



is a conciliation agreement for your consideration

If you are interested in engaging in pre-probable cause conciliation, please contact Jonathan A. Peterson, the attorney assigned to this matter, at (202) 694-1525, (800) 424-9530, or [jpeterson@fec.gov](mailto:jpeterson@fec.gov), within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

We look forward to your response.

On behalf of the Commission,



Ellen Weintraub  
Chair

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** PowerPac.org

**MUR:** 7607

4  
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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> PowerPac did not file a 24-Hour Report  
20 disclosing this independent expenditure.

1 <sup>1</sup> See 52 U.S.C. § 30109(a)(2).

2 <sup>2</sup> RR 18L-27 (PowerPac.org) (Aug. 6, 2018).

3 <sup>3</sup> See PowerPac, Form 990 at 1 (FY 2016).

4 <sup>4</sup> 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>.

19044475472

1 After the election, on December 18, 2017, PowerPac's controller, Lisa Le, notified RAD  
2 that the organization failed to file a 24-Hour Report for the independent expenditure made on  
3 December 2, 2017. RAD advised her to file the 24-Hour Report as soon as possible.<sup>5</sup>

4 On December 22, 2017, PowerPac filed a 24-Hour Report for an independent expenditure  
5 totaling \$75,000 for "Persuasion phone banking – ESTIMATED costs," which was disseminated  
6 on December 2, 2017.<sup>6</sup> In its 2017 Year-End Report filed on January 31, 2018, PowerPac  
7 reported spending \$75,023.67 for the independent expenditure that was disseminated on  
8 December 2, 2017.<sup>7</sup>

9 On April 16, 2018, RAD sent PowerPac an RFAI referencing the 2017 Year-End Report,  
10 noting that the 24-Hour Report for the December 2, 2017, independent expenditure was filed  
11 late.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

---

<sup>5</sup> RR 18L-27 at 1.

<sup>6</sup> PowerPac, 24-Hour Report at 3 (Dec. 22, 2017).

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

<sup>8</sup> See RFAI, 2017 Year-End Report (Apr. 16, 2018).

<sup>9</sup> PowerPac, (FEC Form 99) (Miscellaneous Electronic Submission) (May 21, 2018).

<sup>10</sup> *Id.*

100044742001

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

---

<sup>11</sup> 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).

<sup>12</sup> 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).

<sup>13</sup> 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).

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

1004444444

