



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 28, 2021

**BY ELECTRONIC MAIL ONLY**

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Robert K. Kelner, Esq.  
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850 10th Street NW  
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RE: MUR 7843  
Marathon Petroleum Company LP

Dear Mr. Kelner:

On November 4, 2020, the Federal Election Commission (the "Commission") notified your client, Marathon Petroleum Company LP ("Marathon"), of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to Marathon at that time.

After reviewing the allegations contained in the complaint and your client's response, the Commission, on October 14, 2021, found reason to believe that Marathon violated 52 U.S.C. § 30119(a)(1), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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If your client is interested in engaging in pre-probable cause conciliation, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650 or [rluckett@fec.gov](mailto:rluckett@fec.gov), within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. No action by the Commission or any person and no information derived in connection with any conciliation attempt by the Commission may be made public by the Commission without the written consent of the respondent and the Commission. 52 U.S.C. § 30109(a)(4)(B). The Commission may proceed to the next step in the enforcement process if your client is not interested in pre-probable cause conciliation or a mutually acceptable conciliation agreement cannot be reached within 60 days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's Guidebook for Complaints and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard  
Chair

Enclosures  
Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 Respondent: Marathon Petroleum Company LP

MUR 7843

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7 **I. INTRODUCTION**

8 This matter arose from a Complaint alleging that Marathon Petroleum Company LP  
9 (“Marathon” or “Respondent”) violated the Federal Election Campaign Act of 1971, as amended  
10 (the “Act”), by making a contribution as a federal contractor. Marathon does not deny that it was  
11 a federal contractor at the time of the contribution at issue. Because the information available to  
12 the Commission indicates that Respondent was a federal contractor at the time that it made the  
13 contribution, the Commission finds that there is reason to believe that Marathon Petroleum  
14 Company LP violated 52 U.S.C. § 30119(a)(1).

15 **II. FACTUAL SUMMARY**

16  
17 The Complaint alleges that Marathon, an oil refining, marketing, and pipeline  
18 transportation company, held a federal government contract from February 24, 2020, through  
19 April 30, 2021 at a value of \$1,953,770.<sup>1</sup> The Complaint alleges that Marathon made two  
20 impermissible federal contractor contributions during the timeframe of the government contract,  
21 \$500,000 to the Congressional Leadership Fund (“CLF”) on July 28, 2020, and \$500,000 to the  
22 Senate Leadership Fund (“SLF”) on August 5, 2020.<sup>2</sup> CLF and SLF are both independent  
23 expenditure-only political committees (“IEOPCs”) registered with the Commission.<sup>3</sup>

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<sup>1</sup> MUR 7843 Compl. at 3 (Oct. 28, 2020).

<sup>2</sup> *Id.* at 3-4.

<sup>3</sup> CLF Statement of Organization at 2 (May 17, 2017); SLF Statement of Organization at 2 (Jan. 20, 2015).

1 Marathon’s response to the Complaint acknowledges that it was a federal contractor at  
2 the time of its contributions to CLF and SLF, noting that the Defense Logistics Agency (the  
3 “DLA”), a unit of the U.S. Department of Defense, awarded it a contract to provide a limited  
4 quantity of jet fuel from Marathon’s Detroit refinery.<sup>4</sup> Marathon states that it delivered the jet  
5 fuel and completed its performance under the DLA contract in September 2020 and received  
6 approximately \$1.1 million under the contract.<sup>5</sup> Marathon asserts that after “investigating” the  
7 matter following receipt of the Complaint, it requested and received refunds of its contributions.<sup>6</sup>  
8 CLF and SLF each refunded Marathon’s contributions on November 3, 2020.<sup>7</sup>

### 9 III. LEGAL ANALYSIS

10 A “contribution” is defined as “any gift . . . of money or anything of value made by any  
11 person for the purpose of influencing any election for Federal office.”<sup>8</sup> Under the Act, a federal  
12 contractor may not make contributions to political committees.<sup>9</sup> Specifically, the Act prohibits  
13 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of  
14 personal services or furnishing any material, supplies, or equipment to the United States or any  
15 department or agency thereof” from making a contribution “if payment for the performance of

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<sup>4</sup> MUR 7843 Response of Marathon (“Marathon Resp.”) at 2-3 (Jan. 12, 2021). Marathon’s Response also states that it made a \$500,000 contribution to CLF in 2019, but asserts that this contribution did not violate the Act because Marathon had not entered into a federal contract during this particular timeframe. *Id.* at 2, 7-8.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *See* CLF Amended 2020 30-Day Post-General Report at 1,265 (Jan. 27, 2021) and SLF Amended 2020 30-Day Post-General Report at 284 (Jan. 14, 2021).

<sup>8</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>9</sup> 52 U.S.C. § 30119(a); 11C.F.R. § 115.2.

1 such contract . . . is to be made in whole or in part from funds appropriated by the Congress.”<sup>10</sup>  
2 These prohibitions begin to run at the beginning of negotiations or when proposal requests are  
3 sent out, whichever occurs first, and end upon the completion of performance of the contract or  
4 the termination of negotiations, whichever occurs last.<sup>11</sup> And these prohibitions apply to a  
5 federal contractor who makes contributions to any political party, political committee, federal  
6 candidate, or “any person for any political purpose or use.”<sup>12</sup>

7 The available record indicates that Marathon was a federal contractor at the time it made  
8 the contribution at issue. Marathon confirms that it held a federal contract with DLA at the time  
9 of the contributions at issue.<sup>13</sup>

10 Marathon argues that further enforcement in this matter is unwarranted, however,  
11 asserting that the facts in MUR 7843 are “nearly identical” to those in MUR 6403 (Alaskans  
12 Standing Together), a matter where the Commission exercised its prosecutorial discretion and  
13 dismissed the allegations with respect to certain contributors that met the definition of a federal  
14 contractor.<sup>14</sup> In that matter, the Commission concluded that even though three companies  
15 appeared to be a government contractors based on their leases of office space to the federal  
16 government, the unique circumstances warranted the Commission’s exercise of prosecutorial  
17 discretion to dismiss the allegations as to them.<sup>15</sup>

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<sup>10</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>11</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>12</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

<sup>13</sup> MUR 7843 Marathon Resp. at 4-5.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> Factual and Legal Analysis at 9-11, MUR 6403 (Alaskans Standing Together).

1           The facts in MUR 7843 are distinguishable. Marathon obtained the federal contract  
2 through the regular competitive bidding process, which affects a substantially greater number of  
3 prospective contractors. The amount of Marathon’s federal contract, at a value of at least \$1.1  
4 million, was 40 times greater than the amount of the \$28,000 contract in MUR 6403. Further,  
5 Marathon’s \$1,000,000 in contributions to CLF and SLF are substantial.

6           Marathon also questions whether the contractor ban is unconstitutional as applied to  
7 contributions to IEOPCs, but no court has made such a ruling or even questioned the  
8 application.<sup>16</sup> In *Wagner v. FEC*, the D.C. Circuit, sitting *en banc*, upheld the validity of the  
9 contractor ban but did not address the ban specifically as applied to contributions made to  
10 IEOPCs.<sup>17</sup> Absent a court ruling to the contrary, the Commission has continued to enforce the  
11 ban as to independent-expenditure-only committees, conciliating four matters with contractors  
12 who contributed to IEOPCs.<sup>18</sup> Thus, contributions made by federal contractors to independent  
13 expenditure-only political committees remain prohibited.<sup>19</sup> In this instance, Marathon made  
14 impermissible \$1,000,000 federal contractor contributions.

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<sup>16</sup> MUR 7843 Marathon Resp. at 9-10 (discussing *Speech Now.org v. FEC*, 569 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Wagner v. FEC*, 901 F. Supp. 2d 101, 107 (D.D.C. 2012)).

<sup>17</sup> 793 F.3d 1 (D.C. Cir. 2015) (*en banc*).

<sup>18</sup> See MUR 7568 (Alpha Marine Services Holdings, LLC) (finding reason to believe finding and accepting a negotiated conciliation agreement); MUR 7451 (Ring Power Corporation) (same); MUR 7450 (Ashbritt, Inc.) (same); MUR 7099 (Suffolk Construction) (same). See also FEC Statement on *Carey v. FEC*, n.1 (Oct. 6, 2011), <https://beta.fec.gov/updates/fec-statement-on-carey-v-fec/> (“[f]oreign nationals, government contractors, national banks and corporations organized by authority of any law of Congress cannot contribute” to non-contribution accounts used to make only independent expenditures).

<sup>19</sup> See F&LA at 3, MUR 7099 (Suffolk Construction Company Inc.) (finding reason to believe that a federal contractor violated the Act by making contributions to an IEOPC, noting that the prohibitions with respect to federal contractors include contributions made to “any person for any political purpose or use”); F&LA at 3-4, MUR 7451 (Ring Power Corporation) (same); F&LA at 2-3, MUR 7568 (Alpha Marine Services Holdings, LLC) (same); F&LA at 4, MUR 7450 (Ashbritt, Inc.) (same).

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Factual and Legal Analysis

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- 1           Accordingly, the Commission finds that there is reason to believe that Marathon
- 2   Petroleum Company LP violated 52 U.S.C. § 30119(a)(1).