



Control Number: 38395



Item Number: 3

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DOCKET NO. 38395

AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO BOUNCE ENERGY INC.'S VIOLATION OF PURA §§ 17.004 AND 39.101 AS WELL AS P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479 AND 25.480, CONCERNING CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE, AND 25.107, CONCERNING CERTIFICATION OF RETAIL ELECTRIC PROVIDERS	§ § § § § § § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS <small>RECEIVED AUG 10 PM 2:11 PUBLIC UTILITY COMMISSION FILED CLERK</small>
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**AMENDED APPLICATION FOR
APPROVAL OF SETTLEMENT AGREEMENT**

Staff of the Public Utility Commission of Texas (Staff) files this Amended Application for Approval of Settlement Agreement and would show in support as follows:

Staff filed an Application for Approval of Settlement Agreement on July 8, 2010, which included a copy of the Settlement Agreement and a Proposed Order. The Proposed Order, however, included a typographical error that merged findings of fact 10 and 11. An Amended Proposed Order is included in this Amended Application correcting that error.

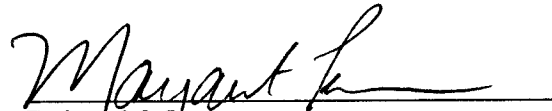
WHEREFORE, Staff respectfully requests that its Amended Application for Approval of Settlement Agreement be granted.

Dated: August 10, 2010

Respectfully Submitted,

Thomas S. Hunter
Division Director
Legal Division

Keith Rogas
Deputy Division Director
Legal Division

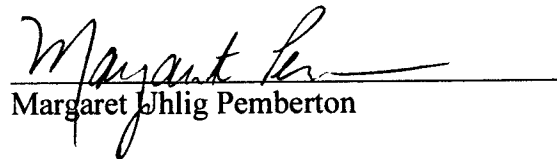


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DOCKET NO. 38395

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 10th day of August 2010 in accordance with P.U.C. Procedural Rule 22.74.



Margaret Uhlig Pemberton

**ATTACHMENT
DOCKET NO. 38395**

AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT RELATING TO BOUNCE ENERGY INC.'S VIOLATION OF PURA §§ 17.004 AND 39.101 AS WELL AS P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479 AND 25.480, CONCERNING CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE, AND 25.107, CONCERNING CERTIFICATION OF RETAIL ELECTRIC PROVIDERS	§ § § § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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AMENDED PROPOSED ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order approves the Settlement Agreement and Report to Commission (Agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Bounce Energy Inc. (Bounce or Company) (together, Parties) regarding Staff's investigation of Company for violation of PURA¹ §§ 17.004 and 39.101 as well as P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479, 25.480, concerning customer protection rules for retail electric service, and 25.107, concerning certification of retail electric providers. This docket was processed in accordance with applicable statutes and Commission rules. The Agreement resolves all issues in this docket. The Agreement is unopposed and provides for a reasonable resolution to the issues in this docket.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. Bounce is a retail electric provider (REP), Certificate Number 10162, pursuant to P.U.C. SUBST. R. 25.107.
2. The Commission instituted a compliance audit program to determine each REP's compliance with the Commission's customer protection rules (P.U.C. SUBST. R. 25.471-498), as well as provisions of PURA (§§ 17.001-17.158 and 39.101-116). Staff reviews

¹ Public Utility Regulatory Act, TEX. UTIL CODE §§ 11.001-66.016 (Vernon 2007 & Supp. 2009) (PURA).

each REP's business practices and supporting documentation to ensure compliance with the customer protection rules and the statute.

3. A compliance audit concluded by the Staff in 2010 revealed that Bounce was not in full compliance with a number of provisions of the Commission's customer protection rules for retail electric service, which are as follows:
 - a. P.U.C. SUBST. R. 25.473(d) relating to dual language requirements. The Company was not providing both an English and Spanish version of the Your Rights as a Customer (YRAC) document to all customers, but was only providing a Spanish version to customers selecting Spanish as their language of choice and only an English version to customers selecting English as their language of choice.
 - b. P.U.C. SUBST. R. 25.474(d)(3) relating to enrollment via the internet. The Company's website did not include an explanation that a move in or switch can only be made by the applicant or authorized agent.
 - c. P.U.C. SUBST. R. 25.474(d)(11) relating to enrollment confirmation via email for Internet enrollments. The Company was not including all required information regarding rescission of enrollment in the case of a switch or the YRAC with their confirmation email.
 - d. P.U.C. SUBST. R. 25.475(c)(2) relating to general contracting requirements. The Company's Terms of Service document (TOS) only made reference to the Electricity Facts Label (EFL) and did not specifically disclose on the TOS the type of product being described using one of the terms: fixed rate product, indexed product, or variable price product.
 - e. P.U.C. SUBST. R. 25.475(d)(2) relating to price changes. The Company's residential bill for a variable rate product did not indicate how to obtain information about the price that will apply on the next bill.
 - f. P.U.C. SUBST. R. 25.475(e)(2) relating to affirmative consent. The Company was not, indicating the identification number of the TOS or Electricity Fact Label (EFL) during the telephonic re-enrollment process.
 - g. P.U.C. SUBST. R. 25.475(h) relating to YRAC disclosure. The Company did not list all customer rights and protections relating to disconnection in the YRAC.

- h. P.U.C. SUBST. R. 25.479(c)(1) relating to bill content. The Company did not identify a toll free number for questions or complaints. The Company also, for one of its TDU service areas, only provided a local telephone area code instead of a toll free number to report outages.
 - i. P.U.C. SUBST. R. 25.480(j) relating to deferred payment plans. The Company failed to confirm deferred payment plans in writing.
 - j. P.U.C. SUBST. R. 25.107(j) relating to suspension and revocation. Staff identified certain deficiencies listed in this paragraph 3 that were not self-identified in the Company's affidavit.
- 4. On or about April 12, 2010, Bounce was provided proper notice of Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
 - 5. Bounce fully cooperated in good faith with Staff's investigation and responded to all inquiries and requests in a prompt and timely manner.
 - 6. Bounce acknowledges the deficiencies which are subject to the investigation detailed in this Order.
 - 7. Bounce participated in one or more settlement discussions with Staff, the purpose of which was to amicably resolve this matter, which was the subject of the investigation and is described herein.
 - 8. Prior to settlement of this matter, Bounce corrected all of the deficiencies that form the basis this agreement and Staff will not initiate any further inquiry or enforcement action related to the subject matter of this Agreement that occurred on or before the date the Agreement was executed.
 - 9. On June 29, 2010, the Parties entered into the Agreement resolving all matters as described herein. Staff recommended, and Bounce voluntarily agreed to pay an administrative penalty of \$28,000.
 - 10. The Agreement provides for a reasonable resolution of this dispute.
 - 11. The Agreement is in the public interest.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 15.023, 15.024, 17.004, and 39.101.
2. Bounce is a retail electric provider for purposes of PURA §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479 and 25.480.
3. As a retail electric provider, Bounce is required to comply with the customer protection standards established by PURA §§ 17.004, and 39.101, as well as P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479, 25.480 and 25.107.
4. The Agreement referenced in Finding of Fact numbers 9-11 is a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).
5. Bounce was provided proper notice of Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
6. PURA § 17.004 establishes customer protection standards, stating, among other things, that all buyers of retail electric services are entitled to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices.
7. PURA § 39.101 establishes customer safeguards, stating, among other things, that a customer is entitled to be protected from unfair, misleading, or deceptive practices.
8. Pursuant to this legislative mandate, the Commission implemented the customer protection standards found in P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479 and 25.480.
9. Bounce allegedly violated PURA §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.473, 25.474, 25.475, 25.479, 25.480 and 25.107.
10. If the violations listed in Paragraph 9 occurred, the violations at issue would not be considered "significant" for purposes of P.U.C. SUBST. R. 25.107(j).P.U.C.
11. PROC. R. 22.246(g)(1)(A),(B) and (C) requires issuance of a report of a settlement to the Commission and a written order that approves the settlement.
12. The Agreement by Bounce and Commission Staff to settle is reasonable.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement is approved.
2. Bounce shall pay an administrative penalty to the Commission in an amount totaling \$28,000 no later than thirty (30) calendar days after the date of this order. Payment shall be made by check payable to the Public Utility Commission of Texas with this docket number referenced and sent to: ATTN: Fiscal Services, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711.
3. Bounce shall continue to make efforts to comply with the Commission's customer protection requirements.
4. Bounce shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
5. Commission approval of the Agreement shall fully and finally resolve all matters described in the Agreement and this Order.
6. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
7. Entry of this order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Neither should the entry of an order consistent with the Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
8. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the ____ day of _____

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER