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February 26, 2021

Via Email and U.S. Mail

Federal Election Commission
Office of Complaints Examination & Legal
Administration
Attn: Kathryn Ross, Paralegal
1050 First Street, NE
Washington, DC 20463

Re: MUR 7864

Dear Ms. Ross:

This firm represents Salt River Project Agricultural Improvement and Power District, which, together with the Salt River Valley Water Users' Association, operates the Salt River Project ("SRP") to provide water and power to more than 2 million customers in central Arizona. In that capacity, we are in receipt of your December 23, 2020 letter inviting SRP's response to the complaint filed by SRP employee Nevada Jack with the Commission on December 16, 2020 (the "Complaint"). While the Complaint names only SRP as a respondent, it includes allegations regarding Mike Jones, an SRP manager, and by separate letter you invited a response by Mr. Jones, as well as Heidi Schaefer as Treasurer of the Salt River Valley Water Users' Association Political Involvement Committee ("SRP PIC"). This response is made on behalf the above-referenced entities and persons.

As set forth in further detail below, because Mr. Jones did not solicit a contribution from Ms. Jack, let alone one that would constitute coercion under the Federal Election Campaign Act of 1971 ("FECA" or the "Act") or the Commission's regulations and binding precedent, SRP submits that the Complaint is without merit and should be dismissed.

Factual Background

SRP PIC is registered both with the Commission (committee ID no. C00048579) and the Arizona Secretary of State and is administered as a separate segregated fund ("SSF"). In addition to other disclosures, and consistent with the requirements of FECA and the Commission's regulations, SRP PIC's solicitation materials properly include disclosure of the political purpose of the fund, that contributions to the fund are voluntary, and that employment decisions do not turn on an employee's decision whether or not to contribute, as

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stated in one of the pages Ms. Jack copied from SRP PIC's internal (eligible employees only) website and attached to her complaint:

PIC contributions will be used solely to support the election campaigns of candidates running for federal, state, county and local offices and NOT used for administrative purposes. Requested contributions are merely a suggestion, and those contributing are free to contribute more or less than the requested amount. SRP will not favor or disadvantage anyone by reason of his/her contribution amount or decision not to contribute. You have the right to refuse to contribute without fear of any reprisal. Federal law also requires PIC to use best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year. Contributions are not tax deductible.

Complaint at page 5. As further explained in one of the pages Ms. Jack copied from the internal website, SRP PIC solicits and accepts contributions solely from SRP executives, administrative personnel, shareholders, and voting-age members of their immediate families who are eligible to join. *Id.* at page 6.

Ms. Jack is a current SRP employee now serving as a Manager Operations Planning, reporting to Mr. Jones, Senior Director Corporate Strategy, Planning & Innovation. According to the Complaint, she met with Mr. Jones on February 20, 2019 to seek feedback after she had been turned down for a management position. She alleges that Mr. Jones made the suggestion, among others, that Ms. Jack become involved with SRP PIC as a way to network with SRP managers, and said that "young people are joining SRP PIC, and they're getting a leg up over" her. *Id.* at 1. The Complaint does *not* allege that Mr. Jones solicited Ms. Jack for a contribution to SRP PIC, nor that she ever made a contribution to SRP PIC, let alone under coercion.

Mr. Jones, as set forth in the attached affidavit, recalls meeting with Ms. Jack in February 2019 to provide feedback on Ms. Jack's not receiving the position she had applied for. Mr. Jones explained that it was due to performance issues. Mr. Jones does not recall discussing SRP PIC in the February 20, 2019 meeting.

On December 10, 2020, during another meeting with Ms. Jack, she asked for advice on becoming a stronger candidate for promotion opportunities. Mr. Jones offered that Ms. Jack needed to perform at a high level, demonstrate value, and establish herself as a leader by networking both within and outside of SRP. As part of the networking point, Mr. Jones offered examples of the types of organizations in which she could become involved: industry groups, non-profit boards, and SRP PIC. Mr. Jones gave examples of other employees who had become involved with these types of organizations. With respect to SRP PIC, Mr. Jones said only that joining was an opportunity if Ms. Jack were interested in legislative issues, that doing so was entirely voluntary, and that involvement would give Ms. Jack

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opportunities to interact with SRP leaders she would not otherwise see in her day-to-day work. Mr. Jones did not solicit a contribution from Ms. Jack, nor did he suggest that involvement in SRP PIC was necessary or required.

Analysis

FECA and its implementing regulations prohibit a corporation's SSF from using moneys that are secured by actual or threatened "physical force, job discrimination, or financial reprisals." 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a)(1). The Commission has explained that these provisions "require more than a mere showing that an employer solicited employees to contribute to its SSF or candidate committees, which is wholly lawful, or that a solicited employee felt pressure to contribute." MUR 6661 (Robert E. Murray, et al.) at 1. "Rather, when a solicitation clearly indicates that contributions are voluntary, evidence of *specific acts or statements* constituting threats of physical force, job discrimination, or financial reprisal is necessary to establish a violation under the Act." *Id.* at 1–2 (emphasis added).

FECA and the Commission's regulations seek to avoid coerced contributions by requiring that solicitations to contribute to a corporation's SSF notify the employee of "the political purposes of the fund at the time of such solicitation" and "his or her right to refuse to so contribute without any reprisal." 52 U.S.C. § 30118(b)(3)(B)–(C); 11 C.F.R. § 114.5(a)(3)–(5). If a solicitation suggests a contribution amount, the solicitation must state that the amount is merely a suggestion, that the employee can contribute more or less than the suggested amount, and that the corporation will not favor or disfavor any employee for their contribution amount. 11 C.F.R. § 114.5(a)(2), (5). "[A] solicitation that clearly indicates that contributions are voluntary satisfies the Act and these regulations." MUR 6661 at 4.

Ms. Jack does not allege that Mr. Jones solicited her for a contribution to SRP PIC, nor that she was ever coerced to actually contribute to SRP PIC. That is, Mr. Jones did not ask or encourage, either directly or indirectly, that Ms. Jack give money or anything of value to SRP PIC. *See* 11 C.F.R. § 300.2(m) ("[T]o solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value."). It was therefore not possible for SRP or SRP PIC to have used funds secured by coerced solicitations from Ms. Jack, both because Ms. Jack does not allege to have made a contribution and because Mr. Jones never solicited her for one, much less under coercion.

Further, the Commission has made clear that it "cannot find that an employer coerced contributions solely upon an employee's subjective perception, particularly where that perception stems from the receipt of an otherwise lawful solicitation that substantially complies with the Act and the Commission's anti-coercion disclaimer requirements." MUR 6661 at 9. (Of course, Mr. Jones's conversation with Ms. Jack did not require a disclaimer,

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as it did not include a solicitation.) Importantly, “a Commission reason-to-believe finding on the Act’s anti-coercion provision demands *objective, demonstrable evidence*, and cannot singularly rest on the subjective perceptions of the solicited individual.” *Id.* (emphasis added)

The Complaint presents no objective, demonstrable evidence of coercion. Again, Ms. Jack is not a “solicited individual,” because Mr. Jones did not solicit a contribution from her. At most, he encouraged her to consider joining SRP PIC as a means by which to network with other SRP leaders. And as mentioned above, Ms. Jack’s subjective perception of Mr. Jones’s comments are not enough, without more, to show coercion. The written materials attached to the Complaint make clear that SRP PIC complies with the anti-coercion disclaimer requirements to the letter, stating the political purpose of the fund, that contributions are voluntary, and that the company will not disfavor any employee for declining to participate. Mr. Jones made clear in his discussion with Ms. Jack that joining SRP PIC was entirely voluntary.

Finally, the Complaint makes a cursory cite to 11 C.F.R. § 114.2, which prohibits corporate contributions to candidates for federal office. Yet the Complaint nowhere alleges facts that SRP made unlawful contributions to any federal candidate.

Conclusion

For the foregoing reasons, SRP submits that the Complaint is without merit, and there is no basis to find reason to believe that a violation of the Act occurred. As such, the Complaint should be summarily dismissed and the file closed.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Roy Herrera', with a stylized flourish at the end.

Roy Herrera

RH

I, Mike Jones, declare as follows:

1. I am over eighteen years old, am competent to testify and make this Declaration based on my own personal knowledge.

2. I am a manager in the Corporate Strategy Planning and Innovation Group at Salt River Project Agricultural Improvement and Power District (“SRP”). My title is Senior Director Corporate Strategy, Planning and Innovation.

3. On February 20, 2019, I met with Nevada Jack, an SRP employee, to provide feedback related to Ms. Jack’s failure to receive a position she had applied for. During this meeting, I explained to her that she had been passed over for the position due to performance issues. I do not recall discussing the Salt River Valley Water Users’ Association Political Involvement Committee (“SRP PIC”) during this meeting.

4. I met with Ms. Jack again on December 10, 2020, during which Ms. Jack asked for advice on becoming a stronger candidate for promotion opportunities.

5. During this meeting, I advised Ms. Jack that she needed to perform at a high level, demonstrate value, and establish herself as a leader by networking both within and outside of SRP.

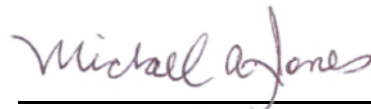
6. As part of the networking point, I recall offering examples of the types of organizations in which she could become involved: industry groups, non-profit boards, and SRP PIC. I also recall giving examples of other employees who had become involved with these types of organizations.

7. With respect to SRP PIC, I only recall stating that joining was an opportunity if Ms. Jack were interested in legislative issues, that doing so was entirely voluntary, and that involvement would give Ms. Jack opportunities to interact with SRP leaders she would not otherwise see in her day-to-day work.

8. At no time did I solicit a contribution from Ms. Jack to SRP PIC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2021.

A handwritten signature in dark ink that reads "Michael A. Jones". The signature is written in a cursive style with a large initial 'M' and 'A'.

Mike Jones



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

AR/MUR/RR/P-MUR# 7864

Name of Counsel: Roy Herrera, Esq.

Firm: Ballard Spahr LLP

Address: 1 East Washington Street, Suite 2300

Phoenix, AZ 85004

Office#: 602-798-5430 Fax#: 602-798-5595

Mobile#: _____

E-mail: herrera@ballardspahr.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

02/24/2021

Date

(Signature - Respondent/Agent/Treasurer)

President

Title

David Rousseau

(Name - Please Print)

Salt River Project Agricultural Improvement and Power District

RESPONDENT:

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: P.O. Box 52025 Mail Station PAB237
(Please Print)

Phoenix, AZ 85072

Home#: _____ Mobile#: _____

Office#: (602) 236-5330 Fax#: _____

E-mail: David.Rousseau@srpnet.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



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02/24/2021

Date

(Signature - Respondent/Agent/Treasurer)

President

Title

David Rousseau

(Name - Please Print)

Salt River Valley Water Users' Association

RESPONDENT:

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: P.O. Box 52025 Mail Station PAB237
(Please Print)

Phoenix, AZ 85072

Home#: _____ Mobile#: _____

Office#: (602) 236-5330 Fax#: _____

E-mail: David.Rousseau@srpnet.com

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Office#: 602-798-5430 Fax#: 602-798-5595

Mobile#: _____

E-mail: herrera@ballardspahr.com

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02/24/2021
Date

Michael A. Jones

(Signature - Respondent/Agent/Treasurer)

Title

Michael (Mike) A. Jones
(Name - Please Print)

Michael (Mike) A. Jones

RESPONDENT:

(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: P.O. Box 52025 Mail Station ISB665
(Please Print)

Phoenix, AZ 85072

Home#: _____ Mobile#: _____

Office#: (602) 236-0882 Fax#: _____

E-mail: Mike.Jones@srpnet.com

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