



# Still Too Far

**Energy Transfer Continues to Display  
Concerning Corporate Behavior**

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**Update: October 2018**

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## COVER PHOTO

Bayou Bridge Pipeline in Louisiana. © 2018 Julie Dermansky / Greenpeace

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# Introduction

Greenpeace USA published a report “*Too Far Too Often: Energy Transfer Partners’ Corporate Behavior On Human Rights, Free Speech, and the Environment*” (“*Too Far*”) in June 2018. Since the time of publication, Energy Transfer Partners has undergone a significant structural change, likely merging with its parent company Energy Transfer Equity at the time of publication. Despite this new business model, Energy Transfer continues to display behavior that indicates a lack of significant changes with regards to the company’s approach to civilian opposition to its pipeline projects. The company continues to use litigation as a means of intimidation—even attempting to expand the scope of that litigation—continues to be associated with controversial private security tactics, and continues to display an alarming track-record of spills and safety violations on pipeline sites. Its operations are set in the backdrop of deeply troubling socio-political trends, including the rise of anti-protest bills and increasing abuse of the rights of Indigenous Peoples globally.<sup>1</sup>



Photo shows the construction of the Bayou Bridge pipeline in Louisiana. Earthjustice and others filed a lawsuit that says a spill could harm the ecosystem of the Atchafalaya Basin. <https://earthjustice.org/cases/2018/bayou-bridge-pipeline>  
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**This addendum to the original report concludes that Energy Transfer still goes too far in attempting to silence the free speech of its opponents, at the expense of human rights and the environment.**

# Use of Intimidation and Threats to Free Speech

The original version of “*Too Far*” covered a handful of tactics the company has used against individuals and organizations opposing its pipelines, including the use of litigation, injunctions, eminent domain, favoring harsher punishment for protesters, and aggressive security measures. The net impact has created unsettling and harsher environment for those opposing pipelines. Ellen Gerhart, a private property owner on the Mariner East pipeline route and retired schoolteacher, presents a noteworthy case. She has been a vocal opponent of the pipeline in her community and has challenged Energy Transfer’s use of her private property, including filing a federal lawsuit in 2017 against Sunoco and others over violating her constitutional rights.<sup>2</sup> Gerhart was arrested, jailed, tried and sentenced, in the summer of 2018 after facing a number of civil and criminal allegations by the company.<sup>3</sup>

## Intimidation Through Litigation Against Pipeline Opponents

Since the Greenpeace “*Too Far*” report was released in June, Energy Transfer has experienced a number of setbacks in its lawsuit against environmental groups. On July 25, 2018, a federal judge dismissed Energy Transfer’s complaint against the Dutch non-profit, BankTrack. He also issued an Order that required Energy Transfer to file an Amended Complaint in order to avoid dismissal of its lawsuit against Greenpeace entities.

The strongly-worded Order stated: “This Circuit consistently requires *pro se* parties to plead with more clarity, and less irrelevant hyperbole, than present here.”<sup>4</sup> Following this rebuke, Energy Transfer filed its first Amended Complaint on August 6th, which does not provide further details requested by the judge, and rather expands its attacks to individuals and to events unrelated to the original allegations.<sup>5</sup> Energy Transfer named five individuals as defendants, including a recently hired Greenpeace USA employee, to its \$900 million dollar lawsuit. This casts a wider net of attacks against unaffiliated activists and organizations who disagreed with the Dakota Access Pipeline (DAPL).

Unlike the initial filing, the Amended Complaint also tries to tie in events related to two currently active Energy Transfer projects: Mariner East 2 pipeline and Bayou Bridge pipeline. Though opposition to these projects is completely unrelated to the events at Standing Rock, Energy Transfer expands its attacks on local activism to Pennsylvania and Louisiana, where there has been mounting opposition to pipeline construction. By including other projects in the lawsuit originally related only to DAPL, the company is making it clear that its views

and tactics have not evolved since 2016, when it earned widespread condemnation. One particular point in the lawsuit included naming Charles Brown, an organizer with Greenpeace who had been with the organization for less than six months, and who had never set foot in North Dakota. His work consisted of meeting with groups on the ground in Louisiana and Pennsylvania to amplify their messages on social media, a job that is clearly in the realm of free speech. If there were any thoughts that Energy Transfer would let its baseless legal claims go because of changes in approach to human rights and free speech, the company has shown just the opposite. Energy Transfer is taking every legal avenue available and attempting to broaden the scope of this lawsuit to include Bayou Bridge and individual defendants—clearly showing that it will seize on dissent and criticism in any form as an opportunity to deploy tactics of intimidation.

After the Amended Complaint was filed, the judge also dismissed the complaint against EarthFirst! for Energy Transfer’s failure to effect proper service. At the time of publication of this document, Greenpeace defendants await a ruling on their motions to dismiss the Amended Complaint.

## Rise of Anti-Protest Bills

State anti-protest bills are on the rise and continue to be a threat to individuals and organizations opposing infrastructure projects and, more generally, a threat to the rights to organize and to protest. Examples of these problematic laws are popping up around the country. As discussed in the original “*Too Far*” report, due to a lack of adequate public disclosure and transparency, it is not

currently possible to directly tie Energy Transfer’s lobbying efforts to every state’s anti-protest bills. However, it is noteworthy that several of these bills, including the law in Louisiana and pending legislation in Pennsylvania and Ohio, target individuals protesting infrastructure in the places where Energy Transfer is currently building pipelines.

In Pennsylvania, the “Critical Infrastructure Protection Act” (SB 652) seeks to enhance existing criminal penalties against pipeline protests and would impact protesters of Energy Transfer’s Mariner East 2 pipeline currently under construction.<sup>6</sup> At the time of publication, the bill is still making its way through the Pennsylvania legislative process. When it was introduced in 2017, the ACLU Pennsylvania wrote in an op-ed warning about the impact of these bills: “SB 652 creates a new category of properties, comprising 18 different types of critical infrastructure facilities, and imposes severe penalties for criminal trespassing on those properties. In many cases, what are currently summary or misdemeanors offenses are enhanced to second- and first-degree felonies under this proposed legislation.”<sup>7</sup>

Another bill was introduced in Ohio earlier this year. The “Protect Critical Infrastructure Facilities from Mischief” (SB 250) bill could similarly increase the penalty for individuals protesting pipeline infrastructure as well as organizations “complicit in those offenses.”<sup>8</sup>

Finally, in Louisiana, the “critical infrastructure” law (HB 722) went into effect on August 1, 2018, and has already been used to arrest over a dozen protesters opposing Energy Transfer’s Bayou Bridge pipeline.<sup>9</sup> At the time of this report, individuals arrested under the new felony law have yet to be prosecuted.

Since August 1, there have already been accounts of private security and law enforcement targeting and arresting activists peacefully engaging in forms of legitimate public protest in Louisiana.<sup>10</sup> Most notably on August 9th, three demonstrators were pulled from their kayaks and arrested under this new law. The individuals were kayaking through public waterways near the Bayou Bridge construction site when they were detained and arrested.<sup>11</sup>

Targeted and sweeping arrests carry the potential to chill speech and deter individuals from organizing in their communities. As Traci Yoder, Director of Research and Education for the National Lawyers Guild wrote: “The impact of this legislation on movement work and on organizations promoting social justice will be dire. Immediate action is needed; many of these bills will become law in the next few months unless there is strong resistance, especially at the state level.”<sup>12</sup>

Energy Transfer had largely avoided a public statement on the company’s position on the rights of demonstrators until recently, when spokeswoman Vicki Granado reportedly said on behalf of the company: “We respect the rights of individuals and organizations to protest and voice their opinions.”<sup>13</sup> Those comments were in response to September events organized by more than 20 organizations that form the “Protect the Protest” task force, calling out Energy Transfer in national media for its extreme legal tactics to limit free speech and silence critics.<sup>14</sup> In stark contrast to Granado’s words, Energy Transfer’s actions against those who have voiced concerns to its operations across the country, as described in this document, continue to show complete disregard for the rights outlined in the First Amendment.

## Concerns with Private Security

Concerns remain over Energy Transfer’s use of private security and how the company manages the various individuals responding to protest activities on or near construction sites. Additionally, the lack of transparency and the on-duty, off-duty revolving door has blurred the lines at times between law enforcement and private security, making it very difficult for protesters and individuals on the ground to understand jurisdiction and the role of security individuals.<sup>15</sup>

In the summer of 2018, individuals opposing the Bayou Bridge pipeline reported multiple accounts of physical threats and violence from employees and/or private security working for the pipeline company. This includes but is not limited to the following:

- On July 25, in response to an aerial tree-sit in the path of the Bayou Bridge pipeline documented by L’Eau Est La Vie protest camp, workers alleged to be acting on behalf of Energy Transfer used chainsaws to cut several branches and supplies from three trees occupied by activists in an effort to extract them from the site.<sup>16</sup> Attorneys representing the activists later sent letters of complaint to St. Martin Parish Sheriff’s Office, the Louisiana State Police, and the office of Governor John Bel Edwards, arguing that law enforcement had witnessed concerning behavior by company employees and had failed to take action to protect the demonstrators.<sup>17</sup>
- On August 5th, eyewitnesses and a recording captured an individual claiming to be a private contractor. He arrived with a shotgun and handgun to a site where activists were gathered. According to individuals from the ground, after threatening violence against the group on multiple occasions stating, “you motherf— are going to get really hurt out here”, he pointed a gun at the protesters and used the butt of the shotgun to physically assault an activist.<sup>18</sup>

# Spills, Fines, & Safety Concerns

Greenpeace report “*Oil and Water: ETP & Sunoco’s History of Pipeline Spills*” from April 2018 included incidents through the end of 2017. Looking at the latest PHMSA data (downloaded 8/20), Energy Transfer and subsidiaries have reported 15 hazardous liquids incidents so far in 2018. These 15 incidents led to the release of 1282 barrels of hazardous liquids (of which 609 barrels were recovered) and caused a reported \$8.4 million in property damage. Notable incidents involving hazardous liquids during 2018 include:

- On June 19, a Sunoco pipeline built in the 1930s and upgraded in 2016 leaked 798 barrels of gasoline into Darby Creek, PA. The leak was reported by a private citizen who detected a “petroleum odor.” A “sheen” was observed on the creek and boom was deployed on the river to collect the spilled oil.<sup>19</sup> Sunoco planned to use this pipeline to supply natural gas liquids while its troubled Mariner East 2 project is still under construction.<sup>20</sup>
- On February 14, 375 barrels of liquefied petroleum gas (LPG) were released near Stanton, TX. A thermal relief valve had failed and the LPG was apparently flared off.<sup>21</sup>
- On April 2, 40 barrels of crude oil were spilled near Drumright, OK, including approximately 5 barrels that spilled into a local unnamed creek. All oil was reported recovered and the soil was remediated.<sup>22</sup>
- On May 10, 15 barrels of crude oil spilled near the intersection of “NW 164th St. and North Penn Ave” near Edmond, OK. Operator notes that “LEAKWARN SYSTEM WAS OPERATING AT THE TIME BUT NOT FUNCTIONAL TO THE CONSOLE DUE TO ROUTINE MAINTENANCE.” In 2015 a liner had been added to the pipe to “PREVENT DEGRADATION OF THE INTERNAL SURFACE OF THE STEEL PIPE.” Nearby residents expressed frustration that “their homes and property are now covered in an oily film” (link also includes video and interviews with local residents).<sup>23</sup> Other reports noted that “wind distributed the oil over an area about a quarter-mile in size.”<sup>24</sup> This spill is listed as resulting in \$4.4 million in property damage.
- The DAPL-ETCO subsidiary also reported 4 incidents in 2018 (bringing the total for that system to 11). The largest was a 13.35 barrel spill near Joppa, IL on January 19.

In addition to these 15 hazardous liquids incidents, Energy Transfer’ Revolution natural gas pipeline exploded in Beaver County, PA on September 10, 2018—just a week after it came online.<sup>25</sup> Safety concerns regarding the company’s operations in Pennsylvania led a bipartisan group of state lawmakers to call for yet another halt on construction of the company’s Mariner East 2 pipeline two days after.<sup>26</sup> State regulators have fined the company over \$13.1 million for violating state environmental and safety laws during Mariner East 2 construction, including a \$148,000 fine in August for breaking the state’s Clean Streams Law and the Dam Safety and Encroachment Act.<sup>27</sup>

The string of incidents in Pennsylvania and other states across the country during 2018 makes it clear that Energy Transfer still lacks a serious commitment to improving its safety and environmental standards, in spite of the risks posed on the communities and sustained pressure from investors, lawmakers, and organized civil society.

# Conclusion

Energy Transfer does not have plans to slow down its operations despite ongoing conflict on the ground and lasting controversy. Furthermore, the company has not made significant public moves regarding its policies, decision making, or personnel, to show positive changes to its corporate behavior. Energy Transfer has recently hinted at an expansion to the Dakota Access pipeline<sup>28</sup> as well as a new proposed pipeline through the Permian basin,<sup>29</sup> which is an alarming development for communities and the environment given the company's continued record on hazardous liquids spills and safety. Furthermore, Energy Transfer's dismissal of Indigenous rights, aggressive approach to pipeline opponents, and its use of litigation as a means of intimidation, threaten the very fabric of democracy. As more financial institutions<sup>30</sup> continue to blacklist and withdraw support from Energy Transfer's controversial business, the lack of significant reform on the part of the company and its executives should raise an alarm for any remaining financial institutions with existing ties to the company.



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