



FAIR POLITICAL PRACTICES COMMISSION

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March 5, 2012

Jesse Mainardi
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. A-12-034

Dear Mr. Mainardi:

This letter responds to your request for advice on behalf of Capital Power US Holdings Inc. ("US Holdings") regarding the campaign financing provisions of the Political Reform Act (the "Act").¹ Please note this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Does the Act prohibit US Holdings, a corporation organized under the laws of the United States that is a subsidiary of a Canadian corporation, from establishing, funding or administering a committee to support a San Diego ballot measure, where all decisions concerning the funding of the committee and committee expenditures will be made by a United States citizen and all funds will come from a United States company with a domestic revenue stream?

CONCLUSION

No. Under Section 85320(c)(4), US Holdings is not a "foreign principal," barred from making contributions or expenditures in connection with a ballot measure, because it is a domestic subsidiary of a foreign corporation and all decisions for funding the committee and committee expenditures will be made by a U.S. citizen.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Capital Power Corporation ("Capital Power"), a Canadian corporation with its principal place of business in Alberta, Canada, engages primarily in the acquisition, construction, and operation of power generation facilities. Capital Power has a number of subsidiaries that are United States entities, including US Holdings: Capital Power Investments LLC ("US Investments"), which is the parent company for Capital Power's power generation facilities in the United States; and Capital Power Operations (USA) Inc. ("US Operations"), which employs all employees of Capital Power affiliates in the United States.

US Investments and US Operations are each wholly owned by US Holdings, which, in turn, is wholly owned by Capital Power. US Holdings administers the processing of payments for its subsidiaries and is the contracting entity for Capital Power development projects in the United States. Capital Power and its United States subsidiaries have overlapping directors and officers, some of whom are Canadian citizens.

US Holdings seeks to build a power generation plant in the City of San Diego. This new plant must first be approved by city voters through a ballot measure expected to be on the November 2012 ballot. US Holdings wishes to establish a committee to support the passage of the measure.

The committee will be funded entirely by US Investments. However, US Investments does not have its own operating bank account and relies on US Holdings to make payments on its behalf. US Holdings will make the payments to the committee, and will then charge those payments to US Investments' account. Thus, the contributions to the committee will be paid by US Investments.

US Investments, which has a positive cash flow, (i.e., net income) will be making contributions to the committee this year from funds generated by its United States operations. US Investments will not receive any transfers of funds from Capital Power or any other entity to reimburse it for all or any portion of its political expenditures.

An employee of US Operations who is a United States citizen will determine the amount of contributions to be made by US Investments to the committee and will be vested with sole authority to administer the committee, making and authorizing all committee expenditures. No performance evaluation, compensation review, or similar personnel-related action for this employee, which is conducted by a foreign national supervisor, will be based solely on this employee's responsibilities in connection with the committee.

ANALYSIS

Section 85320 provides, in pertinent part the following:

“(a) No foreign government or foreign principal shall make, directly or through any other person, any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local ballot measure.

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“(c) For the purposes of this section, a “foreign principal” includes the following:

“(1) A foreign political party.

“(2) A person outside the United States, unless either of the following is established:

“(A) The person is an individual and a citizen of the United States.

“(B) The person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States.

“(3) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

“(4) A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the United States nor a lawfully admitted permanent resident of the United States.”

You state that all decisions for funding the committee and expenditures to be made by the committee will be made by a United States citizen who is an employee of US Investment’s sister company, US Operations. Because decisions to contribute or expend funds will not be made by an officer, director, or management employee of a foreign corporation who is neither a citizen of the United States nor a lawfully admitted permanent resident of the United States, neither US Investments nor US Operations qualifies as a “foreign principal” under Section 85320(c)(4).

Accordingly, the Act does not prohibit US Holdings from establishing, funding or administering a committee to support the San Diego ballot measure.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink, appearing to read "Valentina Joyce", with a long horizontal flourish extending to the right.

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl