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June 14, 2019

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
1050 First Street, NE
Washington, D.C. 20463

Re: Matter Under Review 7594

Dear Mr. Jordan:

We write as counsel to Wolf Political Action Committee (formerly Tom Wolf for Governor)¹ (“Respondent”), in response to the Complaint filed by Alexander Austin (“Complainant”) on April 8, 2019 (the “Complaint”) in the above-referenced matter.

Not only does the Complaint incorrectly suggest that the Respondent accepted contributions from a foreign national, but it also fails to state sufficiently specific facts that, if proven, would show that the Respondent *knowingly* accepted contributions from a foreign national. As the facts do not support the Complaint’s allegation of a violation of the Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”), and Federal Election Commission (“FEC”) regulations, the Commission should immediately dismiss the Complaint and close the file.

FACTS

Respondent is a political organization organized under Section 527 of the Internal Revenue Code and is registered as a political action committee with the Pennsylvania Department of State.² At

¹ In March of 2018, Tom Wolf for Governor amended its registration status in Pennsylvania from an authorized candidate committee to an unauthorized political action committee. It also changed its name to Wolf Political Action Committee (PAC), and operates under the name “Wolf PAC.”

² See Pennsylvania Department of State, “Committee Information - Wolf PAC” available at <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=10691> (last accessed June 7, 2019).

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the time of the events that are the subject of the Complaint, it was the authorized committee of Tom Wolf, the Governor of Pennsylvania.³

Enbridge Inc. is a multinational corporation based in Canada (“**Exhibit A**”).⁴ Its domestic subsidiary, Enbridge (U.S.) Inc., is a Delaware-based corporation whose principal place of business is located in Texas.⁵ On February 27, 2017, Enbridge Inc. finalized its acquisition of the Texas-based Spectra Energy Corporation.⁶ Prior to its acquisition, Spectra Energy Corporation owned and operated a separate segregated fund (“SSF”) registered with the FEC: Spectra Energy Corp Political Action Committee (“Spectra-DCP PAC”).⁷ The same day as the acquisition, Enbridge (U.S.) Inc. became Spectra-DCP PAC’s affiliated organization and changed its name to Enbridge (U.S.) Inc. Political Action Committee (“Enbridge-DCP PAC”).⁸

During the 2017-2018 election cycle, Respondent received two contributions from Enbridge (US) Inc. Political Action Committee: one \$10,000 contribution on May 14, 2018,⁹ and one \$5,000 contribution on October 30, 2018.¹⁰ The Complaint alleges that Enbridge, Inc. made three contributions to Tom Wolf for Governor.¹¹ On its first FEC Monthly Report, Enbridge-DCP PAC reported a contribution to Tom Wolf for Governor.¹² However, Respondent’s records show

³ See, e.g., Pennsylvania Department of State, Tom Wolf for Governor, 2018 Cycle 6 Report (filed Dec. 6, 2018) <https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=295444&isStatement=0&is24Hour=0>.

⁴ Enbridge-DCP PAC’s representations to the Respondent regarding the incorporation of various entities (and those of its predecessor Spectra-DCP PAC) inform the basis for the Respondent’s understanding of the corporate structure underlying the federal PAC. These representations are documented in a letter sent to the Respondent by Enbridge-DCP PAC after the Respondent received the Complaint. See Letter from Bill Burlew, Senior Manager Federal Government Affairs, Enbridge-DCP PAC, to Governor Tom Wolf (May 2, 2019) (attached as “Exhibit A”). In the Letter, Burlew states that Enbridge Inc. is “a Canadian company.” *Id.*

⁵ See *id.* (“Enbridge (U.S.) Inc. is a Delaware corporation and a wholly owned subsidiary of Enbridge Inc. Enbridge (U.S.) Inc.’s principal place of business is located in Houston, Texas . . .”); Delaware Department of State: Division of Corporations General Name Search, File Number 2561207, available at <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (last accessed June 7, 2018).

⁶ Spectra Energy Corp., *We are now Enbridge!* (Feb. 27, 2017), <http://www.spectraenergy.com/>.

⁷ Spectra Energy Corp Political Action Committee (Spectra-DCP PAC), FEC Form 1, Statement of Organization (Sept. 10, 2014), available at <https://docquery.fec.gov/cgi-bin/forms/C00429662/951351/>.

⁸ Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), FEC Form 1, Statement of Organization (Feb. 27, 2017) [hereinafter “Enbridge-DCP PAC FEC Form 1”], <https://docquery.fec.gov/cgi-bin/forms/C00429662/1151436/>; see also Exh. A, *supra* note 4 (stating that Enbridge-DCP PAC was “formerly known as Spectra Energy Corp Political Action Committee (Spectra-DCP PAC)”).

⁹ Pennsylvania Department of State, Tom Wolf for Governor, 2018 Cycle 3 Report 101 (filed June 14, 2018), available at <https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=283571&isStatement=0&is24Hour=0>.

¹⁰ *Id.* 2018 Cycle 6 Report 92 (filed Dec. 6, 2018), available at <https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=295444&isStatement=0&is24Hour=0>.

¹¹ Complaint of Alexander Austin in MUR 7594 17, (Apr. 8, 2019) [hereinafter “Compl.”].

¹² Enbridge-DCP PAC, 2018 February Monthly Report 56 (filed March 20, 2017), available at <https://docquery.fec.gov/cgi-bin/fecimg/?201703209050888783>.

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that this contribution was actually made by Spectra Energy Corp Political Action Committee, prior to Enbridge, Inc.'s acquisition of Spectra Energy Corporation.¹³

LEGAL ANALYSIS

The Complaint alleges that Respondent, along with 305 other political committees which received contributions from Enbridge-DCP PAC in the 2017-2018 election cycle, “accepted contributions from a foreign (Canadian) company (Enbridge Inc.)” in violation of federal law.¹⁴ Although federal law prohibits any person from “solicit[ing], accept[ing], or receiv[ing] a contribution or donation . . . from a foreign national,”¹⁵ the facts here do not support the Complainant’s allegation. Respondent accepted contributions from Enbridge-DCP PAC, the separate segregated fund of a domestic corporation. These contributions were lawful, and Respondent took all reasonable measures to ensure that they were lawful prior to accepting them.

The Complainant confused Enbridge-DCP PAC with both its affiliated organization—Enbridge (U.S.) Inc.—and its affiliated organization’s parent company—Enbridge Inc. In addition, the Complaint fails to even allege that the Respondent *knowingly* accepted contributions from a foreign national in violation of federal law. In reality, the facts underlying the Complaint show that the Respondent accepted legal contributions from a federal committee registered with the FEC and had no valid reason to conclude, or inquire, otherwise.

I. The Complaint Incorrectly Suggests that the Respondent Accepted Contributions from a Foreign National

Under federal law, a foreign national may not directly or indirectly make a contribution or donation of money or other thing of value in connection with any federal, state, or local election.¹⁶ The term “foreign national” refers to: (1) any individual who is not a citizen, national, or lawfully-admitted permanent resident of the United States; and (2) any “foreign principal” who is not as U.S. citizen.¹⁷ A “foreign principal” includes “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”¹⁸

However, a corporation “organized under the laws of any [s]tate within the United States that has its principal place of business in the United States” is neither a foreign principal nor a foreign

¹³ Pennsylvania Department of State, Tom Wolf for Governor, 2017 Cycle 7 Report 931 (filed Jan. 31, 2018), <https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=274807&isStatement=0&is24Hour=0>; Exhibit B.

¹⁴ Compl. at 1.

¹⁵ 52 U.S.C. § 30121(a)(1).

¹⁶ 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

¹⁷ 52 U.S.C. § 30121(b)(1).

¹⁸ *Id.* § 30121(b)(2) (noting that the definition of foreign principal codified at 22 U.S.C. § 611(b) applies to the foreign national contribution ban); 22 U.S.C. § 611(b)(1)-(3).

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national under federal election law.¹⁹ Therefore, the domestic subsidiary of a foreign corporation is not a foreign national and may operate an SSF that makes direct contributions in connection with federal elections, so long as no foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process of the SSF's federal or non-federal election-related activities.²⁰ Further, the foreign parent corporation must “delegate all decisions concerning [the federal PAC's] administration . . . to some other corporate personnel group comprised exclusively of United States citizens or individuals lawfully admitted for permanent residence in the United States.”²¹

As discussed above, Enbridge-DCP PAC is an SSF owned and operated by Enbridge (U.S.) Inc., the domestic subsidiary of Enbridge Inc., a Canada-based corporation.²² Contrary to the Complainant's claims, the Respondent has *never* received contributions from either Enbridge Inc. or Enbridge (U.S.) Inc. However, Respondent did receive contributions from Enbridge-DCP PAC in 2018. To the best of Respondent's knowledge, these contributions were legally permissible contributions under federal election law.²³ Therefore, the Complaint's allegation that the Respondents received and accepted contributions from a foreign national in violation of federal law is grossly inaccurate and should be discarded.

II. The Complainant has Failed to Allege That the Respondent Knowingly Accepted Contributions from a Foreign National in Violation of Federal Law

The Complaint not only confuses the facts and makes grossly inaccurate allegations, but it also fails to allege that the Respondent *knowingly* accepted contributions from a foreign national.

Under FEC regulations, no person “shall knowingly solicit, accept, or receive from a foreign national any contribution or donation.”²⁴ The word “knowingly” means that a person: (1) has “actual knowledge” that the source of funds accepted or received is a foreign national; (2) is “aware of facts that would lead a reasonable person to conclude that there is a substantial probability” that the source of the funds accepted or received is a foreign national; *or* (3) is “aware of facts that would lead a reasonable person to inquire” whether the source of funds accepted or received is a foreign national “but . . . fail[s] to conduct a reasonable inquiry.”²⁵ Pertinent facts relevant to whether a person knowingly solicits, receives, or accepts a foreign national contribution in violation of federal law include—but are not limited to—the contributor

¹⁹ See Fed. Election Comm'n, Advisory Op. 2000-17 at 4 (Extendicare) [hereinafter “AO 2000-17”].

²⁰ See *id.*; 11 C.F.R. § 110.20(i).

²¹ AO 2000-17, *supra* note 19, at 6.

²² See Enbridge-DCP PAC FEC Form 1, *supra* note 8; see also Exh. A.

²³ See Fed. Election Comm'n, Matter Under Review 6099 (Sam Page et al.), Factual and Legal Analysis, at 4-6 (finding no reason to believe that a campaign committee accepted a contribution from a foreign national, because the contributor was a domestic subsidiary of a foreign corporation); Exh. A.

²⁴ 11 C.F.R. § 110.20(g).

²⁵ *Id.* § 110.20(a)(4)(i)-(iii).

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or donor: using a foreign passport or passport number for identification purposes; providing a foreign address; residing abroad; and/or drawing funds from a foreign bank, or wiring money from a foreign bank, to write a check or other written instrument.²⁶

Here, the Complainant does not allege, nor does he furnish the Commission with any information, or accompanying documentation or evidence, that could establish that Respondent knowingly solicited or accepted a contribution from a foreign national.²⁷ The Complaint does not, for instance, state whether the Respondent had actual knowledge that the source of the contributions is a foreign national. Nor does the Complainant discuss whether a reasonable person might conclude or inquire from the nature of these contributions that there is a substantial probability that the source of the funds is a foreign national. The Complaint does not state that the Respondents were aware of facts that might lead a reasonable person to inquire whether or conclude that foreign nationals were involved in Enbridge-DCP PAC's decision-making related to election activities. Outside of conclusory statements, and charts detailing lawful contributions that Enbridge-DCP PAC made to the Respondent, the Complaint is simply devoid of the facts necessary to articulate a valid claim here.

In reality, the contribution checks received by the Respondent from Enbridge DCP-PAC originated from Comerica Bank, a financial institution incorporated and headquartered in the United States.²⁸ The check came from a Houston, Texas address and included Enbridge-DCP PAC's FEC committee identification number. A reasonable inquiry into Enbridge-DCP PAC's background, using this committee identification number on the FEC's website, would confirm that Enbridge (U.S.) Inc., a Houston, Texas-based entity, is the SSF's affiliated organization.²⁹ Further, Enbridge-DCP PAC's custodian of records, treasurer, and designated agent are all based out of Houston, Texas as well.

The facts prove that the Respondent received lawful contributions from a federal committee registered with the FEC. The facts also establish that the Respondent had absolutely no legitimate reason to conclude, or inquire as to whether, the source of the funds received was a foreign national. Thus, the Commission should dismiss this matter.

CONCLUSION

Respondent respectfully requests that the Commission promptly finds no reason to believe any violation occurred, dismisses the matter, and closes the file.

²⁶ *Id.* § 110.20(a)(5)(i)-(iv).

²⁷ Compl., at 1.

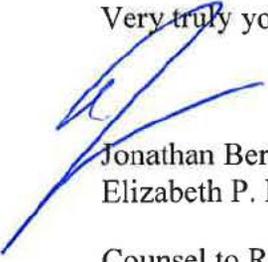
²⁸ See Exhibit C; Comerica Bank, "Company Overview," available at <https://www.comerica.com/about-us/company-overview.html>.

²⁹ Enbridge-DCP PAC FEC Form 1, *supra* note 8.

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We appreciate the Commission's consideration of this response.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'Jonathan Berkon', is written over the typed name.

Jonathan Berkon
Elizabeth P. Poston

Counsel to Respondent

Exhibit A



Enbridge DCP PAC
5400 Westheimer Court
Houston, Texas 77056

May 2, 2019

Governor Tom Wolf
c/o Jason O'Malley

Re: Complaint filed with the Federal Election Commission by Alexander Austin with respect to Enbridge-DCP PAC – MUR 7594

To Jason O'Malley:

As you may be aware, Alexander Austin, an individual residing in Colorado, has submitted a complaint to the Federal Election Commission (FEC) with respect to Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC) (which was formerly known as Spectra Energy Corp Political Action Committee (Spectra-DCP PAC)).

The complaint is focused on the fact that Enbridge (U.S.) Inc., which sponsors Enbridge-DCP PAC, is a subsidiary of Enbridge Inc., a Canadian company.

Enbridge Inc. is a Canadian corporation with its common shares publically traded on the Toronto and New York stock exchanges under the symbol "ENB." Enbridge Inc. is one of North America's largest energy infrastructure companies with strategic business platforms (owned and operated through its subsidiaries) that include an extensive network of crude oil, liquids and natural gas pipelines, regulated natural gas distribution utilities and renewable power generation assets. Enbridge (U.S.) Inc. is a Delaware corporation and a wholly owned subsidiary of Enbridge Inc. Enbridge (U.S.) Inc.'s principal place of business is located in Houston, Texas, and, through its subsidiaries, has approximately 3,500 employees in the U.S., who safely maintain and operate Enbridge's assets across 41 U.S. states.

Please be assured that the operations of the Enbridge-DCP PAC are in full compliance with federal law and regulations, which allow the U.S. subsidiaries of foreign companies to sponsor PACs, have such PACs solicit contributions from eligible U.S. citizens and green card holders, and have such PACs make contributions to U.S. political committees. Many U.S. subsidiaries of foreign companies sponsor PACs and engage in such activities. The law is clear in this area, and we are confident the complaint will be dismissed.

Unfortunately, the complaint identified not only the Enbridge-DCP PAC but also many of the federal and state political committees to which the Enbridge-DCP PAC made contributions to over several years. This included your committee, and the FEC was therefore obligated to notify your committee of the complaint. You likely received a letter from Jeff Jordan, the FEC's Assistant General Counsel, in recent days.

As the letter explains, at this preliminary stage the FEC is given an opportunity to determine if there is any reason to believe that a possible violation has occurred. Only if the FEC reach that conclusion would the FEC open an investigation into the matter.

April 29, 2019

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Enbridge (U.S.) Inc. will respond to the complaint on our behalf and seek to demonstrate that there is no reason for the FEC to believe that any violation has occurred. Other parties mentioned in the complaint, including your committee, are provided a chance to respond at this preliminary stage too, but a response is not required. If your committee chooses to respond, as the letter explains, your committee may request an extension of the 15-day response deadline referenced in the letter.

If you have any questions about this matter, please feel free to contact Adam Parker at 202-347-3386 or adam.parker1@enbridge.com.

Sincerely,

A handwritten signature in blue ink that reads "Adam C. Parker". The signature is written in a cursive style with a large initial "A".

Adam Parker
Enbridge-DCP PAC Manager

Exhibit B

SPECTRA ENERGY CORP. PAC (SPECTRA-DCP PAC)
5400 WESTHEIMER COURT
HOUSTON, TX 77056
FEC ID C00429662

THIS PAC IS REGISTERED AS A MULTI-CANDIDATE CMTE.

COMERICA BANK
09-009720

3778

Date: 02/01/2017

PAY TO THE
ORDER OF

Tom Wolf for Governor

\$ 5,000.00

Five thousand and xx / 100 *****

DOLLARS

Void In 90 Days

Ritu Talwar

2018 Primary

MEMO

[REDACTED]

Exhibit C

CASH ONLY IF ALL CHECKING AND SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Enbridge (U.S.) Inc. PAC (Enbridge-DCP PAC)
5400 WESTHEIMER COURT
HOUSTON, TX 77056
FEC ID C00429662

COMERICA BANK
09-009720

4231

THIS PAC IS REGISTERED AS A MULTI-CANDIDATE CMTE.

Date: 04/24/2018

PAY TO THE ORDER OF Tom Wolf for Governor

\$ 10,000.00

Ten thousand and xx / 100 *****

DOLLARS

Void in 90 Days

Ritu Talwar

MEMO 2018 Primary



CASH ONLY IF ALL CHECKING AND SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Enbridge (U.S.) Inc. PAC (Enbridge-DCP PAC)
5400 WESTHEIMER COURT
HOUSTON, TX 77056
FEC ID C00429662

COMERICA BANK
09-009720

4379

THIS PAC IS REGISTERED AS A MULTI-CANDIDATE CMTE.

Date: 10/15/2018

PAY TO THE ORDER OF Tom Wolf for Governor

\$ 5,000.00

Five thousand and xx / 100 *****

DOLLARS

Void in 90 Days

Ritu Talwar

MEMO 2018 General



Details on Back
Check
Secure Check

Details on Back
Check
Secure Check