumer's contract. Depending on the extent of the issue, or the service provider's workflow, the service provider may have to receive authorization from Cinch Home Services prior to starting the repair. If applicable, the Company will communicate to the customer the following information: exceeded cap limitations, non-covered charges, and non-covered parts that are specifically not covered by the contract. The customer pays these costs to the service provider directly.

Once the repair or replacement is completed, the service provider is paid for the work by the Company and the Company backs-up the repair with a 180-day workmanship guarantee to the customer. This guarantee is one of the industry's leading workmanship guarantees for appliances and systems because it covers repairs up to 180 days, demonstrating the Company's commitment to its consumers.

The Company has established a dedicated Decision Desk that is tasked with reviewing claims that initial agents or qualified service providers have deemed not covered by the terms of the home service contract. The Decision Desk serves as an additional check point to ensure that claims are adjudicated fairly based on the terms of the home service contract and the diagnosis and proof provided by the service provider. If a claim is denied, in whole or in part, the Company emails the denial information to the customer if an email is on file, or we will mail the customer a letter if we do not have the customer's email, explaining the basis of the denial based on the information reported by the service provider and the authorization review.

Of the customers that enrolled in a Cinch Plan from January 2021 to July 2024, there were [REDACTED] service orders requested. Of those, only [REDACTED] were denied in accordance with the terms and conditions of the Cinch Plan. The total amount of claims paid on these service orders is $[REDACTED].

While the claims redemption rate is lower than typical claims in other markets, it should

not be surprising. First, customers require an actual surge, plumbing or HVAC mechanical failure to occur during the term of their Cinch Plan and energy contract. Unlike a pre-paid maintenance contract where maintenance is performed on an item regardless of the underlying condition of the item, a failure must occur in order for a claim to be made under a home service contract. A customer has no way of knowing when their HVAC unit or plumbing may incur a breakdown given the fortuitous nature of such an event; however, they would be generally aware of the necessary maintenance intervals based on manufacturer guidelines and as prescribed in a pre-paid maintenance agreement.

Additionally, the Cinch Plans are unique products tailored to energy customers. As mentioned, other Cinch home service contracts offered in the marketplace provide coverage for numerous items within the home, including up to 22 different items. Because the Cinch Plans are tailored to ESCO products, they cover plumbing, HVAC systems, and surge events. Broader coverage under a stand-alone home service contract would naturally result in a higher claims rate. But, consumers seeking an ESCO product are shopping for energy-related services, not a service contract that anticipates broad whole-home coverage, such as a 22-item contract. When Cinch Plans are offered as part of the energy product, it is an additional benefit that provides peace of mind to these consumers even if they do not anticipate a mechanical failure.

The White Paper notes that the most common home warranty plans offer consumers a "$1,000 annual rebate." As stated above, the home service contract benefits and corresponding $1,000 coverage cap is not a rebate at all, though Staff uses this term in the White Paper to describe such benefits. Coverage for mechanical breakdowns in a home service contract is not something that a consumer can redeem without an underlying product failure. The cap stated in the home service contracts is a limitation on the claims paid in any contract year. Claims paid do not reflect the value to a customer if the cap is not achieved. Instead, the value to a customer is the repair cost that they do not have to pay after a deductible. In addition, claims paid reflect Cinch's cost to pay a claim. It does not reflect the higher cost a customer would pay without a home service contract. Further, even if a customer does not have a claim during the term of their home service contract, they still are provided peace of mind knowing they have coverage and access to a network of qualified service professionals in the event a breakdown was to occur. The White Paper fails to acknowledge the value that a home service contract provides outside of claims paid. In a similar realm, a consumer still benefits from having automobile insurance even if they do not experience an accident as they have assurance that, in the unfortunate event an accident does occur, they would have some recourse to recoup their losses. Benefits under a home service contract are comparable.

E. Customer Service

Cinch's customer service spans all facets of the consumer's home service contract experience, from questions related to product coverage, to assistance with claims, Cinch has a dedicated team of personnel who strive to make the customer experience as seamless as possible

when a covered item in the home breaks down. We believe our customer service and the robust team of dedicated personnel is an additional strength of providing home service contracts to ESCOs. Agent training is a minimum of five weeks to ensure skills and knowledge meet the Company standards. For the purposes of this response, the customer service referred to herein is focused on the Company's assistance with customers in the claims process. The primary means to do so is through phone, an online portal, and the IVR system.

The Company uses an IVR system and a leading call center platform to enable it to manage and oversee customer service calls. If the customer calls the 800 number or IVR and chooses to speak with an agent to file a claim, once the call is routed to an agent, the customer service agent assists the customer in initiating a claim or reviews claim notes if one is already started. The agent reviews the terms and conditions of the contract and the service job status to identify what has transpired and determine the appropriate next steps. In addition, the customer service agent can take payments for service fees associated with the claim. A group of agents also make outbound calls to service providers if additional information is needed to adjudicate the claim or to confirm an appointment or to customers as needed to resolve a claim. The Quality Assurance team will review agent calls to ensure the quality and processes are met.

Email is not the primary or front-line source of resolution to address claims initiation and claims status. As stated above, our IVR, customer service agents and the online portal are designed to serve this function. Therefore, email is generally not a systematic source of customer service. It is sometimes used as a communication tool after the customer has initiated contact online, IVR or with an agent. Customer service provided over email is a manual, not an automated, process.

Once a customer has interacted with a customer service representative, the customer may receive instructions to send information or documentation to supportservices@cinchhs.com. All faxes and mail received are also directed to this email. This email is monitored by customer service representatives and emails are manually reviewed and responded to or routed to the appropriate department. When an email is sent to this email there is an automatic reply acknowledging receipt.

Cinch maintains robust external communications processes to ensure timely customer communications across various media. Cinch has expended resources and time to create and maintain these customer service protocols and we strongly believe that our customers benefit from our commitment to customer service. We caution that, by advocating for the elimination of third-party home warranty companies from offering home service contracts with ESCOs, end customers may be negatively affected the most, either by a much smaller market or by inexperienced companies that lack home warranty expertise and experience.

F. Complaints

Cinch takes consumer complaints very seriously and has a dedicated team to address consumers who are dissatisfied with the service we provide. The White Paper states that consumers have made 3,500 complaints on Cinch's Better Business Bureau website over a three-year period from February 2021 to February 2024. However, this reference is not in the context

of the Cinch Plans at issue.

First, during the three-year period, [REDACTED] were made to the BBB on a national basis. During the same period, Cinch serviced over [REDACTED] customer service requests. The complaints represent [REDACTED] of all service order requests that the Company received during that period. Moreover, these complaints represent customers with broader coverage than Cinch Plans, which are part of the embedded products with ESCOs. As stated above, most consumers have service contracts with Cinch that have over 22 different types of units and are not limited to HVAC or plumbing. The number of units subject to a failure is greater than the Cinch Plans.

Second, of the [REDACTED] BBB complaints, [REDACTED] were in New York. Of those [REDACTED] complaints, only [REDACTED] was related to a Cinch Plan covered by the White Paper. Cinch has not received any consumer complaints from the New York State Attorney General or the DFS regarding customers enrolled in Cinch Plans during the relevant time period.

When the Company receives a BBB customer complaint, we diligently review the matter and timely respond. Cinch places an emphasis on customer satisfaction, so we treat each complaint respectfully and ensure that the customer receives a thoughtful response.

IV. Responses to Questions in Notice & Summary

While the Company's response to the White Paper has been detailed herein, we also want to specifically address the questions posed by the PSC in the Notice. The questions, and the Company's response, are as follows:

1. *What qualitative and/or quantitative evidence can ESCOs provide that shows their HWP offerings are providing value to customers? This evidence should include, but not be limited to, data specific to the number of consumer service claims, the rate of increase in commodity costs to the consumer over the contract period, and the number of successful service claims that resolve consumer service requests.*

   This question can only be answered by ESCOs based on the evidence they can provide, however, the Company encourages the PSC to reevaluate the manner in which it views home service contracts and the benefits provided thereunder.

2. *What barriers, if any, prevent ESCOs from separately disclosing the cost of the service contract from the cost(s) of commodity supply, thereby increasing the transparency of bills including HWP costs?*

   This question can only be answered by ESCOs given their involvement in billing.

3. *What added value do consumers receive by enrolling in ESCO HWPs when they can otherwise directly sign up for home warranty services that are not tied to their energy provider?*

Cinch Plans were specially designed for the energy market based on product coverages and price. Customers are free to purchase a home service contract from the Company directly if they prefer. However, allowing customers to add it as part of their energy package simplifies the process and provides customers with a unique offering.

4. *What barriers, if any, prevent ESCOs from establishing their own in-house home warranty division that would free them from relying on a third-party to handle the service obligation inherent to their HWP contract?*

   In our experience, Staff wholly underestimate the resources needed for an ESCO to establish their own in-house home warranty division. As the Company has illustrated throughout its response, there are several crucial elements in formulating and operating a home warranty program. By forcing ESCOs to create from whole cloth their own in-house programs, the Company believes the end consumer will suffer the most harm.

5. *How many maintenance professionals would an ESCO need to employ to ensure their HWP customer base is covered in a way that supports the recommendations in the White Paper?*

   We believe it would be significantly difficult for an ESCO to gauge the number of personnel that would be required to comply with the PSC's recommendations in the White Paper. Given the volume of anticipated claims, the regulatory requirements for technicians including licensing and insurance (and oversight of such technicians), the regulatory requirements of the ESCO to obtain and maintain the necessary service contract provider license, and the timely service that the PSC encourages (including an onsite visit upon enrollment), it would be challenging for an ESCO without experience in the home service contract space to understand and account for the substantial resources required to operationalize a comprehensive home warranty program. The following statistic may be helpful to the Staff to understand the burden this would be on any ESCO – To ensure a technician hired by an ESCO is at least breakeven in terms of their employee costs to the ESCO, one technician would have to run four jobs a day (approximately 1,040 jobs a year) based on typical industry standard. Running a technician network is based on volume of service jobs. Given the limited enrollments and products covered by each ESCO, it could be very difficult for each ESCO to hire technicians without a significant financial impact.

6. *Are there any industry standards in New York or other states regarding HWPs and consumer protections associated with such products that the Commission should consider?*

   As discussed in the Regulatory Overview, the PSC should consider that home service contracts are typically regulated by state insurance agencies, which often requires providers to hold a license and demonstrate financial responsibility. Further, there are existing contractual disclosures, claim adjudication, and unfair trade practice regulations already in place for home service contracts that Cinch complies with.

7. *Are there any other consumer protections related to ESCO HWPs that the Commission should consider?*

   The Company encourages the PSC to conduct additional research into the robust consumer protections that are in place for home service contracts generally outside of the New York energy market.

In sum, the Company believes that third-party home warranty programs provide a real and meaningful benefit to consumers as home warranty providers specialize in the market. Access to a large network of service professionals is invaluable to customers as it provides timely service availability and multiple service options. Customers also benefit by having access to employees whose sole focus is to assist customers when their covered item within their home breaks down. As it has done in the past, Cinch would welcome the opportunity to continue its dealings with Staff and the PSC, as demonstrated with its willingness to update its previously approved Cinch Plans to address Staff's comments. The Company appreciates the opportunity to provide its feedback on the PSC's White Letter and Notice and is hopeful that the Commission will give sincere consideration to our comments.

Sincerely,

/s/ *Sloane Levy*

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