



Life is good for a pipeline billionaire.



Most of the time

How Kelcy Warren went from cool oilman to face of big, bad energy. By Devin Leonard

“I’m going to be a little boastful here,” says Kelcy Warren. “Nobody has built more pipelines in the last 15 years than Energy Transfer. Many of these pipelines are game changers for the nation, and we’re very proud of them.” Warren, chairman and chief executive officer of Dallas-based pipeline operator Energy Transfer LP, is on the witness stand in a courtroom in Delaware. Few people would dispute his assertion about the disruptive nature of his business. His company is best known for its Dakota Access Pipeline, a \$3.8 billion project that in 2016 became a subject of global interest and, in some cases, outrage. “It kind of, unfortunately, got a little fame to it,” he concedes when questioned about Energy Transfer’s signature undertaking.

In court on this day in February 2018, Warren is on the defensive, testifying in a civil suit filed by some unhappy investors. These shareholders allege that they were denied the opportunity in 2016 to take advantage of a private offering of \$1 billion in new shares—shares that, unlike the usual ones, guarantee cash distributions to holders even in a downturn. Warren, who’s worth \$4.8 billion according to the Bloomberg Billionaires Index, helped himself to more than half of these special securities.

Tall and ruddy-faced, with a crown of snowy hair, Warren is wearing a charcoal suit, a white shirt, a blue-and-white-striped tie, and stylish black leather sneakers. He speaks in soft tones, creasing his brow and pursing his lips as he mulls questions from attorneys. He slips back and forth between corporatese and folksy witticisms, talking one minute about tax complexities and the next about how he might “jack-slap” his chief financial officer for giving him unsound advice.

Warren’s overriding theme is that the private share offering, however exclusive, was the proper thing for Energy Transfer to do. “I’ll tell you—everybody talks like this was a bad deal,” he says, sounding bruised that anyone would think that. What his detractors don’t understand, he says, is that Energy Transfer needed to do the transaction to stave off disaster for all shareholders. Oil prices were tumbling. A \$38 billion merger with a rival, Williams Co., was coming apart. Meanwhile, the billions Energy Transfer had sunk into Dakota Access were put at risk when the Obama administration intervened in September 2016, withholding a permit that the company needed to finish the project. “The federal government shut us down,” Warren says. “Had that not been overturned, we would have been screwed. I mean, in a big way.”

As relaxed as he seems on the witness stand, Warren looks relieved when he steps down. He exits the courthouse, climbs into a black SUV, and he’s gone. The judge in the case will later agree that the privately issued shares were designed to enrich Energy Transfer’s insiders, but he’ll rule that the offering should not be rescinded.

Warren also escaped disaster in North Dakota. Four days after taking office, President Donald Trump, a former Energy Transfer shareholder, issued an executive order freeing up the disputed permit. Warren had ardently supported Trump, donating more than \$100,000 to his campaign and \$250,000 to

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his inaugural celebration. “Having a government that actually backs up what they say, that actually says we’re going to support infrastructure, we’re going to support job creation, we’re going to support growth in America, and then actually does it—my God, this is going to be refreshing,” Warren told investors in a conference call two days after his candidate’s victory.

Before Dakota Access, few outside the industry had ever heard of Warren or his company. He seemed to prefer it that way. He could fraternize with blues and folk singers and country rockers who might have been frostier if he’d introduced himself as, say, CEO of ExxonMobil Corp. Indigo Girls, Keb’ Mo’, and Lucinda Williams all recorded songs for Music Road Records, the label Warren founded in 2007, and played at an annual charity shindig at his ranch north of Austin.

Now Warren is the face of a company famous for a pipeline project that, a sympathetic shareholder says, has become a symbol of “the big, bad energy industry.” The notoriety hasn’t helped as the company tries to build new lines. “People who didn’t know who Energy Transfer was before certainly did after that,” says Tom Seng, assistant professor of energy business at the University of Tulsa and a pipeline industry veteran himself. “So when you’re sitting around at a town hall meeting where representatives of Energy Transfer are coming to talk to you about a proposed project, your hair stands up and you say, ‘Oh my God, it’s those guys!’”

Warren, who declined to be interviewed for this article, can’t let go of what happened with Dakota Access either, though the pipe now carries more than 500,000 barrels of crude oil a day. In August 2017, Energy Transfer filed a federal racketeering suit against Greenpeace International and several other environmental groups, accusing them of being at the center of a vast conspiracy to spread misinformation about the project. It was an effort that required two law firms, one of them Kasowitz Benson Torres, which has often defended President Trump and helped craft his response to the Mueller investigation.

“What happened to us was tragic,” Warren told CNBC three days after the suit was filed. “We were greatly harmed.”



Dakota Access protests in 2016

“How were you harmed by it?” asked anchor Brian Sullivan, looking puzzled.

“Our project was delayed by, let’s say, 90 days, and we lost millions of dollars,” Warren said.

“Kelcy, you’re a billionaire, your company is very wealthy, and your law firm represents Donald Trump,” Sullivan replied. “You understand the optics here, but it doesn’t sound like you are afraid.”

“I’m not afraid at all of these people,” Warren said of the environmentalists his company had targeted. “They are going to pay for this.”

Energy Transfer’s suit didn’t go anywhere—it was dismissed early this year. It’s the company, in fact, that’s been paying: \$12.6 million to the state of Pennsylvania, where the company has drawn the ire of regulators and citizens as it struggles to complete another major project. And while that might not be a lot of money to a company with \$54.1 billion in revenue in fiscal 2018, it speaks to the lesson Energy Transfer has been slowly learning: What works in friendly states such as Texas and Louisiana, where the oil and gas industry is generally accepted as part of the local culture, might not go down as well elsewhere. Energy Transfer has amassed hundreds of violations with state and federal regulators and faces multiple criminal investigations in Pennsylvania—investigations the company says have no legal basis.

There was a time when the public paid little if any attention to pipeline builders like Warren. Their operations were smaller and less visible—being buried underground—than those of oil and gas extractors. Investors liked pipeline companies mainly because they were boring. They tended to enter into lengthy, fee-based contracts, so they were less exposed to commodity price gyrations. “It’s a cash cow industry,” says Kenneth Medlock, senior director of the Center for Energy Studies at Rice University in Houston.

Warren, 63, grew up in a small East Texas town. His father was a pipeline worker, and Warren began his career in that industry. He worked his way up to the executive suite of a pipeline company known as Endevco, then in 1996 co-founded Energy Transfer. Warren became known as a dealmaker, buying up pipeline companies on the eve of the shale boom. As his empire grew, he took home vast sums, including \$244 million in a 2004 initial public offering involving one business, an additional \$487 million in a second IPO, and \$1.6 billion in distributions over more than a decade, according to Bloomberg estimates.

Among the many ways Warren has enjoyed the bounties of his labor (a Dallas mansion, an island off the Honduran coast, three ranches, at one of which he keeps giraffes), the most stylish and personal is his record label, Music Road. It’s modeled on David Geffen’s artist-friendly Asylum Records, home in the 1970s to Southern California troubadour Jackson Browne and his sweet melodies and confessional lyrics. The Energy Transfer CEO can recite the lyrics of any Browne song from memory, or so the *Dallas Morning News* has reported.

“They are going to pay for this”

Warren didn’t get Browne to record for Music Road, but he did the next best thing: In 2014 he released *Looking Into You: A Tribute to Jackson Browne*, featuring the singer’s tunes covered by such artists as Bruce Springsteen, Indigo Girls, Keb’ Mo’, Joan Osborne, and Lucinda Williams. Browne didn’t take part in the project, but he told a Texas reporter he was fond of the result.

The shale boom was in full throttle around this time, and Warren was eager to build in areas of the country that were energy-rich but pipeline-starved. The most prominent of these efforts was Dakota Access. Most segments of the 30-inch-wide crude oil line would be built on private land and didn’t need federal approval. One exception was a 1,000-foot segment beneath Lake Oahe.

The U.S. Army Corps of Engineers ruled in July 2016 that this wouldn’t be a problem. The Standing Rock Sioux tribe sued the Army Corps, seeking to overturn the decision. The pipeline didn’t traverse the tribe’s nearby reservation, but its leaders argued that it would cross land that had been theirs before the federal government appropriated it. Moreover, the tribe said a pipeline mishap might pollute the lake, its historic water source. Energy Transfer says the pipeline is safe and that it tried to engage the Standing Rock Sioux in discussions early on and that the tribe wasn’t interested. But Dave Archambault, the tribe’s chairman at the time, says he explained his people’s concerns to a top Energy Transfer executive, who was unmoved. “I said, ‘You know, you are going to meet resistance,’” Archambault recalls warning him. “He said, ‘That’s nothing. We meet resistance all the time.’” But nothing quite like this. The Standing Rock Sioux led protests along the pipeline route, drawing thousands of demonstrators and the support of a variety of celebrities and Democratic presidential candidate Bernie Sanders.

In early September 2016, the Obama administration said the federal government would delay the permit until it could do a broader review of Dakota Access and the objections raised by the tribe. It asked Energy Transfer to voluntarily pause all construction within 20 miles of the lake. The following month, when an appeals court refused to overturn the decision by the Army Corps, Energy Transfer resumed its activities. “The company said, ‘Screw you. We’re going ahead,’” recalls Jan Hasselman, an attorney for Earthjustice, an environmental law firm representing the Standing Rock tribe. “That’s when things really got tense out there.” (Energy Transfer responds that it “followed all the appropriate rules and regulations in building the Dakota Access Pipeline.”)

Hundreds of demonstrators were arrested as they tried to impede the pipeline’s construction. In one dramatic late-night standoff, law enforcement officers sprayed people with water cannons in freezing temperatures. Images of these confrontations circulated widely and provided many ►

◀ people with their first impression of Energy Transfer.

That apparently included some of the musicians Warren had patronized. Some said they had no idea he was involved in anything like the Dakota Access Pipeline. “Many of us, as artists, take offense and are mystified by how someone with such a deep passion for organic and traditional music can own a company that is so blatantly tearing at the heart of the fabric of our American community,” Indigo Girls wrote in an open letter posted on their Facebook page. It was signed by Browne, Osborne, and Keb’ Mo’. Browne also posted a statement on his website saying he would be donating his songwriting royalties from *Looking Into You* to Warren’s indigenous foes.

Warren responded that the project was being unfairly maligned, and didn’t these musicians understand that their nylon guitar strings were made using fossil fuel transported in pipes by companies such as his? In an early December blizzard, Warren flew into Bismarck to meet with Archambault. The Standing Rock Sioux leader says he again explained the tribe’s position to the Energy Transfer CEO. “Kelcy Warren said, ‘If I knew this stuff a year ago, we wouldn’t be here, but there are only 20 miles of pipeline left. I can’t reroute it,’” Archambault remembers. Energy Transfer confirms that the two men discussed how the problem might have been resolved earlier, but in any case it didn’t matter: Trump cleared the way for the pipeline’s completion the next month.

This might have been a good time for Warren to take steps to repair Energy Transfer’s image, but that didn’t seem to be a priority. In February 2017, the Federal Energy Regulatory Commission allowed Energy Transfer to begin work on a portion of Rover, a \$4.2 billion, 713-mile pipeline intended to transport natural gas from the Marcellus and Utica shale fields in West Virginia, Pennsylvania, and Ohio up into Michigan. FERC refused, however, to give Rover what it calls a blanket construction permit, which would have allowed Energy Transfer to conduct routine construction activities without first getting the commission’s approval.

FERC said it was displeased that the company had violated historic preservation rules by razing the Stoneman House, a 173-year-old building in Leesville, Ohio. Energy Transfer had said it didn’t mean to circumvent federal regulations when it took down the structure, which was across the street from a compressor station it was building, but FERC cited company



Sinkholes filled with concrete in Chester County

emails showing that Energy Transfer was already planning to demolish the building before it purchased it. A contractor warned the company that this would be a “politically risky strategy.” And indeed it was. When Democrats in Congress suggested that Energy Transfer had been less than straightforward with FERC, Warren responded in a public letter that he was “baffled as to how it can be alleged that we provided false or misleading information.” (Energy Transfer says, “We continue to work with FERC to resolve the matter.”)

Once Rover was under way, Energy Transfer was repeatedly sanctioned by the Ohio Environmental Protection Agency for drilling-related spills, including one in April 2017 involving the release of 2 million diesel-fuel-contaminated gallons that coated a 6.5-acre wetland in Stark County. “They basically buried one of the highest-quality wetlands in the state, a forested wetland, under 20 inches of this drilling mud,” says Cheryl Johncox, organizer of the Sierra Club’s Ohio-based Beyond Dirty Fuels Campaign. In his letter to Democratic leaders, Warren characterized Energy Transfer’s spills as “neither uncommon nor unexpected.” The company says its cleanup efforts prevented any long-term environmental damage.

In November 2017, Mike DeWine, then Ohio’s attorney general and now its Republican governor, cited the Stark County spill and numerous others in a lawsuit, accusing Energy Transfer of being a serial polluter. “Whether its actions (and failures to act) stem from a series of calculated business decisions or complete indifference to Ohio’s regulatory efforts, Rover has endangered the environment in more than ten counties,” his office said in a complaint. Energy Transfer denied the charges, and a judge dismissed the suit in March. Rover has been fully operational since last November and is now carrying more than 3.25 billion cubic feet of natural gas a day.

The fight in Pennsylvania is at another level. There, Energy Transfer subsidiary Sunoco is building Mariner East, a 350-mile project repurposing a crude oil line that dates to the 1930s and adding two beside it so that the three can carry liquid propane and ethane from the Marcellus shale field in the western part of the state to a terminal near Philadelphia, where it would be shipped elsewhere.

The Pennsylvania Department of Environmental Protection chastised Energy Transfer in 2017 for fouling private wells in Chester County, near Philadelphia, and halted construction

“This is Chester County. This is not the Siberian wasteland”

in January 2018 for numerous other permit violations. The company went back to work the next month after paying the \$12.6 million fine. By then, investigators for the state Public Utility Commission were alarmed about sinkholes that had opened in the backyards of houses where Sunoco was drilling in West Whiteland Township on a cul-de-sac called Lisa Drive.

One of the unfortunate homeowners was T.J. Allen, a contractor with a graying goatee. On a chilly afternoon, Allen led visitors around his house to show them what Energy Transfer had done to his modest backyard. Mariner East is treated under Pennsylvania law as a public utility and has the right to use court-approved eminent domain to take people’s property. So Allen had little choice but to let Energy Transfer turn his yard into a construction site. Now there were two craters, about 8 feet and 10 feet wide, covered with boards and filled with a slushy, gray material—slurry concrete.

Allen wasn’t happy when the holes appeared on his property, but he was horrified when workers showed up with truckloads of cement and started pouring it into the holes. He feared it would dislodge an older pipe that runs through his property, causing a dangerous natural gas leak and possibly an explosion. “I’m pleading with them,” he said. “I’m like, Please, please, please don’t do it.”

Tom Casey, another homeowner along the Mariner East route, had come to have a look. He surveyed Allen’s pock-marked backyard and shook his head. “Kelcy Warren could probably care less,” he said.

“Of course Mr. Warren cares about the people and properties along our routes,” a spokeswoman for Energy Transfer says. “To say otherwise is irresponsible.”

Even so, the days of profitable invisibility are clearly gone for Warren and Energy Transfer. In March, the PUC issued an emergency order shutting down the existing pipeline because it, too, feared a catastrophe on Lisa Drive. On May 21, Elizabeth Barnes, an administrative law judge at the PUC, ordered Energy Transfer to temporarily halt construction in the area and perform an extensive analysis of Mariner East’s risks and how local police and firefighters ought to respond in the case of a leak. The company, she wrote, “has made deliberate managerial decisions to proceed in what appears to be a rushed manner in an apparent prioritization of profit over the best engineering practices.” (Energy Transfer says sinkholes are “not an uncommon occurrence,” that it was working with homeowners to repair the damage, and that suggestions the project has been rushed are “unequivocally not true.”)

In June the PUC partially reversed the decision, allowing Energy Transfer to send fuel through the old pipe along Lisa Drive. Soon after, it permitted some construction on the two new ones to begin again. For the company’s growing number of opponents in the area, it looked as if Energy Transfer once again

hadn’t been held to account. “The PUC is really weak in terms of enforcing regulations,” says Pennsylvania State Senator Andy Dinniman, a Democrat who represents Chester County and has been one of the leaders of the opposition to the project. A PUC spokesman says the commission is conducting multiple investigations of reported leaks and other issues with the pipeline.

Then, in September, another Energy Transfer natural gas line in Pennsylvania exploded, incinerating a home in Beaver County in the western part of the state. (No one was hurt.) The company says the incident appears to be the result of a landslide. The DEP and PUC are still investigating the blast. They haven’t said much about it, but a cellphone video of a fireball erupting from the ground in the area was widely viewed on the internet and became an issue in the state’s general assembly races in November.

The blast piqued the interest of Tom Hogan, the Republican district attorney of Chester County. After visiting with people on Lisa Drive, he announced he’d opened a criminal investigation of the Mariner East project. He told the local media he’d had it with Energy Transfer. “These pipelines go thorough heavily populated areas,” Hogan said. “They go right past train tracks. They go right past schools and parks. Quite frankly, this is Chester County. This is not the Siberian wasteland.”

Energy Transfer calls Hogan’s investigation “baseless” and says some of his public statements about Mariner East are “inaccurate.” Yet the company’s troubles in Pennsylvania continue to deepen. Recently, Delaware County District Attorney Katayoun Copeland and Pennsylvania Attorney General Josh Shapiro announced that they, too, were jointly conducting a criminal investigation of Energy Transfer and Mariner East. At about the same time, Energy Transfer’s federal suit against Greenpeace was dismissed.

In February, Warren sounded an uncharacteristic note of contrition. “We made some mistakes,” he said on Energy Transfer’s earnings call. “We’re going to take our medicine and fix those mistakes and complete good projects from this point forward. Not to insinuate that everything we’ve done has been bad, it’s just we’ve made some mistakes that we’re not proud of.”

“We’ve learned a lot,” said Tom Long, Energy Transfer’s chief financial officer. “Every place is not Texas.”

It was a somber moment in an otherwise upbeat conversation. And why wouldn’t Warren be sunny? New pipelines are coming online, and company revenue is expected to climb this year to \$62 billion. Then again, this is a man who vowed on national television to seek retribution from his company’s detractors. The very day Warren spoke of the company’s recent mistakes, Energy Transfer filed another suit against Greenpeace, this one in state court in North Dakota. **B**

Energy Transfer’s stock price

