



Control Number: 38395



Item Number: 8

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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 P.U.C. §  
SUBST. R. 25.107, CONCERNING §  
CERTIFICATION OF RETAIL §  
ELECTRIC PROVIDERS §

PUBLIC UTILITY COMMISSION  
OF TEXAS

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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 PURA<sup>1</sup> §§ 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.

<sup>1</sup> 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 acknowledges the 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 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:

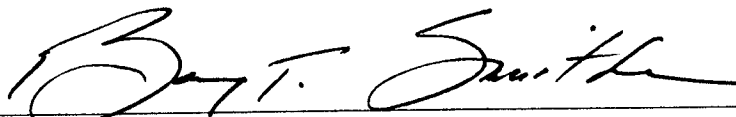
Public Utility Commission of Texas,  
P.O. Box 13326,  
Austin, Texas 78711  
ATTN: Fiscal Services

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 2<sup>nd</sup> day of September 2010.

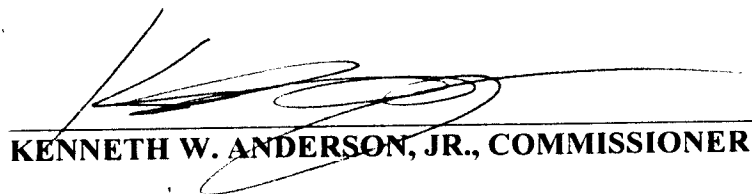
**PUBLIC UTILITY COMMISSION OF TEXAS**



**BARRY T. SMITHERMAN, CHAIRMAN**



**DONNA L. NELSON, COMMISSIONER**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



ATTACHMENT 1

FILED

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DOCKET NO. 38395

REGISTRATION  
FILING CLERK

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION  OF TEXAS
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	§	

**SETTLEMENT AGREEMENT AND REPORT TO COMMISSION**

Staff of the Public Utility Commission of Texas (Commission) and Bounce Energy, Inc. (Bounce or the Company) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes the investigation of the Company for violation of PURA<sup>1</sup> § 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. The investigation was initiated as part of a compliance audit program applicable to all retail electric providers (REP) as instituted by the commission.

**The Parties agree as follows:**

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Staff recommended, and Bounce voluntarily agrees to pay, an administrative penalty of \$28,000 for the deficiencies committed by Bounce as described in the attached Proposed Order.

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

3. Since receiving the results of the Commission's compliance audit which identified the deficiencies that form the basis of the settlement agreement, Bounce has voluntarily taken corrective actions to come into compliance with the Commission's statutory and regulatory requirements relating to customer protection.

4. Unless specifically provided for in this Agreement, Bounce waives any notice and procedures that might otherwise be authorized or required in this proceeding.

5. Nothing in this Agreement shall limit the Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.

6. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.

7. This Agreement is entered into by the Parties in order to avoid the potential for expensive and protracted litigation, the outcome of which would be uncertain. The payment of the administrative penalty or anything in this Agreement shall not be construed as an admission of liability by Bounce.

8. The Parties contemplate that this Agreement will be approved pursuant to P.U.C. PROC. R. 22.246(g)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under

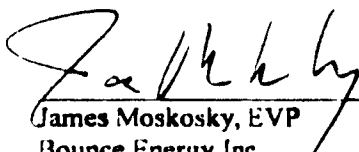
law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

9. This Agreement is the final and entire agreement between the Parties regarding its terms and supersedes all other communications among the Parties or their representatives regarding its terms.

10. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

11. The Company warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

**EXECUTED** by the Parties by their authorized representatives designated below.

  
James Moskosky, EVP  
Bounce Energy Inc.  
2802 Albany St.  
Houston, TX 77006

Date: 6/22/2010

Michael E. Field

Michael E. Field  
Director  
Oversight and Enforcement Division  
Public Utility Commission of Texas

Date: 2/29/2010