

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3  
4 In the Matter of )  
5 )  
6 Mepco Holdings, LLC ) MUR 7221  
7 Mepco, LLC )  
8 Longview Intermediate Holdings C, LLC )  
9 James Laurita, Jr. )  
10 Karen Hughes )  
11 Kevin O'Dell )  
12 Brian Osborn )  
13 Steven Polce )  
14 Richard Usery )  
15 Eric Grimm )  
16 Kent Lindsay )  
17 Christopher Stecher )

18 **THIRD GENERAL COUNSEL'S REPORT**

19 **I. ACTIONS RECOMMENDED**

20 (1) Find reason to believe that James Laurita, Jr. violated 52 U.S.C. § 30116; (2) enter  
21 into pre-probable cause conciliation with Mepco Holdings, LLC, Mepco, LLC, James Laurita,  
22 Jr., and Karen Hughes; (3) approve the attached proposed conciliation agreements; (4) approve  
23 the attached factual and legal analysis for James Laurita, Jr. regarding the violation of 52 U.S.C.  
24 § 30116; (5) take no action and close the file as to Longview Intermediate Holdings C, LLC; and  
25 (6) take no further action and close the file as to the remaining Respondents.

26 **II. INTRODUCTION**

27 This matter arose from a *sua sponte* submission filed on November 17, 2013, by Mepco  
28 Holdings, LLC ("Mepco") and its parent company, Longview Intermediate Holdings C, LLC  
29 ("Longview"), notifying the Commission that James Laurita, Jr., the former President and CEO  
30 of Mepco, caused Mepco to reimburse its executive officers for political contributions.<sup>1</sup> Laurita,

<sup>1</sup> Mepco & Longview Submission at 4 (Nov. 17, 2013) ("First Mepco Submission").

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1 as well as several executives, Karen Hughes, Kevin O'Dell, Brian Osborn, Steven Polce, and  
2 Richard Usery, subsequently joined in the Submission.<sup>2</sup> On October 6, 2014, the Commission  
3 notified Eric Grimm, Kent Lindsay, and Christopher Stecher, other Mepco executives who were  
4 no longer employed by the company when the Submission was filed.<sup>3</sup> Grimm and Lindsay filed  
5 a joint response, admitting to their roles as conduits.<sup>4</sup> Stecher, who moved four times in five  
6 years, states that he did not receive the notification letter.<sup>5</sup>

7  
8  
9 On October 17, 2014, this Office circulated the First General Counsel's  
10 Report, but consideration of the recommendations was delayed for approximately two years  
11 pending the parallel criminal investigation. We obtained tolling from all Respondents with the  
12 exception of Stecher who, at that time, had not yet responded to the Commission's notification  
13 letters.<sup>7</sup>

<sup>2</sup> Hughes, O'Dell, Osborn, Polce, & Usery Submission (Jan. 29, 2014); Laurita Submission (Sept. 24, 2014).

<sup>3</sup> Grimm, Lindsay, & Stecher Notification Letters (Oct. 6, 2014).

<sup>4</sup> Joint Lindsay & Grimm Resp. at 1 (Jan. 9, 2015). Lindsay and Grimm did not specifically ask to join in the Submission. *See id.* However, they have acted in concert with the self-reporting parties, retained the same counsel as the other executives, and have cooperated with the Commission.

<sup>5</sup> Stecher Resp. to RTB Letter at 1 (May 5, 2017).

<sup>7</sup> Stecher left Mepco before the reimbursement program ended, and, as noted above, Stecher states that he did not receive the initial notification letter. Stecher Resp. to RTB Letter at 1 (May 5, 2017). We reached Stecher in 2017, following the reason to believe findings, but most of the violations as to him had already expired under the statute of limitations, and although he provided limited tolling, it has since elapsed. Stecher Resp. to Req. for Information (Aug. 17, 2017).

1 On March 7, 2017, the Commission found reason to believe that: (1) Laurita and Hughes  
2 knowingly and willfully violated 52 U.S.C. § 30122; (2) Mepco Holdings, LLC, Mepco, LLC,  
3 Grimm, Lindsay, O'Dell, Osborn, Polce, Stecher, and Usery violated 52 U.S.C. § 30122; and  
4 (3) Mepco Holdings, LLC, and Mepco, LLC violated 52 U.S.C. § 30116, and commenced an  
5 investigation.<sup>8</sup> Mepco requested that the Commission take no action against Mepco itself, and  
6 the remaining Respondents requested pre-probable cause conciliation.<sup>9</sup>

7 On September 19, 2017, as we were pursuing the investigation, Laurita was indicted on  
8 federal charges related to the reimbursement scheme.<sup>10</sup> The Commission agreed to hold the  
9 investigation in abeyance until the conclusion of Laurita's criminal trial in exchange for tolling  
10 from Respondents.<sup>11</sup> The trial ended in a hung jury, after which DOJ declined to retry Laurita  
11 and dismissed the indictment, at which point we resumed the investigation.<sup>12</sup>

12 As set forth below, we recommend that the Commission proceed against Mepco, Laurita,  
13 and Hughes on a non-knowing and willful basis. Further, we recommend that the Commission  
14 take no further action and close the file as to the remaining Respondents.

<sup>8</sup> Certification ¶ 2, Pre-MUR 567 (MUR 7221) (Mepco, LLC, et al.) (Mar. 7, 2017); Certification ¶ 2, Pre-MUR 567 (MUR 7221) (Eric Grimm, et al.) (Mar. 7, 2017).

<sup>9</sup> First Mepco Submission at 6; Hughes, O'Dell, Osborn, Polce, Usery, Grimm, Lindsay, & Stecher Resps. to RTB Letter (May 5, 2017); Laurita Resp. to RTB Letter (May 5, 2017).

<sup>10</sup> Indictment, *United States v. Laurita*, 1:17-cr-00051-IMK-JES (N.D.W. Va. Sept. 19, 2017) ("Laurita Indictment").

<sup>11</sup> Memo to Comm'n Re: Abeyance of Investigation, MUR 7221 (Mepco Holdings, LLC, et al.) (Jan. 16, 2018); Certification, MUR 7221 (Mepco Holdings, LLC, et al.) (Jan 18, 2018).

<sup>12</sup> Order Declaring Mistrial Due to Jury Deadlock, *United States v. Laurita*, 1:17-cr-00051-IMK-JES (N.D.W. Va. Feb. 6, 2018); Order Granting United States's Motion to Dismiss Indictment and Dismissing Indictment, *United States v. Laurita*, 1:17-cr-00051-IMK-JES (N.D.W. Va. Feb. 16, 2018).

1 **III. SUMMARY OF INVESTIGATION**

2 During the investigation, we reviewed emails, bank records, corporate financial records,  
3 campaign fundraising materials, and other contemporaneous records pertaining to the  
4 reimbursement program. In addition, we interviewed seven of the Mepco executives, deposed  
5 Laurita, and interviewed Robert Place, the former President and CEO of GenPower Holdings  
6 GP, Ltd. ("GenPower"), the ultimate parent company of Mepco and Longview.<sup>13</sup>

7 **A. Background**

8 Mepco is a West Virginia coal company that was headed by President and CEO James  
9 Laurita, Jr. during the relevant period.<sup>14</sup> Laurita managed the company with the assistance of  
10 executives who are also respondents in this matter.<sup>15</sup> In addition to serving as President and  
11 CEO, Laurita was also a minority owner and served as a member of Mepco's Board.<sup>16</sup>

12 **B. Contribution Reimbursement Program**

13 1. March 2010 Meeting

14 In 2009, Laurita began having discussions with leadership from Longview and GenPower  
15 regarding the need to be politically active in the face of increased regulation of the coal

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<sup>13</sup> Osborn, Grimm, Lindsay, Usery, & Polce Interview Summaries (Feb. 21, 2018); O'Dell Interview Summary (May 18, 2018); Hughes Interview Summary (June 7, 2018); Laurita Depo. (June 12, 2018); Place Interview Summary (Aug. 9, 2018).

<sup>14</sup> First Mepco Submission at 2-3; Laurita Depo. at 14-16.

<sup>15</sup> The Respondent executives are: Karen Hughes (Secretary/Treasurer); Kent Lindsay (CFO); Brian Osborn (VP of Engineering); Kevin O'Dell (VP of Safety and Human Resources); Rick Usery (VP of Coal Sales and Surface Operations); Steve Polce (VP of WV Underground Mining); Eric Grimm (VP of PA Underground Mining); and Christopher Stecher (CFO, prior to Lindsay, and Manager of Accounting). See Letter from Counsel for Mepco to Attorney, FEC, Ex. 2 (organization chart) (Sept. 3, 2014) ("September 3, 2014 Mepco Letter"); First Mepco Submission at 2, 3.

<sup>16</sup> Sept. 3, 2014 Mepco Letter at 3; see Laurita Resp. to RTB Letter at 4.

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1 industry.<sup>17</sup> Laurita started making political contributions and helped to arrange meetings with  
2 politicians to discuss issues facing the coal industry.<sup>18</sup> In early 2010, Laurita says that Place  
3 asked him to encourage the Mepco executives "to become more politically active financially."<sup>19</sup>  
4 On March 4, 2010, Laurita sent an email to the Mepco executives, setting up a meeting to  
5 discuss "elections, and our support for particular candidates."<sup>20</sup> At the meeting, held the next  
6 day, Laurita talked about the increased regulation of the coal industry and presented a plan  
7 whereby the executives would make contributions to pro-coal political candidates and receive  
8 compensation from Mepco "so they'd be able to afford to be able to [make contributions]."<sup>21</sup>  
9 None of the executives expressed an opinion that the program was not in the company's interest  
10 or that it might be unlawful.<sup>22</sup> Laurita contends that the purpose of the meeting was to obtain a  
11 "consensus" that making contributions was "the right thing to do" for Mepco, and that, by so  
12 doing, the executives would be voluntarily making the contributions with personal funds.<sup>23</sup>  
13 However, the executives generally interpreted Laurita as offering a straight reimbursement and  
14 did not consider the money they were to contribute to be their own.<sup>24</sup>

<sup>17</sup> Laurita Depo. at 29-30; Place Interview at 1-2; see Laurita Resp. to RTB Letter at 4; Trial Tr. at 360, *United States v. Laurita*, 1:17-CR-51 (N.D.W. Va.) (statement of Charlie Huguenard, Executive VP of Longview) ("Trial Tr.").

<sup>18</sup> Laurita Depo. at 31.

<sup>19</sup> *Id.*; see *id.* at 35-36; Trial Tr. at 391-92 (Laurita). Place does not recall this specific instruction, but he does acknowledge that the companies were becoming politically active and that he had discussions with Laurita about such activities. Place Interview at 1-2.

<sup>20</sup> Email from Laurita to Hughes, *et al.* (Mar. 4, 2010) (MEPCO\_0000070); Laurita Depo. at 36.

<sup>21</sup> Laurita Depo. at 38.

<sup>22</sup> See, e.g., Usery Interview at 2, 6; Hughes Interview at 3; Grimm Interview at 2.

<sup>23</sup> Laurita Depo. at 62; see *id.* at 60-62, 74-75.

<sup>24</sup> E.g., Trial Tr. at 324 ("Jim . . . said that we needed to support some candidates that had positive views on coal . . . and would reimburse us.") (Lindsay); *id.* at 191 ("It was company funds. Mepco funds.") (Usery).

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1           Shortly after the meeting, Laurita approached Hughes to discuss how the program would  
2 operate.<sup>25</sup> Laurita told Hughes that he would give her the names of the candidates and requested  
3 contribution amounts, and Hughes would communicate this information to the executives and  
4 collect their contribution checks.<sup>26</sup> Hughes recalls that Laurita told her to “ask the officers for  
5 their contributions, don’t tell them that they had to make them.”<sup>27</sup> In addition, Laurita directed  
6 Hughes to initiate “bonus” payments to compensate the executives for making the  
7 contributions.<sup>28</sup> Without providing any specifics on the timing and amounts of the  
8 reimbursements, Laurita simply told her to “make sure no one gets hurt here.”<sup>29</sup> Hughes  
9 explained that she asked Laurita to clarify whether the bonuses should be “grossed up” so that  
10 the after tax amount would match the full amount of the contributions.<sup>30</sup> Laurita confirmed that  
11 they should be grossed up because he did not want anybody to be “out-of-pocket.”<sup>31</sup> The  
12 payments were recorded in Mepco’s payroll system as a “bonus” without any other annotation.<sup>32</sup>

13           2.       Operation of the Reimbursement Program

14           On March 6, 2010, Laurita sent the first email to the executives directing them to make  
15 four contributions totaling \$6,800.<sup>33</sup> It contained the names of candidates, requested amounts,

<sup>25</sup> Hughes Interview at 3; Laurita Depo. at 41-47.

<sup>26</sup> Hughes Interview at 3; see Trial Tr. at 45 (Hughes); *id.* at 395 (Laurita).

<sup>27</sup> Trial Tr. at 47 (Hughes); see *id.* at 396 (Laurita).

<sup>28</sup> Hughes Interview at 3; see Trial Tr. at 46 (Hughes); *id.* at 395 (Laurita).

<sup>29</sup> Laurita Depo. at 43; see Hughes Interview at 3.

<sup>30</sup> Hughes Interview at 3.

<sup>31</sup> *Id.* at 3, 6; see Trial Tr. at 395 (Laurita); Laurita Depo. at 46-47.

<sup>32</sup> Mepco & Longview Submission at 7 (Mar. 18, 2014) (“Second Mepco Submission”); see also Hughes Interview at 6.

<sup>33</sup> Email from Laurita to Hughes *et al.* (Mar. 6, 2010) (MEPCO\_00000613).

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1 and included a notation as to whether spouses should also contribute; below was the sentence:

2 "Please direct all contributions to Karen."<sup>34</sup>

3 After this initial email, the program generally followed the same pattern: Laurita would  
4 decide the candidates and amounts and pass this information to Hughes who, in turn, would  
5 notify the executives, attaching copies of any campaign materials or donor cards.<sup>35</sup> Hughes  
6 would collect their checks and forms, unless the donations were made online.<sup>36</sup> Laurita would  
7 then instruct Hughes on what to do with the checks and forms.<sup>37</sup> At some point, Suzanne Crane,  
8 Laurita's personal assistant, assumed Hughes's responsibilities for communicating with the  
9 executives about requested contributions, but Hughes remained responsible for initiating the  
10 reimbursement payments.<sup>38</sup>

11 Laurita states that he and the executives would sometimes select candidates through a  
12 collaborative process.<sup>39</sup> Nearly all of the executives, however, denied that they played any such  
13 role.<sup>40</sup> Grimm said that he tried to assist Laurita at one point, but after Laurita overruled his  
14 recommendation, it became obvious that Laurita had his own "agenda."<sup>41</sup>

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

<sup>35</sup> Hughes Interview at 3; *see also* Second Mepco Submission at 4.

<sup>36</sup> Hughes Interview at 3; Second Mepco Submission at 5.

<sup>37</sup> Hughes Interview at 3. Sometimes, Laurita would personally deliver them to the campaign; sometimes the campaigns would pick them up; and sometimes one of the other executives would bring them to a fundraiser. *Id.*

<sup>38</sup> Second Mepco Submission at 4; Hughes Interview at 4.

<sup>39</sup> Laurita Resp. to RTB Letter at 5 (claiming that Laurita and the other Mepco executives, or a subset of them, would "discuss and evaluate" the contribution recommendations).

<sup>40</sup> *See, e.g.,* Osborn Interview at 3; O'Dell Interview at 2; Usery Interview at 2; *see also* Trial Tr. at 325 (Polce) ("It was [Laurita's] program the way I looked at it."). *But see* Second Mepco Submission at 4 (discussing possible conversations between executives and Laurita regarding candidate recommendations).

<sup>41</sup> Grimm Interview at 2-3; Grimm Resp. to Req. for Information at 1 (Aug. 17, 2017) (stating that Laurita controlled program "at every step" and denying that he chose the candidates or amounts).

1 The contributions were often connected to fundraising events, which were sometimes  
2 attended by Laurita and the executives.<sup>42</sup> It was clear to the executives that they were expected  
3 to be representing Mepco, and, if Laurita could not attend an event, he would sometimes select  
4 one of the executives to attend on his behalf.<sup>43</sup> On some occasions, Laurita invited the spouses  
5 of executives and even employees outside of the executive group to attend events so that they  
6 could help inform the candidates about the effects that increased regulation was having on  
7 Mepco.<sup>44</sup> Laurita personally hosted several of these campaign fundraisers.<sup>45</sup>

8 The Mepco executives confirmed that all federal contributions reported in their names  
9 and the names of their spouses between 2010 and 2013 were made at Laurita's behest with funds  
10 either advanced or reimbursed by Mepco.<sup>46</sup> Based on reports filed with the Commission and the  
11 admissions of Respondents, we have identified contributions totaling \$364,093.52 made in the  
12 executives' names during this period.

13 3. Program Secrecy

14 Hughes says that Laurita specifically told her "not to discuss this program with anybody  
15 outside of the group of officers who were actually making the contributions."<sup>47</sup> As noted in the  
16 First General Counsel's Report, in two instances, Hughes sent emails to the executives in which

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<sup>42</sup> Second Mepco Submission at 5.

<sup>43</sup> See, e.g., Email from Laurita to Grimm (Mar. 28, 2012) (MEPCO\_00001315) (asking Grimm to attend a fundraiser on Laurita's behalf); Email from Laurita to Grimm (June 13, 2012) (MEPCO\_00001129) (same).

<sup>44</sup> Laurita Depo. at 60-61, 82-83.

<sup>45</sup> *Id.* at 76-79; Second Mepco Submission at 5.

<sup>46</sup> Grimm, Lindsay, O'Dell, Osborn, Polce, Stecher, Usery, & Hughes Resps. to Req. for Information (Aug. 17, 2017).

<sup>47</sup> Trial Tr. at 47 (Hughes).

1 she instructed the recipients to “delete” the emails.<sup>48</sup> The emails indicated that the executives  
2 would be receiving reimbursements for their political contributions. Out of the many additional  
3 examples of emails sent by Hughes, we did not find any with similar instructions.

4 When asked why she included instructions to delete those two emails, Hughes testified at  
5 trial that she did so pursuant to Laurita’s directive that the program should not be discussed with  
6 anyone outside of the group of participating executives.<sup>49</sup> She further explained that she was  
7 concerned about privacy because some of the executives worked in open office environments at  
8 mine sites: “I never knew when their e-mail would be left open and inadvertently someone else  
9 would see it or if they would print something and someone would pick it up out of the printer.”<sup>50</sup>  
10 She further added, in her interview with this Office, that she did not want other employees, who  
11 did not participate in the reimbursement program, to learn about the amount of money Mepco  
12 was spending on political contributions when other requests for corporate funds were being  
13 denied.<sup>51</sup>

14 Although the executives besides Hughes stated that they did not recall specifically being  
15 told not to talk about the program, they ultimately did not discuss it with anyone outside of the  
16 executive team or their spouses, who were also conduits.<sup>52</sup> For his part, Laurita denies that he  
17 ever told Hughes or anyone else to conceal the program or destroy any documents.<sup>53</sup> Further, he

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<sup>48</sup> Email from Hughes to Lindsay, *et al.* (Sept. 8, 2010) (MEPCO\_00000211); Email from Hughes to Lindsay, *et al.* (Aug. 13, 2010) (MEPCO\_00000215).

<sup>49</sup> Trial Tr. at 48 (Hughes).

<sup>50</sup> *Id.*; *see* Hughes Interview at 3.

<sup>51</sup> Hughes Interview at 3; *see* Hughes Resp. to RTB Letter at 13.

<sup>52</sup> *E.g.*, Polce Interview at 2; Osborn Interview at 2; O’Dell Interview at 2; *see also* Grimm Interview at 2 (describing the program as “just a small part of my day” and that “it didn’t really require any work on my part”).

<sup>53</sup> Laurita Depo. at 141-42; Laurita Resp. to RTB Letter at 2.

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1 claims that he once referred to the program in passing to a group of GenPower and Longview  
2 executives who happened to be discussing how expensive it was to attend political fundraisers.  
3 Laurita recalls stating that: "I raised the comp of my execs so they could be able to afford to do  
4 this."<sup>54</sup> Mepco asserts, however, that neither it nor Longview, nor any other related company,  
5 was aware of the program.<sup>55</sup>

6 4. Conclusion of the Program and Discovery of the Violations

7 In early 2013, facing "severe financial conditions" at Mepco, which ultimately led to  
8 bankruptcy filings later that year, Laurita decided to end the program, after which none of the  
9 executives made contributions in their personal capacities.<sup>56</sup> On August 30, 2013, Mepco and  
10 certain of its affiliates, including Longview, filed petitions for Chapter 11 bankruptcy.<sup>57</sup> In the  
11 course of reviewing Mepco's executive compensation records, the law firm representing Mepco  
12 and its affiliates in the bankruptcy proceeding discovered the contribution reimbursement  
13 program.<sup>58</sup> The current Mepco CFO, William Pardini (who did not participate in the program),  
14 assisted by Mepco executives who did participate, informed the attorneys that certain bonus  
15 payments were actually reimbursements for political contributions.<sup>59</sup>

16 C. **Laurita's Bonus Payments**

17 Although Laurita and his wife also made federal contributions totaling \$240,250 and  
18 Laurita received \$825,000 in bonuses, there remains a question whether the bonuses were paid

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<sup>54</sup> Laurita Depo. at 127.

<sup>55</sup> Mepco & Longview Submission at 10 (Mar. 14, 2018) ("Fourth Mepco Submission").

<sup>56</sup> Laurita Resp. to RTB Letter at 1; Laurita Second Submission at 1; First Mepco Submission at 2.

<sup>57</sup> First Mepco Submission at 2; Second Mepco Submission at 2-3.

<sup>58</sup> First Mepco Submission at 3.

<sup>59</sup> *Id.* at 2.

1 for the purpose of reimbursing the contributions. Laurita did not receive bonuses in the same  
2 fashion as the other executives, and Mepco contends that bonuses awarded to Laurita were not  
3 reimbursements for political contributions. Laurita's employment contract with Mepco  
4 Holdings, LLC, called for him to receive compensation in the form of salary and annual bonuses  
5 based on the financial performance of the company.<sup>60</sup> Under this contract, Laurita was due a  
6 bonus equal to 100% of his base salary if Mepco reached its goals for earnings before interest,  
7 tax, depreciation and amortization ("EBITDA"), with bonuses further increasing the more that  
8 Mepco exceeded its EBITDA goal.<sup>61</sup> On January 7, 2011, Laurita received a \$165,000 bonus  
9 from GenPower, Mepco's and Longview's ultimate parent company, for work during the 2010  
10 year (the "2010 bonus"). On or about December 28, 2012, Laurita received a \$660,000 bonus  
11 from Mepco for work during 2011 and 2012 years (the "combined 2011 and 2012 bonus").<sup>62</sup>

12 1. 2010 Bonus

13 According to Laurita, his performance in 2010 satisfied the criteria in his contract  
14 entitling him to a \$250,000 bonus, but the Mepco board was reluctant to pay it in light of  
15 "severe" financial difficulties.<sup>63</sup> Laurita claims that he discussed this situation with Bob Place  
16 (CEO of GenPower) and they decided that GenPower, rather than Mepco, would pay his  
17 bonus.<sup>64</sup> Laurita explains that amount was negotiated from \$250,000 to \$165,000, which would,

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<sup>60</sup> Laurita Depo. at 84.

<sup>61</sup> Laurita Resp. to RTB Letter at 11; *id.*, Attach. A at 14-15.

<sup>62</sup> James Laurita Bank Records at 22 (Laurita000028); *see* Mepco & Longview Submission at 4 (May 12, 2017) ("Third Mepco Submission"); Laurita Resp. to RTB Letter at 12-13.

<sup>63</sup> Laurita Depo. at 86-87.

<sup>64</sup> *id.* at 118.

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1 after taxes, at least cover his out-of-pocket expenses for making contributions.<sup>65</sup> During his  
2 deposition, Laurita testified:

3 I was arguing that hey, I have all of these out-of-pocket expenses associated with  
4 my position as well, my out-of-pocket expenses for political and that sort of thing.  
5 And so we basically negotiated that they couldn't afford to pay, remember I told  
6 you we were going through difficult times there, didn't want to take it out of  
7 Mepco. They took it out of GenPower. *But they said, I tell you what, we'll go*  
8 *ahead and at least offset what your out-of-pocket expenses were, you know, for*  
9 *your political giving. So they grossed it up so that the 165 covered, you know, my*  
10 *tax liability.*<sup>66</sup>

11 Laurita's recollection draws some support from contemporaneous documentation.

12 "Reimbursed by GenPower \$165,000" appears on a handwritten ledger kept by Laurita and his  
13 wife to track their contributions.<sup>67</sup> Laurita confirmed that this entry was intended to reflect the  
14 2010 bonus payment.<sup>68</sup> Directly above are federal and state contributions that occurred between  
15 April 28, 2009, and October 4, 2010, totaling \$100,650.<sup>69</sup> It appears that the \$165,000 figure  
16 represents the grossed-up amount of those contributions. Despite this evidence, Laurita  
17 maintains that these payments were not reimbursements but "compensation . . . so I could carry  
18 out my responsibilities."<sup>70</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.* (emphasis added).

<sup>67</sup> Laurita Ledger (Laurita000002).

<sup>68</sup> Laurita Depo. at 117-18; *see also* Emails between Hughes and Laurita (Dec. 10, 2012) (MEPCO\_0000012) (Laurita indirectly referring to the 2010 bonus as a reimbursement, stating: "I don't believe I have been reimbursed [for my political contributions] since 2010").

<sup>69</sup> Laurita Ledger (Laurita000002). Among the contributions noted in this ledger as "reimbursed by GenPower," \$39,850 were contributions by Laurita to federal candidates or committees and an additional \$12,000 from his wife, Rebecca, to federal candidates or committees. *Id.* The remaining contributions were made by Laurita and his wife to state political candidates or committees.

<sup>70</sup> Laurita Depo. at 102.

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1 Yet, while admitting that it reimbursed the other executives for political contributions,  
2 Mepco denies that this bonus to Laurita was a reimbursement for Laurita's own contributions in  
3 2010.<sup>71</sup> It cites to Laurita's testimony during the criminal trial where he stated that no one at  
4 GenPower specifically instructed him to obtain reimbursements for contributions.<sup>72</sup> We also  
5 questioned Place, but he does not recall discussing this particular bonus with Laurita, nor does he  
6 recall political contributions ever being a reason to pay Laurita.<sup>73</sup> However, Place confirmed  
7 that Mepco was not doing well at the time, and that GenPower might have therefore made bonus  
8 payments to Laurita.<sup>74</sup>

9 2. Combined 2011 and 2012 Bonus

10 In December 2012, Laurita considered requesting that Mepco reimburse his political  
11 contributions.<sup>75</sup> Instead, Laurita ultimately requested the bonuses for 2011 and 2012 owed to  
12 him under his employment agreement (at the end of 2011, Laurita did not make any attempt to  
13 get Mepco to pay his bonus for that year, and instead waited until the next year to make a joint

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<sup>71</sup> Mepco & Longview Submission at 10 (Aug. 16, 2018) ("Fifth Mepco Submission").

<sup>72</sup> *Id.* at 2. Laurita was asked whether the executives of GenPower and Longview told him "how to become more politically active," and he answered: "No they did not." Trial Tr. at 391-92.

<sup>73</sup> Place Interview at 2. Though he does not recall the specifics, Place generally remembered that there were ongoing negotiations about Laurita's compensation. *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Email from Hughes to Laurita (Dec. 10, 2012) (MEPCO\_00000065) (embedded email in which Laurita informs Hughes that he would ask his personal assistant to calculate the total amount of his political contributions for the last few years "and have Mepco reimburse me before year end to avoid tax increases").

1 request for the 2011 and 2012 bonuses).<sup>76</sup> Again, Laurita says that he encountered resistance  
2 from the Mepco board, lamenting that he “had to pull teeth.”<sup>77</sup>

3 Laurita submitted his bonus request to the Mepco board by email, which referenced the  
4 company's performance but did not mention his political contributions.<sup>78</sup> However, Laurita  
5 nonetheless claims that, to convince the board to pay his bonus, he brought up his out-of-pocket  
6 expenses (including political contributions).<sup>79</sup> It is unclear exactly how Laurita made these  
7 arguments to the board. Laurita denies that he viewed the bonus as a reimbursement for his  
8 political contributions.<sup>80</sup> For its part, Mepco denies that this was a reimbursement for political  
9 contributions or that it made any such reimbursements to Laurita or his wife.<sup>81</sup> Mepco asserts  
10 that all bonuses it paid to Laurita were strictly performance-related, specifically noting Laurita's  
11 email requesting the combined 2011 and 2012 bonus “per my Employment agreement” and

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<sup>76</sup> Email chain between Laurita, Hughes, & Carrie Lilly (Dec. 19, 2010) (MEPCO\_00007803). In an email to Hughes, Laurita explained that he had “dusted” off his employment agreement and “found out that in reality, I am entitled to a \$660,000 bonus,” because he satisfied the established financial criteria. Email from Laurita to Hughes, Lilly, *et al.* (Dec. 20, 2012) (MEPCO\_00007877).

<sup>77</sup> Laurita Depo. at 89.

<sup>78</sup> Email from Laurita to Hughes, *et al.* (Dec. 21, 2012) (MEPCO\_00007413). Laurita did not receive the bonus he was entitled to under his contract in 2011, so the 2012 amount (\$660,000) covered both the 2011 and 2012 bonus amounts. Laurita Depo. at 88.

<sup>79</sup> *Id.* at 93 (“[P]art of my responsibilities is being politically active in the position I held and that sort of thing, so I had a lot of expenses. So I used those as arguments saying, come on guys, I’ve got all these expenses with this other company that I promised to fund with my personal salary and bonuses.”). Regarding his out-of-pocket expenses, Laurita also noted that, due to Mepco’s financial difficulties, he was funding the development of new mines at the cost of \$100,000 per month in addition to his political contributions. *Id.* at 92, 109.

<sup>80</sup> Laurita Resp. to RTB Letter at 13; Laurita Depo at 109; *id.* at 94 (“No, it’s compensating me for, you know, what I should have been compensated for in my responsibilities.”). *But see* Email from Laurita to Corey Bechtel (Jan. 10, 2013) (MEPCO\_00007847-48) (telling his personal accountant that the bonus was “[i]n actuality, . . . for reimbursements of out of pocket expenses I have had, but for several reasons, [First Reserve, a private equity firm partnering with GenPower] wanted to call it a bonus”).

<sup>81</sup> Third Mepco Submission at 4.

1 detailing the bonus calculation resulting from the amount that Mepco's EBITDA exceeded its  
2 target.<sup>82</sup>

#### 3 **IV. LEGAL ANALYSIS**

##### 4 **A. Relevant Law**

5 The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits any  
6 person from making a contribution in the name of another or knowingly permitting his or her  
7 name to be used to effect such a contribution.<sup>83</sup> The term "person," for purposes of the Act and  
8 Commission regulations, includes partnerships, corporations, and other organizations, including  
9 limited liability companies ("LLCs").<sup>84</sup> The Act further provides that no person shall make  
10 contributions to any candidate and his or her authorized political committees with respect to any  
11 election for federal office, which, in the aggregate, exceed \$2,000.<sup>85</sup> Contribution limits are  
12 indexed for inflation and, therefore, the limit for the 2010 election cycle was \$2,400 per election,  
13 the limit for the 2012 election cycle was \$2,500 per election, and the limit for the 2014 election  
14 cycle was \$2,600 per election.<sup>86</sup>

##### 15 **B. Mepco**

16 A principal is liable for the acts of its agents committed within the scope of their  
17 employment.<sup>87</sup> The investigation revealed that Mepco should be held liable for the actions of

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<sup>82</sup> Fourth Mepco Submission at 2-3 (citing Email from Laurita to William Brown, *et al.* (Dec. 19, 2012) (MEPCO\_00007899)).

<sup>83</sup> 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b)(1)(i).

<sup>84</sup> 52 U.S.C. § 30101(11); 11 C.F.R. § 110.10; Advisory Op. 2009-02 at 3 (True Patriot Network).

<sup>85</sup> 52 U.S.C. § 30116(a)(1).

<sup>86</sup> *See* 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

<sup>87</sup> RESTATEMENT (THIRD) OF AGENCY § 7.07 (Am. Law Inst. 2006); Factual & Legal Analysis at 8, MUR 6465 (Fiesta Bowl, *et al.*).

1 Laurita, Hughes, and the other executives in connection with initiating and operating the  
2 program which resulted in the reimbursement of political contributions. Mepco argues that it  
3 should not be held liable for these actions because executing the illegal reimbursement scheme  
4 was outside the scope of their employment. In *Sun-Diamond Growers*, however, the court held a  
5 corporation criminally liable for the actions of its vice president who used corporate funds to  
6 reimburse campaign contributions in violation of 52 U.S.C. §§ 30118(a) and 30122.<sup>88</sup> Even  
7 though the vice president actually hid the reimbursement scheme from others, the court held that  
8 the corporation was liable because the vice president acted within the scope of his employment,  
9 which was to promote the corporation's interests before the federal government, and undertook  
10 the scheme to benefit the corporation.<sup>89</sup>

11 Here, the factual record establishes that Laurita created the reimbursement program to  
12 benefit Mepco. The trial testimony and interview statements, as well as other information about  
13 Mepco's response to the increased regulation of the coal industry at the time, confirm that the  
14 reimbursement program was intended to benefit the company.<sup>90</sup> Although Mepco seeks to avoid  
15 liability by asserting that the program was not intended to benefit the company but Laurita

<sup>88</sup> *United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961, 970 (D.C. Cir. 1998); see also  
RESTATEMENT (THIRD) OF AGENCY § 7.07 (Am. Law Inst. 2006).

<sup>89</sup> *Sun-Diamond Growers*, 138 F.3d at 970.

<sup>90</sup> See, e.g., Laurita Depo. at 60-61, 82-83; Trial Tr. at 145 (Osborn) ("Jim mentioned to us that we were  
needing to have access to certain elected officials and he explained that . . . political contributions would help us as a  
company do that."); Place Interview at 1-2 (explaining that GenPower and Longview were becoming more involved  
in political activities in response to increased government regulations and how he had conversations with Laurita on  
this topic prior to the implementation of the reimbursement program). The coal industry, beyond just Mepco and  
Longview, believed that political activity and making contributions were important steps in addressing the situation  
for the industry. See Laurita Depo. at 29-30; see Laurita Resp. to RTB Letter at 4; Trial Tr. at 360 (statement of  
William Raney, President of the West Virginia Coal Association); see also *id.* at 260 (statement of Charlie  
Huguenard, Executive VP of Longview, describing his political activity with Laurita).

1 personally,<sup>91</sup> in an earlier submission, Mepco admitted that the executives identified the  
2 commencement of the program in 2010 “as having been made in response to increased  
3 legislative and regulatory hostility to the coal industry.”<sup>92</sup> The Mepco executives viewed the  
4 contributions and their attendance at fundraisers as work obligations (they were instructed to talk  
5 about issues affecting Mepco), and they agreed that securing access to politicians might help the  
6 company.<sup>93</sup> In addition, leadership at GenPower and Longview were engaged in political  
7 activities to educate and secure access to politicians, making the program a natural extension of  
8 that overall effort.

9 Under these circumstances, we recommend that the Commission enter into pre-probable  
10 cause conciliation with Mepco.

11 **C. Laurita**

12 The investigation revealed that Laurita, by virtue of his ownership interest in Mepco,  
13 made contributions in the name of another. Mepco is an LLC that elected to be treated as a  
14 partnership by the Internal Revenue Service.<sup>94</sup> Under Commission regulations, contributions  
15 from a partnership shall be attributed to the partnership and to each partner “in direct proportion  
16 to his or her share of the partnership profits.”<sup>95</sup> During the relevant time period, Laurita owned

<sup>91</sup> Fourth Mepco Submission at 4-6 (claiming that the contributions were made to benefit Laurita personally).

<sup>92</sup> Second Mepco Submission at 3. Further, in the initial meeting with this Office concerning the original *Sua Sponte* Submission, counsel represented that the reimbursement program began in response to a new Democratic administration in 2009 that appeared hostile to the coal industry. See Memo to File, MUR 7221 (Dec. 9, 2013).

<sup>93</sup> See Laurita Depo. at 60-61, 82-83; Trial Tr. at 145 (Osborn) (“Jim mentioned to us that we were needing to have access to certain elected officials and he explained that . . . political contributions would help us as a company do that.”).

<sup>94</sup> Email from Bridget O’Connor, Kirkland & Ellis, counsel for Mepco, to Jin Lee, FEC (May 14, 2014); see also Letter from Bridget O’Connor, Kirkland & Ellis, to Mark Shonkwiler & Jin Lee (Sept. 3, 2014).

<sup>95</sup> 11 C.F.R. § 110.1(e)(1), (g)(2). Alternatively, a partnership or LLC may select a different method for determining the proportion as long as there is a corresponding adjustment to the profits of the partners to whom the contribution is attributed. *Id.* § 110.1(e)(2). Mepco and Laurita made no such adjustments.

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1 approximately 7.8% of Mepco; his share of the partnership profits, according to the partnership  
2 agreement, was equal to his ownership in the company.<sup>96</sup> Accordingly, given Laurita's share in  
3 the partnership profits (7.8%) and the total amount of federal contributions that were reimbursed  
4 (\$364,093.52), we calculate that Laurita is responsible for \$28,399.29 of the contributions made  
5 in the names of the Mepco executives.<sup>97</sup> In addition, based on information developed during the  
6 investigation regarding Laurita's ownership of Mepco, we recommend that the Commission find  
7 reason to believe that Laurita violated 52 U.S.C. § 30116 by making excessive contributions,  
8 because a portion of any contribution made by Mepco must be attributed to Laurita, who had  
9 already reached the maximum amount for many of the candidates who received reimbursed  
10 contributions.<sup>98</sup>

11 With respect to whether Laurita himself was reimbursed for making contributions, there  
12 is a reasonable basis to conclude that GenPower impermissibly reimbursed Laurita for political  
13 contributions when it paid him the 2010 bonus.<sup>99</sup> Despite Mepco's denials, both Laurita's  
14 personal ledger as well as his deposition testimony indicate that the \$165,000 bonus constituted a

<sup>96</sup> Third Mepco Submission at 3; Laurita Resp. to RTB Letter at 4; Amended and Restated Limited Liability Company Agreement of Mepco Holdings, LLC at 7. The 7.8% figure is a conservative estimate. Laurita made draws on his equity in Mepco to make tax payments, which effectively decreased his share. Laurita Depo. at 158-59. His final ownership share when the company went into bankruptcy was 7.8%. Third Mepco Submission at 3.

<sup>97</sup> When the Commission found reason to believe that Laurita violated the Act, 11 C.F.R. § 110.4(b)(1)(iii), which states that no person shall knowingly "help or assist" in making a contribution in the name of another, was a valid regulation. Thus, we initially contemplated a theory of liability against Laurita, based on the regulation, for initiating and directing the scheme. Under such a theory, Laurita would have been liable for the full amount that Mepco reimbursed. However, this provision was recently invalidated by a United States District Court. *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1118-19 (D. Utah 2018). Accordingly, the contributions that Laurita made in the name of another (as minority owner of Mepco) remain the only viable bases for liability as to him.

<sup>98</sup> See 11 C.F.R. § 110.1(e)(1), (g)(2). For example, in 2010, Laurita contributed the maximum allowable amount to Manchin for West Virginia for both the primary and general elections and then, through Mepco, he reimbursed contributions by Mepco executives to the same committee.

<sup>99</sup> GenPower was not a respondent at the time the *sua sponte* submission was filed and the \$165,000 bonus was not discovered until recently, after the statute of limitations had expired as to GenPower. Accordingly, we make no recommendation as to GenPower

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1 gross-up payment to cover the \$100,650 in state and federal contributions that he and his wife  
2 made between April 27, 2009 and October 4, 2010. Place did not refute this explanation; he said  
3 he was unable to recall any conversation connecting Laurita's bonus to political contributions.<sup>100</sup>

4 Laurita stated that while he was entitled to a bonus based on the financial criteria outlined  
5 in his employment contract, Mepco was resistant to actually paying him when the year ended due  
6 to financial hardships that the company was facing. Instead, Laurita worked with leadership  
7 from GenPower (Mepco's ultimate parent company) to negotiate a \$165,000 bonus payment  
8 from GenPower, an amount less than the full \$250,000 that he believed he was owed but enough  
9 to cover the political contributions that he and his wife had made to date in support of the  
10 industry. Although there is no indication that Laurita had prearranged with Mepco or GenPower  
11 to make contributions on their behalf, the evidence, including Laurita's sworn testimony,  
12 indicates that GenPower paid the bonus to compensate Laurita for his political giving.  
13 Accordingly, because the purpose of the bonus was to compensate Laurita for his contributions  
14 (and thus finance political contributions), the contributions Laurita made in his own name were  
15 in reality GenPower's contributions. Thus, Laurita violated section 30122 by allowing his name  
16 to be used to effect the contributions.<sup>101</sup>

<sup>100</sup> Place Interview at 2. Under the circumstances, it is conceivable that Place may not be able to recall the conversation, if it did indeed happen. The events in question occurred more than seven years ago and, unlike Respondents in this matter, Place, who left GenPower in January 2011, stated that he was not aware of the matter before the Commission until we sought to interview him. *Id.* at 1-2.

<sup>101</sup> See *United States v. Whittemore*, 776 F.3d 1074, 1079-80 (9th Cir. 2015) ("The key issue under § [30122] is the source of the funds, regardless of the status of the funds under state property law at the time of the donation."); cf. First General Counsel's Rpt. at 5-8, MUR 7027 (MV Transportation, Inc., et al.) ("FGCR"). In MUR 7027, the Commission found a section 30122 violation against MV and its CEO, Pate, when Pate made contributions with personal funds and was later reimbursed by the company. Pate did not have board approval at the time of the contribution, but he made the contribution believing it was within his authority as CEO and with the knowledge that the Chairman of the Board was aware of the contribution. Soon after, the Chairman told Pate the company would reimburse contributions, and he continued to make contributions and be reimbursed. *But see United States v. O'Donnell*, 608 F.3d 546, 551 (9th Cir. 2010) (opining, in *dicta*, that finding a section 30122 violation would be a

1 The facts regarding the 2011 and 2012 combined bonus do not support a similar  
2 conclusion. There is no information tying the amount of the bonus to any set of political  
3 contributions. Further, the amount of the bonus, \$660,000, was the exact total legally obligated  
4 to him under his contract based on performance criteria, not political contributions, and the  
5 amount did not correspond to the amount of contributions (\$260,407.79) made by Laurita and his  
6 wife. Under these circumstances, we conclude that the evidence does not sufficiently support a  
7 finding that the combined 2011 and 2012 bonus was an impermissible reimbursement in  
8 violation of section 30122.

9 Finally, at the reason to believe stage, the Commission made knowing and willful  
10 findings against Laurita.<sup>102</sup> A violation of the Act is knowing and willful if the acts were  
11 committed with “full knowledge of all the relevant facts and a recognition that the action is  
12 prohibited by law.”<sup>103</sup> This does not require proving knowledge of the specific statute or  
13 regulation that respondent allegedly violated.<sup>104</sup> Instead, it is sufficient to demonstrate that a  
14 respondent “acted voluntarily and was aware that his conduct was unlawful.”<sup>105</sup> This may be  
15 shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may

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“troubling” result when “a defendant reimburses the contributions made by others without any prior arrangements or understandings,” but ultimately “express[ing] no view on that hypothetical defendant”). Because the Ninth Circuit never confronted the circumstances here, and in light of evidence that Laurita and others were encouraged to make contributions as part of a company-wide effort, we conclude that finding a section 30122 violation under these facts is appropriate.

<sup>102</sup> Factual & Legal Analysis at 10, MUR 7221 (Laurita) (Mar. 20, 2017).

<sup>103</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>104</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>105</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

1 be inferred.<sup>106</sup> For example, a person's awareness that an action is prohibited may be inferred  
2 from "the [person's] elaborate scheme for disguising their . . . political contributions."<sup>107</sup>

3 Pursuant to the Commission's *Sua Sponte* Policy, however, the Commission has refrained  
4 from making a knowing and willful finding against a respondent even where there may have  
5 been a "fair basis" to justify making such a finding.<sup>108</sup> In MUR 6889 (Eric Byer), although the  
6 respondent had been previously specifically warned by a consultant about the possible illegality  
7 of a reimbursement program and several conduits also raised similar concerns, the Commission  
8 declined to find that he knowingly and willfully violated the Act given that he had cooperated  
9 with an internal investigation and shared substantial information with the Commission.<sup>109</sup>  
10 Further, in MUR 5818 (Fieger), the Commission voted to find probable cause to believe that  
11 respondents violated section 30122 on a non-knowing and willful basis in another *sua sponte*  
12 matter where the respondent had been acquitted in a related criminal trial.<sup>110</sup>

<sup>106</sup> Cf. *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>107</sup> *Id.* at 214-15. As the *Hopkins* court noted, "[i]t has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)). In prior matters, the Commission has pointed to concealment efforts to support knowing and willful findings. See, e.g., MUR 6465 (*Fiesta Bowl, et al.*) (coaching witnesses not to reveal the reimbursements and falsifying documents); MUR 6516 (PFFW) (attributing the reimbursements to fictitious "legislative meetings"); MUR 6143 (*Galen Capital, et al.*) (varying reimbursement amounts, falsely stating purpose of the reimbursements on checks, and backdating letters to recharacterize purpose of reimbursements); MUR 5903 (PBS&J) (stating false purposes on the physical reimbursement checks such as "business development").

<sup>108</sup> Factual & Legal Analysis at 8-9, MUR 6889 (Eric Byer) (Oct. 31, 2014); see Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16695, 16698 (Apr. 5, 2007) ("*Sua Sponte* Policy") ("In appropriate cases, where there has been self-reporting and full cooperation, the Commission may enter into conciliation without requiring respondents to admit that their conduct was knowing and willful, even where there is evidence that may be viewed as supporting this conclusion.").

<sup>109</sup> Factual & Legal Analysis at 8, MUR 6889 (Eric Byer) (Oct. 31, 2014).

<sup>110</sup> Certification, MUR 5818 (Fieger) (Aug. 25, 2009). We note that the Office of General Counsel recommended proceeding on a knowing and willful basis in the First General Counsel's Report, but the Commission

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1 Here, Laurita contends that he did not believe that the reimbursement program was  
2 illegal<sup>111</sup> because he thought that raising the executives' pay through bonuses to make political  
3 contributions was a legitimate way to ensure that they used "their money" to make the  
4 contributions.<sup>112</sup> The Department of Justice nevertheless prosecuted him for causing  
5 contributions in the name of another, but the criminal proceeding ended in a mistrial.<sup>113</sup>

6 Nonetheless, there are some facts suggesting that Laurita was aware that Mepco's  
7 reimbursement program was unlawful. Laurita read donor forms containing warnings against  
8 contributions in the name of another and was undisputedly aware of some limitations and  
9 prohibitions relating to political contributions.<sup>114</sup> There is also information indicating that  
10 Laurita sought to conceal the program by telling Hughes not to discuss it, leading to the two  
11 "delete" emails.

12 However, we do not believe that the circumstances here warrant pursuing Laurita on a  
13 knowing and willful basis. While Laurita's trial did not result in an acquittal, the resulting  
14 mistrial further underscores the mixed factual record regarding whether his actions were  
15 knowing and willful. By comparison, in MUR 6889 (Byer), there were much stronger facts  
16 indicating that the respondent acted knowingly and willfully, but the Commission proceeded on a  
17 non-knowing and willful basis in light of the respondent's thorough cooperation with the *sua*  
18 *sponte* process. Laurita has similarly cooperated. Accordingly, we recommend that the

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split 3-3 on this recommendation, finding sufficient support only on a non-knowing and willful finding. *Id.*; First General Counsel's Rpt. at 7-8, MUR 5818 (Fieger).

<sup>111</sup> Trial Tr. at 384-85, 404, 442.

<sup>112</sup> *Id.* at 409; Laurita Depo. at 148 (emphasis added); see Laurita Submission at 2.

<sup>113</sup> See Laurita Indictment at 11.

<sup>114</sup> Trial Tr. at 407-409.

1 Commission enter into pre-probable cause conciliation with Laurita but refrain from proceeding  
2 on a knowing and willful basis.<sup>115</sup>

3 **D. Karen Hughes**

4 The Commission has generally pursued officers of a company who played a significant  
5 role in carrying out an illegal reimbursement scheme, not just the principal orchestrator.<sup>116</sup> The  
6 investigation confirmed that Hughes was more than a mere conduit. She helped Laurita select  
7 "bonus" payments as the method for effectuating the reimbursements, proposed the idea of  
8 "grossing up" the reimbursements, and was responsible for generally administering the  
9 program.<sup>117</sup> Laurita provided Hughes with general instructions, *e.g.*, "make them whole," but  
10 the decision-making regarding when and how much were ultimately left to her without any  
11 further oversight from Laurita.<sup>118</sup>

12 Hughes seeks to downplay her position as an executive officer, claiming that she was  
13 more accurately "an officer-in-name-only" and "never had a meaningful leadership or policy-  
14 making role."<sup>119</sup> Yet, none of our conversations with the other executives supports the notion  
15 that her title was purely nominal. One executive claimed that there was an unspoken hierarchy

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<sup>115</sup> *Sua Sponte* Policy at 16,696.

<sup>116</sup> See MUR 7248 (Cancer Treatment Centers of America Global, Inc., *et al.*) (finding reason to believe and entering pre-probable cause conciliation with corporate executives who, in addition to serving as conduits, initiated, directed, solicited, or approved the fundraising activities and accompanying reimbursement bonuses, and taking no action against remaining conduits who did not appear to play any significant role beyond requesting and receiving reimbursements); MUR 7027 (MV Transportation, Inc., *et al.*) (finding reason to believe and entering pre-probable cause conciliation with CFO who approved reimbursements recorded as bonuses and directed payroll department to "gross up" the bonus payments).

<sup>117</sup> Hughes Interview at 3; Trial Tr at 46, 81-82 (Hughes).

<sup>118</sup> Hughes Interview at 3, 7.

<sup>119</sup> Hughes Resp. to RTB Letter at 2.

1 and Hughes was near the top.<sup>120</sup> Hughes explained that there was no intermediary between her  
2 and Laurita, that she managed payroll and benefits, and worked "side-by-side" with CFO Kent  
3 Lindsay.<sup>121</sup> And, in 2007, Laurita promoted Hughes to the position previously occupied by his  
4 sister and gave Hughes a \$50,000 to \$60,000 pay increase.<sup>122</sup>

5 Consistent with our recommendation as to Laurita, however, we recommend that the  
6 Commission enter into pre-probable cause conciliation with Hughes on a non-knowing and  
7 willful basis. The record is mixed as to whether she acted knowingly and willfully. On the one  
8 hand, Hughes falsely recorded the reimbursements as "bonuses," sent two emails with "delete"  
9 instructions, handled donor cards and other campaign materials with disclaimers regarding the  
10 prohibition on reimbursed contributions,<sup>123</sup> and made at least one statement to a fellow Mepco  
11 employee showing some familiarity with contribution rules.<sup>124</sup>

12 On the other hand, Hughes had no political experience and was directed by her superior  
13 Laurita, who she knew had political experience and was someone she thought had a reputation  
14 for trustworthiness.<sup>125</sup> Further, it appears that Hughes had only limited contact with candidates

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<sup>120</sup> Osborn Interview at 3. *But see* Hughes Interview at 2 (denying any such unspoken hierarchy).

<sup>121</sup> Hughes Interview at 2; *see* Trial Tr. at 38 (Hughes).

<sup>122</sup> Hughes Interview at 1-2; Trial Tr. at 38 (Hughes).

<sup>123</sup> *E.g.*, Email from Karen Hughes to Karen Hughes (Sept. 30, 2010 10:41am) (MECPO\_00000191-92) (sending herself a contribution form with a disclaimer stating: "Please Confirm – This contribution is made from my own funds and will not be reimbursed by any other person or entity."). Hughes claims that she did not read the disclaimers appearing on contribution forms. Hughes Interview at 8-9; *see also* MUR 6143 (Galen Capital) (taking no further action against executive officers who had signed similar donor cards with disclaimers). *But see* MUR 5871 (Noe) (knowing and willful findings supported by signed donor cards).

<sup>124</sup> Email from Karen Hughes to Ron Clark (June 4, 2010 9:47am) (MEPCO\_00004005) ("Companies cannot donate to anything political, only individuals."). When asked about this statement, which apparently related to the Act's corporate contribution prohibition, Hughes said that she could not recall the email. Hughes Interview at 8.

<sup>125</sup> Hughes Interview at 2, 8; *see also id.* at 9 (claiming that she first heard of the Commission only after the violations were discovered, and that she "probably never gave it a second thought" as to whether there was any regulation or oversight of federal campaign fundraising). *See also* MUR 7027 (MV Transportation, Inc., et al.)

1 and political committees. The two "delete" emails were apparently the only such instances  
2 out of dozens of similar communications. Moreover, Hughes was copied on an email chain  
3 between Laurita and Mepco's in-house counsel in which Laurita and Mepco's counsel openly  
4 discussed political reimbursements.<sup>127</sup> Hughes admits that Laurita told her "not to discuss this  
5 program with anybody outside of the group of officers," but claims to have been unaware of the  
6 purpose for this directive.<sup>128</sup>

7 Finally, like Laurita, Hughes joined in Mepco's Submission and provided information  
8 regarding her role in the reimbursement program. Although Hughes, through counsel, rejected  
9 our request to obtain deposition testimony and would only agree to an interview, given the mixed  
10 record regarding her willful intent as well as the age of this case, we believe that proceeding on a  
11 non-knowing and willful basis is appropriate and will likely result in a prompt resolution of the  
12 matter. Accordingly, we recommend that the Commission enter pre-probable cause conciliation  
13 with Hughes on a non-knowing and willful basis.

14 **D. Other Mepco Executives**

15 In prior matters, the Commission has generally determined to take no further action  
16 against similarly-situated respondents who were merely "subordinates or otherwise uninvolved

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(declining to pursue knowing and willful finding against CFO who claimed to have relied on representations from CEO in light of his inexperience with political fundraising and contributions).

<sup>127</sup> Email from Carrie Lilly to Laurita, copying Hughes (Dec. 19, 2010 2:37pm) (MEPCO\_00007803).

<sup>128</sup> Trial Tr. at 47 (Hughes).

1 in the promotion of a contribution reimbursement scheme.”<sup>129</sup> Based on the information  
2 obtained during the course of our investigation, it appears that the Mepco executives generally  
3 acted as the kind of conduits the Commission has generally not pursued.

4 The executives did not play any meaningful role in initiating or directing the program.  
5 Further, because all of the executives lacked political experience, they may have had little reason  
6 to suspect that the reimbursements were unlawful. They claim to have been unaware of the  
7 contribution limits and appear to have been reassured by the fact that the money was going  
8 through payroll.<sup>130</sup> Moreover, the executives stated that they were following the orders of  
9 Laurita, their superior, without question and trusted him because of his reputation for  
10 encouraging strict compliance with the rules.<sup>131</sup> None of the executives stated that they were  
11 coerced or required to participate, but they clearly indicated that they felt expected to participate  
12 because they viewed Laurita’s request as a work-related instruction and felt that it was their duty  
13 to follow his orders.<sup>132</sup> One executive who disliked politics was hesitant, but ultimately relented  
14 after Laurita told him it would benefit Mepco.<sup>133</sup> Another said that he felt non-participation

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<sup>129</sup> FGCR at 30, MUR 6889 (NATA PAC) (recommending no further action as to employee conduits who generally lacked sufficient experience or knowledge of the reimbursement program to suspect the arrangement might be prohibited); Certification ¶ 3, Pre-MUR 563 and 564 (MUR 6889) (NATA PAC) (Oct. 21, 2014) (approving the recommendation); *see* MUR 6143 (Galen Capital) (taking no further action as to executive officers who acted as conduits but otherwise played no role in the scheme and their superior directed the reimbursement scheme, and generally did not consult any other officer or director about it).

<sup>130</sup> *E.g.*, Osborn Interview at 3; Usery Interview at 4; O’Dell Interview at 4; *see also* Hughes Interview at 8. *But see* Grimm Interview at 5 (stating that he found out that contribution limits existed as the program went on).

<sup>131</sup> *E.g.*, O’Dell Interview at 2 (“Jim asked me to do this, and I trust and respect Jim, and I did it.”); Grimm Interview at 5 (“Jim asked us to, I was very loyal to Jim, Jim brought me in, Jim was a good guy, an ethical guy.”); Osborn Interview at 5 (“Everything the man did was the right way of doing business — I was proud to work for him, he would say ‘take the high road, always.’”); Usery Interview at 2.

<sup>132</sup> *See, e.g.*, Lindsay Interview at 2 (explaining that the instructions were “coming from the CEO and I wasn’t going to be out any money so, ok”); Grimm Interview at 4 (“Jim wanted something done, he hired me, I worked for him, I thought he was a good man, if he wanted something done, I did it.”).

<sup>133</sup> Usery Interview at 2.

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1 might have jeopardized his opportunities for promotions.<sup>134</sup> Therefore, we recommend that the  
2 Commission take no further action against Kevin O'Dell, Brian Osborn, Steven Polce, Richard  
3 Usery, Eric Grimm, Kent Lindsay, and Christopher Stecher and close the file as to them.<sup>135</sup>

4 **E. Longview**

5 At the reason to believe stage, we recommended that the Commission make no findings  
6 as to Longview, Mepco's parent company, which filed the Submission with Mepco.<sup>136</sup> The  
7 investigation confirmed that Longview was not involved in the making of reimbursement  
8 contributions. Only Mepco executives were reimbursed for their political contributions (with  
9 funds from Mepco, LLC, one of Mepco's subsidiary companies).<sup>137</sup> Therefore, we recommend  
10 that the Commission take no action and close the file as to Longview.

11 **F. Spouses**

12 Also at the reason to believe stage, we recommended that the Commission make no  
13 findings as to the spouses of the Mepco executives.<sup>138</sup> The investigation confirmed that the  
14 spouses played no role in the scheme except that they were reimbursed for their contributions.<sup>139</sup>  
15 Consistent with the Commission's well-established practice regarding spouses and other family

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<sup>134</sup> Osborn Interview at 2.

<sup>135</sup> We were unable to reach Stecher until after the Commission's reason to believe finding against him and the other executives in 2017. By that time, however, the majority of his activity had already expired because he left Mepco before the scheme ended, reducing his level of involvement, and leaving only \$6,000 within the statute of limitations. Stecher responded through the same counsel as the other executives, admitting to his role as a passive conduit. He agreed to cooperate and initially provided a 120-day tolling agreement. The statute of limitations has since elapsed. Stecher Resp. to Req. for Information (Aug. 17, 2017).

<sup>136</sup> FGCR at 18, MUR 7221 (Mepco Holdings, LLC, *et al.*).

<sup>137</sup> *See, e.g.*, Laurita Depo. at 51.

<sup>138</sup> FGCR at 17, MUR 7221 (Mepco Holdings, LLC, *et al.*).

<sup>139</sup> *See, e.g.*, Grimm Interview at 6; Lindsay Interview at 2-3.

1 members, we recommend that the Commission take no action as to the spouses of the Mepco  
2 executives.<sup>140</sup>

3 **G. Recipient Political Committees**

4 Finally, at the reason to believe stage, we did not make any recommendations with  
5 respect to the political committees that received the contributions at issue.<sup>141</sup> The investigation  
6 did not uncover evidence suggesting that any of the recipient committees knowingly accepted  
7 contributions made in the name of another, or knowingly accepted contributions that exceeded  
8 the applicable limits.<sup>142</sup> Therefore, we recommend that the Commission take no action as to the  
9 political committees. However, as noted below, the proposed conciliation agreements require  
10 Respondents to advise each campaign of the impermissible contributions, waive their right to  
11 refunds, and request that the committees disgorge the illegal contributions.

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<sup>140</sup> See, e.g., MUR 6623 (Scalise); MUR 6143 (Galen Capital); MUR 5871 (Noe).

<sup>141</sup> FGCR at 17-18, 20-21, MUR 7221 (Mepco Holdings, LLC, et al.).

<sup>142</sup> Trial Tr. at 448 (Laurita) (confirming that he never informed the recipient political committees that the contributions made in the names of Mepco executives were funded by bonus payments).

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**VI. RECOMMENDATIONS**

1. Find reason to believe that James Laurita, Jr. violated 52 U.S.C. § 30116;
2. Enter into conciliation with Mepeco Holdings, LLC, Mepeco, LLC, James Laurita, Jr., and Karen Hughes prior to a finding of probable cause to believe;
3. Approve the attached Conciliation Agreements;
4. Approve the attached Factual & Legal Analysis for James Laurita, Jr.;
5. Take no further action and close the file as to Kevin O'Dell, Brian Osborn, Steven Polce, Richard Usery, Eric Grimm, Kent Lindsay, and Christopher Stecher;
6. Take no action and close the file as to Longview Intermediate Holdings C, LLC; and
7. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Charles Kitcher  
Acting Associate General Counsel

Date: 3/5/2019

  
Stephen Gura  
Deputy Associate General Counsel

  
Jim Lee  
Acting Assistant General Counsel

  
Nicholas Mueller  
Attorney



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

Respondent: James Laurita, Jr.

MUR 7221

**I. INTRODUCTION**

This matter arises out of a *sua sponte* submission (the “Submission”) filed by Mepco Holdings, LLC (“Mepco”) and its parent company, Longview Intermediate Holdings C, LLC (“Longview”), notifying the Commission that James Laurita, Jr., the former Mepco CEO, caused Mepco to reimburse him and eight other executives for federal and state contributions made in the names of the executives and their spouses.<sup>1</sup> Laurita joined in the Submission.<sup>2</sup>

On March 7, 2017, the Commission found reason to believe that Laurita violated 52 U.S.C. § 30122 of the Federal Election Campaign Act of 1971, as amended (the “Act”) and opened an investigation into the matter. The investigation revealed that Laurita, by virtue of his ownership interest in Mepco, made contributions in the name of another. Because Mepco, and thereby Laurita, reimbursed contributions to several candidates to whom Laurita had already made contributions up to the legal limit, the reimbursed contributions attributable to him also violated the Act’s contributions limits. Accordingly, in addition to the previous reason to believe finding that Laurita violated section 30122, the Commission finds reason to believe that James Laurita, Jr. violated 52 U.S.C. § 30116.

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<sup>1</sup> Mepco & Longview Submission at 4 (Nov. 17, 2013) (“First Mepco Submission”).

<sup>2</sup> See Submission of James Laurita at 1 (Sept. 24, 2014) (“Laurita Submission”).

1 **II. FACTUAL BACKGROUND**

2 **A. Background**

3 Mepco is a West Virginia coal company that was headed by President and CEO James  
4 Laurita, Jr. during the relevant period.<sup>3</sup> Laurita was also a minority owner and served as a  
5 member of Mepco's Board.<sup>4</sup>

6 **B. Contribution Reimbursement Program**

7 1. March 2010 Meeting

8 In 2009, Laurita began having discussions with leadership from Longview and GenPower  
9 regarding the need to be politically active in the face of increased regulation of the coal  
10 industry.<sup>5</sup> Laurita started making political contributions and helped to arrange meetings with  
11 politicians to discuss issues facing the coal industry.<sup>6</sup> In early 2010, Laurita says that CEO of  
12 GenPower asked him to encourage the Mepco executives "to become more politically active  
13 financially."<sup>7</sup>

14 On March 4, 2010, Laurita sent an email to the Mepco executives, setting up a meeting to  
15 discuss "elections, and our support for particular candidates."<sup>8</sup> At the meeting, held the next  
16 day, Laurita talked about the increased regulation of the coal industry and presented a plan  
17 whereby the executives would make contributions to pro-coal political candidates and receive

<sup>3</sup> First Mepco Submission at 2-3; Laurita Depo. at 14-16 (June 12, 2018).

<sup>4</sup> Laurita Depo. at 24; Laurita Resp. to RTB Letter at 4 (May 5, 2017).

<sup>5</sup> Laurita Depo. at 29-30; *see* Laurita Resp. to RTB Letter at 4; Trial Tr. at 360, *United States v. Laurita*, 1:17-CR-51 (N.D.W. Va.) (statement of Charlie Huguenard, Executive VP of Longview) ("Trial Tr.").

<sup>6</sup> Laurita Depo. at 31.

<sup>7</sup> *Id.*; *see id.* at 35-36; Trial Tr. at 391-92 (Laurita).

<sup>8</sup> Email from Laurita to Hughes, *et al.* (Mar. 4, 2010) (MEPCO\_00000070); Laurita Depo. at 36.

1 compensation from Mepco “so they’d be able to afford to be able to [make contributions].”<sup>9</sup>  
2 Laurita contends that the purpose of the meeting was to obtain a “consensus” that making  
3 contributions was “the right thing to do” for Mepco, and that, by so doing, the executives would  
4 be voluntarily making the contributions with personal funds.<sup>10</sup> However, the executives  
5 generally interpreted Laurita as offering a straight reimbursement and did not consider the  
6 money they were to contribute to be their own.<sup>11</sup>

7         Shortly after the meeting, Laurita approached Hughes to discuss how the program would  
8 operate.<sup>12</sup> Laurita told Hughes that he would give her the names of the candidates and requested  
9 contribution amounts, and Hughes would communicate this information to the executives and  
10 collect their contribution checks.<sup>13</sup> Hughes recalls that Laurita told her to “ask the officers for  
11 their contributions, don’t tell them that they had to make them.”<sup>14</sup> In addition, Laurita directed  
12 Hughes to initiate “bonus” payments to compensate the executives for making the  
13 contributions.<sup>15</sup> Without providing any specifics on the timing and amounts of the  
14 reimbursements, Laurita simply told her to “make sure no one gets hurt here.”<sup>16</sup> Laurita  
15 confirmed that the bonus payments should be grossed up because he did not want anybody to be

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<sup>9</sup> Laurita Depo. at 38.

<sup>10</sup> Laurita Depo. at 62; *see id.* at 60-62, 74-75.

<sup>11</sup> *E.g.*, Trial Tr. at 324 (“Jim . . . said that we needed to support some candidates that had positive views on coal . . . and would reimburse us.”) (Lindsay); *id.* at 191 (“It was company funds. Mepco funds.”) (Usery).

<sup>12</sup> Laurita Depo. at 41-47.

<sup>13</sup> Trial Tr. at 45-46 (Hughes); *id.* at 395 (Laurita).

<sup>14</sup> Trial Tr. at 47 (Hughes); *see id.* at 396 (Laurita).

<sup>15</sup> Trial Tr. at 395 (Laurita); *id.* at 46 (Hughes).

<sup>16</sup> Laurita Depo. at 43.

1 “out-of-pocket.”<sup>17</sup> The payments were recorded in Mepco’s payroll system as a “bonus” without  
2 any other annotation.<sup>18</sup>

3 2. Operation of the Reimbursement Program

4 On March 6, 2010, Laurita sent the first email to the executives directing them to make  
5 four contributions totaling \$6,800.<sup>19</sup> It contained the names of candidates, requested amounts,  
6 and included a notation as to whether spouses should also contribute; below was the sentence:  
7 “Please direct all contributions to Karen.”<sup>20</sup>

8 After this initial email, the program generally followed the same pattern: Laurita would  
9 decide the candidates and amounts and pass this information to Hughes who, in turn, would  
10 notify the executives, attaching copies of any campaign materials or donor cards.<sup>21</sup> Hughes  
11 would collect their checks and forms, unless the donations were made online.<sup>22</sup> Laurita states  
12 that he and the executives would sometimes select candidates through a collaborative process.<sup>23</sup>  
13 The executives, however, generally deny that they played any such role.<sup>24</sup>

14 The contributions were often connected to fundraising events, which were sometimes  
15 attended by Laurita and the executives.<sup>25</sup> It was clear to the executives that they were expected

<sup>17</sup> Trial Tr. at 395 (Laurita); Laurita Depo. at 46-47.

<sup>18</sup> Mepco & Longview Submission at 7 (Mar. 18, 2014) (“Second Mepco Submission”).

<sup>19</sup> Email from Laurita to Hughes, *et al.* (Mar. 6, 2010) (MEPCO\_00000613).

<sup>20</sup> *Id.*

<sup>21</sup> Second Mepco Submission at 4.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> Laurita Resp. to RTB Letter at 5 (claiming that Laurita and the other Mepco executives, or a subset of them, would “discuss and evaluate” the contribution recommendations).

<sup>24</sup> *See, e.g.*, Trial Tr. at 325 (Polce) (“It was [Laurita’s] program the way I looked at it.”); *id.* at 113 (O’Dell) (“As I remember Jim or Karen would provide a list of candidates and suggested contributions for us to make.”); *id.* at 150 (Osborn); *id.* at 243 (Lindsay). *But see* Second Mepco Submission at 4 (discussing possible conversations between executives and Laurita regarding candidate recommendations).

<sup>25</sup> Second Mepco Submission at 5.

1 to be representing Mepco, and, if Laurita could not attend an event, he would sometimes select  
2 one of the executives to attend on his behalf.<sup>26</sup> On some occasions, Laurita invited the spouses  
3 of executives and even employees outside of the executive group to attend events so that they  
4 could help inform the candidates about the effects that increased regulation was having on  
5 Mepco.<sup>27</sup> Laurita personally hosted several of these campaign fundraisers.<sup>28</sup>

6 The Commission has identified contributions totaling \$364,093.52 made in the  
7 executives' names during this period that were reimbursed with Mepco funds.

### 8 III. LEGAL ANALYSIS

9 The Act provides that no person shall make contributions to any candidate and his or her  
10 authorized political committees with respect to any election for federal office, which, in the  
11 aggregate, exceed \$2,000.<sup>29</sup> Contribution limits are indexed for inflation and, therefore, the limit  
12 for the 2010 election cycle was \$2,400 per election, the limit for the 2012 election cycle was  
13 \$2,500 per election, and the limit for the 2014 election cycle was \$2,600 per election.<sup>30</sup>

14 Laurita, by virtue of his ownership interest in Mepco, made contributions in the name of  
15 another through the reimbursements made to the executives. Under Commission regulations,  
16 contributions from a partnership shall be attributed to the partnership and to each partner "in  
17 direct proportion to his or her share of the partnership profits."<sup>31</sup> During the relevant time

<sup>26</sup> See e.g., Email from Laurita to Grimm (Mar. 28, 2012) (MEPCO\_00001315) (asking Grimm to attend a fundraiser on Laurita's behalf); Email from Laurita to Grimm (June 13, 2012) (MEPCO\_00001129) (same).

<sup>27</sup> Laurita Depo. at 60-61, 82-83.

<sup>28</sup> *Id.* at 76-79; Second Mepco Submission at 5.

<sup>29</sup> 52 U.S.C. § 30116(a)(1).

<sup>30</sup> See 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

<sup>31</sup> *Id.* § 110.1(e)(1), (g)(2). Alternatively, a partnership or LLC may select a different method for determining the proportion as long as there is a corresponding adjustment to the profits of the partners to whom the contribution is attributed. *Id.* § 110.1(e)(2). Mepco and Laurita made no such adjustments.

1 period, Laurita owned approximately 7.8% of Mepco; his share of the partnership profits,  
2 according to the partnership agreement, was equal to his ownership in the company.<sup>32</sup>  
3 Accordingly, given Laurita's share in the partnership profits (7.8%) and the total amount of  
4 federal contributions reimbursed (\$364,093.52), \$28,399.29 of the contributions made in the  
5 names of the Mepco executives should have been attributed to Laurita. Accordingly, the  
6 Commission finds reason to believe that James Laurita, Jr. violated 52 U.S.C. § 30116.

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<sup>32</sup> Mepco & Longview Submission at 3 (May 12, 2017) ("Third Mepco Submission"); Laurita Resp. to RTB Letter at 4; Amended and Restated Limited Liability Company Agreement of Mepco Holdings, LLC at 7. The 7.8% figure is a conservative estimate. Laurita made draws on his equity in Mepco to make tax payments, which effectively decreased his share. Laurita Depo. at 158-59. His final ownership share when the company went into bankruptcy was 7.8%. Third Mepco Submission at 3.