



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUL 27 2020

William H. Minor
DLA Piper LLP
500 Eighth Street, NW
Washington, DC 20004

RE: MUR 7594

Dear Mr. Minor:

On April 18, 2019, the Federal Election Commission (“Commission”) notified your clients, Enbridge Inc., Enbridge (U.S.) Inc., and Enbridge (U.S.) Political Action Committee and K. Ritu Talwar in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”).

On July 2, 2020, based upon the information contained in the complaint and information provided by respondents, the Commission dismissed the allegation that your clients violated 52 U.S.C. § 30121(a)(1). Accordingly, the Commission closed its file in this matter.

The Commission cautions Enbridge Inc. that, as a company that would qualify as a foreign national under 52 U.S.C. § 30121(b) and as a foreign principal under 22 U.S.C. § 611(b), it is unlawful for Enbridge Inc. to make a contribution or donation of money or other thing of value in connection with a Federal, state, or local election.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A Statement of Reasons explaining the basis for the Commission’s decision is enclosed.

If you have any questions, please contact Kristina Portner, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran".

Lynn Y. Tran
Assistant General Counsel

Enclosure:
Statement of Reasons



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Enbridge, Inc.) MUR 7594

STATEMENT OF REASONS OF CHAIR JAMES E. "TREY" TRAINOR III

I. INTRODUCTION

The Complaint in this matter alleges that Enbridge Inc., a Canadian company, violated the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with contributions from Enbridge PAC to various federal and state political committees during the 2018 election cycle.¹ For the reasons set forth below, I joined my colleagues in voting to dismiss this matter as to Enbridge, Inc., and to find no reason to believe that any of the recipient political committees violated the Act.²

II. FACTUAL BACKGROUND

Enbridge Inc. is a publicly traded Canadian corporation headquartered in Calgary, Canada.³ Enbridge Inc. acknowledged that it is a foreign national under 52 U.S.C. § 30121(b) and a foreign principal under 22 U.S.C. § 611(b).⁴ Enbridge (U.S.) Inc., an indirect wholly-owned subsidiary of Enbridge Inc., is a Delaware corporation with its principal place of business in Houston, Texas.⁵ It has approximately 3,500 employees in the United States and assets across 41 states.⁶

On February 27, 2017, Enbridge Inc. and Spectra Energy Corporation ("Spectra Energy") merged, and Spectra Energy became a wholly-owned subsidiary of Enbridge Inc.⁷ Following the merger, Enbridge (U.S.) Inc. became the direct parent company of Spectra Energy and all of its

¹ Compl. at 1 (Apr. 11, 2019).

² MUR 7594, Certification dated Jul. 2, 2020 at 1.

³ Compl. at 5; Enbridge Resp. at 2.

⁴ Enbridge Resp. at 2.

⁵ Compl. at 5; Enbridge Resp. at 2. Enbridge (U.S.) Inc. is a direct, wholly owned subsidiary of Enbridge US Holdings Inc., which is a Canadian corporation that is a direct, wholly-owned subsidiary of Enbridge Inc. *Id.*

⁶ *Id.*

⁷ *Id.* Spectra Energy was formed in 2006 in connection with its spin-off from Duke Energy Corporation, and was publicly traded on the New York stock exchange. *Id.*

subsidiaries and assets.⁸ At the time of this merger, Spectra Energy sponsored a SSF known as the Spectra Energy Corp Political Action Committee (“Spectra Energy PAC”).⁹ Following the merger, Spectra Energy PAC changed its name to Enbridge (U.S.) Inc. Political Action Committee (“Enbridge PAC”) and identified Enbridge (U.S.) Inc. as its connected organization.¹⁰

Enbridge PAC adopted Articles of Association on March 14, 2017.¹¹ The Articles provide that the members of Enbridge PAC include all Enbridge (U.S.) Inc. shareholders, employees, and families who are eligible and do contribute to Enbridge PAC “provided such individuals are United States citizens or permanent United States residents.”¹²

Enbridge PAC contributed to various federal and state political committees during the 2017-2018 election cycle.¹³

III. LEGAL ANALYSIS

The Act and Commission regulations prohibit any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election.¹⁴ The Act’s definition of “foreign national” includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, 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.

A. There is no evidence in the record of a violation of the foreign national prohibition.

A domestic subsidiary of a foreign national corporation may establish and administer a separate segregated fund (“SSF”) if the subsidiary is a discrete entity whose principal place of

⁸ *Id.*

⁹ *Id.*; see also Spectra Energy Corp Political Action Committee, Amended Statement of Organization (filed Sept. 9, 2014).

¹⁰ Enbridge Resp. at 2; Enbridge (U.S.) Inc. Political Action Committee, Amended Statement of Organization (filed Mar. 6, 2017).

¹¹ Enbridge Resp. at 3. The Enbridge Respondents assert that the Articles of Association are, in substance, nearly identical to those adopted previously by Spectra Energy PAC. *Id.*

¹² *Id.* at 3, Ex. B.

¹³ See Enbridge (U.S.) Inc. Political Action Committee, 2017-2018 financial Summary, available at <https://www.fec.gov/data/committee/C00429662/?tab=summary&cycle=2018>.

¹⁴ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b)-(c). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. See *Bluman v. FEC*, 800 F. Supp. 2d 281, 238-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

business is in the United States and if those exercising decision-making authority over the SSF are not foreign nationals.¹⁵ Where decision-making authority is vested with U.S. citizens or permanent resident aliens, foreign national corporate board members may not determine who will exercise decision-making authority over the SSF's contributions.¹⁶

The Enbridge Respondents assert that each of the individuals involved in managing Enbridge PAC is a U.S. citizen employed by Enbridge (U.S.) Inc., and that neither Enbridge Inc. nor any foreign individuals directed the making of the contributions at issue in this matter. There is no evidence in the record to contradict these assertions. Enbridge PAC is governed by its Board of Trustees ("the PAC Board").¹⁷ The Articles of Association provide for up to 12 trustees on the PAC Board, who are charged with setting "basic policies with respect to contributions and expenditures" by the PAC and are to direct disbursements to specific candidates.¹⁸ Under its Articles of Association, Enbridge PAC has five officers: a chairperson, a vice-chairperson, a treasurer, an assistant treasurer, and a secretary.¹⁹ These articles also call for a PAC administrator with "responsibility for the general affairs" of the PAC.²⁰ They also allow for the creation of Advisory Councils, each of which supports a particular Trustee.²¹ Members of an Advisory Council assist the Trustee in soliciting for the PAC and may make recommendations to the Trustee.²²

Initial members of the PAC Board following the merger of Enbridge Inc. and Spectra Energy were appointed by the senior most member of Enbridge (U.S.) Inc. External Affairs, U.S.²³ Subsequent vacancies on the PAC Board were to be filled by the remaining members of the PAC Board after consultation with the senior most member of Enbridge (U.S.) Inc. External Affairs, U.S., which is currently the Vice President of External Affairs.²⁴

The Enbridge Respondents assert that the Vice President of U.S. External Affairs of Enbridge (U.S.) Inc. is a U.S. citizen and all of the trustees and officers of Enbridge PAC, the PAC Administrator, and the members of the various Advisory Councils are U.S. citizens.²⁵ The Enbridge Respondents further assert that no new trustees or officers of Enbridge PAC have been appointed since the merger of Enbridge Inc. and Spectra Energy, and that no new individuals

¹⁵ Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling) at 3; Advisory Op. 2000-17 (Extencicare) at 4-6; Advisory Op. 1999-28 (Bacardi-Martini) at 3; *see also* Explanation and Justification for Final Rules on Contribution Limitations and Prohibitions, 67 Fed. Reg. 69928, 69943 (Nov. 19, 2002); Advisory Op. 2006-15 (TransCanada) at 2-6.

¹⁶ *See, e.g.*, AO 2006-15 (TransCanada).

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.* at 5.

²² *Id.*

²³ *Id.* at 3.

²⁴ *Id.*

²⁵ *Id.* at 5.

have been added to the Advisory Councils nor have the Advisory Councils been active since the merger.²⁶

The Complaint appears to be premised on a misunderstanding of the foreign national prohibition inasmuch as it relies solely on the fact that Enbridge (U.S.) Inc.'s parent company is a foreign national. But a domestic subsidiary of a foreign national corporation may establish and administer an SSF, and there are no allegations or available information in the record indicating that foreign nationals were involved in Enbridge PAC's decision-making regarding the contributions at issue in this matter.

Further, there is no information in the record indicating that foreign national Enbridge Inc. made a political contribution. On August 3, 2017, Enbridge Inc. adopted a Political Contributions Policy providing that it "does not contribute corporate funds directly to federal political candidates, committees, or parties" in the United States and that "Enbridge participates in the political process in accordance with all state ... and local laws, and any and all corporate contributions shall comply with all applicable laws and regulations."²⁷ Each of the contributions identified in the Complaint was made by Enbridge PAC, and there is no information to suggest that any such contribution has been made by Enbridge Inc.

Because the information in the record does not indicate that the Enbridge Respondents violated the foreign national prohibition in connection with the contributions by Enbridge PAC, I voted to dismiss the allegation that Enbridge, Inc., Enbridge (U.S.) Inc., Enbridge (U.S.) Inc. Political Action Committee and K. Ritu Talwar in her official capacity as treasurer, and Enbridge Energy Company, Inc. violated 52 U.S.C. § 30121(a)(1).

B. There is no reason to believe that the State and Federal Committees knowingly accepted foreign national contributions.

The Act provides that no person shall knowingly solicit, accept, or receive a prohibited foreign national contribution or donation.²⁸ The term "knowingly" is defined as having "actual knowledge" that the source is a foreign national, or being aware of "facts that would lead a reasonable person to conclude that there is a substantial probability that" or "facts that would lead a reasonable person to inquire whether" the source is a foreign national.²⁹

At the time that each contribution was made to the Federal and State Committee Respondents, Enbridge PAC was registered with the Commission and Enbridge (U.S.) Inc. was headquartered in Texas and had operations in the United States. There is no information in the record to suggest that the Federal and State Committees should have questioned whether Enbridge PAC was a foreign national or that foreign nationals were involved in Enbridge PAC's

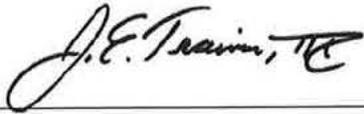
²⁶ *Id.* at 7

²⁷ Enbridge Resp. at Ex. D.

²⁸ 52 U.S.C. § 30121(a)(2).

²⁹ 11 C.F.R. § 110.20(a)(4); *see also id.* § 110.20(a)(5) (providing that "pertinent facts" include, but are not limited to, the use of a foreign address or use of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank).

decisions to make contributions.³⁰ Therefore, I voted to find no reason to believe that the Federal and State Committee Respondents violated 52 U.S.C. § 30121(a)(2).



James E. "Trey" Trainor III
Chairman

7/21/2020

Date

³⁰ The Federal and State Committee Respondents assert facts indicating that contributions from Enbridge PAC were not from a foreign national. *See, e.g.*, Armstrong for Congress Resp. at 2-3 (May 21, 2019) (asserting that Enbridge PAC is not funded or controlled by foreign nationals); Bill Cassidy for U.S. Senate Resp. at 1 (May 10, 2019) (asserting that contributions from an SSF such as Enbridge PAC are permissible on their face); Louisiana Speaks PAC and Alario PAC Resp. at 1 (asserting that Louisiana Speaks PAC and Alario PAC verified that Enbridge (U.S.) Inc. was a domestic company and Enbridge PAC only disclosed contributions from those who reside within the United States prior to accepting the contribution); Miller for Ohio Resp. at 1-2 (Sept. 19, 2019) (asserting that the check received from Enbridge PAC listed a Texas address, included the PAC's Federal Election Commission registration number, and was drawn from a bank based in the United States).