

Rickida Morcomb

From: Rollie Wilson <RWilson@nativelawgroup.com>
Sent: Friday, December 10, 2021 12:15 PM
To: Audit
Cc: Rickida Morcomb
Subject: UtePAC DFAR Response and Hearing Request
Attachments: UtePAC Hrg Request and DFAR Response 12 7 21.pdf

Hello,

Please find attached UtePAC's timely filed response to the Draft Final Audit Report and request for a hearing before the Federal Election Commission.

Please let me know if you have any questions or need any other information. Thanks, Rollie

Rollie Wilson, Partner

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UTEPAC
P.O. Box 190
Fort Duchesne, Utah 84026

December 7, 2021

Via Email and U.S. Certified Mail

Dayna C. Brown
Audit Division Assistant Staff Director
Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463
Email: audit@fec.gov; rlmorcomb@fec.gov

RE: Hearing Request and Response to Draft Final Audit Report

Dear Assistant Staff Director Brown:

On November 22, 2021, UtePAC received the Federal Election Commission's (FEC or Commission) Draft Final Audit Report (DFAR). As noted in your cover letter, UtePAC has until December 10, 2021, to request a hearing before the Commission. By this letter, UtePAC timely requests an in-person or remote hearing before the Commission.

Request for Hearing

A hearing is important in this case to help the Commission resolve significant and novel legal [REDACTED] issues, as well as significant questions about the application of the law to the facts. In this case, the Ute Indian Tribe, a sovereign tribal government, established the first tribally led Political Action Committee, UtePAC, under FEC laws and regulations. The Tribe maintained rigorous financial controls in providing funding for UtePAC operations. In fact, the vast majority of funds involved in this case are the Tribe's own funds provided for UtePAC operations.

The Tribe also hired a Treasurer who claimed to have extensive experience operating Political Action Committees. The Tribe provided the Treasurer with funding for administrative, accounting, and legal support. Finally, when the Tribe became concerned about UtePAC operations, the Tribe conducted its own audit and compliance review of UtePAC.

After learning of the FEC's audit of UtePAC, the Tribe fired and replaced UtePAC's Treasurer, directed its General Counsel to assist in the administration of UtePAC, and sought full compliance with FEC's audit process. During the audit, UtePAC worked with FEC audit staff to

investigate the actions of its former Treasurer and to correct hundreds of recordkeeping and reporting violations made by the former Treasurer. As a result of these investigations, we uncovered a number of deceptive tactics the former Treasurer used to take UtePAC funding for his own personal gain. These tactics included overall management of UtePAC funds as well as specific expenditures for personal benefit.

As the FEC notes in its audit findings, these investigations appear to only scratch the surface. UtePAC's former Treasurer refused to assist in the Tribe's audit and resisted providing receipts and accurate reporting of his disbursements for the FEC audit. The former Treasurer even failed to make "best efforts" to correct his reporting during the audits and appears to be continuing to attempt to cover up his personal use of UtePAC funds. In addition, neither audit was able to fully investigate the financial relationship between UtePAC and a limited liability company established by its former Treasurer, American System Group, LLC (LLC), to funnel funds away from UtePAC for his personal benefit.

The former Treasurer's management of UtePAC and creation of an LLC to misappropriate UtePAC funds for his personal benefit is similar to another FEC case that was recently prosecuted by the FEC and the Department of Justice. In that case, Scott B. Mackenzie served as a Treasurer for multiple PACs and established an entity known as "Mackenzie & Company" to take PAC funding for his personal benefit. *Press Release: Treasurer of Multiple Political Action Committees Sentenced for Filing False Reports with the FEC*, U.S. Dept. of Justice (February 21, 2020). Like UtePAC's former Treasurer, Mackenzie transferred funds between PACs and used PAC funds to pay his company to do consulting and other work. The company would then pay Mackenzie and his friend for work that was never done.

[REDACTED]

[REDACTED]

[REDACTED]

In this case, UtePAC recognizes the seriousness of the actions taken by its former Treasurer and has worked for almost two years at the direction of the Tribe and with FEC audit staff to investigate and document these actions. In applying the law to the facts of this case, the FEC should account for its government-to-government relationship with the Ute Indian Tribe and recognize the actions the Tribe has taken as a sovereign government to address the former treasurer's failure to comply with FEC laws and regulations and his misuse of primarily tribal funds.

In this case, the FEC should minimize audit actions taken against UtePAC [REDACTED]

[REDACTED] UtePAC requests the opportunity to further explain these unique circumstances in a hearing before the Commission.

Response to Draft Final Audit Report

UtePAC continues to request that the FEC remove or reduce findings that have been addressed or corrected in the FEC's public record. UtePAC expended considerable resources responding to and investigating audit findings. However, in the DFAR the FEC states that "since ... corrective action occurred in response to the audit, the findings remain in the audit report." The FEC provides no basis for maintaining corrected audit findings in its DFAR. To encourage compliance with FEC audits, the FEC should remove and reduce findings that have been addressed.

Similarly, under Finding 3, the FEC audit claimed that the former Treasurer of UtePAC made 43 transactions totaling \$131,300 cash transactions violating 52 U.S.C. § 30102(h) and 11 C.F.R. § 102.11. However, based on investigations to correct this finding, UtePAC and FEC audit staff worked with the former Treasurer of UtePAC to obtain a letter from its former bank attesting to the fact that many of the transactions that appeared to be cash disbursements were actually transfers of funds between accounts. This new information was not properly accounted for in the DFAR.

In the DFAR, the FEC states the letter clarifying these transactions reduced the amount of violation from \$131,300 to \$13,640. DFAR at 17. However, there never was a violation in the amount of \$131,300. As clarified in the letter obtained from UtePAC's former bank, these were account transfers, not cash transactions. Thus, the violation was not reduced from \$131,300 to \$13,640, instead, the cash transactions violation has always been in the amount of \$13,640.

The DFAR should properly account for these kinds of corrections. In addition, the FEC should take notice of the extensive account transfers conducted by the former Treasurer of UtePAC. While not a violation of FEC rules and regulations, these extensive account transfers could represent deceptive and fraudulent management of UtePAC funds for personal gain.

Conclusion

Thank you for the opportunity to request a hearing before the Commission and seek further corrections and clarifications to the DFAR. Like the FEC, UtePAC is interested in ensuring compliance with FEC laws and regulations. UtePAC has made every effort to comply with the audit and conduct investigations to document the deceptive tactics used by its former Treasurer to take UtePAC finances for his own personal gain.

UtePAC requests the opportunity to personally explain the unique circumstances of this case to the Commission. UtePAC continues to believe that the proper application of the law to the facts in this case requires that the Commission eliminate or minimize audit findings [REDACTED]

Sincerely,



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