



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 13 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jane F. Kleeb, Executive Director
Bold Nebraska
1141 H Street, 3rd Floor
Lincoln, NE 68508

RE: MUR 6432
TransCanada Keystone Pipeline GP, LLC
Bruning for Attorney General
Governor Heineman Committee

Dear Ms. Kleeb:

On June 7, 2011, the Federal Election Commission reviewed the allegations in your complaint dated November 15, 2010, and found that on the basis of the information provided in the complaint and in responses to the complaint, there is no reason to believe that TransCanada Keystone Pipeline GP, LLC; Bruning for Attorney General; and the Governor Heinemann Committee violated 2 U.S.C. § 441e. Accordingly, on June 7, 2011, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explains the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Christopher Hughey
Acting General Counsel

BY: Roy Q. Luckett
Acting Assistant General Counsel

Enclosures
Factual and Legal Analyses (3)

11044294992

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** TransCanada Keystone Pipeline GP, LLC **MURS:** 6401 and 6432
5
6

7 **I. INTRODUCTION**

8 This matter was generated by complaints filed with the Federal Election Commission by
9 the Nebraska Democratic Party and Bold Nebraska, alleging violations of the Federal Election
10 Campaign Act, of 1971, as amended ("the Act"), by TransCanada Keystone Pipeline GP, LLC.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Facts**
13

14 The complaints allege that TransCanada Corporation, a Canadian corporation
15 ("TransCanada"), or one of its foreign subsidiaries actually made donations of \$2,500 each to
16 two Nebraska state candidate committees that the committees reported as made by either
17 "TransCanada Keystone Pipeline" or "TransCanada Keystone Pipeline LP." Respondent
18 TransCanada Keystone Pipeline, GP, LLC ("Keystone"), is a limited liability company registered
19 in Delaware and headquartered in Texas with operations in Omaha, Nebraska. Keystone
20 Response at 2. Keystone is the general partner in TransCanada Keystone Pipeline, LP
21 ("Keystone LP"), a Delaware limited partnership. Keystone Supplemental Response at 1 and
22 Response, Ex. A (organizational chart). Keystone jointly owns and controls Keystone LP with a
23 limited partner, TransCanada Keystone Pipeline, LLC, another Delaware limited liability
24 company. *Id.* Keystone and its limited partner are, in turn, subsidiaries of a Delaware
25 corporation, TransCanada Oil Pipelines, Inc. All four entities are ultimately wholly-owned by
26 TransCanada. Keystone Response, Ex. A. TransCanada is an energy infrastructure company
27 that, among other things, develops and operates natural gas and oil pipelines in North America.

1 Keystone LP is apparently responsible for constructing and operating the U.S. portion of an oil
2 pipeline that transports crude oil from Alberta, Canada, to U.S. markets. *See* TransCanada
3 March 14, 2008, press release available at www.transcanada.com/3036.html.

4 As general partner, Keystone directs all of the activities of Keystone LP, and Keystone
5 employees approved and directed Keystone LP to make the donations at issue to the state
6 committees in this matter. Keystone Response at 2; Supplemental Response at 1. According to
7 Keystone, sometime before December 11, 2009, Beth Jensen, its Director of Government
8 Relations and a U.S. citizen, reviewed with outside counsel the permissibility and attendant
9 reporting requirements, under state law, of making donations to Nebraska state candidates.
10 Keystone Response at 2. Subsequently, Jensen approved donations of \$2,500 each to the
11 Governor Heineman Committee ("Heineman Committee") and Bruning for Attorney General
12 ("Bruning Committee"), the campaign committees of two Nebraska candidates. *Id.* Jensen sent
13 an email on December 11, 2009, instructing TransCanada's Accounts Payable staff to issue
14 checks from Keystone operating funds to the two state campaigns. *Id.*, Ex. B. The Accounts
15 Payable center, located in Calgary, Alberta, processed the checks. The Accounts Payable center
16 issued the checks on a Keystone-controlled "U.S. funds Citibank account" in the name of
17 Keystone LP and sent them to Jensen. *Id.* Jensen then forwarded the checks to Kissel E&S
18 Associates, an Omaha, Nebraska-based outside consulting firm engaged by Keystone in its
19 government relations efforts. Kissel representatives hand-delivered the checks to the candidate
20 committees, apparently in January 2010. *Id.*

21 Copies of the checks show that each was drawn on an account of "TransCanada Keystone
22 Pipeline, LP, 450 1st Street S.W., Calgary Alberta 502 5H1." Keystone Response, Ex. C. A
23 printed notation on the check face underneath the amount reads "U.S. FUNDS, TransCanada

1 Keystone Pipeline, LP.” *Id.* The checks also indicate the bank where the account was
2 maintained is Citibank, N.A., at an address in New York City.

3 As required under Nebraska law, on February 2, 2010, Jensen filed with the Nebraska
4 Accountability and Disclosure Commission (“NADC”) a Form B-7, “Report of Political
5 Contributions of a Corporation, Union or Other Association,” for each donation. In those forms,
6 Keystone asserts that Jensen erroneously identified TransCanada Corporation as the donor.
7 Keystone Response at 3, and Ex. D. The forms list another Omaha, Nebraska, address where
8 Keystone operates locally. Keystone Response at 2, Ex. D. The Form B-7s have since been
9 amended to show Keystone LP as the donor. *Id.*, Ex. E.

10 The Heineman and Bruning Committees’ initial disclosure reports show that they either
11 incompletely or erroneously reported the donations at issue.¹ The Heineman Committee reported
12 its donation as coming from TransCanada Keystone Pipeline at the 450 1st St. address printed on
13 the check but listed the city and state as Omaha, Nebraska, rather than Calgary. *See* MUR 6401
14 Complaint attachment, Heineman Committee NADC Form B-1, Schedule B, page 10 of 11;
15 MUR 6432 Complaint, Ex. 1. The Bruning Committee reported its donation as coming from
16 TransCanada Keystone Pipeline LP with no address whatsoever. *See* MUR 6401 Complaint
17 Amendment, Bruning Committee NADC Form B-1, Schedule B, page 11 of 12; MUR 6432
18 Complaint, Ex. 2.

19
20
21

¹ It appears that only the most current version of the state disclosure reports are available on the NADC’s website since the state committees’ reports for the period in question now available on-line have been amended. The NADC website states that the website database is based on the paper records filed with the NADC and that the paper records constitute the official records. *See* NADC website at <http://nadc.nol.org/ccdb/search.cgi>.

1 According to the complaint in MUR 6432, an auditor at the NADC discovered that the
2 street address in one of the disclosure reports belonged to TransCanada in Calgary, Alberta.²
3 MUR 6432 Complaint at 2 and Ex. 3. The NADC contacted the Bruning and Heineman
4 Committees on September 30, 2010, about the possibility that the Keystone LP donation may not
5 have been from a U.S. corporation. That same day, each committee separately issued refund
6 checks to "TransCanada Keystone Pipeline, LP." Keystone Response at 2. Keystone states that
7 the committees refunded the donations "out of an abundance of caution" despite clarifying
8 information it provided to them. Keystone Response at 3.

9 **B. Analysis**

10 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits a foreign
11 national, directly or indirectly, from making a contribution or donation of money or other thing
12 of value in connection with a Federal, State, or local election. 2 U.S.C.
13 § 441e(a)(1)(A), (B); 11 C.F.R. § 110.20(b). A foreign national is also prohibited from directly
14 or indirectly making an expenditure, an independent expenditure, or a disbursement in
15 connection with a Federal, State, or local election. 2 U.S.C. § 441e(a)(1)(C); 11 C.F.R.
16 § 110.20(f). In addition, Commission regulations prohibit foreign nationals from directing,
17 dictating, controlling, or directly or indirectly participating in the decision-making process of any
18 person, such as a corporation, with regard to such person's election-related activities, including
19 decisions concerning the making of contributions, donations, expenditures, or disbursements in
20 connection with elections for any Federal, State, or local office. 11 C.F.R. § 110.20(i).

² The MUR 6432 complaint and an attached Internet article state that the Calgary street address was listed in the Bruning Committee's state disclosure report. The attached copies of the original paper reports, filed on April 12, 2010, however, show that the Heineman Committee listed a street address and the Bruning Committee listed no address. See MUR 6432 Complaint at Ex. 1 and Ex. 2.

1 The Act and Commission regulations define “foreign national” to include “foreign
2 principals,” as defined in 22 U.S.C. § 611(b), and an individual who is not a citizen or national of
3 the United States and who is not a permanent resident. 2 U.S.C. § 441e(b). A “foreign
4 principal” includes “a partnership, association, corporation, organization, or other combination of
5 persons organized under the laws of or having its principal place of business in a foreign
6 country.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

7 In past advisory opinions, the Commission has permitted a U.S. subsidiary of a foreign
8 national corporation to make donations and disbursements in connection with state and local
9 elections when: (1) the donations and disbursements derive entirely from funds generated by the
10 subsidiary and not from funds provided by the foreign parent; and (2) when all decisions
11 concerning the donations and disbursements are made by U.S. citizens or permanent residents,
12 except for setting the overall budget for donations. *See* Advisory Opinions 2006-15
13 (TransCanada)(wholly-owned domestic subsidiaries of a foreign corporation that receive no
14 subsidies from their foreign parent or other foreign national may make donations to state and
15 local candidates as long as no foreign national participates in the decision-making, except for
16 setting overall budget amounts, and they use funds generated by their domestic operations
17 maintained in U.S. bank accounts); 1992-15 (Nansay Hawaii)(wholly-owned subsidiary of a
18 foreign corporation that received some subsidies from its foreign parent may make donations in
19 connection with state and local elections where it currently had substantial net earnings
20 generated by its domestic operations placed in segregated accounts that received no subsidies,
21 and provided that, in the future, it could demonstrate through a reasonable accounting method
22 that it had sufficient funds in its accounts to make donations, other than funds given or provided
23 by its foreign national parent).

1 Keystone states that the donations to the state candidate committees were made with U.S.
2 operating funds from an account maintained in a U.S. financial institution. *Id.* at 3. It points out
3 that the attached photocopies of the donation checks were drawn on a New York Citibank, N.A.
4 bank account and bear the notation "U.S. Funds" on the check faces. It also explains that the
5 Canadian address on the checks is that of TransCanada's Accounts Payable center, an office that
6 merely processes payments authorized by operating units of TransCanada, including Keystone.
7 *Id.* at 3. Finally, Keystone states that Keystone LP received no subsidies from foreign nationals
8 and generated substantial net earnings from which it funded the donations. Keystone
9 Supplemental Response at 1-2. There is no information indicating that the donations were
10 derived from non-U.S. funds.

11 With respect to the status of those involved in making the donations, Keystone's response
12 identifies only Beth Jensen, a U.S. citizen, and describes her role as approving and directing the
13 disbursement of the donations. The response also states, however, that no foreign individual or
14 entity "participate[d] in the decision making process regarding the making of the contributions"
15 and none directed or controlled the donations. Keystone Response at 3; *see also Id.* at 1.
16 Consequently, it may be that Ms. Jensen was the sole decision-maker involved in making the
17 donations or that Keystone decided not to specifically identify other non-foreign nationals who
18 were involved in the decision-making process. In any case, the Commission possesses no
19 information suggesting that any non-U.S. citizen or non-permanent resident was involved in
20 decisions to make the donations.

21 Based on Keystone's response, it appears that the donations to the Bruning and Heineman
22 Committees were made using funds generated by a domestic subsidiary that received no
23 subsidies from a foreign national, and that no foreign national was involved in the decision to

Factual and Legal Analysis
TransCanada Keystone Pipeline GP, LLC

- 1 make the donations. Accordingly, the Commission has determined to find no reason to believe
- 2 that TransCanada Keystone GP, LLC, as the general partner that conducts the activities of
- 3 Keystone LP, violated 2 U.S.C. § 441e.

11044294999

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Bruning for Attorney General **MURS:** 6401 and 6432

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by the Nebraska Democratic Party and Bold Nebraska alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Bruning for Attorney General ("the Bruning Committee").

II. FACTUAL AND LEGAL ANALYSIS**A. Facts**

The complaints in these matters allege that the Bruning Committee accepted a \$2,500 prohibited foreign national donation from TransCanada Corporation ("TransCanada"), a Canadian corporation, or one of its foreign subsidiaries that the Committee reported as received from "TransCanada Keystone Pipeline LP." TransCanada Keystone Pipeline, GP, LLC ("Keystone"), is a limited liability company registered in Delaware and headquartered in Texas with operations in Omaha, Nebraska. Keystone is the general partner in TransCanada Keystone Pipeline, LP ("Keystone LP"), a Delaware limited partnership. Keystone jointly owns and controls Keystone LP with a limited partner, TransCanada Keystone Pipeline, LLC, another Delaware limited liability company. Keystone and its limited partner are, in turn, subsidiaries of a Delaware corporation, TransCanada Oil Pipelines, Inc. All four entities are ultimately wholly-owned by TransCanada. TransCanada is an energy infrastructure company that, among other things, develops and operates natural gas and oil pipelines in North America. Keystone LP is apparently responsible for constructing and operating the U.S. portion of an oil pipeline that

1 transports crude oil from Alberta, Canada, to U.S. markets. See TransCanada March 14, 2008,
2 press release available at www.transcanada.com/3036.html.

3 As general partner, Keystone directs all of the activities of Keystone LP, and Keystone
4 employees approved and directed Keystone LP to make the donations at issue to the state
5 committees in this matter. According to Keystone, sometime before December 11, 2009, Beth
6 Jensen, its Director of Government Relations and a U.S. citizen, reviewed with outside counsel
7 the permissibility and attendant reporting requirements, under state law, of making donations to
8 Nebraska state candidates. Subsequently, Jensen approved donations of \$2,500 each to the
9 Bruning Committee and another state candidate committee. Jensen sent an email on
10 December 11, 2009, instructing TransCanada's Accounts Payable staff to issue checks from
11 Keystone operating funds to the two state campaigns. The Accounts Payable center, located in
12 Calgary, Alberta, processed the checks. The Accounts Payable center issued the checks on a
13 Keystone-controlled "U.S. funds Citibank account" in the name of Keystone LP and sent them to
14 Jensen. Jensen then forwarded the checks to Kissel E&S Associates, an Omaha, Nebraska-based
15 outside consulting firm engaged by Keystone in its government relations efforts. Kissel
16 representatives hand-delivered the checks to the candidate committees, apparently in January
17 2010.

18 A copy of the Bruning Committee's donation check shows that it was drawn on an
19 account of "TransCanada Keystone Pipeline, LP, 450 1st Street S.W., Calgary Alberta 502 5H1."
20 A printed notation on the check face underneath the amount reads "U.S. FUNDS, TransCanada
21 Keystone Pipeline, LP." The check also indicates the bank where the account was maintained is
22 Citibank, N.A., at an address in New York City.

As required under Nebraska law, on February 2, 2010, Jensen filed with the Nebraska Accountability and Disclosure Commission ("NADC") a Form B-7, "Report of Political Contributions of a Corporation, Union or Other Association," for the Bruning Committee donation. In that form, Keystone asserts that Jensen erroneously identified TransCanada Corporation as the donor. The form lists another Omaha, Nebraska, address where Keystone operates locally. The Form B-7 has since been amended to show Keystone LP as the donor.

The Bruning Committee's initial disclosure report shows that it incompletely reported the donation at issue.¹ It reported receiving a \$2,500 donation from TransCanada Keystone Pipeline LP but listed no address whatsoever. See MUR 6401 Complaint Amendment, Bruning Committee NADC Form B-1, Schedule B, page 11 of 12; MUR 6432 Complaint, Ex. 2.

The Bruning Committee states that the NADC contacted it on September 30, 2010, about the possibility that the Keystone LP donation may not have been from a U.S. corporation. Bruning Committee Response at 1-2.² That same day, the Committee issued a refund check to "TransCanada Keystone Pipeline, LP." *Id.*, Ex. 3. The Committee states that it refunded the donation "out of an abundance of caution" despite information provided by Keystone indicating the donation was from a U.S. corporation. *Id.* at 1-2.

B. Analysis

The Act prohibits a person, in pertinent part, from knowingly accepting or receiving a donation made in connection with a Federal, State, or local election from a foreign national. See 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

¹ It appears that only the most current version of the state disclosure report is available on the NADC's website since the report for the period in question now available on-line has been amended. The NADC website states that the website database is based on the paper records filed with the NADC and that the paper records constitute the official records. See NADC website at <http://nadc.ne.gov/ccdb/search.cgi>.

² The reference to the Bruning Committee Response is to its response in MUR 6401. The Committee responded to the complaint in MUR 6432 by referencing its earlier MUR 6401 response.

1 The Act and Commission regulations define “foreign national” to include “foreign
2 principals,” as defined in 22 U.S.C. § 611(b), and an individual who is not a citizen or national of
3 the United States and who is not a permanent resident. 2 U.S.C. § 441e(b). A “foreign
4 principal” includes “a partnership, association, corporation, organization, or other combination of
5 persons organized under the laws of or having its principal place of business in a foreign
6 country.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

7 In past advisory opinions, the Commission has permitted a U.S. subsidiary of a foreign
8 national corporation to make donations and disbursements in connection with state and local
9 elections when: (1) the donations and disbursements derive entirely from funds generated by the
10 subsidiary and not from funds provided by the foreign parent; and (2) when all decisions
11 concerning the donations and disbursements are made by U.S. citizens or permanent residents,
12 except for setting the overall budget for donations. *See Advisory Opinions 2006-15*
13 *(TransCanada)*(wholly-owned domestic subsidiaries of a foreign corporation that receive no
14 subsidies from their foreign parent or other foreign national may make donations to state and
15 local candidates as long as no foreign national participates in the decision-making, except for
16 setting overall budget amounts, and they use funds generated by their domestic operations
17 maintained in U.S. bank accounts); 1992-15 *(Nansay Hawaii)*(wholly-owned subsidiary of a
18 foreign corporation that received some subsidies from its foreign parent may make donations in
19 connection with state and local elections where it currently had substantial net earnings
20 generated by its domestic operations placed in segregated accounts that received no subsidies,
21 and provided that, in the future, it could demonstrate through a reasonable accounting method
22 that it had sufficient funds in its accounts to make donations, other than funds given or provided
23 by its foreign national parent).

1 Keystone has stated that the donation to the Bruning Committee was made with U.S.
2 operating funds from an account maintained in a U.S. financial institution. It has also pointed
3 out that the donation check was drawn on a New York Citibank, N.A. bank account and bears the
4 notation "U.S. Funds" on the check face. It has also explained that the Canadian address on the
5 check is that of TransCanada's Accounts Payable center, an office that merely processes
6 payments authorized by operating units of TransCanada, including Keystone. Finally, Keystone
7 has stated that Keystone LP received no subsidies from foreign nationals and generated
8 substantial net earnings from which it funded the donations. There is no information indicating
9 that the donation was derived from non-U.S. funds.

10 With respect to the status of those involved in making the donation, Keystone identifies
11 only Beth Jensen, a U.S. citizen, and describes her role as approving and directing the
12 disbursement of the donation. Keystone maintains, however, that no foreign individual or entity
13 "participate[d] in the decision making process regarding the making of the contribution[]" and
14 none directed or controlled the donation. Consequently, it may be that Ms. Jensen was the sole
15 decision-maker involved in making the donation or that Keystone decided not to specifically
16 identify other non-foreign nationals who were involved in the decision-making process. In any
17 case, the Commission possesses no information that any non-U.S. citizen or non-permanent
18 resident was involved in the decision to make the donation.

19 The Bruning Committee promptly refunded the donation when NADC notified it of a
20 potential problem with the donation despite statements from TransCanada representatives that
21 the donation was permissible. Bruning Committee Response at 2, Ex. 3 (refund check). It
22 contends that any potential violation was inadvertent and requests that the Commission dismiss it
23 from the matters.

**Factual and Legal Analysis
Bruning for Attorney General**

1 Based on the available information, it appears that the donation to the Bruning
2 Committee was made using funds generated by a domestic subsidiary that received no subsidies
3 from a foreign national, and that no foreign national was involved in the decision to make the
4 donation. Therefore, the Commission has determined to find no reason to believe that Bruning
5 for Attorney General violated 2 U.S.C. § 441e by accepting a foreign national donation.

11044295005

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Governor Heineman Committee **MURS:** 6401 and 6432

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by the Nebraska Democratic Party and Beld Nebraska alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Governor Heineman Committee ("the Heineman Committee").

II. FACTUAL AND LEGAL ANALYSIS**A. Facts**

The complaints in these matter allege that the Heineman Committee accepted a \$2,500 prohibited foreign national donation from TransCanada Corporation ("TransCanada"), a Canadian corporation, or one of its foreign subsidiaries that the Committee reported as received from "TransCanada Keystone Pipeline." TransCanada Keystone Pipeline, GP, LLC ("Keystone"), is a limited liability company registered in Delaware and headquartered in Texas with operations in Omaha, Nebraska. Keystone is the general partner in TransCanada Keystone Pipeline, LP ("Keystone LP"), a Delaware limited partnership. Keystone jointly owns and controls Keystone LP with a limited partner, TransCanada Keystone Pipeline, LLC, another Delaware limited liability company. Keystone and its limited partner are, in turn, subsidiaries of a Delaware corporation, TransCanada Oil Pipelines, Inc. All four entities are ultimately wholly-owned by TransCanada. TransCanada is an energy infrastructure company that, among other things, develops and operates natural gas and oil pipelines in North America. Keystone LP is apparently responsible for constructing and operating the U.S. portion of an oil pipeline that

1 transports crude oil from Alberta, Canada, to U.S. markets. See TransCanada March 14, 2008,
2 press release available at www.transcanada.com/3036.html.

3 As general partner, Keystone directs all of the activities of Keystone LP, and Keystone
4 employees approved and directed Keystone LP to make the donation at issue in this matter.
5 According to Keystone, sometime before December 11, 2009, Beth Jensen, its Director of
6 Government Relations and a U.S. citizen, reviewed with outside counsel the permissibility and
7 attendant reporting requirements, under state law, of making donations to Nebraska state
8 candidates. Subsequently, Jensen approved donations of \$2,500 each to the Heineman
9 Committee and another state candidate committee. Jensen sent an email on December 11, 2009,
10 instructing TransCanada's Accounts Payable staff to issue checks from Keystone operating funds
11 to the two state campaigns. The Accounts Payable center, located in Calgary, Alberta, processed
12 the checks. The Accounts Payable center issued the checks on a Keystone-controlled "U.S.
13 funds Citibank account" in the name of Keystone LP and sent them to Jensen. Jensen then
14 forwarded the checks to Kissel E&S Associates, an Omaha, Nebraska-based outside consulting
15 firm engaged by Keystone in its government relations efforts. Kissel representatives hand-
16 delivered the checks to the candidate committees, apparently in January 2010.

17 A copy of the Heineman Committee's donation check shows that it was drawn on an
18 account of "TransCanada Keystone Pipeline, LP, 450 1st Street S.W., Calgary Alberta 502 5H1."
19 A printed notation on the check face underneath the amount reads "U.S. FUNDS, TransCanada
20 Keystone Pipeline, LP." The check also indicates the bank where the account was maintained is
21 Citibank, N.A., at an address in New York City.

22 As required under Nebraska law, on February 2, 2010, Jensen filed with the Nebraska
23 Accountability and Disclosure Commission ("NADC") a Form B-7, "Report of Political

11044295007

1 Contributions of a Corporation, Union or Other Association,” for the Heineman Committee
2 donation. In that form, Keystone asserts that Jensen erroneously identified TransCanada
3 Corporation as the donor. The form lists another Omaha, Nebraska, address where Keystone
4 operates locally. The Form B-7 has since been amended to show Keystone LP as the donor.

5 The Heinman Committee’s initial disclosure report shows that it erroneously reported the
6 donation at issue.¹ It reported receiving a \$2,500 donation from TransCanada Keystone Pipeline
7 at the 450 1st St. address printed on the check but listed the city and state as Omaha, Nebraska,
8 rather than Calgary. See MUR 6401 Complaint attachment, Heineman Committee NADC Form
9 B-1, Schedule B, page 10 of 11; MUR 6432 Complaint, Ex. 1.

10 According to the complaint in MUR 6432, an auditor at the NADC discovered that the
11 450 1st street address belonged to TransCanada in Calgary, Alberta. MUR 6432 Complaint at 2
12 and Ex. 3. The Heineman Committee states that the NADC contacted it on September 30, 2010,
13 about the possibility that the Keystone LP donation may not have been from a U.S. corporation.
14 Heineman Committee Response at 1.² That same day, the Committee issued a refund check to
15 “TransCanada Keystone Pipeline, LP.” *Id.* at 5.

16 **B. Analysis**

17 The Act prohibits a person, in pertinent part, from knowingly accepting or receiving a
18 donation made in connection with a Federal, State, or local election from a foreign national. See
19 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

¹ It appears that only the most current version of the state disclosure report is available on the NADC’s website since the report for the period in question now available on-line has been amended. The NADC website states that the website database is based on the paper records filed with the NADC and that the paper records constitute the official records. See NADC website at <http://nadc.nol.org/ccdb/search.cgi>.

² The reference to the Heineman Committee Response is to its response in MUR 6401. The Committee responded to the complaint in MUR 6432 by referencing its earlier MUR 6401 response.

1 The Act and Commission regulations define “foreign national” to include “foreign
2 principals,” as defined in 22 U.S.C. § 611(b), and an individual who is not a citizen or national of
3 the United States and who is not a permanent resident. 2 U.S.C. § 441e(b). A “foreign
4 principal” includes “a partnership, association, corporation, organization, or other combination of
5 persons organized under the laws of or having its principal place of business in a foreign
6 country.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

7 In past advisory opinions, the Commission has permitted a U.S. subsidiary of a foreign
8 national corporation to make donations and disbursements in connection with state and local
9 elections when: (1) the donations and disbursements derive entirely from funds generated by the
10 subsidiary and not from funds provided by the foreign parent; and (2) when all decisions
11 concerning the donations and disbursements are made by U.S. citizens or permanent residents,
12 except for setting the overall budget for donations. *See* Advisory Opinions 2006-15
13 (TransCanada)(wholly-owned domestic subsidiaries of a foreign corporation that receive no
14 subsidies from their foreign parent or other foreign national may make donations to state and
15 local candidates as long as no foreign national participates in the decision-making, except for
16 setting overall budget amounts, and they use funds generated by their domestic operations
17 maintained in U.S. bank accounts); 1992-15 (Nansay Hawaii)(wholly-owned subsidiary of a
18 foreign corporation that received some subsidies from its foreign parent may make donations in
19 connection with state and local elections where it currently had substantial net earnings
20 generated by its domestic operations placed in segregated accounts that received no subsidies,
21 and provided that, in the future, it could demonstrate through a reasonable accounting method
22 that it had sufficient funds in its accounts to make donations, other than funds given or provided
23 by its foreign national parent).

1 Keystone has stated that the donation to the Heineman Committee was made with U.S.
2 operating funds from an account maintained in a U.S. financial institution. It has also pointed
3 out that the donation check was drawn on a New York Citibank, N.A. bank account and bears the
4 notation "U.S. Funds" on the check face. It has also explained that the Canadian address on the
5 check is that of TransCanada's Accounts Payable center, an office that merely processes
6 payments authorized by operating units of TransCanada, including Keystone. Finally, Keystone
7 has stated that Keystone LP received no subsidies from foreign nationals and generated
8 substantial net earnings from which it funded the donations. There is no information indicating
9 that the donation was derived from non-U.S. funds.

10 With respect to the status of those involved in making the donation, Keystone identifies
11 only Beth Jensen, a U.S. citizen, and describes her role as approving and directing the
12 disbursement of the donation. Keystone maintains, however, that no foreign individual or entity
13 "participate[d] in the decision making process regarding the making of the contribution[]" and
14 none directed or controlled the donation. Consequently, it may be that Ms. Jensen was the sole
15 decision-maker involved in making the donation or that Keystone decided not to specifically
16 identify other non-foreign nationals who were involved in the decision-making process. In any
17 case, the Commission possesses no information that any non-U.S. citizen or non-permanent
18 resident was involved in the decision to make the donation.

19 The Heineman Committee promptly refunded the donation when NADC notified it of a
20 potential problem with the donation. Heineman Committee Response at 1 and 5 (refund check).
21 The Committee contends that any potential violation was inadvertent and requests that the
22 Commission dismiss it from these matters. Heineman Committee Response at 1.

11044295010

**Factual and Legal Analysis
Governor Heineman Committee**

1 Based on the available information, it appears that the donation to the Heineman
2 Committee was made using funds generated by a domestic subsidiary that received no subsidies
3 from a foreign national, and that no foreign national was involved in the decision to make the
4 donation. Therefore, the Commission has determined to find no reason to believe that the
5 Governor Dave Heineman Committee violated 2 U.S.C. § 441e by accepting a foreign national
6 donation.

11044295011