

RECEIVED

By OGC-CELA at 4:04 pm, Nov 21, 2022

1099 NEW YORK AVENUE, NW SUITE 900 WASHINGTON, DC 20001-4412

JENNER & BLOCK LLP

November 18, 2022

Jessica Ring Amunson
Tel +1 202 639 6023
Fax +1 202 661 4993
JAmunson@jenner.com**VIA EMAIL**Federal Election Commission
Office of the General Counsel
Attn: Aaron Rabinowitz
999 E Street, NW
Washington, DC 20463Re: **MUR 7464 – CONFIDENTIAL TREATMENT REQUESTED PER 52 U.S.C. § 30109(a)(12)(A)**

Dear Mr. Rabinowitz:

The undersigned represents Respondent American Electric Power, Inc. in the above-captioned MUR. This Response is submitted pursuant to 52 U.S.C. § 301309(a)(1) and 11 C.F.R. § 111.6 to address the Complaint filed by Citizens for Responsibility and Ethics in Washington (“CREW”) and Noah Bookbinder, the Federal Election Commission’s (the “Commission”) Factual and Legal Analysis regarding the same, and the Commission’s specific questions provided in its September 27, 2022 letter to American Electric Power. Confidential treatment of this Response is requested in accordance with 52 U.S.C. § 30109(a)(12)(A).

I. Background**a. AEP**

American Electric Power is a publicly traded utility holding company that is a generator of electricity. American Electric Power was formed in 1906 and today delivers electricity to more than five million customers in eleven states.¹ American Electric Power’s electricity transmission network stretches more than 40,000 miles and American Electric Power is one of the nation’s largest electricity producers, with about 31,000 megawatts of diverse generating capacity, including more than 7,100 megawatts of renewable energy.²

¹ <https://aep.com/about>; <https://aep.com/ourstory>

² <https://aep.com/about/businesses/transmission>; <https://aep.com/about/businesses/generation>; Nov. 11, 2022, Press Release, “AEP to Focus Capital Investments on Regulated Businesses, Reaffirms Operating Earnings Growth Rate of 6 to 7 Percent.”

AEP CONFIDENTIAL

November 18, 2022

Page 2

AEP Ohio is a subsidiary of the parent company, American Electric Power, and delivers electricity to 1.5 million customers in Ohio.³ Below, American Electric Power and AEP Ohio are collectively referred to as “AEP.”

AEP maintains a detailed political engagement policy, which, among other things, sets forth AEP’s commitment to comply with all federal and state campaign finance and lobbying ethics requirements and to go beyond, holding all of its employees and contractors to stringent behavioral standards. AEP’s political engagement policy also sets forth the standards by which AEP will contribute to social welfare organizations.⁴

b.

_____ is a social welfare organization created in 2014 pursuant to Section 501(c)(4) of the U.S. Tax Code. According to its Internal Revenue Service Form 990s, _____ was created to promote economic and business development in Ohio, for the purpose of bringing about civic betterments and social improvements, to encourage job growth, and to encourage economic development.⁵

_____ is not a subsidiary of AEP nor a related entity to AEP.⁶ _____ has never been a subsidiary of AEP nor a related entity to AEP. AEP contributed funds to _____ on four occasions: \$3 million on January 15, 2015; \$5 million on December 29, 2016; \$200,000 on July 31, 2019; and \$500,000 on October 9, 2019. (*See* Hoersdig Affidavit, at ¶¶ 3-4.)

According to _____ Form 990s filed with the Internal Revenue Service, since its inception in 2014, _____ has maintained a board of five directors. From 2014 to 2016, _____ then-President of AEP Ohio, served on the board of _____. Starting in 2016, Vegas left the _____ board and then-Vice President of External Affairs, _____ joined. _____ an attorney and outside political consultant for AEP, served on the _____ board starting in 2014.

—AEP Ohio’s Government Affairs Manager and later Director of Government Affairs—also assisted with _____ board matters.

Form 990s indicate that _____ contributed to ten organizations in 2017 (including \$50,000 to Ohio Works); fifteen organizations in 2018 (including \$300,000 to Ohio Works); five organizations in 2019; and five organizations in 2020.⁷

³ <https://www.aepohio.com/company/about/>

⁴ AEP Political Engagement Policy, *available at* <https://www.aep.com/Assets/docs/investors/governance/political/AEPPOLITICALENGAGEMENTPOLICY2021.pdf>

⁵ *See* _____ Form 990s filed with the Internal Revenue Service (collected from public sources and enclosed as Exhibits A-F).

⁶ *Cf.* 26 U.S.C. § 168(h)(4).

⁷ *See* _____ Form 990s (enclosed as Exhibits A-F).

November 18, 2022

Page 3

c. Ohio Works and Other Entities Referenced in the FEC’s September 27, 2022 Letter

Upon receiving the FEC’s letter on September 27, 2022, AEP searched its records and confirmed that neither AEP nor any of its subsidiaries or related entities has contributed funds to Ohio Works; IFN (Independence and Freedom Network, Inc.); LZP, LLC; or the Honor and Principles PAC. (*See* Hoersdig Affidavit, at ¶ 5.)

II. Argument

AEP has not violated section 30122—the provision of Federal Election Campaign Act (“FECA”) that prohibits persons from making contributions in the name of another—in any way. Section 30122 provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.” The Commission has explained that “the proper focus” in construing and applying section 30122 is “whether funds were *intentionally* funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act’s reporting requirements.”⁸

As the Commission has explained, “if Corporation A provides Individual B a \$3,000 bonus for the purpose of rewarding good work, and Individual B uses that income to contribute to Candidate C, there is no violation of section 30122. But if Corporation A provides Individual B a \$3,000 bonus for the purpose of reimbursing Individual B’s contribution to Candidate C, a violation of section 30122 can be found, and indeed it has. *U.S. v. Danielczyk*, 788 F. Supp. 2d 472 (E.D. Va. 2011). In both scenarios, the *purpose* of the transfer has always been the dispositive fact.”⁹

AEP did not violate either the spirit or the letter of section 30122. There is no evidence that AEP gave funds to _____ with the purpose of evading disclosure or masking any political

⁸ Supplemental Statement of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 2 (April 18, 2016), MURs 6485, 6487, 6488, 6711, 6930, <https://www.fec.gov/files/legal/murs/6711/16044393039.pdf> (emphasis added). “The Act rests upon a ‘purpose-laden definition of “contribution.”’ *See Van Hollen v. FEC*, 811 F.3d 486, 493 (D.C. Cir. 2016). A thing of value, in order to be a contribution, must be given or made for the *purpose of influencing an election* for Federal office. 52 U.S.C. § 30101(8)(A). ... The *purpose* of the transfer of funds has always been the determining factor. Moreover, at least when applied to corporate contributions to Super PACs, section 30122 only furthers a disclosure interest since amount limitations and certain source prohibitions are not implicated by such contributions. Thus, determining whether there exists a purpose to evade disclosure is the relevant inquiry in these types of matters.” Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen (July 2, 2018), MURs 6968, 6995, 7014, 7017, 7019, 7090, https://www.fec.gov/files/legal/murs/7090/7090_2.pdf.

⁹ Supplemental Statement of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 2 (April 18, 2016), MURs 6485, 6487, 6488, 6711, 6930, <https://www.fec.gov/files/legal/murs/6711/16044393039.pdf>.

November 18, 2022

Page 4

contributions, nor any evidence that AEP provided funds to [redacted] with the intention of making a contribution to evade FECA's reporting requirements. Nor is there any evidence of any intent by AEP to illicitly channel political contributions through other entities.

Simply put, AEP made contributions to a 501(c)(4) social welfare organization, which then made its own contributions to various organizations. Section 30122 does not prohibit making contributions to organizations that themselves make contributions when the original contributor has no unlawful purpose to evade disclosure. And for good reason: if section 30122 swept that broadly, it would plainly be unconstitutional.¹⁰

¹⁰ *Citizens United v. FEC*, 558 U.S. 310 (2010) (recognizing the First Amendment right of corporations to engage politically by advocating the election or defeat of political candidates); *Van Hollen*, 811 F.3d at 501 (recognizing the Commission's "unique prerogative to safeguard the First Amendment when implementing its congressional directives" by "balanc[ing] the competing values that lie at the heart of campaign finance law"). The Commission's previous attempts to construe section 30122 more broadly than the text of the statute permits have been enjoined. *See FEC v. Swallow*, 304 F.Supp.3d 1113 (D. Utah 2018) (enjoining the operation of 11 C.F.R. § 110.4(b)(1)(iii), which provided that "no person shall knowingly help or assist any person in making a contribution in the name of another" as extending beyond the bounds of the statutory text); *see also FEC v. Rivera*, No. 17-22643, 2018 WL 11426428, at *3 (S.D. Fla. Sept. 24, 2018).

¹¹ *See* Exhibit G, enclosed.

¹² *See* Exhibits H-N, enclosed. Note: Exhibits G and H-N were located by AEP in its email archives. It appears that Ms. Haberman forwarded these emails from her personal Gmail account to her AEP email account.

November 18, 2022

Page 5

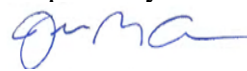
November 18, 2022

Page 6

Based on all of the foregoing, AEP respectfully requests that the Commission take no further action as to AEP.

Dated: November 18, 2022

Respectfully submitted,



Jessica Ring Amunson
Attorney for Respondent AEP

Submitted in Support of MUR 7464
Confidential Treatment Requested
Per 52 U.S.C. § 30109(a)(12)(A)

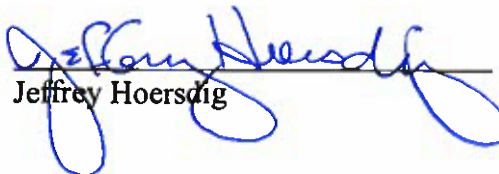
DECLARATION OF JEFFREY HOERSDIG
ASSISTANT CONTROLLER
AMERICAN ELECTRIC POWER

I, Jeffrey Hoersdig, hereby declare:

1. I am an employee of American Electric Power (AEP). I have been employed at AEP since January 1997 and currently hold the position of Assistant Controller.
2. My job responsibilities at AEP, as Assistant Controller, primarily entail oversight of ledger and sub-ledger accounting for all AEP companies, oversight of quarterly and annual reporting to the Federal Energy Regulatory Commission, as well as oversight of the accounting services performed by a third-party provider and the related contract management and service level governance.
3. The 501(c)(4) social welfare organization _____ is not a subsidiary of AEP or a legally related entity to AEP. _____ has never been a subsidiary of AEP nor a legally related entity to AEP.
4. AEP contributed funds to _____ on four occasions: \$3 million on January 15, 2015; \$5 million on December 29, 2016; \$200,000 on July 31, 2019; and \$500,000 on October 9, 2019.
5. AEP has searched its records and confirmed that neither AEP nor any of its subsidiaries or related entities has contributed funds to Ohio Works; IFN (Independence and Freedom Network, Inc.); LZP, LLC; or the Honor and Principles PAC.

I declare under penalty of perjury (under the laws of the United States of America) that the foregoing is true and correct to the best of my knowledge.

Dated: November 18, 2022


Jeffrey Hoersdig