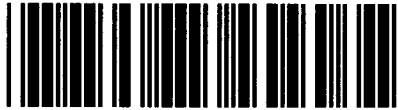




Control Number: 38395



Item Number: 5

Addendum StartPage: 0

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, 25474, 25.475, 25.479, AND §
25480, CONCERNING CUSTOMER §
PROTECTION RULES FOR RETAIL §
ELECTRIC SERVICE AND P.U.C. §
SUBST. R. 25.107, CONCERNING §
CERTIFICATION OF RETAIL §
ELECTRIC PROVIDERS §

BEFORE THE
PUBLIC UTILITY COMMISSION

OF TEXAS

RECEIVED
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PUBLIC UTILITY COMMISSION
CLERK

**JOINT EXCEPTIONS
TO THE PROPOSED ORDER**

TO THE HONORABLE COMMISSIONERS AND ADMINISTRATIVE LAW JUDGES:

NOW COMES Bounce Energy, Inc. ("Bounce") and Staff of the Public Utility Commission of Texas ("Staff"), (together, "Parties"), and pursuant to PUC Docket Management's memo dated August 11, 2010 in the above-reference proceeding, files these Exceptions to the Proposed Order attached to that memo on or before Tuesday, August 24, 2010, and in support thereof would respectfully show as follows:

SUMMARY OF PARTIES' EXCEPTIONS

The Parties to this proceeding entered into a Settlement Agreement which included a Proposed Order and was signed by representatives of both Parties. Staff filed an Application for Approval of the Settlement Agreement on July 8, 2010. Due to a typographical error in the Proposed Order, Staff subsequently filed an Amended Application for Approval of the Settlement Agreement on August 10, 2010 which included an amended version of the Proposed Order which correctly reflects the Settlement Agreement entered into by the Parties. The next day, on August 11, 2010, PUC Docket Management issued a memo with a Proposed Order for consideration by the Commission. The Proposed Order attached to the August 11, 2010 memo is not consistent with the Settlement Agreement agreed to by the Parties. Accordingly, the Parties jointly file these Exceptions.

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PARTIES' JOINT EXCEPTIONS

The Parties to this proceeding jointly file these exceptions to the Proposed Order on the grounds that the Proposed Order attached to PUC Docket Management's memo dated August 11, 2010 does not accurately reflect the Settlement Agreement negotiated by the Parties. The Parties request that the Proposed Order be changed so that Findings of Fact 5, 6, 8 & 9 and Conclusion of Law 9 read as stated in Attachment A to this pleading.

CONCLUSION

The Parties urge the Commission to approve the Settlement Agreement and issue an Order in this proceeding that is consistent with that Settlement Agreement by approving the Proposed Order issued on August 11, 2010 with the changes requested above.

Respectfully submitted,

SMITH TROSTLE LLP
707 West Avenue, Ste. 202
Austin, Texas 78701
(512) 494-9500
(512) 494-9505 – Fax

By: *Miguel A. Huerta*
Miguel A. Huerta
State Bar No. 00787733

ATTORNEYS FOR BOUNCE ENERGY, INC.

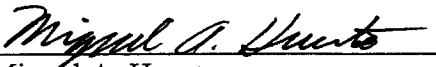
PUC Legal Division
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7290
(512) 936-7268 – Fax

By: *Miguel A. Huerta by permission for*
Robert M. Long
State Bar No. 12525500

**ATTORNEYS FOR STAFF OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2010, a true and correct copy of the foregoing document is being served via facsimile, U.S. mail and/or hand delivery to all parties of record.


Miguel A. Huerta

Attachment A

Requested Changes to Proposed Order

DOCKET NO. 38395

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO BOUNCE ENERGY,	§	OF TEXAS
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 P.U.C.	§	
SUBST. R. 25.107, CONCERNING	§	
CERTIFICATION OF RETAIL	§	
ELECTRIC PROVIDERS	§	

PROPOSED ORDER

Pursuant to P.U.C. PROC. R. 22.246(g)(1)(C), this Order addresses the Settlement Agreement and Report to Commission (Agreement) between the Public Utility Commission of Texas (Commission) Staff and Bounce Energy, Inc. (Bounce) (collectively, Parties) regarding Commission Staff's investigation of Bounce for violations of PURA¹ §§ 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 P.U.C. SUBST. R. 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. Commission Staff recommended an administrative penalty of \$28,000. Bounce agreed to pay the recommended administrative penalty. The Agreement is approved.

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 No. 10162, pursuant to P.U.C. SUBST. R. 25.107.

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

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. 25.471-25.498), as well as provisions of PURA §§ 17.001-17.158 and 39.101-39.116. Commission Staff reviewed each REP's business practices and supporting documentation to ensure compliance with the Commission's customer protection rules and PURA.

3. A compliance audit concluded by the Commission's Oversight and Enforcement Division in 2010 revealed that Bounce was not in full compliance with several provisions of the Commission's customer protection rules for retail electric service, including the following:
 - a. P.U.C. SUBST. R. 25.474(d) relating to dual language requirements. Bounce 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 Bounce 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. Bounce 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. Bounce'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. Bounce'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. Bounce was not indicating the identification number of the TOS or EFL during the telephonic

- re-enrollment process;
- g. P.U.C. SUBST. R. 25.475(h) relating to YRAC disclosure. Bounce 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. Bounce did not identify a toll free number for questions or complaints. Bounce 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. Bounce failed to confirm deferred payment plans in writing; and
 - 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 Commission Staff's investigation in this matter, the results of the investigation, information about the right to a hearing, and an opportunity to explain its activities.
5. Bounce fully cooperated in good faith with Commission Staff's investigation and responded to all inquiries in a prompt and timely manner.
6. Bounce ~~acknowledged~~ acknowledges the ~~violations~~ deficiencies detailed in this Order.
7. Bounce participated in one or more settlement discussions with Commission Staff to resolve this matter.
8. Prior to settlement of this matter, Bounce corrected all of the alleged deficiencies that form the basis of this agreement and Staff will not initiate any further inquiry or enforcement action related to the subject matter of this investigation that occurred on or before the date the related Agreement was executed.

9. On June 29, 2010, the Parties filed an Agreement in this docket in which Commission Staff recommended and Bounce agreed to pay an administrative penalty of \$28,000 for the ~~violations~~ deficiencies described herein. On July 8, 2010, Commission Staff clarified Bounce as the correct entity for which this proceeding comprises.
10. The Agreement provides for a reasonable resolution of this dispute.
11. The Agreement is in the public interest and should be approved.

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 REP for purposes of PURA §§ 17.004 and 39.101, as well as P.U.C. SUBST. R. 25.473, 25.474, 25.475 and 25.479, and 25.480.
3. As a REP, 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, and 25.480, and 25.107.
4. The Agreement referenced in Finding of Fact Nos. 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 Commission Staff's investigation in this matter, the results of the investigation, information about the 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, and 25.480, and 25.107.
10. If the violations listed in Finding of Fact No. 9 occurred, the violations at issue would not be considered “significant” for purposes of P.U.C. SUBST. R. 25.107(j).
11. P.U.C. PROC. R. 22.246(g)(1)(A), (B), and (C) require issuance of a report of a settlement to the Commission and a written order that approves the settlement.
12. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

1. The Agreement, attached to this Order as Attachment 1, is approved, and the Parties shall be bound by its terms.
2. Bounce shall pay an administrative penalty to the Commission in the amount of \$28,000. Bounce shall remit payment of the full amount of the administrative penalty on or before 30 calendar days after the date this Order is signed. Payment of the administrative penalty shall be made by check payable to the Public Utility Commission of Texas and shall reference Docket No. 38395. The check shall be sent to the following address:

Public Utility Commission of Texas,
P.O. Box 13326,
Austin, Texas 78711
ATTN: Fiscal Services

3. Bounce shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. Bounce shall continue to make efforts to comply with the Commission's customer protection requirements.
5. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
7. 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 September 2010.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER

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