



**Federal Election Commission  
Washington, DC 20463**

March 13, 2009

Jan Witold Baran, Esq.  
Wiley Rein LLP  
1776 K. St., NW  
Washington, DC 20006

Re: ADR 480 (MUR 5931)  
Sumter Electric Cooperative and James P. Duncan

Dear Mr. Baran:

Enclosed is the signed copy of the agreement resolving the complaint filed on August 8, 2007 with the Federal Election Commission ("FEC/Commission") against Sumter Electric Company, Inc. and James P. Duncan ("Respondents"). The agreement for ADR 480 (MUR 5931) was approved by the Commission on March 11, 2009 – the effective date of the agreement.

Note the specific time frames for compliance in paragraph 12 of the agreement. Please forward to this office, a statement confirming Respondent's compliance with the terms listed in paragraph 9 of the aforementioned agreement. The letter should note the dates on which Respondents satisfied each of the terms listed in paragraph 9 and contain the ADR caption and case number.

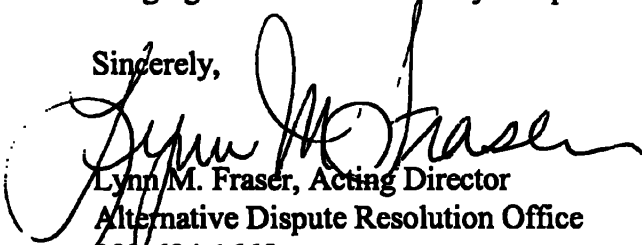
As you are aware, the settlement agreement will be made part of the record that is released to the public. The Commission will also place on the record copies of the complaint, correspondence exchanged between your office and this office prior to our entry into settlement negotiations and reports prepared for the Commission by this office to assist in its consideration of this matter. The Commission is obliged by Federal statute to place on the public record documents in closed enforcement and alternative dispute resolution cases; accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

This agreement resolves the matter that was brought to the attention of the FEC by R. Floyd Suggs regarding an alleged violation of the federal election

29190281125

campaign laws. I appreciate your assistance in effectively resolving this matter and bringing the case to a mutually acceptable conclusion.

Sincerely,



Lynn M. Fraser, Acting Director  
Alternative Dispute Resolution Office  
202-694-1665

Enclosure: Agreement



**Federal Election Commission  
Washington, DC 20463**

Case Number: ADR 480

Source: MUR 5931

Case Name: Sumter Electric Cooperative, Inc.

### **NEGOTIATED SETTLEMENT**

This matter was initiated by a signed, sworn and notarized complaint filed by the International Brotherhood of Electrical Workers, Local 108. Following review of the matter, and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended, (FECA) and resolve this matter, the Commission entered into negotiations with Jan Witold Baran, Esq., representing Sumter Electric Cooperative Inc. (SECO) and James P. Duncan (collectively, the Respondents). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondents addressed the issues raised in this complaint. The parties agree to resolve the matter according to the following terms:

1. The Commission entered into this agreement as part of its responsibility for administering the FECA, and in an effort to promote compliance on the part of Respondents. The Commission's use of alternative dispute resolution procedures (ADR) is guided by "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondents voluntarily enter into this agreement with the Commission.
3. Complainant alleges that Respondents violated the FECA by improperly soliciting employees to make contributions to the Action Committee for Rural Electrification (ACRE), a separate segregated fund established for certain employees. Specifically, the complaint alleges that certain written communications distributed by Respondents' management and ACRE constituted improper solicitations because they failed to inform employees of the political purpose of the ACRE, that all contributions to the fund are voluntary, and that employees have a right to refuse to contribute without reprisal. In addition, the complaint alleges that managers held one-on-one meetings with employees who had withdrawn support of ACRE, and that those meetings were inherently coercive.
4. SECO, an electric distribution cooperative, providing electricity to homes and businesses in seven counties in central Florida asserts that it is a member of the National Rural Electric Cooperative Association

29190281128

(“NRECA”). The NRECA established ACRE, a multi-candidate political action committee, for its affiliated cooperatives’ employees and members.

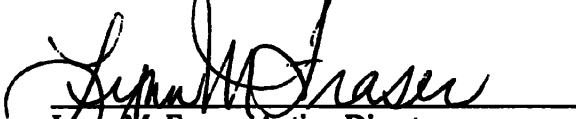
5. Under the FECA, a cooperative, as a membership organization, may solicit contributions for its own separate segregated fund, as well as for a fund connected with an organization with which the cooperative is affiliated from “members and executive or administrative personnel, and their families, of the organization.” 2 U.S.C § 441(b)(4)(C), 11 C.F.R. § 114.7(a). “Executive or administrative personnel” are those employees “who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.” 11 C.F.R. § 114.1(c).
6. The regulations require any solicitation, whether oral or written, to “inform [the] employee or member of the political purposes of the fund at the time of the solicitation” and to “inform the employee or member at the time of such solicitation of his or her right to refuse to so contribute without any reprisal.” 11 C.F.R. §§ 114.5(a)(3), (4), (5). If a contribution guideline is suggested, then a solicitation, whether oral or written, must indicate that such a guideline is a suggestion and that “an individual is free to contribute more or less than the guidelines suggest and the corporation or labor union will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.” 11 C.F.R. §§ 114.5(a)(2), (5).
7. Respondents contend, after reviewing the solicitation procedures and internal records, that they may have unwittingly solicited non-member employees’ contributions to ACRE from employees who were not executive or administrative personnel. Moreover, Respondents acknowledge some employee solicitations may not have contained the complete disclaimer language required by the FECA.
8. Respondents assert that after discovering the inadvertent errors and omissions, they conducted an internal review to determine all ineligible SECO employees who had made contributions during the past three years to ACRE. The review was done so that refund checks could be issued for any inappropriately solicited contributions. Respondents further assert they also sent a letter to all previously-solicited employees, providing them with information on how to “opt out” of future solicitations if they were not, in fact, eligible to contribute. In addition, ACRE modified all solicitation materials to include the necessary disclaimers.
9. In an effort to avoid similar errors in the future, Respondents agree to: (a) develop and follow written solicitation procedures and policies in compliance with the FECA; (b) review the employment status and, where necessary, the address of new SECO employees to determine whether they are eligible to be solicited; and (c) send written notification to current employees/ACRE contributors on an annual basis reminding them of the

29190281129

eligibility requirements and the employee's responsibility to notify SECO of any changes in their eligibility.


10. Respondents understand that nothing in this settlement precludes any proceedings or action that might be taken by the U.S. Department of Justice, or any other government entity against Respondents.
11. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge, and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
12. This agreement shall become effective on the date signed by all parties and approved by the Commission. Respondents shall comply with the terms within thirty (30) days from the effective date of this agreement.
13. This negotiated settlement constitutes the entire agreement between the parties on ADR 480, and effectively resolves those issues identified in paragraph 3 above. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.

FOR THE COMMISSION:

  
Lynn M. Fraser, Acting Director,  
Alternative Dispute Resolution Office

3/11/09  
Date Signed

FOR THE RESPONDENTS:

  
Jan Witold Baran, Esq.,  
Representing Sumter Electric Cooperative, Inc. and  
James P. Duncan, CEO and General Manager

2/9/09  
Date Signed