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45 North Hill Drive • Suite 100 • Warrenton, VA 20186

July 1, 2019

Federal Election Commission
 Office of General Counsel
 Office of Complaints Examination
 & Legal Administration
 attn: Kathryn Ross, Paralegal
 1050 First Street, NE
 Washington, DC 20002

2019 JUL -3 AM 11:46

GENERAL COUNSEL

Re: Response of Diane Black for Governor in MUR 7594

Dear Ms. Ross,

This response is submitted by the undersigned counsel in connection with MUR 7594 on behalf of Diane Black for Governor.

The Complaint contends that the Respondent accepted a contribution from Enbridge Inc. in violation of the foreign national contribution ban. (Respondent is a non-federal campaign committee but acknowledges that the foreign national prohibition at 52 U.S.C. § 30121 applies to contributions made in connection with Federal, state, and local elections.) Specifically, the Complainant incorrectly asserts that “a foreign (Canadian) company (Enbridge Inc.) has made hundreds of contributions directly to American political campaigns and dozens of American political party committees; likewise, hundreds of American political campaigns and dozens of American political party committees accepted contributions from a foreign (Canadian) company (Enbridge Inc.)”¹ Elsewhere, the Complainant notes that the identified contributions were made by “Enbridge-DCP PAC,” but the Complaint as a whole appears either to misattribute the contributions to Enbridge Inc. or presumes there is no distinction between the two.

The contributions at issue were *not* made by Enbridge Inc.; they were made by Enbridge (U.S.) Inc. Political Action Committee. According to its most recent Statement of Organization, “Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC)” is the connected PAC of Enbridge (U.S.) Inc., which has an address of 5400 Westheimer Court, Houston, Texas 77056. Enbridge (U.S.) Inc. is incorporated in Delaware. The treasurer, custodian of records, and

¹ Complaint at 1.

designated agent identified in the Statement of Organization are based in Houston, and the PAC's bank account is with Comerica Bank in Detroit.

The Complainant does not appear to be aware of the Commission's treatment of separate segregated funds maintained by domestic subsidiaries of foreign principals. The Complainant presents no facts suggesting that Enbridge (U.S.) Inc. Political Action Committee is improperly funded or controlled. To the contrary, Enbridge's website includes a link to a "Political Contributions Policy"² that indicates the company is familiar with the Commission's requirements. The policy reads, in relevant part:

In the United States, eligible employees may choose to participate in the political process by voluntarily making contributions to the Enbridge (U.S.) Inc. Political Action Committee (Enbridge-DCP PAC), a political action committee that is not affiliated with any political party, candidate or organization. The PAC was established by Enbridge (U.S.) Inc. and DCP Midstream LLC, a joint venture between Enbridge Inc. and Phillips 66. Enbridge-DCP PAC is directed by a board of employees of both Enbridge (U.S.) Inc. and DCP Midstream, which makes all decisions regarding the PAC's political contributions. Enbridge-DCP PAC contributions go directly to support candidates for Congressional office and for state office, where Federal PAC contributions are permitted by state law. Contributions to certain national party organizations may also be made as appropriate. All PAC contributions are disclosed consistent with Federal and state laws and regulations, and available on the website of the Federal Election Commission and on the websites of election boards in the certain states where the PAC makes contributions.³

This language is consistent with the Commission's guidance regarding the source of funding and control of separate segregated funds established by domestic subsidiaries of foreign principals. *See generally* Advisory Opinion 2006-15 (TransCanada).

Diane Black for Governor did not solicit or accept contributions from foreign nationals. Under a long line of Commission precedent, Enbridge (U.S.) Inc. Political Action Committee is not a "foreign national." The contribution made to the Respondent was facially valid and the Complaint presents no evidence suggesting any violation of the foreign national prohibition. There is no information available that would cause a reasonable person to conclude otherwise.

² Enbridge Inc. Political Contributions Policy (Aug. 3, 2017), https://www.enbridge.com/~/_media/Enb/Documents/Investor%20Relations/CorporateGovernance/ENB_Political_Contributions_Policy.pdf?la=en.

³ *Id.* (emphasis added).

The Commission should find no reason to believe a violation of the Act occurred and dismiss the Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read 'JF Johnson', with a long horizontal flourish extending to the right.

Jessica F. Johnson

GENERAL COUNSEL
2019 JUL -3 AM 11: 47



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL: cela@fec.gov FAX: 202-219-3923

MUR # 7594

Name of Counsel: Michael Bayes; Jessica F. Johnson

Firm: Holtzman Vogel Josefiak Torchinsky PLLC

Address: 45 North Hill Drive Suite 100

Warrenton, VA 20186

Telephone: 540-341-8808 Fax: 540-341-8808

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

07/01/2019
Date

Tommy Whittaker
Signature (Respondent/Agent)

Treasurer

Title

RESPONDENT: Diane Black for Governor; Tommy Whittaker, Treasurer
(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: c/o The Farmers Bank
(Please Print)

PO Box 10, Portland, Tennessee 37148

Telephone (H): _____ (W): 615-323-1100

E-mail: twhittaker@thefarmersbank.net

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Statement of Designation of Counsel

Provide one form for each Respondent/Witness
 Note: You May E-Mail Form to: CELA@fec.gov

CASE: Blanket

Name of Counsel: Derek H. Ross

Firm: Clark Hill PLC

Address: 1001 Pennsylvania Ave. NW, Suite 1300 S

Washington, DC 20004

Telephone: (202) 640-6684 **Fax:** (202) 640-6697

The above named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7/11/2019

Date



Signature

Treasurer

Title

RESPONDENT: Culberson for Congress and Kevin Broghamer in his official capacity as treasurer
 (Committee Name/Company Name/Individual Named In Notification Letter)

MAILING ADDRESS:

Contact through counsel

Telephone:(H): _____ **(W):** _____

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