

1 independent expenditures.² The Commission commenced an investigation to identify the
2 unknown respondents and obtain additional information about the distribution of the signs.

3 **III. SUMMARY OF INVESTIGATION**

4 The investigation revealed that Gary DuBois was the vendor who sold the signs at issue.³
5 DuBois bought a total of 10,500 signs in order to resell them.⁴ DuBois paid \$46,174.30 for the
6 signs (\$4.75 per sign) and sold each sign for \$6.⁵ In total, DuBois sold 10,460 of the signs to
7 “hundreds possibly thousands of individuals” and some businesses,⁶ but sold the most substantial
8 quantities to four companies: PBS Coals; Mepco, LLC; Oxford Mining Company, LLC; and
9 Oxford Mining Company–Kentucky, LLC.⁷ After he learned of the disclaimer requirement in
10 September 2012, after the filing of the Complaint in this matter, DuBois created “blank
11 disclaimer stickers for customers to use and fill in if they chose to display the signs in public.”⁸
12 DuBois personally “put up” 20 of the remaining 40 signs with “the legally required disclaimer.”⁹

² See Certification, MUR 6658 (June 17, 2015); First Gen. Counsel's Rpt. at 5-6.

³ Du Bois was identified as the potential vendor in this matter because he previously sold the same signs to Murray Energy Corporation; the signs sold to Murray Energy Company were the subject of a previous matter settled by the Commission. See First Gen. Counsel's Rpt. at 3 n. 3, MUR 6659 (Murray Energy Corporation). In MUR 6659, Murray Energy Corporation entered into a settlement agreement with the Commission for publicly distributing signs without a disclaimer and failing to disclose independent expenditures. See Certification, MUR 6659 (Murray Energy Corporation) (Sept. 10, 2015).

⁴ Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Oct. 5, 2015). DuBois decided to sell the signs after seeing similar signs in March and April 2012 in Kentucky, West Virginia, and Virginia. *Id.* at 2.

⁵ *Id.* at 1.

⁶ *Id.*

⁷ DuBois represented that there were no individual buyers who spent over \$1,000 for signs. DuBois further represented that he did not retain any supporting documentation of the companies' purchases. See, e.g., Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Nov. 10, 2015); Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (March 25, 2016).

⁸ Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Oct. 5, 2015); Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Nov. 10, 2015).

⁹ Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Oct. 5, 2015).

1 Each of the four companies identified by DuBois as purchasing a significant amount of
2 signs were notified as potential respondents¹⁰ and each submitted a response to the Commission,
3 as described below.

4 **A. PBS Coals**

5 PBS Coals paid \$5,850 for 975 signs.¹¹ PBS Coals claims that it is unable to determine
6 whether its signs included a disclaimer because the employees who authorized the sign purchase
7 no longer work for the company.¹² PBS Coals also states that it is unlikely that the signs
8 Complainant observed were actual PBS Coals signs because Mercer County, PA is over 100
9 miles from PBS Coals' operations in Somerset County, PA.¹³

10 **B. Mepco, LLC**

11 Mepco paid \$3,525 for an unknown number of signs.¹⁴ Mepco asserts that it was
12 unaware that the signs required a disclaimer or that the purchase required disclosure because
13 none of the other signs displayed in the region contained a disclaimer, and it reasonably believed
14 that the signs advocated its long held policy position that the federal government maintain

¹⁰ See Memorandum from the Office of the General Counsel to the Commission (May 19, 2016); Letters from Kathleen Guith, Acting Assoc. Gen. Counsel for Enforcement, FEC, to PBS Coals, Mepco, LLC, Oxford Mining Company, LLC, and Oxford Mining Company-Kentucky, LLC (June 8, 2016).

¹¹ Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (March 25, 2016). PBS Coals claims that it spent \$5,568 for the signs. PBS Coals Resp. at 1 (June 28, 2016).

¹² PBS Coals Resp. at 1. PBS Coals explains that at the time of the Complaint, it was owned and operated by Severstal Resources, but that it was purchased by Corsa Coal Corp. in August 2014. PBS Coals states that none of the current officers and members of upper management of either PBS Coals or Corsa Coal worked for PBS Coals/Severstal when the signs were purchased. *Id.*

¹³ *Id.* PBS Coals did not address its failure to file an independent expenditure report for its sign purchases.

¹⁴ Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Nov. 10, 2015); Mepco Resp. at 1 (June 30, 2016). Mepco states that it was reorganized through bankruptcy in August of 2013 and that none of Mepco's management team involved with the sign purchase is currently employed by Mepco. Mepco Resp. at 1.

1 policies that encourage the production and use of coal.¹⁵ Mepco also asserts that it has not
2 purchased, distributed, or displayed the signs since the time of the Complaint, and that the
3 Complaint is vague because it does not specifically identify Mepco nor does it state any specific
4 time or place where Mepco posted any sign.¹⁶ Mepco requests that the Commission recognize
5 these factors, as well as the minimal amount of the purchase and that the violation will not
6 reoccur now that Mepco is aware of the disclaimer and disclosure requirements.¹⁷

7 **C. Oxford Mining Company, LLC & Oxford Mining Company–Kentucky, LLC**

8
9 Oxford Mining Company, LLC paid \$5,673.89 and Oxford Mining Company–Kentucky,
10 LLC paid \$712.02 for an unknown number of signs.¹⁸ The joint response, submitted by the
11 companies' mutual parent company,¹⁹ asserts that the Commission's Factual and Legal Analysis
12 does not show that either entity paid for or distributed the signs described in the Complaint.²⁰
13 The response also states that the companies' are now subject to a corporate Code of Conduct and
14 Ethics policy that strictly prohibits the type of activities alleged in the Complaint — the policy
15 specifically limits employees' ability to engage in political activities using company resources.²¹

¹⁵ Mepco Resp. at 1, 2.

¹⁶ Mepco Resp. at 1-2.

¹⁷ *Id.* at 2.

¹⁸ Letter from Gary DuBois to Kamau Philbert, Staff Attorney, FEC at 1 (Nov. 10, 2015).

¹⁹ Oxford Mining Company, LLC and Oxford Mining Company–Kentucky, LLC (collectively "Oxford Mining") were sold in December of 2014, and are now subsidiaries of Westmoreland Coal Company ("Westmoreland"), a publicly traded coal mining company with operations throughout the United States and Canada. Oxford Mining Resp. at 2 (July 25, 2016) (joint response of Oxford Mining).

²⁰ Westmoreland claims that, since it purchased Oxford Mining, many corporate changes have occurred and many Oxford Mining employees who may have knowledge of any sign purchases are no longer with the company. Oxford Mining Resp. at 2. Westmoreland claims that Oxford Mining Company, LLC's operations are in Ohio, nearly 150 miles away from Stoneboro, Pennsylvania where the signs described in the Complaint were displayed, and that Oxford Mining Company–Kentucky, LLC's operations are even further away in Kentucky. *Id.* at 1-2.

²¹ Oxford Mining Resp. at 2, Ex. B.

16047430049

1 The response asks that the Commission dismiss the matter because of these factors, the reduced
2 risk of a recurring violation, and the minimal amount involved.²²

3 IV. LEGAL ANALYSIS

4 None of the companies presented any information showing that its signs included a
5 disclaimer. As set forth in the Commission's Factual and Legal Analysis, an appropriate
6 disclaimer was required on the signs.²³ As we have identified PBS Coals; Mepco, LLC; Oxford
7 Mining Company, LLC; and Oxford Mining Company-Kentucky, LLC as entities that paid for
8 and disseminated signs, we recommend that the Commission substitute each entity's name in the
9 place of "Unknown Respondents" in the Commission's previous finding that there is reason to
10 believe that Unknown Respondents violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11, by
11 failing to include a proper disclaimer on the signs.²⁴

12 Further, none of the respondents reported their disbursements for the signs as
13 independent expenditures. As set forth in the Commission's Factual and Legal Analysis, each
14 respondent should have, but did not, disclose its purchase to the Commission in an independent-
15 expenditure report covering the relevant quarterly reporting period.²⁵ We recommend, therefore,
16 that the Commission substitute PBS Coals; Mepco, LLC; Oxford Mining Company, LLC; and
17 Oxford Mining Company-Kentucky, LLC's names in the place of "Unknown Respondents" in

²² Oxford Mining Resp. at 1, 3-4.

²³ Factual & Legal Analysis at 2-3 ("F&LA"). Under the Act and Commission regulations, any public communication that expressly advocates the election or defeat of a clearly identified candidate must include a disclaimer. See 52 U.S.C. § 30120(a); 11 C.F.R. §§ 100.22(a), 110.11(a)(2), (c)(2).

²⁴ Since we are recommending that the Commission take no further action, we are not recommending that the Commission substitute Westmoreland in place of Oxford Mining. We also do not recommend that the Commission make any findings regarding DuBois because he spent only \$95 (\$4.75 x 20) to publicly distribute his own signs.

²⁵ F&LA at 3-4; see 52 U.S.C. § 30104(c) (requiring a person other than a political committee who makes independent expenditures exceeding \$250 to file an independent-expenditure report with the Commission).

1 the Commission's previous findings that there is reason to believe that Unknown Respondents
2 violated 52 U.S.C. § 30104(c) by failing to report expenditures made in connection with the
3 signs. Furthermore, a person that makes independent expenditures aggregating \$1,000 or more
4 after the 20th day, but more than 24 hours, before the date of an election, must file a report
5 describing the expenditures within 24 hours.²⁶ Oxford Mining Company–Kentucky, LLC did
6 not make expenditures aggregating \$1,000 or more for its signs and so is not within the scope of
7 the 24-hour reporting requirement. But to the extent that PBS Coals, Mepco, LLC, and Oxford
8 Mining Company, LLC made a disbursement during this time period, each was required to file a
9 24-hour report.²⁷ We recommend, therefore, that the Commission substitute PBS Coals; Mepco,
10 LLC; and Oxford Mining Company, LLC's names in the place of "Unknown Respondents" in
11 the Commission's previous findings that there is reason to believe that Unknown Respondents
12 violated 52 U.S.C. § 30104(g) by failing to report expenditures made in connection with the
13 signs.²⁸

14 The full cost of PBS Coals' sign purchases was at least \$5,568, the cost of Mepco's sign
15 purchases was \$3,525, the cost of Oxford Mining Company, LLC's sign purchases was

²⁶ 52 U.S.C. § 30104(g)(1)(A). Political committees and other persons must file 24-hour notices by 11:59 p.m. on the day following the date on which the independent expenditure communication is publicly distributed. See 11 C.F.R. §§ 104.4(c), 109.10(d).

²⁷ The companies' lack of records did not allow us to definitively determine that any of the Respondents made their expenditures within the 24-hour reporting timeframe. But the investigation showed that DuBois sold the signs through the fall of 2012, a timeframe that could encompass the reporting period that precedes the general election. The Act and Commission regulations also require 48-hour notices for independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election. See 52 U.S.C. § 30104(g)(2)(A); 11 C.F.R. § 109.10(c). Although the Commission found reason to believe the "Unknown Respondents" violated these provisions, the investigation showed that none of the respondent companies made expenditures for the signs that aggregated \$10,000 or more.

²⁸ We are not including the Commission's previous findings that Unknown Respondents violated 52 U.S.C. § 30104(b)(4)(H)(iii) because our investigation did not find that a political committee paid for any of the signs. See F&LA at 4.

1 \$5,673.89, and the cost of Oxford Mining Company–Kentucky, LLC's sign purchases was
2 \$712.02. In previous matters involving similar facts and amounts in violation, the Commission
3 has not pursued these cases on the basis that the apparent cost of the communication was *de*
4 *minimis*.²⁹ Accordingly, we recommend that the Commission exercise its prosecutorial
5 discretion and take no further action other than to issue letters of caution as to PBS Coals;
6 Mepco, LLC; Oxford Mining Company, LLC; and Oxford Mining Company–Kentucky, LLC.³⁰

7 **V. RECOMMENDATIONS**

- 8 1. Substitute the names PBS Coals; Mepco, LLC; Oxford Mining Company, LLC; and
9 Oxford Mining Company–Kentucky, LLC in place of “Unknown Respondents” in the
10 Commission's previous findings that Unknown Respondents violated 52 U.S.C.
11 §§ 30104(c)(1) and 30120(a), and 11 C.F.R. §§ 109.10 and 110.11.
- 12 2. Substitute the names PBS Coals; Mepco, LLC; and Oxford Mining Company, LLC in
13 place of “Unknown Respondents” in the Commission's previous findings that Unknown
14 Respondents violated 52 U.S.C. § 30104(g).
- 15 3. Take no further action other than to approve letters of caution to PBS Coals; Mepco,
16 LLC; Oxford Mining Company, LLC; and Oxford Mining Company–Kentucky, LLC.
- 17 4. Approve the appropriate letters.

²⁹ See, e.g., MUR 6642 (Christopher Kauffman) (taking no further action on partial disclaimer and independent expenditure reporting violations and issuing a letter of caution where cost of billboards at issue amounted to \$3,000); MUR 6377 (Harry Reid Votes) (dismissing allegation as to radio advertisement with partial disclaimer and issuing a letter of caution where cost of advertisement was \$2,135).

³⁰ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

