

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4 RAD REFERRAL: 18L-27

5 DATE REFERRED: August 6, 2018

6 DATE OF NOTIFICATION: August 6, 2018

7 DATE ACTIVATED: January 5, 2019

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10 ELECTION CYCLE: 2018

11 EXPIRATION OF SOL: December 22, 2022

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13 **SOURCE:** Internally Generated

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15 **RESPONDENT:** PowerPac.org

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17 **RELEVANT STATUTES** 52 U.S.C. § 30104(c)
18 **AND REGULATIONS:** 52 U.S.C. § 30104(g)(1)
19 11 C.F.R. § 109.10

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22 **INTERNAL REPORTS CHECKED:** Disclosure Reports

23
24 **FEDERAL AGENCIES CHECKED:** None

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26 **I. INTRODUCTION**

27 The Reports Analysis Division ("RAD") referred PowerPac.org ("PowerPac") to the
28 Office of General Counsel for failing to file a 24-Hour Report to support an independent
29 expenditure totaling \$75,023.67 disclosed on its 2017 Year-End Report.¹ For the reasons set out
30 below, we recommend that the Commission open a MUR, find reason to believe that PowerPac
31 violated 52 U.S.C. § 30104(g)(1) by failing to file a 24-Hour Report, and authorize pre-probable
32 cause conciliation.

¹ RR 18L-27 (PowerPac.org) (Aug. 6, 2018).

1 **II. FACTUAL BACKGROUND**

2 Founded in 2005, PowerPac is a tax-exempt entity organized under section 501(c)(4) of
3 the Internal Revenue Code.² PowerPac is not registered with the Commission as a political
4 committee. On December 2, 2017, PowerPac made an independent expenditure in the amount of
5 \$75,023.67 in support of Doug Jones, the Democratic candidate in the 2017 Alabama Senate
6 Special General Election held on December 12, 2017.³ PowerPac did not file a 24-Hour Report
7 disclosing this independent expenditure.

8 After the election, on December 18, 2017, PowerPac's controller, Lisa Le, notified RAD
9 that the organization failed to file a 24-Hour Report for the independent expenditure made on
10 December 2, 2017. RAD advised her to file the 24-Hour Report as soon as possible.⁴

11 On December 22, 2017, PowerPac filed a 24-Hour Report for an independent expenditure
12 totaling \$75,000 for "Persuasion phone banking – ESTIMATED costs," which was disseminated
13 on December 2, 2017.⁵ In its 2017 Year-End Report filed on January 31, 2018, PowerPac
14 reported spending \$75,023.67 for the independent expenditure that was disseminated on
15 December 2, 2017.⁶

² See PowerPac, Form 990 at 1 (FY 2016).

³ See RR 18L-27 at 1; The Alabama Senate Special General Election was held on December 12, 2017. See *State of Alabama, Canvass of Results for the Special General Election Held on December 12, 2017*, <https://www.sos.alabama.gov/sites/default/files/voter-pdfs/2017%20Official%20General%20Election%20Results%20with%20Write-In%20Appendix%20-%202017-12-28.pdf>.

⁴ RR 18L-27 at 1.

⁵ PowerPac, 24-Hour Report at 3 (Dec. 22, 2017). Also on this day, PowerPac filed a second 24-Hour Report for a \$10,000 independent expenditure that was disseminated on December 12, 2017. PowerPac, 24-Hour Report at 3 (Dec. 22, 2017).

⁶ PowerPac, 2017 Year-End Report at 13 (Jan. 31, 2018).

1 On April 16, 2018, RAD sent PowerPac an RFAI referencing the 2017 Year-End Report,
2 noting that the 24-Hour Report for the December 2, 2017, independent expenditure was filed
3 late.⁷ PowerPac responded on May 21, 2018, by filing an FEC Form 99 (Miscellaneous
4 Electronic Submission) where it acknowledged that the 24-Hour Report for the independent
5 expenditure was filed late.⁸ Further, in this filing, PowerPac's controller offered an explanation
6 for the late report, explaining that a Get-Out-The-Vote ("GOTV") phone bank was changed to
7 phone calls to persuade individuals to vote for Doug Jones, but staff failed to notify her of the
8 change until after the election.⁹

9 III. LEGAL ANALYSIS

10 Committees that are not currently reporting to the Commission as political committees
11 within the meaning of the Federal Election Campaign Act of 1971, as amended (the "Act"), must
12 file disclosure reports with the Commission when they make independent expenditures that
13 aggregate in excess of \$250 during a calendar year with respect to a given election.¹⁰ Depending
14 on the amount and timing of the expenditures, a person may have to file a 24- or 48- hour report
15 of independent expenditures. Specifically, if the person makes independent expenditures
16 aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th
17 day before the election, the entity must file a 48-Hour Report disclosing those expenditures.¹¹ If

⁷ See RFAI, 2017 Year-End Report (Apr. 16, 2018).

⁸ PowerPac, FEC Form 99 (Miscellaneous Electronic Submission) (May 21, 2018).

⁹ *Id.*

¹⁰ 52 U.S.C. § 30104(c)(1). An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. *Id.* § 30101(17).

¹¹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The person must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000 relating to the same election. 52 U.S.C. § 30104(g)(2)(B).

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1 the person makes independent expenditures aggregating \$1,000 or more with respect to a given
2 election after the 20th day before the date of an election, but more than 24 hours before the date
3 of the election, the person must file a 24-Hour Report disclosing those expenditures.¹²

4 In addition, if the person spends in excess of \$250 on independent expenditures during a
5 calendar year with respect to a given election, that person must also file a quarterly report for any
6 quarterly period in which the independent expenditures exceed \$250 and any subsequent
7 quarterly period during that calendar year when additional independent expenditures are made.¹³

8 In this matter, PowerPac failed to file a 24-Hour Report for an independent expenditure
9 totaling \$75,023.67 made in connection with a federal election. PowerPac suggests that its
10 failure to file the required report was because the group initially planned to make GOTV calls
11 and instead made calls expressly advocating the election of Doug Jones. PowerPac did not
12 respond to the Referral, but acknowledged in its communications with RAD that it failed to
13 timely file the required 24-Hour Report. Accordingly, we recommend that the Commission find
14 reason to believe that PowerPac violated 52 U.S.C. § 30104(g)(1).¹⁴

¹² 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The person must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000 relating to the same election. 52 U.S.C. § 30104(g)(1)(B).

¹³ See 52 U.S.C. § 30104(c)(2); 11 C.F.R. § 109.10(b).

¹⁴ In its filings with the Commission, PowerPac reported making \$29,170 in independent expenditures in the 2014 election cycle, none in the 2016 cycle, and \$104,286 in the 2018 cycle. See PowerPac, Independent Expenditures, 2013-2014, 2015-2016, 2017-2018 (regularly scheduled reports). PowerPac reported no electioneering communications during these time periods. In publicly available IRS reports, PowerPac disclosed spending \$1,671,486 in fiscal year 2014, \$1,939,855 in fiscal year 2015, and \$4,065,815 in fiscal year 2016. See PowerPac, Form 990 at 1 (FYs 2014, 2015, 2016). Its 2017 Form 990 is not publicly available.

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V. RECOMMENDATIONS

1. Open a MUR in 18L-27;
2. Find reason to believe that PowerPac.org violated 52 U.S.C. § 30104(g)(1);
3. Enter into conciliation with PowerPac.org prior to a finding of probable cause to believe;
5. Approve the attached Factual and Legal Analysis;
6. Approve the attached Conciliation Agreement; and
7. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

4/3/19
Date

Stephen Gura by LG/T
Stephen A. Gura
Deputy Associate General Counsel for Enforcement

Lyn Tran
Lynn Y. Tran
Assistant General Counsel

Jonathan A. Peterson
Jonathan A. Peterson
Attorney

Attachments:

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** PowerPac.org

MUR: _____

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5 **I. INTRODUCTION**

6
7 This matter was generated by information ascertained by the Federal Election
8 Commission (the "Commission") in the normal course of carrying out its supervisory
9 responsibilities.¹ The Reports Analysis Division ("RAD") referred PowerPac.org ("PowerPac")
10 to the Office of General Counsel for failing to file a 24-Hour Report to support an independent
11 expenditure totaling \$75,023.67 disclosed on its 2017 Year-End Report.² For the reasons set out
12 below, the Commission finds reason to believe that PowerPac violated 52 U.S.C. § 30104(g)(1)
13 by failing to file a 24-Hour Report.

14 **II. FACTS**

15 Founded in 2005, PowerPac is a tax-exempt entity organized under section 501(c)(4) of
16 the Internal Revenue Code.³ PowerPac is not registered with the Commission as a political
17 committee. On December 2, 2017, PowerPac made an independent expenditure in the amount of
18 \$75,023.67 in support of Doug Jones, the Democratic candidate in the 2017 Alabama Senate
19 Special General Election held on December 12, 2017.⁴ PowerPac did not file a 24-Hour Report
20 disclosing this independent expenditure.

1 ¹ See 52 U.S.C. § 30109(a)(2).

2 ² RR 18L-27 (PowerPac.org) (Aug. 6, 2018).

3 ³ See PowerPac, Form 990 at 1 (FY 2016).

4 ⁴ See RR 18L-27 at 1; The Alabama Senate Special General Election was held on December 12, 2017. See *State of Alabama, Canvass of Results for the Special General Election Held on December 12, 2017*, <https://www.sos.alabama.gov/sites/default/files/voter-pdfs/2017%20Official%20General%20Election%20Results%20with%20Write-In%20Appendix%20-%202017-12-28.pdf>.

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6 on December 2, 2017.⁶ In its 2017 Year-End Report filed on January 31, 2018, PowerPac
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8 December 2, 2017.⁷

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10 noting that the 24-Hour Report for the December 2, 2017, independent expenditure was filed
11 late.⁸ PowerPac responded on May 21, 2018, by filing an FEC Form 99 (Miscellaneous
12 Electronic Submission) where it acknowledged that the 24-Hour Report for the independent
13 expenditure was filed late.⁹ Further, in this filing, PowerPac’s controller offered an explanation
14 for the late report, explaining that a Get-Out-To-Vote (“GOTV”) phone bank was changed to
15 phone calls to persuade individuals to vote for Doug Jones, but staff failed to notify her of the
16 change until after the election.¹⁰

⁵ RR 18L-27 at 1.

⁶ PowerPac, 24-Hour Report at 3 (Dec. 22, 2017).

⁷ PowerPac, 2017 Year-End Report at 13 (Jan. 31, 2018).

⁸ See RFAI, 2017 Year-End Report (Apr. 16, 2018).

⁹ PowerPac, (FEC Form 99) (Miscellaneous Electronic Submission) (May 21, 2018).

¹⁰ *Id.*

1 **III. LEGAL ANALYSIS**

2 Committees that are not currently reporting to the Commission as political committees
3 within the meaning of the Federal Election Campaign Act of 1971, as amended (the "Act"), must
4 file disclosure reports with the Commission when they make independent expenditures that
5 aggregate in excess of \$250 during a calendar year.¹¹ Depending on the amount and timing of
6 the expenditures, a person may have to file a 24- or 48- hour report of independent expenditures.
7 Specifically, if the person makes independent expenditures aggregating \$10,000 or more for an
8 election in any calendar year, up to and including the 20th day before the election, the entity
9 must file a 48-Hour Report disclosing those expenditures.¹² If the person makes independent
10 expenditures aggregating \$1,000 or more with respect to a given election after the 20th day
11 before the date of an election, but more than 24 hours before the date of the election, the person
12 must file a 24-Hour Report disclosing those expenditures.¹³

13 In addition, if the person spends in excess of \$250 on independent expenditures during a
14 calendar year with respect to a given election, that person must also file a quarterly report for any
15 quarterly period in which the independent expenditures exceed \$250 and any subsequent
16 quarterly period during that calendar year when additional independent expenditures are made.¹⁴

¹¹ 52 U.S.C. § 30104(c)(1). An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. *Id.* § 30101(17).

¹² 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The person must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000 relating to the same election. 52 U.S.C. § 30104(g)(2)(B).

¹³ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The person must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000 relating to the same election. 52 U.S.C. § 30104(g)(1)(B).

¹⁴ See 52 U.S.C. § 30104(c)(2); 11 C.F.R. § 109.10(b).

1 In this matter, PowerPac failed to file a 24-Hour Report for an independent expenditure
2 totaling \$75,023.67 made in connection with a federal election. PowerPac suggests that its
3 failure to file the required report was because the group initially planned to make GOTV calls
4 and instead made calls expressly advocating the election of Doug Jones. PowerPac did not
5 respond to the Referral, but acknowledged in its communications with RAD that it failed to
6 timely file the required 24-Hour Report. Accordingly, the Commission finds reason to believe
7 that PowerPac violated 52 U.S.C. § 30104(g)(1).