



OIL & GAS

Keystone XL: Merry KXLMas

Here in Washington and around the state capitals the end of the working year for the public policy community comes this Friday, December 19. We are not saying that the Nebraska Supreme Court faces any kind of deadline, but it does releases its decisions on Friday mornings, shortly after 9 am ET, and a decision on Nebraska's permit for the Keystone XL pipeline is due this month or next by our calculations. The Court's decisions are posted online [here](#).

The court could effectively uphold the current Nebraska permit for the pipeline, or it could order a redo that would take seven months to a year—or longer, if the past history of Keystone XL has any predictive value.

If the court upholds the permit, that seeming good news is tempered by two realities. The good news is that the State Department process in Washington can resume and possibly put the Presidential permit for the border crossing on President Obama's desk within a matter of months. The bad news is that President Obama might use to occasion to add burdensome conditions to the permit when he grants it.

A seemingly positive decision by the court might also undermine prospects for legislation on Capitol Hill that would grant the border crossing permit faster, more definitively, with no conditions, and less legal risk. In a way, we would rather see the Senate vote first on the Landrieu-Hoeven bill which failed to reach 60 votes last month.

Depending on how you do the math, there might be 62 to 65 votes for the same or a similar bill next year. That's not a veto-proof majority, but it is enough to move the bill forward, if the half dozen "soft" Democratic votes can withstand the all-out assault to be launched by the enviro community. The bill would not bar lawsuits against the Keystone XL pipeline, but it would send most legal challenges direct to the D.C. Circuit, where they would most likely meet a skeptical welcome.

Assuming the bill passes Congress and survives a possible veto threat, it would probably ensure that the pipeline gets built more quickly, in the long run. But if the court decision allows the process in Washington to restart, with final action by the President possible in a matter of months, wavering Senate Democrats could say that a

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bill to force the President's hand was no longer needed.

However, our considered view is that the Nebraska court is more likely to rule against the permit and in favor of a re-do. This would add about another year to the Keystone timetable, and possibly mean that when the next Yuletide rolls around, barring Congressional action, we will be looking to Nebraska again for a Merry KXLmas.

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