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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of) FPPC No. 16/19804
12)
13)
14 CALIFORNIA LOCAL ENERGY –) **STIPULATION, DECISION and ORDER**
ADVANCING RENEWABLES,)
15)
16 Respondent.)

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent California Local Energy – Advancing Renewables (“CLEAR”), hereby agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
23 matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of CLEAR.

25 CLEAR understands, and hereby knowingly and voluntarily waives, any and all procedural rights
26 set forth in Government Code Sections 83115.5, 11503 and 11523, and in California Code of Regulations,
27 title 2, Sections 18361.1 through 18361.9. This includes, but is not limited to the right to personally
28 appear at any administrative hearing held in this matter, to be represented by an attorney at CLEAR’s

1 own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses
2 to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing
3 officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that CLEAR violated the Political Reform Act as described in
5 Exhibit 1: CLEAR failed to timely file a 24-hour contribution report by the September 10, 2016 due date
6 for making a \$110,000 contribution on September 9, 2016, violating Government Code section 84203,
7 subdivisions (a) and (b) (1 count).

8 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
9 Exhibit 1 is a true and accurate summary of the facts in this matter.

10 CLEAR agrees to the issuance of the Decision and Order, which is attached hereto. CLEAR also
11 agrees to the Commission imposing an administrative penalty in the total amount of One Thousand Five
12 Hundred Dollars (\$1,500). A cashier's check from CLEAR in said amount, made payable to the "General
13 Fund of the State of California," is submitted with this Stipulation as full payment of the administrative
14 penalty, and shall be held by the State of California until the Commission issues its Decision and Order
15 regarding this matter. The parties agree that in the event the Commission refuses to accept this
16 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
17 meeting at which the Stipulation is rejected, all payments tendered by CLEAR in connection with this
18 Stipulation shall be reimbursed to CLEAR. CLEAR further stipulates and agrees that in the event the
19 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes
20 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified
21 because of prior consideration of this Stipulation.

22
23 Dated: _____

Galena West, Chief, on Behalf of the Enforcement Division
Fair Political Practices Commission

24
25
26 Dated: _____

Bill Powers, Chair of the Board of Directors, on behalf of
California Local Energy – Advancing Renewables,
Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of California Local Energy – Advancing Renewables,” FPPC Case No. 16/19804, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent California Local Energy – Advancing Renewables (“CLEAR”) is a 501(c)(3) non-profit organization located in San Diego, CA, which advocates and educates the public on issues related to the reduction of greenhouse gases, including land-use decisions that contribute to greenhouse gases.

Under the Political Reform Act (Act)¹, CLEAR qualified as a major donor committee when it made a late contribution to a primarily formed ballot measure committee for the purpose of making contributions to oppose Measure B in San Diego County, CA, which was on the ballot for the November 8, 2016 election. Thus, CLEAR had a duty to file a 24-hour contribution report related to the November 8, 2016 election.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2016.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

Mandatory Filing of Campaign Statements and Reports

At the core of the Act’s campaign reporting system is the requirement that committees must file campaign statements and reports for certain reporting periods and by certain deadlines.⁶

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¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 81001, subd. (h).

³ § 81003.

⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

⁶ See § 84200, *et seq.*

Definition of Major Donor Committee

The Act defines a “committee” to include any person (or combination of persons) who makes contributions totaling \$10,000 or more in a calendar year to candidates or committees.⁷ This type of committee commonly is referred to as a “major donor committee.”

Duty to File 24-Hour Contribution Reports

When a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report filed at each office with which the committee is required to file its next campaign statement, within 24 hours of making or receiving the contribution.⁸ A “late contribution” means a contribution which totals in the aggregate \$1,000 or more that is made to or received by a committee formed or existing primarily to support or oppose a measure during the 90-day period preceding the date of the election, or on the date of the election, at which the measure is to be voted on.⁹

SUMMARY OF THE FACTS

Save Our Forest and Ranchlands Opposed to Measure B Sponsored by California Local Energy Advancing Renewables (“Save Our Forest”) is a primarily formed sponsored committee opposing Measure B in San Diego County, CA. Measure B would amend the county’s general plan, zoning ordinance, and code of regulatory ordinances to authorize the development of a 608-acre planned community. Save Our Forest was a Respondent in FPPC Case No. 16/19753, which was approved by the Commission on November 17, 2016.

On September 12, 2016, CLEAR made a \$110,000 contribution from non-donor funds to Save Our Forest. This activity qualified CLEAR as a major donor committee, and required CLEAR to file a 24-hour contribution report.

After notice from the Enforcement Division, and as of the date of this settlement agreement, CLEAR filed the following:

Statement Type	Reporting Period	Due Date	Date Filed	Days Late
24-Hour Contribution Report	09/9/2016	09/10/2016	11/4/2016	57

VIOLATIONS

Count 1: Failure to Timely File 24-Hour Contribution Report

CLEAR failed to timely file a 24-hour contribution report by the September 10, 2016 due date for making a \$110,000 contribution on September 9, 2016, violating Government Code section 84203, subdivisions (a) and (b).

⁷ § 82013, subd. (c).

⁸ §§ 84203, subd. (a) and (b), and 84215.

⁹ § 82036, subd. (a).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent cases with similar violations include:

Failure to Timely File 24-Hour Contribution Report

- *In the Matter of Ruben Valencia, Valencia 4 City Council 2014, and Kathleen Christiansen*, FPPC No. 14/1234. The respondents failed to timely file eight late contribution reports disclosing nine contributions totaling \$17,000. On September 17, 2015, the Commission approved a \$1,500 penalty for this violation (1 count).

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.¹⁰ CLEAR failed to timely file a 24-hour contribution report. Consequently, CLEAR deprived the public of important information about its political activity as a major donor, which included making a \$110,000 contribution within the 24-hour reporting period.

But, unlike the comparable case above, CLEAR promptly filed the late report after contact from the Enforcement Division, which provided full disclosure of CLEAR's political activity before the November 8, 2016 election. And in mitigation, CLEAR has no prior history of violating the Act.

PROPOSED PENALTY

After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant factors, a \$1,500 penalty for Count 1 is recommended.

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¹⁰ § 81002, subd. (a).