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FEDERAL ELECTION  
COMMISSION

2011 JUN -8 AM 9:07

BEFORE THE FEDERAL ELECTION COMMISSION

GELA

In the Matter of )  
 )  
TransCanada Keystone Pipeline GP, ) MURs 6401 and 6432  
LLC; Bruning for Attorney General; )  
Governor Heineman Committee )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 07, 2011, the Commission decided by a vote of 5-1 to take the following actions in MURs 6401 and 6432:

1. Find no reason to believe in MURs 6401 and 6432 that TransCanada Keystone Pipeline, GP, LLC violated 2 U.S.C. § 441e.
2. Find no reason to believe in MURs 6401 and 6432 that Bruning for Attorney General violated 2 U.S.C. § 441e.
3. Find no reason to believe in MURs 6401 and 6432 that the Governor Heineman Committee violated 2 U.S.C. § 441e.
4. Approve the Factual and Legal Analyses in MURs 6401 and 6432, as recommended in the First General Counsel's Report dated May 19, 2011.
5. Approve the appropriate letters.

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Federal Election Commission  
MURs 6401 and 6432  
June 07, 2011

6. Close the files in MUR 6401 and MUR 6432.

Commissioners Bauerly, Hunter, McGahn II, Petersen, and Weintraub  
voted affirmatively for the decision. Commissioner Walther dissented.

Attest:

June 7, 2011  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUN 13 2011**

Mike McNamara  
Michael E. Zolandz  
SNR Denton US LLP  
1301 K Street, NW  
Suite 600, East Tower  
Washington, DC 20005

RE: MUR 6401  
TransCanada Keystone Pipeline GP, LLC

Dear Messrs. McNamara & Zolandz:

On October 27, 2010, the Federal Election Commission notified your client, TransCanada Keystone Pipeline GP, LLC, of two complaints denoted as MUR 6401, alleging violations of the Federal Election Campaign Act of 1971, as amended. On June 7, 2011, the Commission found, on the basis of the complaints and information provided in your response that there is no reason to believe the TransCanada Keystone Pipeline GP, LLC, violated 2 U.S.C. § 44 *ie.* Accordingly, the Commission closed its file in this matter.

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

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Roy Q. Luckett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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

**RESPONDENT:** TransCanada Keystone Pipeline GP, LLC      **MURS:** 6401 and 6432

**I. INTRODUCTION**

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

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

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

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

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

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

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

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

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

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

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

9 **B. Analysis**

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

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

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

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

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

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

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

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**Factual and Legal Analysis**  
**TransCanada Keystone Pipeline GP, LLC**

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

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**JUN 13 2011**

Laura A. Wigley  
Nebraska Democratic Party  
1327 H Street, Suite 200  
Lincoln, NE 68508

RE: MUR 6401  
TransCanada Keystone Pipeline GP, LLC  
Bruning for Attorney General  
Governor Heineman Committee

Dear Ms. Wigley:

On June 7, 2011, the Federal Election Commission reviewed the allegations in your two complaints, dated October 18, 2010 and denoted as MUR 6401, and found that on the basis of the complaints and information in responses to them, there is no reason to believe that TransCanada Keystone Pipeline GP, LLC, Bruning for Attorney General, and the Governor Heineman Committee violated 2 U.S.C. § 441e. Accordingly, on June 7, 2011, the Commission closed the file in this matter.

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

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

Sincerely,

Christopher Hughey  
Acting General Counsel

A handwritten signature in black ink, appearing to read "Roy Q. Lockett".

BY: Roy Q. Lockett  
Acting Assistant General Counsel

Enclosures  
Factual and Legal Analyses (3)

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: TransCanada Keystone Pipeline GP, LLC MURS: 6401 and 6432**

**I. INTRODUCTION**

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

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

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

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

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

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

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

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

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

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

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

9 **B. Analysis**

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

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

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

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

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

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

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

**Factual and Legal Analysis**  
**TransCanada Keystone Pipeline GP, LLC**

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

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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

**I.      INTRODUCTION**

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

**II.      FACTUAL AND LEGAL ANALYSIS**

**A.      Facts**

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

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

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

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

11044300165

11044300166

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

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

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

17 **B. Analysis**

18 The Act prohibits a person, in pertinent part, from knowingly accepting or receiving a  
19 donation made in connection with a Federal, State, or local election from a foreign national. See  
20 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

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

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

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

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

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

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

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

11044300168

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

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

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENT: Governor Heineman Committee MURS: 6401 and 6432**

5  
6 **I. INTRODUCTION**

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

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Facts**

13  
14 The complaints in these matter allege that the Heineman Committee accepted a \$2,500  
15 prohibited foreign national donation from TransCanada Corporation ("TransCanada"), a  
16 Canadian corporation, or one of its foreign subsidiaries that the Committee reported as received  
17 from "TransCanada Keystone Pipeline." TransCanada Keystone Pipeline, GP, LLC  
18 ("Keystone"), is a limited liability company registered in Delaware and headquartered in Texas  
19 with operations in Omaha, Nebraska. Keystone is the general partner in TransCanada Keystone  
20 Pipeline, LP ("Keystone LP"), a Delaware limited partnership. Keystone jointly owns and  
21 controls Keystone LP with a limited partner, TransCanada Keystone Pipeline, LLC, another  
22 Delaware limited liability company. Keystone and its limited partner are, in turn, subsidiaries of  
23 a Delaware corporation, TransCanada Oil Pipelines, Inc. All four entities are ultimately wholly-  
24 owned by TransCanada. TransCanada is an energy infrastructure company that, among other  
25 things, develops and operates natural gas and oil pipelines in North America. Keystone LP is  
26 apparently responsible for constructing and operating the U.S. portion of an oil pipeline that

1 transports crude oil from Alberta, Canada, to U.S. markets. See TransCanada March 14, 2008,  
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4 employees approved and directed Keystone LP to make the donation at issue in this matter.  
5 According to Keystone, sometime before December 11, 2009, Beth Jensen, its Director of  
6 Government Relations and a U.S. citizen, reviewed with outside counsel the permissibility and  
7 attendant reporting requirements, under state law, of making donations to Nebraska state  
8 candidates. Subsequently, Jensen approved donations of \$2,500 each to the Heineman  
9 Committee and another state candidate committee. Jensen sent an email on December 11, 2009,  
10 instructing TransCanada's Accounts Payable staff to issue checks from Keystone operating funds  
11 to the two state campaigns. The Accounts Payable center, located in Calgary, Alberta, processed  
12 the checks. The Accounts Payable center issued the checks on a Keystone-controlled "U.S.  
13 funds Citibank account" in the name of Keystone LP and sent them to Jensen. Jensen then  
14 forwarded the checks to Kissel E&S Associates, an Omaha, Nebraska-based outside consulting  
15 firm engaged by Keystone in its government relations efforts. Kissel representatives hand-  
16 delivered the checks to the candidate committees, apparently in January 2010.

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

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

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

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

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

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17 The Act prohibits a person, in pertinent part, from knowingly accepting or receiving a  
18 donation made in connection with a Federal, State, or local election from a foreign national. See  
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20 generated by its domestic operations placed in segregated accounts that received no subsidies,  
21 and provided that, in the future, it could demonstrate through a reasonable accounting method  
22 that it had sufficient funds in its accounts to make donations, other than funds given or provided  
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11044300174

1 Keystone has stated that the donation to the Heineman Committee was made with U.S.  
2 operating funds from an account maintained in a U.S. financial institution. It has also pointed  
3 out that the donation check was drawn on a New York Citibank, N.A. bank account and bears the  
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15 decision-maker involved in making the donation or that Keystone decided not to specifically  
16 identify other non-foreign nationals who were involved in the decision-making process. In any  
17 case, the Commission possesses no information that any non-U.S. citizen or non-permanent  
18 resident was involved in the decision to make the donation.

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

**Factual and Legal Analysis  
Governor Heineman Committee**

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

11044300175



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 13 2011

Bryan P. Roberston, Treasurer  
Governor Heineman Committee  
1610 N Street, Suite 100  
Lincoln, NE 68508

RE: MUR 6401  
Governor Heineman Committee

Dear Mr. Robertson:

On October 27, 2010, the Federal Election Commission notified the Governor Heineman Committee ("Committee") and you, as treasurer, of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended. On June 7, 2011, the Commission found, on the basis of the complaint and information provided in responses to the complaint, that there is no reason to believe the Committee violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter.

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

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Roy Q. Lockett

Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

11044300177

11044300178

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
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6 **I. INTRODUCTION**

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4 employees approved and directed Keystone LP to make the donation at issue in this matter.  
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11 450 1<sup>st</sup> street address belonged to TransCanada in Calgary, Alberta. MUR 6432 Complaint at 2  
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15 “TransCanada Keystone Pipeline, LP.” *Id.* at 5.

16 **B. Analysis**

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18 donation made in connection with a Federal, State, or local election from a foreign national. See  
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18 resident was involved in the decision to make the donation.

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

**Factual and Legal Analysis  
Governor Heineman Committee**

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

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