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December 15, 2022

Mr. François Poirier
President & CEO
TC Energy
Suite 255
1250 I Street NW
Washington, DC, 20005

Dear Mr. Poirier,

TC Energy must answer for yet another oil spill from the Keystone pipeline system. This time, on December 7, almost 600,000 gallons of crude oil leaked from the pipeline in Kansas, contaminating the Mill Creek in Washington County.[1] This latest spill is larger than all twenty-two previous Keystone pipeline leaks combined —including major disasters in 2011, 2016, 2017, and 2019[2]—and is the biggest onshore spill in the United States in more than a decade.[3] Enough is enough. Communities threatened by your pipeline urgently need an explanation of how and why these spills keep happening, and whether your company will continue to put people nationwide and our environment at risk.

One issue that raises questions is the stress level at which TC Energy operates the Keystone pipeline. In 2007, the pipeline received a special permit from the Pipeline and Hazardous Materials Safety Administration (PHMSA) to operate at a higher stress level than other lines.[4] TC Energy is the only hazardous liquid pipeline operator with such a permit, which allows TC Energy to increase the operating stress level from 72 percent to 80 percent of the steel pipe's specified minimum yield strength (SMYS). TC Energy claimed that operating with a thinner

[1] Brijesh Patel, Rod Nickel & Nia Williams, *Keystone pipeline shut after 14,000-barrel oil spill in Kansas*, Reuters (Dec. 9, 2022), https://www.reuters.com/business/energy/keystone-pipeline-shut-after-oil-spill-into-kansas-creek-2022-12-08/.
[2] *See* Government Accountability Office Report No. GAO-21-588, Information on Keystone Accidents and DOT Oversight (hereinafter "GAO Rept.") (2021), https://www.gao.gov/assets/gao-21-588.pdf.
[3] Robert Tuttle, *Keystone Has Leaked More Oil Than Any Other Pipeline in US Since 2010*, Bloomberg (Dec. 12, 2022), https://www.bloomberg.com/news/articles/2022-12-12/tc-energy-keystone-has-leaked-more-oil-than-any-other-pipeline-in-us-since-2010?srnd=premium&leadSource=uverify%20wall#xj4y7vzkg.
[4] Pipeline and Hazardous Materials Safety Administration, Special Permit PHMSA-2006-26617 (2007).

steel pipe at a higher stresses would cut steel costs by 10 percent.[5] Quality issues with the pipeline prevented TC Energy from operating it at the higher stress level until 2016 or 2017. Perhaps not coincidentally, the largest spills from the Keystone pipeline occurred in 2017, 2019, and 2022—after the higher operating pressure went into effect.[6] Although a 2021 report by the Government Accountability Office (GAO) noted that PHMSA officials did not believe that the higher operating stress level caused the 2017 and 2019 ruptures—which they attributed solely to "fatigue failure related to pre-existing flaws or defects"[7]—operation at a higher pressure could be a contributing factor, and could accelerate a pipeline's failure, precipitating a spill before completion of scheduled in-line inspections.

When applying for initial operating permits, TC Energy "provided a spill risk assessment to regulators that estimated the chance of a leak of more than 50 barrels to be 'not more than once every seven to 11 years over the entire length of the pipeline in the United States.'"[8] With five major disasters in the past eleven years, this was clearly a tragic and unacceptable underestimation of the pipeline's impact.

After the 2019 disaster, I wrote to TC Energy and questioned the adequacy of the company's responses to the earlier leaks, as well as whether the Keystone pipeline should continue to operate.[9] In response, TC Energy assured me of its "sincere commitment to ensuring the safety of the public and protecting the environment," and detailed its safety efforts. But clearly, those efforts have been woefully insufficient. The oil transported through your pipeline has left a trail of environmental devastation in its wake, from the disastrous effects of tar sand extraction on the land of the Cree, Dene, and Métis indigenous communities, to the direct damage that the frequent spills along its route cause.

In order to help me understand how and why these Keystone pipeline spills keep happening, and what Congress can do to prevent them, please respond to the following questions in writing by January 4, 2023:

1. Please provide an update on the latest oil spill, including:
    a. the extent of the spill, including whether and to what extent it contaminated waterways, and a description of the types and locations of water quality monitoring underway post-spill;

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[5] GAO Rept. at 10, https://www.gao.gov/assets/gao-21-588.pdf.
[6] Rod Nickel & Nia Williams, *Keystone spill prompts scrutiny of permit allowing pipeline to run faster*, Reuters (Dec. 9, 2022), https://www.reuters.com/business/energy/keystone-spill-prompts-scrutiny-permit-allowing-pipeline-run-faster-2022-12-09/.
[7] GAO Rept. at 24, https://www.gao.gov/assets/gao-21-588.pdf.
[8] Valerie Volcovici & Richard Vadmanis, *Keystone's existing pipeline spills far more than predicted to regulators*, Reuters (Nov. 27, 2017), https://www.reuters.com/article/us-usa-pipeline-keystone-spills/keystones-existing-pipeline-spills-far-more-than-predicted-to-regulators-idUSKBN1DR1CS.
[9] Letter from Senator Edward J. Markey to TC Energy (Nov. 1, 2019), https://www.markey.senate.gov/news/press-releases/senator-markey-demands-answers-from-pipeline-owner-on-latest-keystone-spill-4th-major-spill-since-2010 .

   b. the estimated total amount of oil spilled and the total amount of oil removed, recovered, lost to evaporation, remaining to be recovered, and likely to be unrecoverable;
   c. plans for future remediation efforts, including how oil will be removed from the ground and waterways; stream and land restoration efforts; and a timeline for cleanup and restoration; and
   d. your current understanding of how and why the spill occurred, based on any investigation you have conducted to date. In responding, please provide a description of the damaged pipe segment, including whether oil spilled through a weld failure, corroded pipe, physical damage to the pipe, or other damage, and provide photos of the ruptured pipe.

2. Was the section of pipeline that failed operating in compliance with American Petroleum Institute (API) Recommended Practice 1160[10] or API Recommended Practice 1173?[11] If so, please provide copies of the following documentation relevant to the segment of the pipeline that failed: performance measures and tracking; management of change reviews and procedures; audits; leading and lagging safety indicators; root cause incident investigation reports; performance improvement; and safety culture assessments. If not, why not?
3. Please provide copies of the Material Safety Data Sheet, Spill Model report, the relevant Geographic Response Plan, and Facility Response Plan for the ruptured section of the pipeline. Were unredacted copies of these documents available to first responders in advance of the most recent spill?
4. Please provide copies of the Root Cause Failure Analysis reports for all prior spills, including details of who carried out these analyses and how they were funded.
5. Did the higher operating pressure of the pipeline affect its failure, the timing of the failure, or the amount of oil released in the 2017, 2019, and 2022 leaks? For each spill, please provide any evidence that the higher operating pressure was or was not a factor in the pipeline's failure, its timing, and the amount of oil released.
6. How often was the section of the pipeline affected by the most recent rupture inspected, and by what means? When was the most recent inspection? Please provide the inspection results.
7. According to the GAO report, TC Energy "stated that the special permit would reduce steel costs by approximately 10 percent."[12] How much did this design change actually save?
8. How much has TC Energy spent on cleanup and repair operations from previous pipeline spills on sections of the Keystone pipeline authorized to operate at 80 percent of SMYS under the PHMSA special permit?
9. Please provide the values included as casualties and losses in your Form 6 annual reports to the Federal Energy Regulatory Commission from 2010 to present, and state the amount of those values that oil spills caused.

[10] API Recommended Practice 1160, Managing System Integrity for Hazardous Liquid Pipelines, 3rd ed. (2019).
[11] ANSI/API Recommended Practice 1173, Pipeline Safety Management Systems, 1st ed. (2015).
[12] GAO Rept. at 10, https://www.gao.gov/assets/gao-21-588.pdf.

10. Has TC Energy included spill response costs as an operational expense? If so, what amount of spill response costs has TC Energy recovered from its shippers and insurers?
11. What is TC Energy's current estimated budget for cleanup, repair, and restoration operations related to the latest spill?
12. What support are you providing to local landowners and community members affected by the latest spill and cleanup operations?
13. Have you entered into, or do you plan to enter into, any compensation agreements with local landowners for harm or damage caused by the latest spill? If so, please provide a copy of these agreements.

Thank you in advance for your attention to this matter. If you have any questions about these requests, please contact my office at (202) 224-2742.

Sincerely,

Edward J. Markey
United States Senator