

**FEDERAL ELECTION COMMISSION****FIRST GENERAL COUNSEL'S REPORT**

MUR: 7594

DATE COMPLAINT FILED: April 11, 2019

DATE OF NOTIFICATION: April 18 and 22, 2019

LAST RESPONSE RECEIVED: October 16, 2019

DATE ACTIVATED: September 11, 2019

EARLIEST EXPIRATION OF SOL: March 6, 2022

ELECTION CYCLE: 2018

**COMPLAINANT:**

Alexander Austin

**RESPONDENTS:**

Enbridge, Inc.

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

**RELEVANT STATUTES AND  
REGULATIONS:**

52 U.S.C. § 30121

11 C.F.R. § 110.20

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**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> The contributions at issue in the Complaint

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

1 were made by Enbridge (U.S.) Inc. Political Action Committee (“Enbridge PAC”), a separate  
2 segregated fund (“SSF”) of Enbridge Inc.’s U.S. subsidiary, Enbridge (U.S.) Inc.<sup>2</sup>

3 Enbridge Inc., Enbridge (U.S.) Inc., and Enbridge PAC (collectively, “Enbridge  
4 Respondents”)<sup>3</sup> assert that the Complaint is baseless because the contributions were made by  
5 Enbridge PAC, not Enbridge Inc.<sup>4</sup> The Enbridge Respondents further assert that the PAC  
6 complied with Commission precedent permitting a U.S. subsidiary of a foreign company to form  
7 a SSF and contribute to federal, state, and local candidates so long as the foreign parent company  
8 does not finance the political activities and no foreign national participates in the operation or  
9 administration of the SSF or in any decision made by the SSF with respect to contributions or  
10 expenditures.<sup>5</sup> Since the available information is insufficient to establish that Enbridge Inc.  
11 contributed to any political committees or that any foreign national participated in the decision-  
12 making of Enbridge PAC, we recommend that the Commission dismiss the allegation that  
13 Enbridge Inc., Enbridge (U.S.) Inc., Enbridge (U.S.) Inc. Political Action Committee and K. Ritu  
14 Talwar in her official capacity as treasurer, and Enbridge Energy Company, Inc. violated  
15 52 U.S.C. § 30121(a)(1).

16 The Federal and State Committee Respondents assert that they relied upon the fact that  
17 Enbridge PAC was registered with the Commission when accepting the contributions, they had  
18 no information suggesting that the contributions were from a foreign national, and Enbridge PAC

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<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.

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

1 complied with Commission precedent permitting a U.S. subsidiary of a foreign company to form  
2 a SSF. Since there is no information available to suggest that the Federal and State Committees  
3 had a basis to conclude that Enbridge PAC was a foreign national or that foreign nationals were  
4 involved in Enbridge PAC's decisions to make contributions, we recommend that the  
5 Commission find no reason to believe that the Federal and State Committee Respondents  
6 violated 52 U.S.C. § 30121(a)(2).

## 7 **II. FACTUAL BACKGROUND**

8 Enbridge Inc. is a publicly traded Canadian corporation in the oil and gas industry and is  
9 headquartered in Calgary, Canada.<sup>6</sup> Enbridge Inc. acknowledges that it is a foreign national  
10 under 52 U.S.C. § 30121(b) and a foreign principal under 22 U.S.C. § 611(b).<sup>7</sup> Enbridge (U.S.)  
11 Inc., an indirect wholly-owned subsidiary of Enbridge Inc., is a Delaware corporation with its  
12 principal place of business in Houston, Texas.<sup>8</sup> It has approximately 3,500 employees in the  
13 United States and assets across 41 states.<sup>9</sup>

14 On February 27, 2017, Enbridge Inc. and Spectra Energy Corporation ("Spectra Energy")  
15 merged, and Spectra Energy became a wholly-owned subsidiary of Enbridge Inc.<sup>10</sup> Following  
16 the merger, Enbridge (U.S.) Inc. became the direct parent company to Spectra Energy and all of

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<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.*

1 its subsidiaries and assets.<sup>11</sup> At the time of this merger, Spectra Energy sponsored a SSF known  
2 as the Spectra Energy Corp Political Action Committee (“Spectra Energy PAC”).<sup>12</sup> Following  
3 the merger, Spectra Energy PAC changed its name to Enbridge (U.S.) Inc. Political Action  
4 Committee (“Enbridge PAC”) and identified Enbridge (U.S.) Inc. as its connected organization.<sup>13</sup>

5 Enbridge PAC adopted Articles of Association on March 14, 2017.<sup>14</sup> The Articles  
6 provide that the members of Enbridge PAC include all Enbridge (U.S.) Inc. shareholders,  
7 employees, and families who are eligible and do contribute to Enbridge PAC “provided such  
8 individuals are United States citizens or permanent United States residents.”<sup>15</sup>

9 Enbridge PAC contributed over \$500,000 to federal and state political committees during  
10 the 2017-2018 election cycle.<sup>16</sup> As of October 31, 2019, Enbridge PAC had contributed over  
11 \$95,000 to federal and state political committees during the 2019-2020 election cycle.<sup>17</sup>

### 12 **III. LEGAL ANALYSIS**

13 The Act and Commission regulations prohibit any “foreign national” from directly or  
14 indirectly making a contribution or donation of money or other thing of value, or an expenditure,

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<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.

<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>.

1 independent expenditure, or disbursement, in connection with a federal, state, or local election.<sup>18</sup>  
 2 The Act's definition of "foreign national" includes an individual who is not a citizen or national  
 3 of the United States and who is not lawfully admitted for permanent residence, as well as a  
 4 "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership,  
 5 association, corporation, organization, or other combination of persons organized under the laws  
 6 of or having its principal place of business in a foreign country."<sup>19</sup> Commission regulations  
 7 implementing the Act's foreign national prohibition provide that "[a] foreign national shall not  
 8 direct, dictate, control, or directly or indirectly participate in the decision-making process of any  
 9 person, such as a corporation ... with regard to such person's Federal or non-Federal election-  
 10 related activities, such as decisions concerning the making of contributions[.]"<sup>20</sup>

11 **A. There is insufficient information to conclude that a foreign national was**  
 12 **involved in Enbridge PAC's decision-making process or that Enbridge Inc.**  
 13 **made a political contribution.**

14 The Commission has held that a domestic subsidiary of a foreign national corporation is  
 15 permitted to make contributions, when corporate contributions are otherwise permitted, if (1) the  
 16 contributions derive entirely from funds generated by the subsidiary's U.S. operations; and (2) if  
 17 no foreign nationals are involved in the decision to make the contribution.<sup>21</sup> Similarly, a

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<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> Factual & Legal Analysis at 4, MUR 7122 (American Pacific International Capital, Inc. ("APIC")); First Gen. Counsel's Rpt. at 9, MUR 6203 (Itinere North America, LLC); Factual & Legal Analysis at 4-5, MUR 6099 (Sam Page); *see also* Advisory Op. 2006-15 (TransCanada) at 2-6; Advisory Op. 1992-16 (Nansay Hawaii) at 3-4.

1 domestic subsidiary of a foreign national corporation is permitted to establish and administer a  
2 SSF if it is a discrete entity whose principal place of business is in the United States and if those  
3 exercising decision-making authority over the SSF are not foreign nationals.<sup>22</sup>

4 Where decision-making authority is vested with U.S. citizens or permanent resident  
5 aliens, foreign national corporate board members may not determine who will exercise decision-  
6 making authority.<sup>23</sup> The Commission has consistently found a violation of the foreign national  
7 prohibition where foreign national officers or directors of a U.S. company participated in the  
8 company's decisions to make contributions or in the management of its separate segregated  
9 fund.<sup>24</sup> The Commission has explained that this "ensures the exclusion of foreign nationals from  
10 direct or indirect participation in the decision-making process related to election-related  
11 activities."<sup>25</sup>

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<sup>22</sup> Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling) at 3; Advisory Op. 2000-17 (Extendicare) 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.

<sup>23</sup> *See, e.g.*, Factual & Legal Analysis at 4-6, MUR 7122 (APIC).

<sup>24</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>25</sup> Factual & Legal Analysis at 4-5, MUR 7122 (APIC).

1           Enbridge PAC's Articles of Association provide that the SSF's administrative expenses  
2 are to be paid by Enbridge (U.S.) Inc.<sup>26</sup> The Enbridge Respondents assert that Enbridge (U.S.)  
3 Inc. fully finances the administration of Enbridge PAC,<sup>27</sup> and there is no information available to  
4 suggest that the administrative expenses of the Enbridge PAC were paid from sources other than  
5 funds generated by Enbridge (U.S.) Inc.'s U.S. operations.

6           The Enbridge Respondents assert that each of the individuals involved in managing  
7 Enbridge PAC is a U.S. citizen employed by Enbridge (U.S.) Inc., and that neither Enbridge Inc.  
8 nor any foreign individuals play any role in directing or overseeing the activities of Enbridge  
9 PAC.

10           Enbridge PAC is governed by its Board of Trustees ("the PAC Board").<sup>28</sup> The Articles of  
11 Association provide for up to 12 trustees on the PAC Board, who are charged with setting "basic  
12 policies with respect to contributions and expenditures" by the PAC and are to direct  
13 disbursements to specific candidates.<sup>29</sup> Under its Articles of Association, Enbridge PAC has five  
14 officers: a chairperson, a vice-chairperson, a treasurer, an assistant treasurer, and a secretary.<sup>30</sup>  
15 These articles also call for a PAC administrator with "responsibility for the general affairs" of the  
16 PAC.<sup>31</sup> They also allow for the creation of Advisory Councils, each of which supports a

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<sup>26</sup> *Id.* at Ex. B.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.* at 4-5.

<sup>30</sup> *Id.* at 4.

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

1 particular Trustee.<sup>32</sup> Members of an Advisory Council assist the Trustee in soliciting for the  
2 PAC and may make recommendations to the Trustee.<sup>33</sup>

3 Initial members of the PAC Board following the merger of Enbridge Inc. and Spectra  
4 Energy were appointed by the senior most member of Enbridge (U.S.) Inc. External Affairs,  
5 U.S.<sup>34</sup> Subsequent vacancies on the PAC Board were to be filled by the remaining members of  
6 the PAC Board after consultation with the senior most member of Enbridge (U.S.) Inc. External  
7 Affairs, U.S., which is currently the Vice President of External Affairs.<sup>35</sup>

8 The Enbridge Respondents assert that the Vice President of U.S. External Affairs of  
9 Enbridge (U.S.) Inc. is a U.S. citizen and all of the trustees and officers of Enbridge PAC, the  
10 PAC Administrator, and the members of the various Advisory Councils are U.S. citizens.<sup>36</sup> The  
11 Enbridge Respondents further assert that no new trustees or officers of Enbridge PAC have been  
12 appointed since the merger of Enbridge Inc. and Spectra Energy, and that no new individuals  
13 have been added to the Advisory Councils nor have the Advisory Councils been active since the  
14 merger.<sup>37</sup>

15 However, the Enbridge Respondents do not identify the Vice President of U.S. External  
16 Affairs of Enbridge (U.S.) Inc., the trustees and officers of Enbridge PAC, the PAC  
17 administrator, or the members of the Advisory Councils, other than stating that they are U.S.

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<sup>32</sup> *Id.* at 5.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 7

1 citizens. Further, the Enbridge Respondents do not confirm that the PAC Board has made all  
2 decisions regarding the Enbridge PAC's contributions as provided by the Articles of Association  
3 and do not explain the process by which potential contributions are proposed or considered. Nor  
4 do the Enbridge Respondents address whether any other individuals, including individuals  
5 associated with Enbridge Inc., proposed contributions or were directly or indirectly involved with  
6 decisions about Enbridge PAC's contributions.

7         Although the specific decision-making structure and process of Enbridge PAC is  
8 unknown, there are no allegations or available information indicating that foreign nationals are  
9 involved in Enbridge PAC's decision-making. Instead, the Complaint appears to be premised on  
10 a misunderstanding of the foreign national prohibition, and relies solely on the fact that Enbridge  
11 (U.S.) Inc.'s parent company is a foreign national.

12         Further, there is no information available indicating that foreign national Enbridge Inc.  
13 made a political contribution. On August 3, 2017, Enbridge Inc. adopted a Political  
14 Contributions Policy providing that it "does not contribute corporate funds directly to federal  
15 political candidates, committees, or parties" in the United States and that "Enbridge participates  
16 in the political process in accordance with all state ... and local laws, and any and all corporate  
17 contributions shall comply with all applicable laws and regulations."<sup>38</sup> Although this policy  
18 leaves open the possibility that Enbridge Inc. may have made contributions directly to state or  
19 local political candidates and committees, each of the contributions identified in the Complaint  
20 was made by Enbridge PAC, and there is no information available to suggest that any such  
21 contribution has been made by Enbridge Inc.

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<sup>38</sup> Enbridge Resp. at Ex. D.

1           In light of the circumstances presented, the available information does not provide a  
2 sufficient basis to reasonably infer that the Enbridge Respondents violated the foreign national  
3 prohibition in connection with the contributions by Enbridge PAC.<sup>39</sup> Therefore, we recommend  
4 that the Commission dismiss the allegation that Enbridge, Inc., Enbridge (U.S.) Inc., Enbridge  
5 (U.S.) Inc. Political Action Committee and K. Ritu Talwar in her official capacity as treasurer,  
6 and Enbridge Energy Company, Inc. violated 52 U.S.C. § 30121(a)(1). Because Enbridge, Inc.'s  
7 Political Contributions Policy suggests it may believe it may legally make contributions in  
8 connection with state and local elections, we also recommend the Commission caution it that  
9 52 U.S.C. § 30121(a)(1) prohibits foreign nationals, like Enbridge, Inc., from making such  
10 contributions.

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

13           The Act provides that no person shall knowingly solicit, accept, or receive a prohibited  
14 foreign national contribution or donation.<sup>40</sup> The term “knowingly” is defined as having “actual  
15 knowledge” that the source is a foreign national, or being aware of “facts that would lead a  
16 reasonable person to conclude that there is a substantial probability that” or “facts that would  
17 lead a reasonable person to inquire whether” the source is a foreign national.<sup>41</sup>

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<sup>39</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>40</sup> 52 U.S.C. § 30121(a)(2).

<sup>41</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).

1           At the time that each contribution was made to the Federal and State Committee  
2 Respondents, Enbridge PAC was registered with the Commission and Enbridge (U.S.) Inc. was  
3 headquartered in Texas and had operations in the United States. There is no information  
4 available to suggest that the Federal and State Committees had any basis to conclude that  
5 Enbridge PAC was a foreign national or that foreign nationals were involved in Enbridge PAC's  
6 decisions to make contributions. Moreover, the Federal and State Committee Respondents deny  
7 that they knew that Enbridge PAC was a foreign national when they accepted the contributions.<sup>42</sup>  
8 Therefore, we recommend that the Commission find no reason to believe that the Federal and  
9 State Committee Respondents violated 52 U.S.C. § 30121(a)(2).

#### 10 **IV. RECOMMENDATIONS**

- 11           1. Dismiss the allegation that Enbridge, Inc. violated 52 U.S.C. § 30121(a)(1) and  
12           send a letter of caution;
- 13  
14           2. Dismiss the allegation that Enbridge (U.S.) Inc., Enbridge (U.S.) Inc. Political  
15           Action Committee and K. Ritu Talwar in her official capacity as treasurer, and  
16           Enbridge Energy Company, Inc. violated 52 U.S.C. § 30121(a)(1);
- 17  
18           3. Find no reason to believe that the Federal and State Committee Respondents  
19           violated 52 U.S.C. § 30121(a)(2);
- 20  
21           4. Approve the attached Factual and Legal Analysis;
- 22  
23           5. Approve the appropriate letters; and  
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<sup>42</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).

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6. Close the file.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel for Enforcement

12.04.19

Date

  
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Stephen Gura  
Deputy Associate General Counsel for Enforcement

  
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Lynn Y. Tran  
Assistant General Counsel

  
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Kristina M. Portner  
Attorney

## Appendix A

### Federal Committee Respondents

- 1
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- 3 Angus King for US Senate Campaign and Rebecca London, as Treasurer
- 4 Anthony Gonzalez for Congress and Natalie Bauer, as Treasurer
- 5 Armstrong for Congress and Cabell Hobbs, as Treasurer
- 6 Bill Cassidy for U.S. Senate and Ralph Stephens, as Treasurer
- 7 Bill Flores for Congress and Nancy Rennaker, as Treasurer
- 8 Brady for Congress and Michael J. Karlins, as Treasurer
- 9 Buck for Colorado and Paul Kilgore, as Treasurer
- 10 Capuano for Congress Committee (Terminated) and Brian Mount, as Treasurer
- 11 Citizens to Elect Rick Larsen and Brooke N. Davis, as Treasurer
- 12 Coffman for Congress 2018 and Jacque Ponder, as Treasurer
- 13 Cory Gardner for Senate and Lisa Lisker, as Treasurer
- 14 Culberson for Congress and Jennifer Imle Naedler, as Treasurer
- 15 Deb Fischer for Senate and James Watts, as Treasurer
- 16 Denham for Congress and David Bauer, as Treasurer
- 17 Duffy for Wisconsin and Michael Masterson, as Treasurer
- 18 Emmer for Congress and Paul Kilgore, as Treasurer
- 19 Filemon Vela for Congress and Mary Jo Vela, as Treasurer
- 20 French Hill For Arkansas and Cale Turner, as Treasurer
- 21 Friends of Chris Murphy and Kathy Altobello, as Treasurer
- 22 Friends of John Barrasso and Karen Hinchey, as Treasurer
- 23 Friends of Paul Mitchell and Glen Christensen, as Treasurer
- 24 Garret Graves for Congress and Christel Slaughter, as Treasurer
- 25 Gene Green Congressional Campaign and Helen Green, as Treasurer
- 26 Gibbs for Congress and Jody L. Gibbs, as Treasurer
- 27 Heartland Values PAC and Chad D. Hatch, as Treasurer
- 28 Heidi for Senate and Jessica Haak, as Treasurer
- 29 House Republican Campaign Committee and Trisha Lynn Hamm, as Treasurer
- 30 Jason Lewis for Congress, Inc. and Bradley T. Crate, as Treasurer
- 31 Johnson for Congress and Paul Kilgore, as Treasurer
- 32 Josh Hawley for Senate and Salvatore A. Purpura, as Treasurer
- 33 Kaptur for Congress and Thomas Jaffee, as Treasurer
- 34 Manchin for West Virginia and Jack Rossi, as Treasurer
- 35 Marsha Blackburn for Congress, Inc. and Ron Gant, as Treasurer
- 36 Mullin for Congress and Steve Ralls, as Treasurer
- 37 NRSC and Keith Davis, as Treasurer
- 38 Olson for Congress Committee and Thornton J. Keel, as Treasurer
- 39 Pallone for Congress and Warren Goode, as Treasurer
- 40 Pat Meehan for Congress and Louis Schiazza, as Treasurer
- 41 Pelican PAC and William Vanderbrook, as Treasurer
- 42 Pete Stauber for Congress Volunteer Cmte and Sandra Finch, as Treasurer
- 43 Peterson for Congress and Elliott A. Peterson, as Treasurer
- 44 Poliquin for Congress and Thomas Datwyler, as Treasurer
- 45 Richard E. Neal for Congress Committee and Michael F. Hall, as Treasurer

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Appendix A

- 1 Rick Scott for Florida and Salvatore A. Purpura, as Treasurer
- 2 Rob Bishop for Congress and Mike McCauley, as Treasurer
- 3 Rodney for Congress and Thomas Datwyler, as Treasurer
- 4 Ted Cruz for Senate and Bradley s. Knippa, as Treasurer
- 5 Ted Yoho for Congress and Laura Jackson, as Treasurer
- 6 The Bill Keating Committee and David A. Doucette, as Treasurer
- 7 Vicente Gonzalez for Congress and Janica Kyriacopoulos, as Treasurer
- 8 Volunteers for Shimkus and Mary Ellen Maxwell, as Treasurer
- 9 Yvette4Congress and Philip Pearce, as Treasurer

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### 11 **State Committee Respondents**

- 12 (Louisiana) House Democratic Campaign Committee
- 13 (Louisiana) Senate Democratic Campaign Committee
- 14 Republican Senate Campaign Committee OH Nonfederal
- 15 (Tennessee) House Republican Caucus
- 16 (Tennessee) Senate Republican Caucus
- 17 Marsh for State Representative
- 18 Abel Herrero Campaign
- 19 Adam Putnam for Governor
- 20 Alario PAC
- 21 Alex Dominguez for St. Rep. District 37
- 22 Angela Paxton Campaign
- 23 Angie Chen Button Candidate Committee Campaign
- 24 Armando Walle Campaign
- 25 Art Swann for Senate
- 26 Brad Boles Campaign
- 27 Brenner for Ohio
- 28 Brent Howard for Senate 2018
- 29 Bret Allain Campaign Fund
- 30 Brian Birdwell Campaign
- 31 Brian D. Hill for Senate Representative
- 32 Brinkman Campaign Committee
- 33 Brooks Landgraf Campaign
- 34 Cagle for Georgia, Inc.
- 35 Caldwell for State House 2018
- 36 Calfee for State Representative
- 37 Campaign to Elect James M. Hoops
- 38 Carl Newton Representative 2016
- 39 Carl Newton Representative 2018
- 40 Carol Alvarado Campaign
- 41 Carrico For Senate
- 42 Casada Election Fund
- 43 Cesar for El Paso
- 44 Chafin for Senate Campaign
- 45 Charles Jim Beckett Campaign

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- 1 Charlie Green Campaign
- 2 Chip Brown Campaign
- 3 Christi Craddick Campaign
- 4 Citizens for Anne Gonzales
- 5 Citizens for Bill Beagle
- 6 Citizens for Blessing
- 7 Citizens for Gardner Committee
- 8 Citizens for Gavarone
- 9 Citizens for Hottinger
- 10 Citizens for McColley
- 11 Citizens for Pat Browne
- 12 Citizens for Rezabek
- 13 Citizens for Richard Brown
- 14 Citizens for Schuring Committee
- 15 Citizens for Scott Ryan
- 16 Citizens for Stephanie Kunze
- 17 Citizens to Elect Andre Thapedi
- 18 Citizens to Elect Craig Riedel
- 19 Clark Boyd for State Representative
- 20 Clay Schexnayder Campaign Fund
- 21 Committee to Elect Gayle Manning
- 22 Committee for Wiggam
- 23 Committee to Elect Bob Wooley
- 24 Committee to Elect Cliff Rosenberger
- 25 Committee to Elect David Gallegso
- 26 Committee to Elect Fred Strahorn
- 27 Committee to Elect Glenn Holmes
- 28 Committee to Elect Greg Nibert
- 29 Committee to Elect Jim R. Trujillo
- 30 Committee to Elect Jim Strickler
- 31 Committee to Elect John Patterson
- 32 Committee to Elect Kelly Fajardo
- 33 Committee to Elect Mark Abraham
- 34 Committee to Elect Nate Gentry
- 35 Committee to Elect Patty Lundstrom
- 36 Committee to Elect Phillip Devillier
- 37 Committee to Elect Rick Tillis
- 38 Committee to Elect Sean J. O'Brien
- 39 Committee to Elect Stephen Dwight
- 40 Committee to Elect Zach Cook
- 41 Committee to Re-Elect Brian Egolf
- 42 Committee to Re-Elect Candy Spence Ezzell
- 43 Committee to Re-Elect George Dodge
- 44 Committee to Re-Elect Jim Townsend
- 45 Committee to Re-Elect Larry Scott

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- 1 Committee to Re-Elect Patricio Ruiloba
- 2 Committee to Re-Elect Rod Montoya
- 3 Commonwealth Victory Fund
- 4 Cupp for State Representative Committee
- 5 Darrell Kick for State Rep
- 6 David Sessions for Alabama Senate
- 7 Democratic Legislative Campaign Committee (DLCC)
- 8 Dennis Bonnen Campaign
- 9 DeWayne Burns Campaign
- 10 Dewine Husted for Ohio
- 11 Diane Black for Governor
- 12 Dodie Horton Campaign Fund
- 13 Doreen Gallegos for State Representative
- 14 Drew Darby Campaign
- 15 Ed Gillespie for Virginia
- 16 Eddie Smith for State Representative
- 17 Elect Devitis
- 18 Elect Mark Allen 2018
- 19 Election Fund for Craig J. Coughlin for Assembly
- 20 Ernest Bailes Campaign
- 21 Estes Texas Senate
- 22 Farmer Election Fund Campaign
- 23 Fitzhugh for Tennessee
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- 25 Four Price Campaign
- 26 Friends for Steve Arndt
- 27 Friends of AJ Griffin 2014
- 28 Friends of Bill Coley
- 29 Friends of Bill Reineke
- 30 Friends of Brandon Creighton
- 31 Friends of Charles McCall 2018
- 32 Friends of Chris Kannady 2018
- 33 Friends of Dan Ramos
- 34 Friends of Dana Murphy 2018
- 35 Friends of Dave Greenspan
- 36 Friends of Denise Crosswhite-Hader 2018
- 37 Friends of Derek Merrin
- 38 Friends of Eric Nelson
- 39 Friends of Harold Wright 2018
- 40 Friends of Hearcel F. Craig
- 41 Friends of Jay Edwards
- 42 Friends of Joe Schiavoni
- 43 Friends of John Eklund
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- 45 Friends of John Pfeiffer 2016

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- 1 Friends of John Zerwas
- 2 Friends of Jon Echols 2016
- 3 Friends of Jon Echols 2018
- 4 Friends of Jonathan Dever
- 5 Friends of Josh Cockroft 2018
- 6 Friends of Kenny Yuko
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- 8 Friends of Kevin Wallace 2018
- 9 Friends of Kim David 2018
- 10 Friends of Kirk Cox
- 11 Friends of Kris Jordan
- 12 Friends of Larry Householder
- 13 Friends of Lou Terhar
- 14 Friends of Martin J. Sweeney
- 15 Friends of Marty Quinn 2014
- 16 Friends of Marty Quinn 2018
- 17 Friends of Matt Dolan
- 18 Friends of Mike Sanders 2018
- 19 Friends of Pete Flores
- 20 Friends of Rogers
- 21 Friends of Ryan Smith
- 22 Friends of Scott Lipps
- 23 Friends of Scott Walker
- 24 Friends of Stuart Bishop
- 25 Friends of Tim Downing 2018
- 26 Friends of Wes Goodman
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- 28 Hagan for State Representative
- 29 Hambley for House Committee
- 30 Hicks for State Representative
- 31 Hoagland for Ohio
- 32 Honorable John Smithee
- 33 Jack Cera for State Representative
- 34 Jack McFarland Campaign Fund
- 35 Jack PAC
- 36 Jerome Moon for State Representative
- 37 Joe Deshotel Campaign
- 38 John Boccieri for Ohio Committee
- 39 John Kuempel Campaign
- 40 John Whitmire Campaign
- 41 Johnson Victory PAC
- 42 Joseph Sanchez for New Mexico
- 43 Juan J. Chuy Hinojosa Campaign
- 44 Kay Ivey for Governor
- 45 Kel Seliger Campaign

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- 1 Kemp for Governor, Inc.
- 2 Ken King for State Representative
- 3 Ken Paxton Campaign
- 4 Kilgore for Delegate
- 5 Kristina Daley Roegner for Ohio
- 6 Kyle Kacal Campaign
- 7 Latourette for Ohio
- 8 Louisiana Speaks PAC
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- 10 Lynn Stucky Campaign
- 11 Lyons for Land Commissioner
- 12 Maestas for NM
- 13 Malinda White Campaign Fund
- 14 Manning for Ohio
- 15 Mark McBride for House 53-2018
- 16 Matt Huffman for Ohio
- 17 MCPAC
- 18 Mike Huval Campaign
- 19 Miller for Ohio
- 20 Morris for New Mexico
- 21 NM Prosperity
- 22 Northam for Governor
- 23 Oelslager for Ohio Committee
- 24 Ohio House Republican Organizational Committee
- 25 Oklahoma State Republican Senatorial Committee
- 26 Oklahomans for Anthony
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- 28 O'Quinn for Delegate
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- 30 PA House Democratic Campaign Committee
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- 40 Ralph Northam Inaugural Committee
- 41 Reelect Greg Treat 2016
- 42 Rene Oliveira Campaign
- 43 Republican Governors Association
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- 2 Rhonda Baker for State House 2018
- 3 Roger Thompson for OK Senate 2018
- 4 Romanchuk for State Rep.
- 5 Ryan Sitton Campaign
- 6 Ryan Williams for State Representative
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- 8 Seitz for Ohio
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- 10 Stephen Sweeney for Senate
- 11 Steve Huffman for Ohio
- 12 Steve Kouplén for State House 2018
- 13 Steve Wilson for Ohio
- 14 Stitt for Governor
- 15 Sykes for Office
- 16 Tan Parker Campaign
- 17 Team Burke
- 18 Team West Committee
- 19 Terry Canales
- 20 Texans for Chris Paddie
- 21 Texans for Dade
- 22 Texans for Dan Patrick
- 23 Texans for Greg Abbott
- 24 Texans for Kelly Hancock
- 25 Texans for Stan
- 26 Texans for Trent Ashby
- 27 The Committee to Elect Cliff Hite
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- 29 Tim Ginter for State Representative
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- 34 Troy Balderson for State Senator
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- 36 Wayne Christian for Texas
- 37 William Casey Murdock 2017
- 38 Wirgau for State Representative

ELW Edits 6.29.2020

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

1  
2  
3 RESPONDENTS: Enbridge Inc. MUR 7594  
4 Enbridge (U.S.) Inc.  
5 Enbridge (U.S.) Inc. Political Action Committee  
6 and K. Ritu Talwar, as Treasurer  
7 Enbridge Energy Company, Inc.  
8 52 Federal Committee Respondents and Treasurer and 252 State  
9 Committee Respondents identified on Appendix A  
10

**I. INTRODUCTION**

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

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

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<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.

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

## 6 **II. FACTUAL BACKGROUND**

7 Enbridge Inc. is a publicly traded Canadian corporation in the oil and gas industry and is  
8 headquartered in Calgary, Canada.<sup>6</sup> Enbridge Inc. acknowledges that it is a foreign national  
9 under 52 U.S.C. § 30121(b) and a foreign principal under 22 U.S.C. § 611(b).<sup>7</sup> Enbridge (U.S.)  
10 Inc., an indirect wholly-owned subsidiary of Enbridge Inc., is a Delaware corporation with its  
11 principal place of business in Houston, Texas.<sup>8</sup> It has approximately 3,500 employees in the  
12 United States and assets across 41 states.<sup>9</sup>

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

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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.*

1 as the Spectra Energy Corp Political Action Committee (“Spectra Energy PAC”).<sup>12</sup> Following  
2 the merger, Spectra Energy PAC changed its name to Enbridge (U.S.) Inc. Political Action  
3 Committee (“Enbridge PAC”) and identified Enbridge (U.S.) Inc. as its connected  
4 organization.<sup>13</sup>

5 Enbridge PAC adopted Articles of Association on March 14, 2017.<sup>14</sup> The Articles  
6 provide that the members of Enbridge PAC include all Enbridge (U.S.) Inc. shareholders,  
7 employees, and families who are eligible and do contribute to Enbridge PAC “provided such  
8 individuals are United States citizens or permanent United States residents.”<sup>15</sup>

9 Enbridge PAC contributed over \$500,000 to federal and state political committees during  
10 the 2017-2018 election cycle.<sup>16</sup> As of October 31, 2019, Enbridge PAC had contributed over  
11 \$95,000 to federal and state political committees during the 2019-2020 election cycle.<sup>17</sup>

### 12 **III. LEGAL ANALYSIS**

13 The Act and Commission regulations prohibit any “foreign national” from directly or  
14 indirectly making a contribution or donation of money or other thing of value, or an expenditure,

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<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.

<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>.

1 independent expenditure, or disbursement, in connection with a federal, state, or local election.<sup>18</sup>  
 2 The Act’s definition of “foreign national” includes an individual who is not a citizen or national  
 3 of the United States and who is not lawfully admitted for permanent residence, as well as a  
 4 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,  
 5 association, corporation, organization, or other combination of persons organized under the laws  
 6 of or having its principal place of business in a foreign country.”<sup>19</sup> Commission regulations  
 7 implementing the Act’s foreign national prohibition provide that “[a] foreign national shall not  
 8 direct, dictate, control, or directly or indirectly participate in the decision-making process of any  
 9 person, such as a corporation ... with regard to such person’s Federal or non-Federal election-  
 10 related activities, such as decisions concerning the making of contributions[.]”<sup>20</sup>

11 **A. There is insufficient information to conclude that a foreign national was involved**  
 12 **in Enbridge PAC’s decision-making process or that Enbridge Inc. made a**  
 13 **political contribution.**

14 The Commission has held that a domestic subsidiary of a foreign national corporation is  
 15 permitted to make contributions, when corporate contributions are otherwise permitted, if (1) the  
 16 contributions derive entirely from funds generated by the subsidiary’s U.S. operations; and (2) if  
 17 no foreign nationals are involved in the decision to make the contribution.<sup>21</sup> Similarly, a  
 18 domestic subsidiary of a foreign national corporation is permitted to establish and administer a

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<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> Factual & Legal Analysis at 4, MUR 7122 (American Pacific International Capital, Inc. (“APIC”)); First Gen. Counsel’s Rpt. at 9, MUR 6203 (Itinere North America, LLC); Factual & Legal Analysis at 4-5, MUR 6099 (Sam Page); Advisory Op. 1992-16 (Nansay Hawaii) at 3-4.

1 SSF if it is a discrete entity whose principal place of business is in the United States and if those  
2 exercising decision-making authority over the SSF are not foreign nationals.<sup>22</sup>

3 Where decision-making authority is vested with U.S. citizens or permanent resident  
4 aliens, foreign national corporate board members may not determine who will exercise decision-  
5 making authority.<sup>23</sup> The Commission has consistently found a violation of the foreign national  
6 prohibition where foreign national officers or directors of a U.S. company participated in the  
7 company's decisions to make contributions or in the management of its separate segregated  
8 fund.<sup>24</sup> The Commission has explained that this “ensures the exclusion of foreign nationals from  
9 direct or indirect participation in the decision-making process related to election-related  
10 activities.”<sup>25</sup>

11 Enbridge PAC's Articles of Association provide that the SSF's administrative expenses  
12 are to be paid by Enbridge (U.S.) Inc.<sup>26</sup> The Enbridge Respondents assert that Enbridge (U.S.)

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<sup>22</sup> Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling) at 3; Advisory Op. 2000-17 (Extendicare) 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).

<sup>23</sup> *See, e.g.*, Factual & Legal Analysis at 4-6, MUR 7122 (APIC).

<sup>24</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>25</sup> Factual & Legal Analysis at 4-5, MUR 7122 (APIC).

<sup>26</sup> Enbridge Resp. at Ex. B.

1 Inc. fully finances the administration of Enbridge PAC,<sup>27</sup> and there is no information available to  
2 suggest that the administrative expenses of the Enbridge PAC were paid from sources other than  
3 funds generated by Enbridge (U.S.) Inc.’s U.S. operations.

4 The Enbridge Respondents assert that each of the individuals involved in managing  
5 Enbridge PAC is a U.S. citizen employed by Enbridge (U.S.) Inc., and that neither Enbridge Inc.  
6 nor any foreign individuals play any role in directing or overseeing the activities of Enbridge  
7 PAC.

8 Enbridge PAC is governed by its Board of Trustees (“the PAC Board”).<sup>28</sup> The Articles  
9 of Association provide for up to 12 trustees on the PAC Board, who are charged with setting  
10 “basic policies with respect to contributions and expenditures” by the PAC and are to direct  
11 disbursements to specific candidates.<sup>29</sup> Under its Articles of Association, Enbridge PAC has five  
12 officers: a chairperson, a vice-chairperson, a treasurer, an assistant treasurer, and a secretary.<sup>30</sup>  
13 These articles also call for a PAC administrator with “responsibility for the general affairs” of  
14 the PAC.<sup>31</sup> They also allow for the creation of Advisory Councils, each of which supports a  
15 particular Trustee.<sup>32</sup> Members of an Advisory Council assist the Trustee in soliciting for the  
16 PAC and may make recommendations to the Trustee.<sup>33</sup>

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<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.* at 4-5.

<sup>30</sup> *Id.* at 4.

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

<sup>32</sup> *Id.* at 5.

<sup>33</sup> *Id.*

1 Initial members of the PAC Board following the merger of Enbridge Inc. and Spectra  
2 Energy were appointed by the senior most member of Enbridge (U.S.) Inc. External Affairs,  
3 U.S.<sup>34</sup> Subsequent vacancies on the PAC Board were to be filled by the remaining members of  
4 the PAC Board after consultation with the senior most member of Enbridge (U.S.) Inc. External  
5 Affairs, U.S., which is currently the Vice President of External Affairs.<sup>35</sup>

6 The Enbridge Respondents assert that the Vice President of U.S. External Affairs of  
7 Enbridge (U.S.) Inc. is a U.S. citizen and all of the trustees and officers of Enbridge PAC, the  
8 PAC Administrator, and the members of the various Advisory Councils are U.S. citizens.<sup>36</sup> The  
9 Enbridge Respondents further assert that no new trustees or officers of Enbridge PAC have been  
10 appointed since the merger of Enbridge Inc. and Spectra Energy, and that no new individuals  
11 have been added to the Advisory Councils nor have the Advisory Councils been active since the  
12 merger.<sup>37</sup>

13  
14 There are no allegations or available information indicating that foreign nationals are  
15 involved in Enbridge PAC's decision-making. Instead, the Complaint appears to be premised on  
16 a misunderstanding of the foreign national prohibition, and relies solely on the fact that Enbridge  
17 (U.S.) Inc.'s parent company is a foreign national.

18 Further, there is no information available indicating that foreign national Enbridge Inc.  
19 made a political contribution. On August 3, 2017, Enbridge Inc. adopted a Political

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<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.* at 7

1 Contributions Policy providing that it “does not contribute corporate funds directly to federal  
2 political candidates, committees, or parties” in the United States and that “Enbridge participates  
3 in the political process in accordance with all state ... and local laws, and any and all corporate  
4 contributions shall comply with all applicable laws and regulations.”<sup>38</sup> Although this policy  
5 leaves open the possibility that Enbridge Inc. may have made contributions directly to state or  
6 local political candidates and committees, each of the contributions identified in the Complaint  
7 was made by Enbridge PAC, and there is no information available to suggest that any such  
8 contribution has been made by Enbridge Inc.

9 In light of the circumstances presented, the available information does not provide a  
10 sufficient basis to reasonably infer that the Enbridge Respondents violated the foreign national  
11 prohibition in connection with the contributions by Enbridge PAC.<sup>39</sup> Therefore, the Commission  
12 dismisses the allegation that Enbridge, Inc., Enbridge (U.S.) Inc., Enbridge (U.S.) Inc. Political  
13 Action Committee and K. Ritu Talwar in her official capacity as treasurer, and Enbridge Energy  
14 Company, Inc. violated 52 U.S.C. § 30121(a)(1). Because Enbridge, Inc.’s Political  
15 Contributions Policy suggests it may believe it may legally make contributions in connection  
16 with state and local elections, the Commission cautions it that 52 U.S.C. § 30121(a)(1) prohibits  
17 foreign nationals, like Enbridge, Inc., from making such contributions.

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<sup>38</sup> Enbridge Resp. at Ex. D.

<sup>39</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).

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

3           The Act provides that no person shall knowingly solicit, accept, or receive a prohibited  
4 foreign national contribution or donation.<sup>40</sup> The term “knowingly” is defined as having “actual  
5 knowledge” that the source is a foreign national, or being aware of “facts that would lead a  
6 reasonable person to conclude that there is a substantial probability that” or “facts that would  
7 lead a reasonable person to inquire whether” the source is a foreign national.<sup>41</sup>

8           At the time that each contribution was made to the Federal and State Committee  
9 Respondents, Enbridge PAC was registered with the Commission and Enbridge (U.S.) Inc. was  
10 headquartered in Texas and had operations in the United States. There is no information  
11 available to suggest that the Federal and State Committees had any basis to conclude that  
12 Enbridge PAC was a foreign national or that foreign nationals were involved in Enbridge PAC’s  
13 decisions to make contributions. Moreover, the Federal and State Committee Respondents deny  
14 that they so concluded when they accepted the contributions.<sup>42</sup> Therefore, the Commission  
15 finds no reason to believe that the Federal and State Committee Respondents violated 52 U.S.C.  
16 § 30121(a)(2).

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<sup>40</sup> 52 U.S.C. § 30121(a)(2).

<sup>41</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>42</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).

CCH suggested edits 6/30/2020

## FEDERAL ELECTION COMMISSION

### FACTUAL AND LEGAL ANALYSIS

1  
2  
3 RESPONDENTS: Enbridge Inc. MUR 7594  
4 Enbridge (U.S.) Inc.  
5 Enbridge (U.S.) Inc. Political Action Committee  
6 and K. Ritu Talwar, as Treasurer  
7 Enbridge Energy Company, Inc.  
8 52 Federal Committee Respondents and Treasurer and 252 State  
9 Committee Respondents identified on Appendix A  
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#### 11 I. INTRODUCTION

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

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

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

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<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.

1 expenditures.<sup>5</sup> The Federal and State Committee Respondents assert that they relied upon the  
2 fact that Enbridge PAC was registered with the Commission when accepting the contributions,  
3 they had no information suggesting that the contributions were from a foreign national, and  
4 Enbridge PAC complied with Commission precedent governing SSFs established and operated  
5 by the U.S. subsidiary of a foreign company.

## 6 **II. FACTUAL BACKGROUND**

7 Enbridge Inc. is a publicly traded Canadian corporation in the oil and gas industry and is  
8 headquartered in Calgary, Canada.<sup>6</sup> Enbridge Inc. acknowledges that it is a foreign national  
9 under 52 U.S.C. § 30121(b) and a foreign principal under 22 U.S.C. § 611(b).<sup>7</sup> Enbridge (U.S.)  
10 Inc., an indirect wholly-owned subsidiary of Enbridge Inc., is a Delaware corporation with its  
11 principal place of business in Houston, Texas.<sup>8</sup> It has approximately 3,500 employees in the  
12 United States and assets across 41 states.<sup>9</sup>

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

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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 publicly traded on the New York stock exchange. *Id.*

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

1 as the Spectra Energy Corp Political Action Committee (“Spectra Energy PAC”).<sup>12</sup> Following  
2 the merger, Spectra Energy PAC changed its name to Enbridge (U.S.) Inc. Political Action  
3 Committee (“Enbridge PAC”) and identified Enbridge (U.S.) Inc. as its connected  
4 organization.<sup>13</sup>

5 Enbridge PAC adopted Articles of Association on March 14, 2017.<sup>14</sup> The Articles  
6 provide that the members of Enbridge PAC include all Enbridge (U.S.) Inc. shareholders,  
7 employees, and families who are eligible and do contribute to Enbridge PAC “provided such  
8 individuals are United States citizens or permanent United States residents.”<sup>15</sup>

9 Enbridge PAC contributed over \$500,000 to federal and state political committees during  
10 the 2017-2018 election cycle.<sup>16</sup> As of October 31, 2019, Enbridge PAC had contributed over  
11 \$95,000 to federal and state political committees during the 2019-2020 election cycle.<sup>17</sup>

### 12 **III. LEGAL ANALYSIS**

13 The Act and Commission regulations prohibit any “foreign national” from directly or  
14 indirectly making a contribution or donation of money or other thing of value, or an expenditure,

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<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.

<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>.

1 independent expenditure, or disbursement, in connection with a federal, state, or local election.<sup>18</sup>  
2 The Act’s definition of “foreign national” includes an individual who is not a citizen or national  
3 of the United States and who is not lawfully admitted for permanent residence, as well as a  
4 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,  
5 association, corporation, organization, or other combination of persons organized under the laws  
6 of or having its principal place of business in a foreign country

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

9 A domestic subsidiary of a foreign national corporation may establish and administer an  
10 SSF if the subsidiary is a discrete entity whose principal place of business is in the United States  
11 and if those exercising decision-making authority over the SSF are not foreign nationals.<sup>19</sup>

12 Where decision-making authority is vested with U.S. citizens or permanent resident  
13 aliens, foreign national corporate board members may not determine who will exercise decision-  
14 making authority over the SSF’s contributions.<sup>20</sup> Applying this rule, the Commission has found  
15 violations of the foreign national prohibition where foreign national officers or directors of a  
16 U.S. company participated in the company’s decisions to make contributions and  
17 expenditures..<sup>21</sup>

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<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> Advisory Op. 2009-14 (Mercedes-Benz USA/Sterling) at 3; Advisory Op. 2000-17 (Extendicare) 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.

<sup>20</sup> *See, e.g.*, AO 2006-15 (TransCanada).

<sup>21</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

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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”).<sup>22</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>23</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>24</sup> These articles also call for a PAC administrator with “responsibility for the general affairs” of the PAC.<sup>25</sup> They also allow for the creation of Advisory Councils, each of which supports a particular Trustee.<sup>26</sup> Members of an Advisory Council assist the Trustee in soliciting for the PAC and may make recommendations to the Trustee.<sup>27</sup>

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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)).

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 5.

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

1 Initial members of the PAC Board following the merger of Enbridge Inc. and Spectra  
2 Energy were appointed by the senior most member of Enbridge (U.S.) Inc. External Affairs,  
3 U.S.<sup>28</sup> Subsequent vacancies on the PAC Board were to be filled by the remaining members of  
4 the PAC Board after consultation with the senior most member of Enbridge (U.S.) Inc. External  
5 Affairs, U.S., which is currently the Vice President of External Affairs.<sup>29</sup>

6 The Enbridge Respondents assert that the Vice President of U.S. External Affairs of  
7 Enbridge (U.S.) Inc. is a U.S. citizen and all of the trustees and officers of Enbridge PAC, the  
8 PAC Administrator, and the members of the various Advisory Councils are U.S. citizens.<sup>30</sup> The  
9 Enbridge Respondents further assert that no new trustees or officers of Enbridge PAC have been  
10 appointed since the merger of Enbridge Inc. and Spectra Energy, and that no new individuals  
11 have been added to the Advisory Councils nor have the Advisory Councils been active since the  
12 merger.<sup>31</sup>

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14 The Complaint appears to be premised on a misunderstanding of the foreign national  
15 prohibition, and relies solely on the fact that Enbridge (U.S.) Inc.'s parent company is a foreign  
16 national. But there are no allegations or available information in the record indicating that  
17 foreign nationals were involved in Enbridge PAC's decision-making regarding the contributions  
18 at issue in this matter.

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<sup>28</sup> *Id.* at 3.

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

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 7

1 Further, there is no information in the record indicating that foreign national Enbridge  
2 Inc. made a political contribution. On August 3, 2017, Enbridge Inc. adopted a Political  
3 Contributions Policy providing that it “does not contribute corporate funds directly to federal  
4 political candidates, committees, or parties” in the United States and that “Enbridge participates  
5 in the political process in accordance with all state ... and local laws, and any and all corporate  
6 contributions shall comply with all applicable laws and regulations.”<sup>32</sup> Each of the contributions  
7 identified in the Complaint was made by Enbridge PAC, and there is no information to suggest  
8 that any such contribution has been made by Enbridge Inc.

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

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

16 The Act provides that no person shall knowingly solicit, accept, or receive a prohibited  
17 foreign national contribution or donation.<sup>33</sup> The term “knowingly” is defined as having “actual  
18 knowledge” that the source is a foreign national, or being aware of “facts that would lead a  
19 reasonable person to conclude that there is a substantial probability that” or “facts that would  
20 lead a reasonable person to inquire whether” the source is a foreign national.<sup>34</sup>

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<sup>32</sup> Enbridge Resp. at Ex. D.

<sup>33</sup> 52 U.S.C. § 30121(a)(2).

<sup>34</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).

1           At the time that each contribution was made to the Federal and State Committee  
2 Respondents, Enbridge PAC was registered with the Commission and Enbridge (U.S.) Inc. was  
3 headquartered in Texas and had operations in the United States. There is no information in the  
4 record to suggest that the Federal and State Committees should have questioned whether  
5 Enbridge PAC was a foreign national or that foreign nationals were involved in Enbridge PAC's  
6 decisions to make contributions.<sup>35</sup> Therefore, the Commission finds no reason to believe that the  
7 Federal and State Committee Respondents violated 52 U.S.C. § 30121(a)(2).

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<sup>35</sup> 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).