



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Enbridge Inc. ) MUR 7594  
Enbridge (U.S.) Inc. )  
Enbridge (U.S.) Inc. Political Action )  
Committee and K. Ritu Talwar, as )  
Treasurer )  
Enbridge Energy Company, Inc. )  
52 Federal Committee Respondents and )  
Treasurer and 252 State Committee )  
Respondents identified on Appendix A )

**STATEMENT OF REASONS OF VICE CHAIR STEVEN T. WALTHER AND  
COMMISSIONER ELLEN L. WEINTRAUB**

**I. INTRODUCTION**

The Complaint alleges that Enbridge Inc., a Canadian company, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with contributions to political committees during the 2018 election cycle.<sup>1</sup> In fact, the contributions at issue in the Complaint were made by Enbridge (U.S.) Inc. Political Action Committee (“Enbridge PAC”), a separate segregated fund (“SSF”) of Enbridge Inc.’s U.S. subsidiary, Enbridge (U.S.) Inc.<sup>2</sup>

Enbridge Inc., Enbridge (U.S.) Inc., and Enbridge PAC (collectively, “Enbridge Respondents”)<sup>3</sup> assert that the Complaint is baseless because the contributions were made by Enbridge PAC, not Enbridge Inc.<sup>4</sup> The Enbridge Respondents further assert that the PAC complied with Commission precedent permitting a U.S. subsidiary of a foreign company to form a SSF and contribute to federal, state, and local candidates so long as the foreign parent company does not finance the political activities and no foreign national participates in the operation or administration of the SSF or in any decision made

<sup>1</sup> Compl. at 1 (Apr. 11, 2019).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> The Enbridge Respondents assert that Enbridge Energy Company, Inc. is not directly involved in the matter and should not be considered a respondent, but do not provide any additional information about Enbridge Energy Company, Inc.’s position within the Enbridge corporate structure. Enbridge Resp. at 1 n.1 (June 11, 2019).

<sup>4</sup> Enbridge Resp. at 1.

by the SSF with respect to contributions or expenditures.<sup>5</sup> The Federal and State Committee Respondents assert that they relied upon the fact that Enbridge PAC was registered with the Commission when accepting the contributions, they had no information suggesting that the contributions were from a foreign national, and Enbridge PAC complied with Commission precedent permitting a U.S. subsidiary of a foreign company to form a SSF.

## II. FACTUAL BACKGROUND

Enbridge Inc. is a publicly traded Canadian corporation in the oil and gas industry and is headquartered in Calgary, Canada.<sup>6</sup> Enbridge Inc. acknowledges that it is a foreign national under 52 U.S.C. § 30121(b) and a foreign principal under 22 U.S.C. § 611(b).<sup>7</sup> 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.<sup>8</sup> It has approximately 3,500 employees in the United States and assets across 41 states.<sup>9</sup>

On February 27, 2017, Enbridge Inc. and Spectra Energy Corporation (“Spectra Energy”) merged, and Spectra Energy became a wholly-owned subsidiary of Enbridge Inc.<sup>10</sup> Following the merger, Enbridge (U.S.) Inc. became the parent company to Spectra Energy and all of its subsidiaries and assets.<sup>11</sup> At the time of this merger, Spectra Energy sponsored a SSF known as the Spectra Energy Corp Political Action Committee (“Spectra Energy PAC”).<sup>12</sup> 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.<sup>13</sup>

Enbridge PAC adopted Articles of Association on March 14, 2017.<sup>14</sup> 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.”<sup>15</sup>

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<sup>5</sup> *Id.* at 7.

<sup>6</sup> Compl. at 5; Enbridge Resp. at 2.

<sup>7</sup> Enbridge Resp. at 2.

<sup>8</sup> 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.*

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

<sup>10</sup> *Id.* Spectra Energy was formed in 2006 in connection with its spin-off from Duke Energy Corporation, and was publically traded on the New York stock exchange. *Id.*

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

<sup>12</sup> *Id.*; *see also* Spectra Energy Corp Political Action Committee, Amended Statement of Organization (filed Sept. 9, 2014).

<sup>13</sup> Enbridge Resp. at 2; Enbridge (U.S.) Inc. Political Action Committee, Amended Statement of Organization (filed Mar. 6, 2017).

<sup>14</sup> 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.*

<sup>15</sup> *Id.* at 3, Ex. B.

Enbridge PAC contributed over \$500,000 to federal and state political committees during the 2017-2018 election cycle.<sup>16</sup> As of October 31, 2019, Enbridge PAC had contributed over \$95,000 to federal and state political committees during the 2019-2020 election cycle.<sup>17</sup>

### 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.<sup>18</sup> 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.”<sup>19</sup> Commission regulations implementing the Act’s foreign national prohibition provide that “[a] foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation ... with regard to such person’s Federal or non-Federal election-related activities, such as decisions concerning the making of contributions[.]”<sup>20</sup>

#### **A. There is insufficient information to find reason to believe that a foreign national was involved in Enbridge PAC’s decision-making process or that Enbridge Inc. made a political contribution.**

The Commission has held that a domestic subsidiary of a foreign national corporation is permitted to establish and administer a SSF if it is a discrete entity whose principal place of business is in the United States and if those exercising decision-making authority over the SSF are not foreign nationals.<sup>21</sup>

Where decision-making authority is vested with U.S. citizens or permanent resident aliens, foreign national corporate board members may not determine who will

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<sup>16</sup> 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>. \$22,000 of the contributions were made prior to the merger of Enbridge Inc. and Spectra Energy.

<sup>17</sup> See Enbridge (U.S.) Inc. Political Action Committee, 2019-2020 financial Summary, available at <https://www.fec.gov/data/committee/C00429662/?tab=spending&cycle=2020>.

<sup>18</sup> 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).

<sup>19</sup> 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); see also 11 C.F.R. § 110.20(a)(3).

<sup>20</sup> 11 C.F.R. § 110.20(i).

<sup>21</sup> 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).

exercise decision-making authority.<sup>22</sup> The Commission has consistently found a violation of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company's decisions to make contributions or in the management of its separate segregated fund.<sup>23</sup> The Commission has explained that this "ensures the exclusion of foreign nationals from direct or indirect participation in the decision-making process related to election-related activities."<sup>24</sup>

Enbridge PAC's Articles of Association provide that the SSF's administrative expenses are to be paid by Enbridge (U.S.) Inc.<sup>25</sup> The Enbridge Respondents assert that Enbridge (U.S.) Inc. fully finances the administration of Enbridge PAC,<sup>26</sup> and there is no information available to suggest that the administrative expenses of the Enbridge PAC were paid from sources other than funds generated by Enbridge (U.S.) Inc.'s U.S. operations.

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 play any role in directing or overseeing the activities of Enbridge PAC.

Enbridge PAC is governed by its Board of Trustees ("the PAC Board").<sup>27</sup> 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.<sup>28</sup> Under its Articles of Association, Enbridge PAC has five officers: a chairperson, a vice-chairperson, a treasurer, an assistant treasurer, and a secretary.<sup>29</sup> These articles also call for a PAC administrator with "responsibility for the general affairs" of the PAC.<sup>30</sup> They also allow for the creation of Advisory Councils, each of which supports a particular Trustee.<sup>31</sup>

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<sup>22</sup> See, e.g., Factual & Legal Analysis at 4-6, MUR 7122 (APIC).

<sup>23</sup> See Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (APIC) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute); Advisory Op. 1989-20 (Kuilima) at 2 ("[N]o director or officer of the company or its parent who is a foreign national may participate in any way in the decision-making process with regard to making ... proposed contributions).

<sup>24</sup> Factual & Legal Analysis at 4-5, MUR 7122 (APIC).

<sup>25</sup> Enbridge Resp. at Ex. B.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* at 4-5.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 5.

Members of an Advisory Council assist the Trustee in soliciting for the PAC and may make recommendations to the Trustee.<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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 have been added to the Advisory Councils nor have the Advisory Councils been active since the merger.<sup>36</sup>

There are no allegations or available information indicating that foreign nationals are involved in Enbridge PAC's decision-making. Instead, the Complaint appears to be premised on a misunderstanding of both the facts and the law, and relies solely on the fact that Enbridge (U.S.) Inc.'s parent company is a foreign national.

There is no information available 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."<sup>37</sup> Although this policy leaves open the possibility that Enbridge Inc. may have made contributions directly to state or local political candidates and committees, each of the contributions identified in the Complaint was made by Enbridge PAC, and there is no information available to suggest that any such contribution has been made by Enbridge Inc.

In light of the circumstances presented, the available information does not provide a reason to believe that the Enbridge Respondents violated the foreign national

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<sup>32</sup> *Id.*  
<sup>33</sup> *Id.* at 3.  
<sup>34</sup> *Id.*  
<sup>35</sup> *Id.* at 5.  
<sup>36</sup> *Id.* at 7  
<sup>37</sup> Enbridge Resp. at Ex. D.

prohibition in connection with the contributions by Enbridge PAC.<sup>38</sup> Therefore, we 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). We note, however, that Enbridge, Inc.'s Political Contributions Policy suggests it may believe it may legally make contributions in connection with state and local elections. If so, it is incorrect: 52 U.S.C. § 30121(a)(1) prohibits foreign nationals, like Enbridge, Inc., from making such contributions.

**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.<sup>39</sup> 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.<sup>40</sup>

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 available to suggest that the Federal and State Committees had any basis to conclude that Enbridge PAC was a foreign national or that foreign nationals were involved in Enbridge PAC's decisions to make contributions. Moreover, the Federal and State Committee Respondents deny that they so concluded when they accepted the contributions.<sup>41</sup> Therefore, we voted to find no reason to believe that the Federal and State Committee Respondents violated 52 U.S.C. § 30121(a)(2).

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<sup>38</sup> The Commission's stated policy regarding matters at the initial state in the enforcement process is that a reason to believe finding is appropriate “when a complaint credibly alleges that a significant violation may have occurred.” *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

<sup>39</sup> 52 U.S.C. § 30121(a)(2).

<sup>40</sup> 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).

<sup>41</sup> *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).

August 25, 2020



Steven T. Walther  
Steven T. Walther  
Vice Chair



Ellen L. Weintraub  
Ellen L. Weintraub  
Commissioner