

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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October 18, 2011

The Honorable Fred Upton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Chairman Whitfield:

I am writing to renew my request that the Committee investigate the role of Koch Industries in the Keystone XL pipeline. When I first raised this issue in May, representatives from Koch denied any interest in the pipeline and Chairman Upton called the idea that there could be a link between Koch and the pipeline an “outrageous accusation” and a “blatant political sideshow.” Recently, however, I have become aware of evidence that appears to contradict the assertions of the Koch representatives and Chairman Upton. I believe this evidence and the veracity of Koch’s prior assertions should be reviewed by the Committee.

On May 20, 2011, Rep. Rush and I wrote you to request that the Committee investigate the link between Koch and the Keystone XL pipeline. In our letter, we cited a Reuters article that reported that Charles and David Koch, the owners of Koch Industries, are “positioned to be big winners if Keystone XL pipeline is approved” and would receive “great financial opportunity.”¹ We also cited reports that Koch’s Pine Bend Refinery in Minnesota currently

¹ Reuters, *Koch Brothers Positioned To Be Big Winners If Keystone XL Pipeline Is Approved* (Feb. 10, 2011) (online at <http://www.reuters.com/article/2011/02/10/idUS292515702420110210>).

processes roughly 25% of the tar sands fuel imports to the United States;² that Koch owns Flint Hills Resources, LLP, in Calgary, Canada, which is “among Canada’s largest crude oil purchasers, shippers and exporters”;³ that Flint Hills Resources operates a crude oil terminal in Hardisty, Alberta, where the Keystone XL pipeline will begin;⁴ that Koch Industries has both proposed and produced tar sands projects in the province and is a tar sands project developer;⁵ and that Koch’s Corpus Christi refinery is positioned near the end of the proposed Keystone XL pipeline and would be a potential buyer for the tar sands crude shipped through the pipeline.⁶

At the time, Koch representatives categorically denied any interest in the Keystone XL pipeline. As we described in our letter, our staff spoke with representatives of the company on May 19, 2011. In that conversation, the Koch representatives said that the Keystone XL pipeline has “nothing to do with any of our businesses” and that Koch had “no financial interest” in the pipeline. Philip Ellender, the President for Government and Public Affairs, at Koch Companies Public Sector, LLC, subsequently wrote: “We have stated publicly and repeatedly, including last week when questioned by the staff of Congressman Waxman, that we have no financial stake in the pipeline ... and we are not a party to its design or construction. We are not a proposed shipper or customer of oil delivered by this pipeline.”⁷

The Koch denials were apparently persuasive to Chairman Upton. When the Committee held a hearing on May 23, 2011, on the Keystone XL pipeline, the Chairman dismissed the evidence of a link between Koch and the pipeline, asserting in his statement: “what we ... heard ... last week is the outrageous accusation from the minority that this pipeline deserves even greater scrutiny because one company might or might not benefit from its construction. This blatant political sideshow is simply a distraction that, in the end, underscores the desperation of those who want to stand in the way of this common-sense project.”⁸

² *Id.*

³ Website, Flint Hill Resources, History (accessed on May 19, 2011) (online at <http://www.fhr.com/about/history.aspx>).

⁴ Website, Flint Hill Resources, Canada (accessed on May 19, 2011) (online at <http://www.fhr.com/refining/canada.aspx>).

⁵ Government of Alberta, Alberta’s Oil Sands Projects and Upgraders (Jan. 2011); Oil Sands Developers Group, Oil Sands Project List (Jan. 2011).

⁶ U.S. Department of State, *Supplemental Draft Environmental Impact Statement, Keystone XL Project, Applicant for Presidential Permit: TransCanada Keystone Pipeline, LP*, 3-176 (Apr. 22, 2011).

⁷ Letter from Phillip Ellender, President, Government and Public Affairs, Koch Companies Public Sector, LLC to Mr. Jack Reerink, Managing Editor, Reuters (May 27, 2011) (online at: <http://www.kochfacts.com/kf/reuters-misleads-readers-on-koch-industries-and-the-keystone-xl-pipeline-we-respond/>).

⁸ House Committee on Energy and Commerce, Opening Statement of Chairman Fred Upton, *Hearing on the American Energy Initiative – Day 8*, 112th Cong. (May 23, 2011) (as prepared for the record) (online at: <http://republicans.energycommerce.house.gov/Media/file/Hearings/Energy/052311/Upton.pdf>).

I have now learned that the statements Koch representatives made to my staff are directly contradicted in legal papers that a Koch Industries subsidiary filed with the Canadian government. In 2009, Canada's National Energy Board held hearings on TransCanada's application to construct and operate the Keystone XL pipeline.⁹ Flint Hills Resources Canada, which is owned by Koch Industries, filed an application with the National Energy Board for intervenor status in the hearings.¹⁰ In its application for intervenor status, Flint Hills Resources stated:

Flint Hills Resources Canada LP ("Flint Hills") is among Canada's largest crude oil purchasers, shippers and exporters, coordinating supply for its refinery in Pine Bend, Minnesota. Consequently, Flint Hills has a direct and substantial interest in the application.¹¹

The National Energy Board granted Flint Hills intervenor status.¹² Under the Board's regulations, a company must have "business interest" in a project to be granted this status.¹³

There appears to be a direct contradiction between what Koch representatives told me and the assertion by a Koch subsidiary that it "has a direct and substantial interest" in the Keystone XL pipeline. I believe the Committee should examine this matter to determine the nature of Koch's interest in the pipeline. The Committee should also investigate whether Koch sought to conceal its interest in the pipeline from the Committee.

These issues are significant and timely given the pending approvals required for the Keystone XL pipeline, which has been the subject of legislation by our Committee. Charles and David Koch and Koch Industries should not be exempt from responsible oversight and normal accountability. If members of the Committee were misled by Koch, that is a serious matter that deserves prompt and thorough investigation.

⁹ National Energy Board, *National Energy Board Approves Keystone XL Pipeline Project* (Mar. 11, 2011) (news release) (online at: <http://www.neb.gc.ca/clf-nsi/rthnb/nwsrls/2010/nwsrls06-eng.html>).

¹⁰ *Application for Intervenor Status* (May 19, 2009) (online at: https://www.neb.gc.ca/ll-eng/Livelihood.exe/fetch/2000/90464/90552/418396/550305/556601/557343/557339/C-8-1_-_Flint_Hills_Resources_Canada_LP_-_Application_for_Intervenor_Status_-_A1J8R7_.pdf?nodeid=557340&vernum=0).

¹¹ *Application for Intervenor Status* (May 19, 2009) (online at: https://www.neb.gc.ca/ll-eng/Livelihood.exe/fetch/2000/90464/90552/418396/550305/556601/557343/557339/C-8-1_-_Flint_Hills_Resources_Canada_LP_-_Application_for_Intervenor_Status_-_A1J8R7_.pdf?nodeid=557340&vernum=0).

¹² *Koch company declared 'substantial interest' in Keystone XL pipeline*, InsideClimate News (Oct. 5, 2011) (online at: <http://insideclimatenews.org/news/20111004/koch-brothers-koch-industries-flint-hills-financial-interest-canada-energy-board-keystone-xl-pipeline>).

¹³ *Koch company declared 'substantial interest' in Keystone XL pipeline*, InsideClimate News (Oct. 5, 2011) (quoting National Energy Board spokeswoman) (online at: <http://insideclimatenews.org/news/20111004/koch-brothers-koch-industries-flint-hills-financial-interest-canada-energy-board-keystone-xl-pipeline>).

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Thank you for considering this request.

Sincerely,



Henry A. Waxman
Ranking Member