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DOCKET NO. 51277



AGREED NOTICE OF VIOLATION §
AND AGREEMENT RELATING TO §
DIRECT ENERGY, LP, FIRST §
CHOICE POWER, LLC, AND §
BOUNCE ENERGY, INC.'S §
VIOLATIONS OF PURA § 39.101 AND §
16 TAC §§ 25.474, 25.475, AND 25.483 §

PUBLIC UTILITY COMMISSION
OF TEXAS

**ORDER NO. 1
REQUIRING ADDITIONAL INFORMATION**

In this matter, Commission Staff and Direct Energy, LP seek Commission approval of an agreement between them regarding alleged violations by Direct Energy, First Choice Power, LLC, and Bounce Energy, Inc. Commission Staff and Direct Energy agree that Direct Energy should pay an administrative penalty of \$250,000.

Before processing of this matter can proceed, the administrative law judge (ALJ) requires further explanation and clarification of the following issues:

- **The legal relationship between Direct Energy, First Choice Power, and Bounce Energy**
 - What is the legal relationship between these three entities?
 - Should First Choice Power be a party to the agreement and this proceeding?
 - Is there a successor in interest to Bounce Energy that should be a party to the agreement and this proceeding?
 - How does Direct Energy have the legal authority to admit to and attempt settle alleged violations committed by First Choice Power and Bounce Energy? How are such admissions binding upon First Choice Power or Bounce Energy?
 - The agreement states, "Direct Energy and its representatives are authorized to agree to and execute this settlement agreement on behalf of First Choice Power." Is there evidence of a delegation of such authority from First Choice Power in the record of this case? If, in fact, First Choice Power has

delegated authority for Direct Energy to act on its behalf, should not First Choice Power still be a party to this case?

- How can a final order in this proceeding resolve violations by an entity that is not a party to this proceeding?

- **Direct Energy's alleged violations**

- What is the specific time period within which the alleged 287 violations occurred?
- Is Commission Staff claiming that the alleged 287 violations constituted violations of:
 - 16 Texas Administrative Code (TAC) § 25.474(e) (for failure to enroll customers by a written letter of authorization authorized and verified by the customer); or
 - 16 TAC § 25.474(e)(9) (for failure to immediately provide to each customer a legible copy of the customer's signed letter of authorization);
 - or both?
 - or something else?
- Is Commission Staff alleging additional violations by Direct Energy for failing to maintain "signed letters of authorization on file"?

- **First Choice Energy's alleged violations**

- What is the specific time period within which the alleged violations regarding authorized pay stations occurred?
- Has Commission Staff identified a specific number of alleged violations regarding authorized pay stations?
- What is the specific time period within which the alleged violations regarding letters of authorization occurred?

- Is Commission Staff claiming that the alleged 2,067 violations related to letters of authorization constituted violations of:
 - 16 Texas Administrative Code (TAC) § 25.474(e) (for failure to enroll customers by a written letter of authorization authorized and verified by the customer); or
 - 16 TAC § 25.474(e)(9) (for failure to immediately provide to each customer a legible copy of the customer's signed letter of authorization);
 - or both?
 - or something else?
- **Notice**
 - Were First Choice Energy and any successor to Bounce Energy entitled to notice of this proceeding? Were they provided any notice?
- **Ordering Paragraphs**
 - How can the Commission order First Choice Power to comply with the agreement and Order, if First Choice Power is neither a signatory to the agreement nor a party to this proceeding?
 - Under what legal authority may the Commission hold First Choice Power jointly and severally liable for obligations in the Order?
 - If only Direct Energy is paying the administrative penalty, what is the purpose of the joint and several liability ordering paragraph?

By October 13, 2020, Commission Staff must, and Direct Energy may, provide briefing responding to these questions.

Signed at Austin, Texas the 22nd day of September 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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