COMMENTARY

Much Ado about a Pipeline

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The U.S. government is in the final stages of deciding whether a major new pipeline project bringing oil-sands-derived crude oil from Canada to the United States is in the U.S. "national interest." Energy infrastructure projects in the United States are frequently subject to local, regional, and sometimes national opposition for a host of reasons ranging from concern over environmental impacts to effects on property rights. According to the U.S. Chamber of Commerce, 351 major infrastructure projects in the United States are caught up in regulatory or public acceptance hurdles (sometime the former triggered by the latter), including almost every kind of energy infrastructure imaginable from coal mining to transmission lines to solar or wind power generation facilities.[1]

This particular project, the Keystone XL pipeline proposed by Canadian pipeline company TransCanada, has attracted an unusually large amount of attention, however. The proposed 1,700-mile pipeline would bring approximately 830,000 barrels per day of crude oil from Alberta, Canada, to Oklahoma and Texas. The project actually consists of two main sections of pipe connecting existing pipeline infrastructure to new delivery points. The first part would connect Cushing, Oklahoma, to Port Arthur and Houston, Texas. The second part would connect supply sources in Hardisty, Alberta, to existing pipeline infrastructure in Steele City, Nebraska. Like all other pipelines, the Keystone XL project must secure the appropriate permitting, land rights, and commercial contracts in both Canada and the United States in order to proceed. Because the Keystone XL pipeline crosses the border between the United States and Canada, TransCanada must also obtain a presidential permit, which is required for any new or substantially altered infrastructure crossing the border between the United States and Canada or Mexico (and includes things like land-crossings, bridges, pipelines, tunnels, etc.).[2] Under Executive Order 11423, as amended, the U.S. secretary of state has the authority to receive applications and grant presidential permits for any new or modified cross-border infrastructure projects.

The process for reviewing presidential permit applications is fairly straightforward though the projects in question are sometimes controversial. The State Department, working with other federal agencies, conducts an environmental impact statement (EIS), receives public comment on the EIS, finalizes the EIS, and makes a national interest determination (NID). While the executive order does not explicitly define "national interest," the State Department website states that a national interest determination includes but "extends beyond environmental impact, taking into account economic, energy security, foreign policy, and other relevant issues."[3] Though most infrastructure projects in the United States experience some degree of local or even sometimes national opposition, the presidential permit process is usually fairly straightforward, especially considering all the other local permits that must be obtained long before a presidential permit is often sought. Exceptions do exist, however. In 2009, the State Department granted a presidential permit for the Alberta Clipper pipeline, an Enbridge pipeline designed to bring 450,000 barrels per day of crude oil from Alberta to Wisconsin. Despite a fairly routine and not highly controversial process, several

[1] U.S. Chamber of Commerce, "Progress Denied," http://www.projectnoproject.com/, accessed on November 3, 2011.
[2] Note that electricity transmission lines are permitted by the U.S. Department of Energy, and natural gas pipelines are permitted by the Federal Energy Regulatory Commission.
[3] U.S. Department of State, "Keystone XL Pipeline Project," http://www.keystonepipeline-xl.state.gov/clientsite/keystonexl.nsf?Open, accessed on November 2, 2011.

environmental organizations subsequently sued the State Department for failure to adequately consider the environmental impact of the project. The case was ultimately dismissed.

The Keystone XL pipeline permit has attracted a degree of public opposition not commonly experienced for major pipeline projects in the United States. In many ways, it has become the primary battleground for environmental organizations who want to see more aggressive U.S. policies to combat climate change, protect the United States from potentially negative environmental impacts of pipeline development, possibly oil spills, and refining impacts, and stop the production of oil sands in Canada for both local environmental and larger climate change reasons. In response, proponents of the pipeline have launched an equally robust effort to promote the pipeline in the name of energy security and job creation.

Signs of controversy first emerged in early 2010 when the Environmental Protection Agency and a number of congressional Democrats began to express concern over the quality and thoroughness of the draft environmental impact statement. Despite State Department efforts to extend the public review comment period and conduct several new studies to support the final draft EIS, controversy over the pipeline has only increased. During the late summer of 2011, hundreds of demonstrators were arrested while protesting the pipeline in front of the White House. In the past couple of months, allegations of an improper relationship between the State Department and a TransCanada lobbyist who worked for the Clinton campaign, and a too-close-for-comfort affiliation between the company hired to conduct the EIS and TransCanada, have raised new concerns about the integrity of the review process. All of this controversy is, of course, much more scintillating because of the looming presidential election cycle and the perceived need for the administration to weigh the costs and benefits of offending pro- or anti-pipeline constituencies. In recent weeks press reports have indicated that the Obama campaign is concerned about the political and indeed fundraising impact of approving the pipeline and angering many progressive supporters of the administration.

State and local concern over the pipeline is also at play. In late October, the Nebraska governor (a Republican) called a special session of the state legislature to address concerns over the possible environmental impact of the pipeline on the Ogallala Aquifer and other environmentally sensitive areas. It is unclear whether Nebraska lawmakers have the legal ability or the political will to block or alter the pipeline development or what, if any, impact their decision to hold a special session will have on the presidential permit process.

After conducting the draft EIS and draft supplement EIS, issuing the final EIS, and conducting a 90-day public comment and hearing process on the national interest determination, the State Department has stated that it intends to issue a final decision by the end of 2011. In recent days, however, the White House and State Department have sent conflicting messages on the end-of-2011 target date and whether or not the State Department will actually make the decision. One news report states that an anonymous State Department official claims that the department may not meet its goal to issue a decision by the end of 2011. In addition, despite a press statement by White House spokesperson Jay Carney that the State Department is in charge of making the permit decision, President Obama seemed to indicate that he would make the decision, taking input from the State Department process and recommendations, the next day in a TV interview in Nebraska. The following day, the White House sought to smooth over the disjointed remarks saying that any position taken by the Obama administration would reflect the views and opinions of the administration and the president.

All of this intrigue makes it more difficult to weigh the merits of the project absent political considerations and distort the actual impact of the project. Below is a thumbnail sketch of the arguments being waged for and against the project.

	Anti-Pipeline	Pro-Pipeline
Environmental Impact	Oil sands produce higher greenhouse gas emissions than conventional oil and therefore contribute to global warming and the associated environmental and public health impacts.	Oil sands production is not that much more greenhouse gas intensive than conventional oil on a lifecycle emissions basis, and Canada has put in place measures to reduce emissions intensity over time.
	Oil sands production has negative local land, water, wildlife, and air pollution impacts that are not adequately addressed in Canada.	Alberta has in place regulations to improve the entire range of environmental impacts of oil sands production.
	The pipeline will have adverse environmental impacts in ecologically sensitive areas, and the current plans to do not take adequate steps to address these concerns (some opposition members are flatly opposed to the pipeline regardless of safety measures).	The proposed pipeline has met or exceeded all environmental and permitting conditions to deem it safe and has appropriate measures in place to deal with incidents or accidents should they occur.
	The process of refining additional crude oil will have negative environmental and social justice impacts on areas of the country where this oil will be refined.	Refining additional volumes of crude oil or a different kind of crude oil will not change the environmental impact of regional refining activities, as local air pollution guidelines set standards for acceptable levels of air quality.
Energy Security	Increasing crude oil imports will only prolong our dependence on a fuel that is ultimately insecure due to limited global supply and oil price volatility due to the nature of the global market.	Canada is one of the most secure sources of oil supply in the world and has long been a secure source of supply for the United States.
	The oil imported by this pipeline will not be used in the United States but instead shipped to other countries through access to Gulf of Mexico trade ports. The U.S. market does not need this crude oil anyway.	The pipeline will allow more crude oil to travel to the United States and allow greater market efficiency within U.S. oil markets; some oil- sands-derived products will be exported to more appropriate markets, but other product will remain in the United States. Any additional oil in the global market helps to enhance oil security by increasing supply.
Economic Benefit	The pipeline is bad for the economy because it will increase oil prices in certain parts of the country (the Midwest) and distract investment away from clean energy technologies that will be the source of future economic growth and competition.	The pipeline and associated upgrading and marketing will have significant positive impacts on local economies, and the additional oil supplies will provide downward price pressure on global oil prices, which will have a positive economic effect.
	The pipeline will not create very many jobs and those jobs will not be high quality, high paying, or permanent.	The pipeline will create tens if not hundreds of thousands of quality jobs in a value-added economic activity.
Foreign Policy	Oil is bought and sold in a global market so buying oil from Canada does nothing to help alleviate dependence on other parts of the world. Canada does not need to ship this oil through the United States but can export it from its own shores.	Canada is a secure and stable oil supplier, trading partner, and ally of the United States. Dependence on oil from Canada is better than dependence on oil from other regions of the world. If the United States does not take advantage of this opportunity, it will be a bad trading partner and Canada will export its crude from its own coast.

Truth be told, an NDI is a very hard decision to make when there is this much public controversy over a given project. On the environmental side, public concern about the environmental integrity of any large energy project is entirely warranted given the myriad environmental incidents of the last several years: the Gulf of Mexico oil spill, natural gas pipeline explosions in California, the pipeline leak in the Yellowstone River, the groundswell of concern over groundwater contamination associated with unconventional gas development, and the nuclear disaster in Japan. Our

laws and processes, moreover, make it well within the rights of environmental groups and local citizens to challenge the environmental integrity and safeguards of these projects. This ability to drive for higher safety and environmental standards is an important part of our nation's history of advancing environmental protection. The part that appears to be missing is the fact that environmental safety is also in the interest of the government and the companies. Companies and governments lose a great deal from improper management of energy resources and infrastructure. They lose money by having to pay for remediation and compensate for damages. They lose the trust and faith of the general public, their customers, and the governments from whom they must seek future licenses. Some of them do not survive these losses. The truth of the matter is that no energy project comes without risks, environmental impacts, and trade-offs. Yes, society needs to have a conversation about whether or not some risks are too high, how best to mitigate those risks, and what to do when and if an accident occurs, but the conversation must also yield a result that is in the best interest of society and provide a plausible path forward. Still, there are legitimate local environmental concerns that can and should be worked out at a local level and the presidential permit process does not obstruct those reviews from taking place. For its part, the State Department EIS concluded that there are reasonable ways of managing the environmental risks and impacts of the Keystone XL pipeline. State legislators in Nebraska must also make their own decision.

On the energy security, economic, and foreign policy arguments, it is very difficult to find a solid reason why the project would be "against" the national interest. The United States has long encouraged strong trade ties with Canada and increased production of Canadian oil sands. It would be a significant reversal of position to now decide not to advance those two longstanding goals. On the trade point alone, Canada and the United States, as members of NAFTA, have granted energy trade a special and protected priority among categories of cross-border trade. Many previous cross-border energy projects and initiatives have been approved or advanced on this basis. It is hard to see how opposition to crude oil imports based on the higher emission profile of oil sands would be fair national treatment if we do not have a national consensus on the need to reduce greenhouse gas emissions or at the very least similar policies applying to heavier crudes in the United States. The United States has also long been a proponent, through the International Energy Agency and a variety of other international organizations, of promoting free and fair trade environments, governed by economically rational interests and promoting well-supplied and efficiently functioning global oil markets. This project, whether all or some of the oil-derived products stay in the United States or are sold abroad, is in line with those criteria. For those who believe that dependence on oil is in and of itself an energy security problem, it is not clear that failure to permit this pipeline will lead to more investments or more policies to encourage alternatives to oil for use in the transportation sector. It is also not entirely clear that investment in the Keystone XL pipeline would take away the opportunity to invest in green/clean energy technologies and sources that could also have important economic impacts for the United States.

The most disconcerting part of the controversy over the Keystone XL pipeline is what it seems to say about our national dialogue on energy policy. The political atmosphere has made it more and more obvious that this pipeline has come to represent a battleground for those who want to see the country on a path to a low-carbon energy future and those who believe in using currently available, abundant natural resources regardless of their carbon impact. The Obama administration came into office firmly on the side of the low-carbon pathway but failed to make headway on its policy objectives when the Congress failed to pass a cap and trade program. Since then, an economic downturn and a period of high energy prices that threatened the U.S. and global economic recovery have moderated their position a bit: the administration still maintains policy goals to reduce overall emissions, reduce oil consumption, and promote greater efficiency and alternative forms of transportation. It also recognizes, however, the need to maintain adequate and affordable supplies of fossil-based energy sources until alternatives are available at a wider scale. The current economic climate and concern over budget austerity, however, will challenge us to achieve even the most incremental transition toward low-carbon energy goals absent new policies and investments (although the shale gas revolution, if prudent and responsible development can be achieved, may provide a previously unexpected opportunity to contribute to these goals).

For those who believe that failure to address global climate change is a far more pressing global and national concern than energy security, economics, or foreign policy, this moderated position and, indeed, this pipeline represent a

fundamental threat to society's overall well-being and a sign of the administration's waning commitment to that cause. The problem is that the administration is not the constituency that needs convincing. Firmly embattled in a fight for another term, weathering controversy over its green energy stimulus spending, and under attack for its efforts to regulate greenhouse gases and non-greenhouse gas pollutants, the administration is not in a particularly empowered position to move the ball forward on a low-carbon pathway absent significant support from the public and congress. The decision to permit or not permit this pipeline will not change that reality and, frankly, is the wrong way to advance low-carbon energy policy. Political or conventional wisdom holds that talking about climate change and the relationship between energy and climate change is not a popular thing to do right now. Failure to talk about it, however, doesn't make those who support climate objectives go way, just as the reverse was true in the late 2000s when many environmentalists acted as if not addressing the concerns of climate skeptics would somehow make them go away as well. Fighting out these big questions about where the United States is headed vis-à-vis our national energy policy and climate change on a project-by-project basis is a terrible and uncoordinated way to proceed, but given the example of Keystone XL, it appears to be the path we're on.

Thus far, it has been understandable that the White House and the president did not want to comment on approval of a pipeline while a review was underway. Making these vague comments on either side of the debate, however, does not provide the leadership that is lacking in our current energy policy discussion. Prolonging the decision would likely only make the problems worse. Rather than letting a pipeline serve as an all-important proxy for where the administration stands on energy and climate policy, the administration should strive to do a better job communicating with constituencies on both sides of this debate. Folks in the administration will argue that they have been doing this and continue to do this on a routine basis, but they have never adequately addressed the question of what's next on climate change to the satisfaction of many of their cores supporters. Moreover, a lot has changed and continues to change on the global energy landscape—a post-Fukushima nuclear environment, the unconventional gas and oil revolution in the United States, and the question over how Americans view energy and environmental trade-offs in a period of slow or no growth.

Allowing one pipeline to be such an important symbol for a much more complex and difficult debate is really disturbing and not likely to yield positive conclusions for anyone.

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