

Keystone Pipeline Likely Has Life After Veto

By **Juan Carlos Rodriguez**

Law360, New York (February 11, 2015, 8:41 PM ET) -- Congress' approval of the Keystone XL pipeline will likely lead to a veto by President Barack Obama, but experts said that his rejection won't end the effort to get the pipeline built and that the political arguments made by pipeline supporters, such as energy independence, will carry over into the 2016 elections.

After six years of turmoil since TransCanada Corp.'s permit application was first submitted to the U.S. Department of State, the importance of how the country gets, uses, and even sells energy resources has only increased. It's been framed as a matter of independence and security, as well as jobs and economic growth. The Keystone pipeline, despite its difficulties, still remains a tantalizing prospect for many in Congress and across the country — despite warnings from Obama, environmentalists and others about its effects on nature.

"I think there's a lot of political opportunity here if Obama does veto the bill," Richard O. Faulk, a partner at Hollingsworth LLP, said Wednesday.

Faulk said after Wednesday's vote, some strong arguments that haven't received many headlines may now be ready for some time in the spotlight — particularly the importance of the Keystone pipeline to the relationship between Canada and the U.S.

"We have an opportunity here to put the fine products coming from Canada in our nation's bloodstream. We can build a tremendous relationship with Canada," Faulk said.

He said a strong energy alliance between Canada and the U.S. would "liberate" the two countries from reliance on other oil-producing regions that require political and diplomatic balancing acts.

Faulk said even with all the other energy issues to deal with, including infrastructure, exports and environmental regulations, Republicans aren't likely to let go of Keystone as a point of contention. He said they may hope that "as the soup heats up," Obama may finally decide that the pipeline is in the national interest and allow it to proceed.

"This will be a living issue from now on," he said.

Paul H. Dickerson, of counsel at Mintz Levin Cohn Ferris Glovsky and Popeo PC and former chief

operating officer for the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy, agreed with Faulk. He said supporters in Congress will keep the pipeline question alive. And he said energy topics in general will be a big part of the 2016 presidential election.

Dickerson said the Republicans will argue that the U.S. has had well-documented problems getting oil from the fields to the refineries, ranging from train accidents to delays in pipeline projects.

"We've got this new era in American energy production. When you have this massive supply, we need to invest in our infrastructure. Not only in roads, but also in pipelines," he said. "The key drumbeat for the XL pipeline will remain dealing with that infrastructure problem."

Of course, this presents Democrats and environmentalists with an issue as well. Groups like the Sierra Club, the Natural Resources Defense Council, and the Center for Biological Diversity all released statements in support of the expected Obama veto, decrying the project for its environmental impact.

"President Obama has made it clear he will veto this toxic legislation, clearing the way for his administration to finish its assessment of the damage this dangerous project will do to our air, water, land and climate. We are confident that assessment will find that Keystone XL fails the president's climate test and is therefore not in our national interest, meaning it must be rejected once and for all," Sierra Club executive director Michael Brune said in a statement.

Keystone aside, Congress still has an energy-heavy agenda in the coming weeks and months.

Michael L. Krancer, a partner at Blank Rome LLP and chair of its energy industry team, as well as a former secretary of the Pennsylvania Department of Environmental Protection, said Congress will likely work on streamlining permitting processes and ensuring "reasonable" time frames for permit review decisions. He said debate about lifting a decades-old crude export ban has been controversial, so it's not quite clear how that will play out.

"The key is the country has to move forward with the building of energy infrastructure in a responsible manner," Krancer said.

Bob Meyers, senior counsel at Crowell & Moring LLP, said Congress may also look at other areas, such as transmission siting and grid reliability, that don't have the political history of Keystone and could have some reasonable prospect of success in 2015.

"I imagine the House will reach out in a bipartisan manner on the type of economic issues where you can get that, as opposed to those that boil down to environmental issues," he said.

In fact, earlier this week, the House Energy and Commerce Committee released a framework for a comprehensive energy package to advance its "Architecture of Abundance" agenda this Congress. The committee said it was preparing a series of discussion drafts to address four key policy areas: infrastructure, energy workforce, energy diplomacy, and efficiency and accountability.

And Catherine Karen, counsel in Sidley Austin LLP's government strategies group, said Senate Energy and Natural Resources Committee chairwoman Lisa Murkowski has expressed an interest in trying to move forward targeted energy legislation that focuses on a couple of key points.

"They're really going to be focused a lot on energy infrastructure. I think that what we can anticipate is

that Murkowski wants a comprehensive energy bill with four focal areas: supply, infrastructure, efficiency and accountability,” Karen said.

TransCanada isn’t likely to sit on its hands, either, according to Lara D. Pringle, a partner at Jones Walker LLP. She said TransCanada will explore other options, such as transporting crude by rail or using existing natural gas pipelines to move the crude to Canada's east coast, to avoid the U.S.

“Other new pipeline routes could also be proposed,” Pringle said.

--Editing by Kat Laskowski and Emily Kokoll.

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