BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: CORE-ECS, Respondent.	)))))	No. 2008-0085

CONDITIONAL ASSESSMENT ORDER

This matter came on to be heard informally by the Commission on September 23, 2008 at its regularly scheduled meetings. Commission staff presented documentation indicating that Respondent failed to file a semi-annual lobbying expenditure report as required by Tenn. Code Ann. § 3-6-303(a).

FINDINGS OF FACT

Documentation on file with the Commission shows, and the Commission finds, as follows:

1. Registration. Respondent CORE-ECS, registered as an employer of a lobbyist on December 24, 2007.

2. Semi-annual lobbying expenditure report. CORE-ECS had a duty under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act") to file an employer disclosure report ("semi-annual lobbying expenditure report") for the six month period ending March 31, 2008. This report was due to be filed no later than May 15, 2008.
   a. As of May 15, 2008, CORE-ECS had not filed its semi-annual lobbying report.
   b. On June 9, 2008, Commission staff sent CORE-ECS by electronic mail a notice of failure to file a semi-annual lobbying expenditure report.
   c. On August 11, 2008, Commission staff mailed CORE-ECS a Notice of Informal Show Cause hearing. The letter was returned to sender, because of insufficient address.
   d. On August 27, 2008, Commission staff updated the employers address and re-mailed to CORE-ECS.

3. Notice of violation. On August 11, 2008, the Commission sent CORE-ECS by certified mail, return receipt requested, a notice that the Commission intended to consider at its September 23, 2008 meeting assessment of civil penalties against CORE-ECS for failure to file the semi-annual lobbying expenditure report due for the six month period ending March 31, 2008.

a. The notice set forth the allegation, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and CORE-ECS's opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.
b. On August 26, 2008, the certified letter was returned for insufficient address. On August 27, 2008, the Commission staff resent by certified mail, return receipt requested to the updated address the intended notice.
c. In response to the notice, CORE-ECS filed on September 5, 2008.

4. Hearing. CORE-ECS filed a written response on September 5, 2008 which stated that it incorrectly believed its contractor was responsible to file report.

CONCLUSIONS OF LAW

The Commission concludes that CORE-ECS had an obligation under the Act to file a semi-annual lobbying expenditure report for the six month period ending March 31, 2008, failed to do so, and had no "good cause" for such failure to file. The Act authorizes the Commission to administratively assess a civil penalty of not more than twenty-five dollars ($25.00) per day up to a maximum of seven hundred fifty dollars ($750.00) if an employer of a lobbyist fails, without good cause, to timely file an employer disclosure report. Tenn. Code Ann. § 3-6-306 (a)(1)(A)(iii).

The Commission considers the complete failure to respond to the warning and notice concerning the failure to file to be significant. The Commission has taken steps through training, website postings, and notices to help employers of lobbyist to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective. The Commission finds that CORE-ECS did file promptly upon receipt of the Show Cause Notice and did provide a written response. Accordingly, the Commission finds that CORE-ECS should be assessed a civil penalty of four hundred dollars ($400.00).

This assessment cannot become final until after respondent has been afforded an opportunity for a notice and a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its rights to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

CONDITIONAL ORDER

It is therefore ORDERED that a civil penalty in the amount of four hundred dollars ($400.00) is assessed against CORE-ECS for failure to file an employer disclosure report.

It is further ORDERED that the Executive Director shall issue this order and file it in the Commission's offices.

It is FURTHER ORDERED that this order shall not become final if respondent files a timely request for reconsideration of petition for a contested case hearing.

It is further ORDERED that the Executive Director shall cause to be provided to the respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, and notice of the following:

Respondent's right to seek reconsideration of this order by filing with the Commission, within fourteen (14) days of this order, a written request for reconsideration in the form set forth in the notice;

Respondent's right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a petition for a contested case hearing in the form set forth in the notice; and

That in the event of failure to timely file a request for reconsideration or a petition for a contested case hearing the order shall become final and may form the basis for legal action to collect the civil penalty.

SO ORDERED.

Issued this 30th day of September, 2008

TENNESSEE ETHICS COMMISSION

By: _____

Bruce A. Androphy,
Executive Director