



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7512
 Pembina Pipeline Corporation, *et al.*)

SUPPLEMENTAL STATEMENT OF REASONS OF CHAIR SHANA M. BROUSSARD

This matter involved allegations that Pembina Pipeline Corporation (“Pembina”), a Canadian corporation, and its U.S. domestic subsidiaries (the “Jordan Cove entities”)¹ (collectively, “Respondents”) made prohibited foreign national donations to Save Coos Jobs Committee, an Oregon ballot measure committee, and to Oregon state and local candidate committees and other non-federal committees.² I joined three of my colleagues in dismissing the allegations that these Respondents made, and Save Coos Jobs Committee accepted, prohibited foreign national donations.³ The Commission, however, divided 3-3 on the Office of General Counsel’s recommendation that the Commission find reason believe that Pembina and the Jordan Cove entities made prohibited foreign national donations to the other candidate and non-ballot measure committees.⁴

The Federal Election Campaign Act of 1971, as amended (the “Act”) requires that the Commission “find reason to believe that a person has committed, or is about to commit, a violation” of the Act before opening an investigation into the alleged violation.⁵ A “reason to believe” finding is a threshold determination that does not establish that the law has been violated.⁶ Rather, “reason to believe” only means that the available information is at least sufficient to warrant an investigation to determine whether a violation actually occurred.⁷ When a complaint “credibly alleges that a significant violation has occurred,” the Commission should find “reason to believe” and conduct an investigation into the alleged violation.⁸ In making this

¹ These entities include Fort Chicago Holdings, II US, LLC, Jordan Cove Energy Project L.P., Jordan Cove LNG, LLC, and Jordan Cove LNG, L.P.

² Compl. at 1-2, Attach. 3 (Oct. 12, 2018).

³ Certification ¶ 2, MUR 7512 (July 13, 2021); Factual & Legal Analysis, MUR 7512; *see also* Statement of Reasons of Chair Shana M. Broussard, MURs 7512 (Pembina Pipeline Corporation, *et al.*) and 7523 (Stop I-186, *et al.*).

⁴ Certification ¶ 3.

⁵ 52 U.S.C. § 30109(a)(2); *see also* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

⁶ Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. at 12,545.

⁷ *Id.*

⁸ *Id.*

threshold determination, the “Commission must take into consideration all available information concerning the alleged wrongdoing.”⁹

With respect to the contributions made by the Jordan Cove entities to the non-ballot measure committees, the Complaint and its attachments contained sufficient information to satisfy this low threshold. The Commission has previously permitted contributions by the domestic subsidiaries or affiliates of foreign national corporations (when corporate contributions are otherwise permitted) if the contributions were from funds *generated solely by their domestic operations* and if no foreign nationals were involved in the decision to make the contributions.¹⁰ Here, the limited information available to the Commission indicates that the Jordan Cove entities had no apparent domestic revenue stream to make the approximately \$243,000 in donations to the non-ballot measure committees because, at the time of the contributions, construction of their liquified natural gas (“LNG”) project in Coos Bay, Oregon had not yet started.¹¹ Pembina and the Jordan Cove Respondents acknowledge in their Response that the project was in development at the time of their donations and therefore not operational.¹² In fact, at all times relevant to this matter, the Jordan Cove entities never actively conducted revenue-generating activities through the LNG project. And Pembina has since paused the project’s development because of denials of required regulatory authorizations.¹³ Further, the Complaint’s attachments contained information indicating that Pembina was budgeting and spending approximately \$10 million per month on expenses associated with the LNG project.¹⁴ Respondents did not fully address this information in their responses. Nor did they provide any affidavits or other documentation identifying any domestic source of revenue. And OGC was unable to locate evidence that the donating Jordan Cove entities engaged in domestic activities unrelated to the LNG project at the time of the donations or since.

Thus, the Complaint and its attachments supplied two critical pieces of information: that the Jordan Cove entities’ domestic project was not operational and therefore incapable of generating revenue within the United States; and it appeared that the project was being financed by their foreign parent company, Pembina. Accordingly, I voted to support OGC’s recommendation to find reason to believe that the Jordan Cove entities and Pembina Pipeline Corporation made prohibited foreign national contributions, in violation of 52 U.S.C. § 30121(a)(1)(A) and 11 C.F.R. § 110.20(b).

⁹ *In re Fed. Election Campaign Act Litig.*, 474 F. Supp. 1044, 1046 (D.D.C. 1979).

¹⁰ *E.g.*, Factual & Legal Analysis at 4, MUR 7122 (American Pacific International Capital, Inc.); Factual & Legal Analysis at 4-5, MUR 6099 (Sam Page); Advisory Op. 1992-16 (Nansay Hawaii) at 3-4; Advisory Op. 1989-20 (Kuilima).

¹¹ *See generally* Compl.; *id.*, Attachs. 3, 5, 7, 9, 15.

¹² *See* Jordan Cove Resp. at 2, MUR 7512 (Jan. 8, 2019).

¹³ *See* First General Counsel’s Report at 13 & n.34, MUR 7512.

¹⁴ Compl., Attach. 7 (attaching Canadian Press Article); *id.* at 7, Attach. 5 (attaching Dennis Webb, *Geopolitical Case for Jordan Cove*, DAILY SENTINEL (Sept. 12, 2018), https://www.gjsentinel.com/news/western_colorado/geopolitical-case-for-jordan-cove/article_cd728716-b64a-11e8-9ed7-10604b9f7e7c.html); *id.*, Attach. 15 (attaching Ted Sickinger, *Jordan Cove LNG Campaign Contributions Raise Questions*, OREGONIAN (Jan. 29, 2019), https://www.oregonlive.com/politics/2018/09/jordan_cove_campaigns_contribu.html (quoting Jordan Cove spokesperson)).

In declining to find reason to believe, my colleagues essentially endorsed the Respondents' arguments.¹⁵ Respondents argued, *inter alia*, that the Commission should find no reason to believe because the Complainant appears to base the alleged violation "solely on the fact that the contributors were related to Pembina, and that the domestic respondents are registered as 'foreign' with the Oregon Secretary of State."¹⁶ If that were all of the information provided in the Complaint and attachments, then I would agree. But it is not. As outlined above, the Complaint provided enough information to support a reason to believe determination. My colleagues' Statement of Reasons does not appear to consider, let alone mention, the other relevant information attached to the Complaint.¹⁷

My colleagues also accuse OGC of improperly shifting the burden on the Respondents. They take issue with the "foreign funding" aspect of OGC's analysis, among other things, calling OGC's reliance on the lack of evidence that the Jordan Cove entities had a domestic revenue stream a "faulty presumption."¹⁸ I believe this alone would have been sufficient to support reason to believe at this initial stage of the enforcement process because the Jordan Cove entities' U.S.-based project was not operational. In addition, OGC relied on information that Pembina, the foreign parent company, was paying all expenses associated with the proposed project. Combined, this information supports OGC's common-sense conclusion that Pembina may have also funded the donations made by the Jordan Cove entities, a conclusion that is also consistent with decades of well-established Commission precedent.¹⁹

¹⁵ See generally Statement of Reasons of Vice Chair Allen Dickerson & Commissioners Sean J. Cooksey & James E. "Trey" Trainor III, MUR 7512 (Sept. 28, 2021).

¹⁶ *Id.* Respondents correctly note that the designation "foreign" in their corporate filings with the Oregon Secretary of State does not necessarily mean they are organized in another country. Jordan Cove Resp. at 2, 4. However, this error alone does not render the Complaint insufficient. As detailed above, there was still enough information supplied by the Complaint to satisfy the reason to believe standard.

¹⁷ See *Level the Playing Field v. FEC*, 232 F. Supp. 3d 130, 140 (D.D.C. 2017) (finding that the "FEC's Legal and Factual Analyses do not provide any evidence that the FEC considered the relevant factors or took a hard look at the evidence," as the FEC does not "even mention the vast majority of the substantive evidence" that was submitted with the complaints); *Antosh v. FEC*, 599 F. Supp. 850, 855 (D.D.C. 1984) (finding that the Commission acted contrary to the law by ignoring evidence in the record).

¹⁸ Statement of Reasons of Vice Chair Allen Dickerson & Commissioners Sean J. Cooksey & James E. "Trey" Trainor III at 3-4.

¹⁹ See Factual & Legal Analysis at 1, 4, MUR 6093 (Transurban Group) (finding reason to believe where domestic subsidiary toll road developer began to generate income from domestic operations mid-way through contribution period, but relied upon foreign parent as "predominant source of funds"); Advisory Op. 1989-20 (Kuilima) at 1 (determining company involved in developing commercial real estate projects in the first stages of development that did not generate income — and were therefore funded by loans and contributions by foreign parent company — was prohibited from making contributions); Factual & Legal Analysis at 6 & n.5, MUR 4250 (Republican Nat'l Comm.) (finding reason to believe committee accepted foreign national contributions from a domestic subsidiary with no significant assets and only apparent income from rental properties owned by foreign parent company); Conciliation Agreement ¶ IV.6, MUR 2892 (Royal Hawaiian Country Club and Y.Y. Valley Corp.) ("At the time of the events in this matter, neither [domestic companies] were generating income. Respondents' funds consisted of either capital contributions and/or loans from [respondent's] owners.").

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In sum, the foreign national prohibition does not bar the domestic subsidiaries of foreign parent companies from making otherwise lawful political contributions so long as those contributions are funded by revenue generated within the United States. This requirement ensures that their foreign parents are not doing indirectly what they cannot do directly by providing their domestic subsidiaries with the funds for political contributions. The result in this case is yet another recent example of the Commission's failure to investigate well-placed complaints alleging significant campaign finance violations.²⁰

11/2/2021

Date



Shana M. Broussard
Shana M. Broussard
Chair

²⁰ I disagree with my colleagues' claim that the Complaint fails to "satisfy the most basic standard for a complaint to be considered complete and proper," because it fails to differentiate statements based on personal knowledge and those based on information and belief. Statement of Reasons of Vice Chair Allen Dickerson & Commissioners Sean J. Cooksey & James E. "Trey" Trainor III at 4 (citing FED. ELECTION COMM'N, *GUIDEBOOK FOR COMPLAINANTS AND RESPONDENTS ON THE FEC ENFORCEMENT PROCESS* (May 2012), available at https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf). The complainant appears to be a nonlawyer who is inexperienced in this area of the law and the agency's procedures. While this does not relieve him of his obligation to comply with the Commission's procedures, we must make sure that we are treating complaints filed by such individuals with the same consideration that we afford those filed by sophisticated parties. The Complaint here complies with the Commission's standards and procedures and was appropriately processed by the Office of Complaints Examination and Legal Administration.