

**BEFORE THE ALASKA PUBLIC OFFICES COMMISSION**

ALASKA PUBLIC OFFICE COMMISSION	)	
	)	
v.	)	
	)	
RENEWABLE RESOURCES COALITION, INC.	)	OAH No. 09-0231-APO
ALASKANS FOR CLEAN WATER INC.,	)	Agency Nos. 09-01-CD
ROBERT GILLAM, AMERICANS FOR JOB	)	09-04-CD
SECURITY, ARTHUR HACKNEY, MICHAEL	)	09-05-CD
<u>DUBKE, and RICHARD JAMESON</u>	)	09-06-CD

**COMMISSION’S RULING ON “MOTION OF RRC AND RICHARD JAMESON FOR PARTIAL SUMMARY JUDGMENT”**

Respondents Renewable Resources Coalition, Inc. (RRC) and its former president, Richard Jameson, have moved for a summary adjudication that would dismiss all claims against Jameson and a number of the claims against RRC. The staff of the Alaska Public Offices Commission (APOC) opposes the motion as to both movants. The complainants have also filed briefing in opposition to the motion.

The motion has four lines of argument that are sufficiently independent of one another that it will be most convenient to address them separately, as though four different motions had been brought. The four axes of the motion are:

1. That Jameson was not a member of a “group” with respondents Gillam, Hackney, and Dubke for APOC reporting purposes. This argument parallels motions by other members of this purported group, and it is well taken.
2. That what RRC calls the “pass-through statute,” AS 15.13.074, does not apply to ballot propositions or, in any event, cannot support a civil prosecution because of the rule of lenity stated in *APOC v. Stevens*.<sup>1</sup> This argument parallels a motion by respondents Gillam and Alaskans for Clean Water, Inc. (AFCW), and is unpersuasive.
3. That the alleged arrangement between Gillam and RRC for RRC to serve as a conduit to pass through a contribution to AFCW, while perhaps illegal for Gillam and AFCW, does not represent a violation of any statute or rule by the conduit entity. This argument, which has not been considered elsewhere, is unpersuasive.

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<sup>1</sup> 205 P.3d 321, 325-6 (Alaska 2009).

4. That RRC was not itself a group and was not required to register and report as though it were a group. This argument is likewise outside the scope of any prior motion. The Commission notes that it raises a complex issue on which briefing and argument to date are not adequate for a fully informed decision. The Commission elects to hold this aspect of the motion in abeyance pending a decision on an issue that may render it moot.

**I. Jameson Was Not a Member of a Group.**

**A. *Alleged Violation at Issue***

The staff alleges that Robert Gillam, Arthur Hackney, Michael Dubke, and Richard Jameson formed a “group,” as that term is defined in Alaska’s campaign finance statutes, for the purpose of influencing the outcome of the Ballot Measure 4. This allegation was not made by Pebble Limited Partnership and the Resource Development Council, the original complainants to this case. It was developed solely by the APOC staff.

“Groups” are required to register with APOC and file reports detailing their contributions and expenditures. Because the group of which Jameson was allegedly a member did not do so, the staff alleges that he was in violation of the registration and reporting requirements.

**B. *Procedural Posture of this Aspect of the Motion***

Mr. Jameson submitted no evidence specifically connected with this aspect of his and RRC’s joint motion. In general, he has taken the position that if the assertions in the staff reports are accepted as true, he violated no registration or reporting law applicable to “groups.” With respect to certain peripheral facts about the nature of RRC as an organization, Jameson has submitted evidence, which has not been controverted by the staff.

The motion seeks summary adjudication. As noted in connection with prior motion practice, summary adjudication is a traditional means of resolving administrative proceedings without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts.<sup>2</sup> In such a motion, if an allegation in the pleadings has not been negated by any evidence, it must be accepted as true.<sup>3</sup> In evaluating the present motion, the factual history alleged in the staff reports will be accepted as true.

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<sup>2</sup> See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000); cf. 2 AAC 64.270(b), (c).

<sup>3</sup> E.g., *Odsather v. Richardson*, 96 P.3d 521, 523 n.8 (Alaska 2004); *Barry v. University of Alaska*, 85 P.3d 1022, 1026 & n.6 (Alaska 2004).

### ***C. Assumed Facts***

In the interest of brevity, the “assumed facts” in Part D of the Commission’s Ruling on Arthur Hackney’s Motion to Dismiss are incorporated by reference. A few additional matters specific to Jameson are set out below. Where they are sourced to exhibits submitted by Jameson, they are facts established for purposes of this motion through uncontroverted evidence. Where they are sourced to staff reports, they are allegations that remain to be proven but that must be assumed true for purposes of this motion.

Richard Jameson is an attorney who was involved in drafting initiatives leading up to Ballot Measure 4.<sup>4</sup> With Arthur Hackney and two others, he was on the initial board of directors of RRC when RRC was incorporated in 2005.<sup>5</sup> He served as RRC’s first president, remaining in that office until 2009.<sup>6</sup> RRC’s purpose and activities have extended substantially outside mere support for Ballot Measure 4.<sup>7</sup>

Mr. Jameson was involved with Hackney and Gillam in discussions about setting up AFCW in early 2008.<sup>8</sup>

Accepting all allegations as true, Jameson placed RRC “largely at the service of the ballot campaign.”<sup>9</sup> Respondent Dubke performed media and political consulting work “for Jameson and RRC,” in addition to his professional work for “Hackney and AFCW” and Gillam.<sup>10</sup> Fund Raising, Inc. also did work for RRC and AFCW, and Jameson was involved in joint discussions of campaign strategy and fundraising involving that organization, Gillam, Hackney, and Dubke.<sup>11</sup>

Jameson is not alleged to have had any role in the AJS transactions whereby Gillam contributed \$2 million to AJS and AJS contributed \$1.6 million to AFCW, but he suggested on August 12, 2008 that AJS “come clean” about its role after press attention developed.<sup>12</sup> Accepting all allegations as true, Jameson was intimately involved in arranging the pass-through of \$150,000 in Gillam’s money through RRC to AFCW.<sup>13</sup>

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<sup>4</sup> RRC/Jameson Ex. K; August 14 staff report at 11.

<sup>5</sup> RRC/Jameson Ex. A.

<sup>6</sup> August 14, 2009 staff report at 4.

<sup>7</sup> See RRC/Jameson Ex. A-H.

<sup>8</sup> August 14 staff report at 12-13.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *Id.* The staff seems to regard work for a corporation as work for its chief executive. It is not clear that the staff is actually alleging that Dubke worked for the personal interests of Jameson or Hackney.

<sup>11</sup> *Id.* at 17.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.* at 15-16.

Jameson is not alleged to have exercised any control over AFCW expenditures.

***D. Whether the Facts Can Support a Finding that Jameson Was Part of a Group for Purposes of Reporting***

The staff and complainants did not make any arguments tying Jameson to the alleged Gillam-Hackney-Dubke-Jameson group that were different from those aired in connection with Dubke's and Hackney's motions regarding the "group" claims. For the reasons discussed in Part E of the Commission's Ruling on Arthur Hackney's Motion to Dismiss and in Part II-E of the Commission's Ruling on Motion for Summary Adjudication by Michael Dubke, the allegations that Mr. Jameson failed to register and report on behalf of a group are dismissed. These are the only pending claims against Mr. Jameson.

**II. AS 15.13.074(a) and (b) Apply to Ballot Propositions and Are Sufficiently Clear to Support a Civil Prosecution.**

***A. Alleged Violation at Issue***

The staff alleged in its June 4 report that RRC violated AS 15.13.074 "by acting as a pass through organization for Robert Gillam to make undisclosed contributions to AFCW." RRC understood this to be an allegation that RRC had violated AS 15.13.074(b),<sup>14</sup> which provides that a "person or group may not make a contribution anonymously, using a fictitious name, or using the name of another." The staff has more recently clarified that its allegation against RRC relies primarily on AS 15.13.074(a), which provides that a "person, group, or nongroup entity may not make a contribution if the making of the contribution would violate this chapter."

In a short argument at the end of its motion, RRC sought dismissal of this allegation on the basis of two threshold legal contentions: first, that AS 15.13.065(c) makes AS 15.13.074(b) inapplicable to contributions in support of a ballot proposition, and second, that even if AS 15.13.074(b) is found to apply to ballot propositions, its applicability is so uncertain under ambiguous statutory language in a related provision (AS 15.13.065(c)) that the rule of lenity prevents it from supporting a civil prosecution. In its reply brief and oral argument, which followed the staff's shift to an emphasis on subsection (a), RRC has not expanded on this argument nor contended that the analysis is any different with respect to AS 15.13.074(a).

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<sup>14</sup> Remarks of Mr. Maasen at oral argument to the administrative law judge.

**B. Procedural Posture of this Aspect of the Motion**

RRC submitted no evidence specifically connected with this aspect of its motion. In general, it has taken the position that if the assertions in the original complaint against it, as amended by the subsequent staff investigation, are accepted as true, the alleged pass-through contributions violated no provision of law that may properly be applied in the context of a ballot proposition. With respect to certain peripheral facts about the nature of RRC as an organization and about the details of the funds transfer, RRC has submitted evidence that has not been controverted by the staff.

The motion seeks summary adjudication, the nature of which is discussed in Part I-B above. In evaluating the present motion, the factual history alleged in the staff reports will be accepted as true.

**C. Assumed Facts**

The facts set out below are not findings of fact. They are allegations that are assumed to be true for purposes of this motion only. With the exception of a limited amount of information established through RRC's evidentiary submissions (identified in the citations), the facts are taken from the June 4 and August 14, 2009 staff reports, primarily the former.<sup>15</sup> Legal conclusions from the reports are omitted from the synopsis below.

Renewable Resources Coalition is a nonprofit corporation organized in 2005.<sup>16</sup> Its purpose and activities have extended substantially outside mere support for Ballot Measure 4.<sup>17</sup>

AFCW, formed in March of 2008 and registered with APOC as a group immediately afterward, was the public face of the campaign for Ballot Measure 4.<sup>18</sup> Robert Gillam, an Anchorage businessman, was the direct or indirect source of most funds contributed to AFCW in the course of the campaign.<sup>19</sup>

On May 30, 2008, the board of RRC voted to give \$150,000 per month to AFCW if RRC could raise that amount.<sup>20</sup> RRC did not have sufficient funds on hand to make any such donations, but RRC had broached to Gillam the idea that he could "give[] us \$100,000" to fund a

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<sup>15</sup> The August 14 report was devoted to respondents Hackney, Jameson, and Dubke. It is not formally a part of the allegations against RRC, although it is a pleading in a consolidated case to which RRC is a party. It provides some clarification and context for the allegations in the June 4 report.

<sup>16</sup> RRC/Jameson Ex. A.

<sup>17</sup> See RRC/Jameson Ex. A-H.

<sup>18</sup> June 4, 2009 staff report at 6; August 14 staff report at 5.

<sup>19</sup> June 4 staff report.

<sup>20</sup> *Id.* at 21.

contribution to AFCW.<sup>21</sup> Three days after the board vote, Gillam gave \$350,000 to RRC, and two days after that RRC transmitted a \$150,000 contribution to AFCW.<sup>22</sup> By virtue of a prearrangement, Gillam either presumed or expected that his contributions to RRC would go to AFCW.<sup>23</sup> There is no allegation that RRC made subsequent donations to AFCW after the initial \$150,000, however.<sup>24</sup>

The funds transfer to AFCW was made by means of a check bearing RRC's name and address and signed by two members of its board.<sup>25</sup> RRC reported the donation as a contribution by RRC on APOC Form 15-5, filed 15 days after the funds were transferred.<sup>26</sup>

***D. Whether AS 15.13.074(a) and (b) Apply to Ballot Propositions***

RRC argues that AS 15.13.065(c) prevents application of AS 15.13.074(b) to ballot propositions. This argument has been fully addressed and rejected in Part D of the ruling of this date on "Gillam's and AFCW's Motion for Summary Adjudication Pursuant to AS 15.13.065(c) and .074(b)."

Presented with the clarification that the staff relies primarily on § 074(a) rather than § 074(b) for this claim, RRC has offered no independent argument regarding that subsection.

***E. Whether the Rule of Lenity Prevents Application of AS 15.13.074 to Ballot Propositions***

RRC argues that AS 15.13.074 cannot be applied in a civil prosecution involving a ballot proposition because of the rule applied by the Alaska Supreme Court in reaching its final disposition of *APOC v. Stevens*.<sup>27</sup> This is the principle, referred to in other cases as the rule of lenity, that "imprecise, indefinite, or ambiguous statutory or regulatory requirements must be strictly construed in favor of the accused before an alleged breach may give rise to a civil penalty."<sup>28</sup> RRC contends that the applicability provision in AS 15.13.065(c) is so ambiguous that this principle must be applied to block liability.

As explained at pages 6-7 of the ruling of this date on "Gillam's and AFCW's Motion for Summary Adjudication Pursuant to AS 15.13.065(c) and .074(b)," however, § 065(c) is not

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 16, 20; August 14 staff report at 16, 18.

<sup>24</sup> A separate allegation that Gillam passed a \$10,000 contribution through RRC in March of 2008 appears to have been dropped and apparently it would not be accurate.

<sup>25</sup> RRC/Jameson Ex. P.

<sup>26</sup> RRC/Jameson Ex. R.

<sup>27</sup> Motion at 19.

<sup>28</sup> *Stevens*, 205 P.3d at 326.

ambiguous. Moreover, as discussed in the same ruling at pages 7-8, the legislature directed APOC to “adopt regulations necessary to . . . clarify” AS 15.13.<sup>29</sup> The Commission has done this with respect to AS 15.13.065(c), and the resulting regulation, 2 AAC 50.352, fully resolves the alleged ambiguity of which RRC complains.

### **III. RRC May Have Violated AS 15.13.074.**

#### ***A. Alleged Violation at Issue***

As discussed in Part II, the staff alleges that RRC violated AS 15.13.074 “by acting as a pass through organization for Robert Gillam to make undisclosed contributions to AFCW.” The staff’s emphasis in the course of briefing has fallen on subsection AS 15.13.074(a), which provides that a “person, group, or nongroup entity may not make a contribution if the making of the contribution would violate this chapter,” but the staff has not formally conceded that subsection (b) could not likewise apply. The complainants, exercising their right to make independent argument, have firmly relied on subsection (b)—as it has been interpreted by regulation—in support of this allegation.

In addition to the threshold arguments addressed in Part II above, RRC seeks dismissal of the AS 15.13.074 allegations on the merits, arguing that the prohibitions in AS 15.13.074 simply do not describe the conduct in which RRC (as opposed to other participants) is alleged to have engaged.

#### ***B. Procedural Posture of this Aspect of the Motion***

See Part II-B.

#### ***C. Assumed Facts***

See Part II-C.

#### ***D. Whether a Conduit Entity Can Violate AS 15.13.074***

##### ***1. AS 15.13.074(a)***

The staff seeks to impose essentially derivative liability under AS 15.13.074(a). It argues that Gillam, in allegedly making a prearranged pass-through contribution of \$150,000, was violating AS 15.13.074(b). RRC, by re-contributing the money, was making a contribution under circumstances where “the making of the contribution would violate this chapter,” which is prohibited by subsection (a).

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<sup>29</sup> AS 15.13.030(9).

RRC's response is that there are only two possibilities under these facts: that RRC is the contributor or that Gillam is the contributor. If RRC is the contributor, it correctly reported itself as such on its Form 15.5. If Gillam is the contributor, RRC did not "make" the contribution and thus RRC's conduct cannot fall within the prohibitive language ("may not make a contribution") of § 074(a).

While this argument has a certain semantic appeal, it overlooks the nature of a pass-through arrangement. In the circumstance of a pass-through contribution, the original source and the conduit make the contribution together, in cooperation with one another. Thus, if the contribution is illegal because—according to the terms of the arrangement between the original source and the conduit—the source will avoid reporting it as required by AS 15.13.074(b), the conduit is liable under (a) for making a contribution that would violate the chapter. Both of them are liable, by different routes, as makers of the contribution.<sup>30</sup>

## 2. AS 15.13.074(b)

Alaska Statute 15.13.074(b) prohibits a person from making a contribution in any of three ways: (i) anonymously; (ii) using a fictitious name; or (iii) using the name of another. In its original motion, RRC pointed out that its transfer of funds, made by means of a pre-printed check bearing its name, was not anonymous and did not use a fictitious name. Neither the staff nor complainants have quarreled with this observation.

RRC goes on to argue that it did not make a contribution "using the name of another." It relies on a recent federal trial court case interpreting 2 U.S.C. § 441f, the Federal Election Campaign Act provision (discussed at some length in a prior order in this case) that provides, "No person shall make a contribution in the name of another person . . ."<sup>31</sup> The federal court held:

The Government says contributions in the name of another include the contribution made by Defendant in his own name to the Marlinga campaign with funds received from Hulet. However, the plain language of the statute does not support this construction. Although the court accepts that more than one person can make or cause a contribution in the

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<sup>30</sup> The staff also alleges that *if* RRC was required to report as if it were a group (the issue addressed in Part IV below), RRC would be subject to AS 15.13.040(b)(2)'s requirement that it report and identify "the true source of the funds" for contributions. *See also* AS 15.13.040(p). However, "the true source of the funds" in AS 15.13.040 refers to identification of contributors to the reporting group. The present allegation is about an outgoing contribution from RRC to AFCW.

<sup>31</sup> *See* Commission's Ruling on "Gillam's and AFCW's Motion for Summary Adjudication Pursuant to AS 15.13.065(c) and .074(b)," at 8-9.



name of another, the “other” must be somebody different than the person causing the contribution.<sup>32</sup>

The complainants in this case have pointed out, however, that APOC has formally interpreted AS 15.13.074(b) in a manner different from the federal court’s conclusion about § 441f. Exercising its statutory directive to clarify AS 15.13,<sup>33</sup> the Commission has adopted 2 AAC 50.258(c), which explains that “[f]or the purposes of AS 15.13.074(b), a contribution made at the direction of another person . . . is a contribution using the name of another.” The pass-through allegation at issue is an allegation that RRC made a \$150,000 contribution at the direction of Robert Gillam.

RRC did not respond to the complainant’s observation in its reply brief, but offered a single counterargument at oral argument before the administrative law judge: that the staff “is the master of its own complaint” and has elected not to allege a violation of 2 AAC 50.258(c). Leaving aside the question whether the staff can really be said to be the exclusive “master” of what legal theories apply in a proceeding where complainants have an express right to make independent arguments to the Commission,<sup>34</sup> this argument misconstrues the role of the regulation. 2 AAC 50.258(c) is purely an interpretive regulation. It is not a regulation one can violate.<sup>35</sup> The allegation remains that RRC violated AS 15.13.074, and 2 AAC 50.258(c) merely functions to construe that statute.

### 3. Summary

RRC has not established that the conduct that must be assumed for purposes of this motion could not represent a violation of AS 15.13.074(a) or (b). The pass-through allegation against RRC must proceed to a hearing, at which the staff must prove the factual basis for the alleged violations.

## IV. **RRC Was Required by an Apparently Valid Regulation to Report As If It Were a Group.**

### A. *Alleged Violation at Issue*

The June 4 staff report alleged in its concluding summary that:

RRC did violate AS 15.13.040(b) by failing to register and report as a group. Because RRC assessed, collected, pooled, and solicited money for

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<sup>32</sup> *United States v. Johnston*, 2008 WL 2544779 at \*3 (E.D. Mich. 2008).

<sup>33</sup> *See* AS 15.13.030(9).

<sup>34</sup> *See* 2 AAC 50.470(e).

<sup>35</sup> Other subsections of 2 AAC 50.258 contain direct prohibitions, but (c) does not.

the purpose of influencing the ballot measure campaign, 2 AAC 50.352 required RRC to register and report as a group.<sup>36</sup>

By statute, a “group” is a combination of individuals who, among other things, have “organize[d] for the principal purpose of influencing the outcome of one or more elections.”<sup>37</sup> In the body of the report, the staff acknowledged an argument that RRC—which was organized long before the Ballot Measure 4 campaign—does not fit the statutory definition of group, but reasoned that even if it was not a group RRC was required by the regulation, 2 AAC 50.352, to report “as a group.”<sup>38</sup>

In moving for summary adjudication, RRC began with a substantial evidentiary presentation designed to prove it does not fit the definition of “group.” Responding to the motion, the staff went beyond its prior acknowledgment that RRC is arguably not a “group,” and instead expressly conceded that RRC is not a “group” under the statutory definition.<sup>39</sup> This issue therefore no longer needs to be resolved.

What remains of the motion are arguments that the regulation, 2 AAC 50.352, must be construed so as to require “group” registration only of entities that meet the statutory definition of “group” or, alternatively, that the regulation exceeds APOC’s statutory authority and is void. The staff and complainants have opposed these two arguments.

### ***B. Procedural Posture of this Aspect of the Motion***

Given that the issue on which RRC submitted substantial evidence—whether RRC is a group—has been resolved, the motion is essentially in the posture described in Part II-B above. For this aspect of the motion, it is important to note that while the staff will ultimately, at any hearing, have the burden to prove any violations by RRC, in the context of RRC’s motion for summary adjudication it is RRC that has the burden to show that the law requires judgment at this time in its favor.<sup>40</sup>

### ***C. Assumed Facts***

RRC is a trade association organized as an Alaska nonprofit corporation and qualified under Internal Revenue Code § 501(c)(6).<sup>41</sup> RRC was not organized for the principal purpose of influencing the outcome of one or more elections and has never been a “group” as that term is

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<sup>36</sup> June 4 staff report at 39.

<sup>37</sup> AS 15.13.400(8)(B).

<sup>38</sup> June 4 staff report at 26-29.

<sup>39</sup> Opposition at 4.

<sup>40</sup> See, e.g., *Brock v. Rogers & Babler, Inc.*, 536 P.2d 778, 782 (Alaska 1975).

defined in AS 15.13.400(8).<sup>42</sup> Accepting the allegations of the staff report as true, RRC assessed, collected, pooled, and solicited money for the purpose of influencing the election concerning Ballot Measure 4.<sup>43</sup> No details of this activity are necessary for purposes of this motion.

RRC reported a single contribution of \$150,000 to AFCW on APOC Form 15-5, which is the form for reporting under AS 15.13.040(k).<sup>44</sup>

***D. Whether 2 AAC 50.352 Can Be Applied to Require RRC to Register and Report as Though It Were a Group***

Alaska Statutes 15.13.040 and 15.13.110 are the central provisions of chapter 15.13 requiring the reporting of expenditures and contributions. These provisions contain requirements for such reporting by:

- ◆ Candidates, covering contributions received and expenditures (AS 15.13.040(a); AS 15.13.110(a))
- ◆ Persons who have indicated the intent to become candidates or who have filed nominating petitions, covering contributions received and expenditures (AS 15.13.110(f))
- ◆ Groups, as defined in AS 15.13.400, covering contributions both received and given and expenditures (AS 15.13.040(b); AS 15.13.110(a), (e), (f))
- ◆ Individuals, persons, and nongroup entities, covering expenditures (AS 15.13.040(d))
- ◆ Nongroup entities, covering contributions both received and given and expenditures (AS 15.13.040(j); AS 15.13.110(a))
- ◆ Individuals, persons, groups, and nongroup entities contributing \$500 or more to groups organized to influence ballot propositions (AS 15.13.040(k))

In reporting a single \$150,000 contribution, RRC reported as a person under the last of these reporting categories.<sup>45</sup>

The staff contends that RRC should have reported *as if it were* a group, which would entail more extensive reporting requirements. The basis for the staff's contention is 2 AAC 50.352, which provides in relevant part, with respect to ballot measures:

(c) A corporation . . . may report its contributions and expenditures under AS 15.13.040(d) and (e) as an individual if

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<sup>41</sup> Jameson/RRC Ex. A, B, R.

<sup>42</sup> *Id.*; concession at oral argument.

<sup>43</sup> June 4 staff report at 27.

<sup>44</sup> RRC/Jameson Ex. R.

<sup>45</sup> *See id.*

(1) all contributions and expenditures to influence the outcome of a ballot measure election are made from the organization's general day-to-day operating account; and

(2) the organization does not assess, collect, pool, or solicit money for anything of value for the purpose of influencing a ballot measure election.

(d) A corporation . . . that does not meet the requirements in (c) of this section must register and report as a group.

RRC must be assumed for purposes of this motion to have assessed, collected, pooled, and solicited money to influence Ballot Measure 4, which would make it ineligible to report under subsection (c).

Although RRC will maintain at the hearing that it was fully eligible to report under (c), it has brought this motion to address the contingency that it might be found ineligible to do so. After reviewing the state of the arguments and the proposed ruling on this issue, the Commission believes it would be preferable to address *first* the question of whether RRC was eligible to report under (c) and then, only if the answer is negative, turn to what reporting requirements would apply to RRC if it does not meet the requirements of (c). The motion to dismiss will be held in abeyance and will be addressed if it is not moot after the threshold issue of eligibility under (c) has been addressed.

**V. Conclusion**

RRC and Jameson's motion is granted in part and denied in part, as follows:

1. Because he was not a member of a group for reporting purposes, all claims against Richard Jameson are dismissed.

2. No claims against RRC are dismissed. At the hearing or in such other proceedings as may be scheduled (such as post-hearing supplemental briefing), if the question is not moot, RRC may maintain its argument that it should not be required to register or report as a group even if it does not meet the eligibility requirements of 2 AAC 50.352(c).

DATED this 19<sup>th</sup> day of November, 2009.

BY DIRECTION OF THE COMMISSION

By: *Signed* \_\_\_\_\_  
Christopher Kennedy  
Administrative Law Judge

**Certificate of Service:** The undersigned certifies that on the 19<sup>th</sup> day of November, 2009, a true and correct copy of this document was emailed or faxed to:

- ◆ Scott Kendall and Timothy McKeever, counsel for respondents Alaskans for Clean Water, Inc. & Robert Gillam;
- ◆ Matthew Singer and Charles Dunnagan, counsel for complainants Pebble Limited Partnership and Renewable Resources Coalition;
- ◆ Douglas Pope and Jonathon Katcher, counsel for Arthur Hackney;
- ◆ Jeffrey Feldman and Kevin Cuddy, counsel for Michael Dubke;
- ◆ Peter Maasen, counsel for Richard Jameson and Renewable Resources Coalition, Inc.; and
- ◆ Thomas Dosik, Assistant Attorney General, counsel for the APOC staff.

Copies of this document were provided by the same means to Holly Hill, APOC Executive Director, Elizabeth Hickerson, APOC Chair, and William Milks, AAG, legal advisor to the Commission.

By: Signed  
Linda Schwass/Kimberly DeMoss