



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT 1 2010

Kevin Hall, Esq.  
Hall & Bowers, LLC  
1329 Blanding Street  
Columbia, SC 29201

RE: MUR 6253  
Under the Power Lines

Dear Mr. Hall:

On February 25, 2010, the Federal Election Commission ("Commission") notified your client, Under the Power Lines, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. On September 28, 2010, the Commission found, on the basis of the information in the complaint and information provided by your client, that there is no reason to believe that Under the Power Lines violated 2 U.S.C. §§ 441a(a) or 441b. Accordingly, on September 30, 2010, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Susan L. Lebeaux  
Acting Deputy Associate General Counsel  
for Enforcement

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Under the Power Lines**

**MUR 6253**

**I. INTRODUCTION**

The complaint in this matter alleges that Under the Power Lines ("UTPL") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by under-billing Trey Gowdy for Congress and Marvin Quattlebaum, in his official capacity as treasurer (the "Committee"), Harold W. ("Trey") Gowdy's authorized committee for his Congressional race in South Carolina's fourth Congressional District, for work performed for its website. Specifically, the Complainant points out that Mr. Gowdy's state committee, Gowdy State Solicitor Committee ("State Committee"), disclosed an expenditure of \$6,000 on April 9, 2009, to UTPL for website design and development fees for a website that was never publicly activated, whereas the Committee disclosed a payment to the same firm of only \$3,806 on June 29, 2009, for its website development. In an addendum to the complaint, filed on March 4, 2010, Complainant compares the "website development" charges that the Gowdy Committee paid UTPL with UTPL's far more substantial "website design" charges in 2008 to another client, Barrett for Congress.

Mr. Gowdy has continuously served, and is still serving, as South Carolina's 7<sup>th</sup> Circuit Solicitor since his election to that position in 2000, and has maintained his State Committee. On June 1, 2009, Mr. Gowdy filed his statement of candidacy for federal office. On July 13, 2009, the Committee filed its first disclosure report, the July 2009 Quarterly Report, covering the period from April 1, 2009, through June 30, 2009. That Report disclosed receipts of \$87,924 and expenditures of \$4,924.52. The State Committee filed its disclosure report for the same period

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1 with the South Carolina State Ethics Commission on July 1, 2009, disclosing no receipts and  
2 expenditures of \$6,793.79.

3 In response, UTPL includes affidavits refuting the allegations that it had under-billed the  
4 Committee. The Commission has concluded that these numerous and specific affidavits should  
5 be credited. Accordingly, The Commission has determined to find no reason to believe that  
6 UTPL violated 2 U.S.C. §§ 441a(a) or 441b.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 The Act limits the contributions a person can make, and a candidate can receive, with  
9 respect to a federal election. 2 U.S.C. § 441a. These contributions cannot, in aggregate, exceed  
10 \$2,400 per election. See 2 U.S.C. § 441a(a)(1)(A). The Act also prohibits corporate  
11 contributions, including in-kind contributions, to a federal candidate and his or her authorized  
12 political committee, and candidates and their authorized committees are prohibited from  
13 knowingly accepting such contributions. 2 U.S.C. § 441b(a).<sup>1</sup>

14 In response to the complaint, Wesley Donehue of UTPL declares in his affidavit that the  
15 Gowdy State Committee payments for website services are unrelated to Gowdy's congressional  
16 campaign.<sup>2</sup> He also attests that the April 2009 website fees were exclusively focused on Mr.  
17 Gowdy's responsibilities as Solicitor and Chairman of the South Carolina Prosecution

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<sup>1</sup> In general, multi-member limited liability companies like UTPL may elect to be treated either as partnerships or as corporations for federal tax purposes, regardless of their status under state law. See Explanation and Justification for 11 C.F.R. § 110.1(g): Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37397, 37399 (July 12, 1999). A contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service ("IRS") shall be considered a contribution from a partnership, which shall be attributed to the partnership and each partner. See 11 C.F.R. §§ 110.1(e) and (g)(2). An LLC that elects to be treated as a corporation by the IRS shall be considered a contribution from a corporation pursuant to 11 C.F.R. § 110.1(e). See 11 C.F.R. § 110.1(g)(3). The available information does not indicate which type of tax treatment UTPL elected for its organization.

<sup>2</sup> According to his page on LinkedIn, see <http://www.linkedin.com/in/wesleydonehue>, Mr. Donehue was one of the owners of UTPL from 2007 to January 2010.

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1 Commission. Donehue Affidavit, paragraph 3. He also states that Mr. Gowdy did not approach  
2 him concerning the project for a federal campaign website until May 2009, and that the State  
3 Committee's payments to UTPL in April 2009 were for work not connected with the  
4 Committee's website. *Id.* at paragraph 4.

5 In addition, Respondent also provided sworn statements from individuals who were  
6 involved in the State Committee-proposed website. A. Murray Glenn, a public information  
7 officer for the 7<sup>th</sup> Circuit Solicitor's office, states in his affidavit that in February or March 2009,  
8 he participated in the filming of a video segment for a website that Mr. Gowdy "was having  
9 built," which focused only on reforming the state criminal justice system, and maintains that  
10 there was no mention of Congress or any discussion of a run for that office. Glenn Affidavit,  
11 paragraph 5. Eric Williams, who owns a media company, states in his affidavit that he filmed a  
12 "short web video introduction" after being approached by Mr. Gowdy in February or March of  
13 2009, and confirms that the content of the video centered on reforming the state criminal justice  
14 system. *See Williams Affidavit*, paragraphs 3-4. He also states that "[a]t no point in time was  
15 Congress mentioned either on film, before filming or after filming." *Id.*, paragraphs 5.<sup>3</sup>

16 The Commission concludes that the affidavits provided by the Respondent sufficiently  
17 refute the allegation that UTPL under-billed the Committee for work performed for its website.  
18 In addition, the fact that no State Committee website has been activated does not mean that there  
19 were never efforts to create one, but may have reflected Mr. Gowdy's decision in May 2009 to  
20 run for federal office in 2010. The fact that the Gowdy Committee may have spent less in initial  
21 website design and development fees than another UTPL client is not probative, standing alone,  
22 since business arrangements among clients can differ based on a variety of factors. Moreover,

<sup>3</sup> According to its disclosure reports, it appears that the State Committee had laid the groundwork for designing a nonfederal website months before the videos were filmed in February or March 2009, as it paid Misk, a web hosting domain registration company, \$60 to obtain domain names for Gowdy for Solicitor in December 2008.

1 since the Committee's initial \$3,806 payment to UTPL, its disclosure reports show that it has  
2 paid UTPL and its parent company amounts that collectively total in excess of \$50,000 for a  
3 variety of services—more than the amounts Complainant alleges that Barrett for Congress paid  
4 UTPL in 2008—that include strategic consulting, commercial editing, website development, web  
5 advertising, and “voter fetch” services, an online phone banking program for campaigns that  
6 allows volunteers to make calls. In light of the foregoing, the Commission has determined to  
7 find no reason to believe that Under the Power Lines violated 2 U.S.C. §§ 441a(a) or 441b.

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