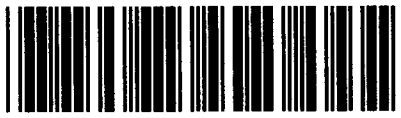
Control Number: 35767



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PROJECT NO. 35767

RULEMAKING RELATING TO THE CERTIFICATION OF RETAIL ELECTRIC PROVIDERS	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

COMMENTS OF BOUNCE ENERGY, INC.
TO PROPOSAL FOR PUBLICATION OF REPEAL OF §25.107 AND
NEW §25.107 AS APPROVED AT THE OCTOBER 23, 2008 OPEN MEETING

Bounce Energy, Inc. (Bounce Energy) appreciates the opportunity to provide comments to the proposal by the Public Utility Commission of Texas (Commission) to repeal §25.107 relating to the certification of Retail Electric Providers (REPs) and adopt a new §25.107 (proposed rule). Bounce Energy respectfully submits the following comments in support of the Commission's stated overall objectives of better protecting customers, transmission and distribution utilities (TDUs), and other REPs from the insolvency of REPs and other potentially harmful activities. In particular, Bounce Energy wishes to address §25.107(f) of the proposed rule, including the concerns raised by Commissioner Nelson in her October 22, 2008 Memorandum (Nelson Memo), as to how sections (f)(1) and (f)(2) of the proposed rule can achieve the Commission's goal of customer protection without having an unnecessary or inequitable adverse impact on REPs that are operating in a prudent manner. Accordingly, Bounce Energy would like to propose certain modifications to these provisions to assist in achieving the Commission's goals.

Proposed Modification to Section (f)(1)(B)

Under the proposed rule, a REP must meet the requirements of section (f)(1)(A), which requires a REP to maintain an investment-grade credit rating or $100 million in tangible net worth, or section (f)(1)(B), which requires a REP to maintain certain amounts of liquid capital ranging from $3 million to $1 million based upon the number of years in which the REP has continuously served retail customers in Texas. With regard to the different liquid capital amounts required by REPs under sections (f)(1)(B)(i), (ii), and (iii), Bounce Energy does not believe that there should be distinctions for liquid capital requirements based solely upon the

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number of years in which a REP has continuously served customers. The preamble to the proposed rule states that the rule sets forth minimum requirements necessary to operate a REP prudently. Accordingly, Section (f)(1)(B)(iii) indicates that the minimum liquid capital required to prudently manage a REP is $1 million. Bounce Energy does not believe that prudently operated REPs should have different liquid capital requirements based solely upon length of time in business, and that such a circumstance would result in unfair competitive advantages to certain REPs. Bounce Energy does recognize that the impact of (f)(1)(B) would be less discriminatory and have less of an arbitrary adverse impact if these differing liquid capital amounts were applied only to new REPs that have yet to enter the market, since these REPs will have had full disclose of the liquid capital requirements prior to entering the market and such rules would be equally applied to all of them.

Accordingly, at a minimum, Bounce Energy strongly urges that all existing REPs that are serving retail customers be treated equally and be subject to the same liquid capital amounts under (f)(1)(B)(iii), and proposes the following modification to said section of the proposed rule:

> "(iii) liquid capital not less than $1 million, provided that the REP has continuously served retail customers in the Texas retail market without sanction or default for at least three years, or for a period beginning prior to and including the effective date of this rule."

Unless so modified, Bounce Energy believes that section (f)(1)(B) would provide immediate unfair competitive advantages to certain REPs based solely upon time in business, without providing benefit or protection to customers and, in fact, would facilitate many of the adverse consequences that the Commission is seeking to avoid. By way of example under the proposed rule, if REP #1 and REP #2 each serve the same number of customers, operate prudently, and maintain $1 million in liquid capital, but REP #1 has been operating for 36 months versus 23 months for REP #2, then REP #2 would be forced to cease operations (even if it actually operated more effectively and prudently than REP #1) unless it acquired $2 million of additional liquid capital (a substantial burden not imposed upon REP #1 and which may not be achievable upon satisfactory terms, if at all, under prevailing economic market conditions). This result would not only be fundamentally unfair, discriminatory and impose a substantial competitive disadvantage upon certain REPs, it would serve no tangible benefit or protection for customers or TDUs – contrary to the spirit and purpose espoused by the Commission in establishing the

proposed rule. In fact, it may likely harm those groups for the very reasons stated in the preamble to the proposed rule, and have additional adverse consequences for the competitive retail electric market which are of concern to the Commission, namely, loss of consumer confidence, reduced competition, higher customer rates, contribution to market instability, and the potential for market entrants being dissuaded due to perceived financial instability of market participants or concerns that subsequent rule changes after their market entry could adversely impact their business models. It is important to further note that existing REPs have entered the Texas competitive market in good faith with the reasonable expectations that similarly situated REPs would be treated fairly and equally, with the same opportunity to compete on a level playing field. As stated in the Nelson Memo, the Commission's goals of customer protection can be achieved "without unnecessarily forcing existing REPs out of the market." Bounce Energy believes that its proposed modification to section (f)(1)(B)(iii) will help achieve that goal.

Proposed Modification to Section (f)(1)(C)

In order to reduce the potential adverse impact upon existing REPs resulting from the new financial requirements under the proposed rule, a period of time for REPs to establish compliance has been provided. Bounce Energy proposes that, in order to more effectively protect existing REPs from these adverse consequences, including a death penalty, that the period of time required to establish compliance be lengthened from six (6) months to eighteen (18) months. This additional time will likely be necessary for impacted REPs to prudently obtain additional capital required by the proposed rule, without suffering harsh or unfavorable terms. Current prevailing and projected economic market conditions for obtaining equity and/or debt financings are extremely unfavorable. This is evidenced by the recent insolvency of several Fortune 500 companies, the U.S. government bailout of major financial institutions, and the substantial difficulties encountered by businesses, including companies with investment-grade credit ratings and substantial tangible net worth, to obtain credit or other financing upon favorable terms, if at all. It must also be noted that, for any company seeking capital financing, an impending deadline for obtaining such capital will significantly weaken the negotiating leverage of that company and will likely result in the undervaluation of its business relative to the terms of such financing transaction. Applying this concept to REPs seeking to establish

compliance with new financial requirements under the proposed rule, the failure to lengthen the short six (6) month deadline may force REPs to obtain capital, if available, upon unnecessarily costly and unfavorable terms, for the sole purpose of compliance with the proposed rule (and potentially without regard as to whether the REP is prudently managed if (f)(1)(B) of the proposed rule is not modified as proposed above).

An example to further illustrate this point is as follows: if REP #1 and REP #2 have continuously and prudently operated prior to the new financial requirements with $900,000 in liquid capital (except that REP #1 has operated for 30 months while REP #2 has operated for 16 months), then in order for REP #2 not to be forced to cease operations, it would have to obtain $2.1 million in additional capital within a six (6) months timeframe, while REP #1 would only have to obtain $100,000 (even though REP #2 is more prudently and efficiently managed). This would have an immediate adverse impact upon REP #2, create significant competitive advantages for REP #1 (with no corresponding customer protection benefits), and may likely result in the very same detriments to customers, TDUs, and the overall competitive market, that the Commission seeks to avoid by establishing the proposed rule.

For the reasons stated above, lengthening from six (6) to eighteen (18) months the period of time under section (f)(1)(C) required by existing REPs to establish compliance with the new financial requirements of the proposed rule will better enable the Commission to achieve its stated customer protection and other goals without unnecessarily forcing prudently operated REPs out of the market or adversely impacting these REPs.

Comments to Sections (f)(2) and (f)(3)(A), (B)

Bounce Energy believes that, with regard to sections (f)(2)(A) and (B) relating to protection of customer deposits, all REPs should be treated equally on the same basis and manner, and that REPs certified under section (f)(1)(B) should be entitled to maintain customer deposits in restricted cash accounts as are REPs certified under (f)(1)(A). As current economic conditions have shown, even companies with investment-grade credit ratings and substantial tangible net worth are not immune to financial insolvency.

For similar reasons, TDU deposit requirements as prescribed under Section (f)(3)(A) and (B) of the proposed rule should also treat REPs on a fair and equal basis, and no REPs (whether certified under (f)(1)(A) or (B)) should be required to pay deposits or provide other types of security to TDUs. If deposit or security requirements must be maintained, Bounce Energy believes that such requirements and amounts be clearly and specifically set forth in the proposed rule. Otherwise, all REPs (or as currently set forth in the proposed rule, only certain REPs) will be negatively impacted due to lack of certainty (as well as other considerations) if the size of deposit, type of security and other factors are prescribed and subject to changes at any time pursuant to the TDU's tariff for retail electric service. Such uncertainties and inequalities may serve to undermine the stability of REP market participants and the overall competitive retail electric market, as well as potentially resulting in higher electricity rates and competitive disadvantages and additional financial burdens being imposed upon some, but not all, REPs.

Other Considerations

Bounce Energy believes that, in concurrence with the statements made by Commissioner Anderson in his October 8, 2008 Memorandum to the Commission (Anderson Memo), many of the issues for which rulemaking are addressed under the proposed rule can be resolved by the adoption of rules under the Providers of Last Resort (POLR) Project providing adequate protections to retail customers that are involuntarily transferred to a POLR solely because of the insolvency of a REP. These rules should include, as further noted in the Anderson Memo, the more rapid transfer of customer accounts to and from their respective POLRs and ultimately to their desired REPs, clear and effective disclosures to customers affected by a REP insolvency so that customers can make timely and informed decisions, and reasonable price protections for the limited period necessary for customers to be transferred to the REP of their choice.

As noted above, neither customers nor the competitive market overall will benefit by forcing prudently operated REPs out of the market, or by creating competitive disadvantages and disincentives by arbitrarily or unnecessarily imposing additional financial and other burdens upon some, but not all, existing REPs in the market. Bounce Energy strongly believes that the incorporation of its proposed modifications to the financial certification requirements, customer deposits, and TDU security and deposit requirements contained in the proposed rule will

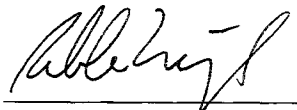
maintain the retail customer protections sought to be achieved by the Commission without creating an unnecessary, adverse impact upon existing REPs, which will thereby in total benefit and strengthen the stability and competitive attributes of the overall retail electric market in Texas.

Request for Incorporation of Proposed Modifications

Bounce Energy wishes to thank the Commission for the opportunity to provide comments to the proposed rule and respectfully requests that the Commission take these comments into consideration and incorporate the alternative modifications presented herein into the proposed rule.

Respectfully Submitted,

Bounce Energy, Inc.



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