



Insight

Waiting Game on Keystone XL

CATRINA RORKE | FEBRUARY 5, 2014

With last week's release of the Department of State's final environmental impact statement (EIS) for Keystone XL, it may be tempting to think that a decision on the presidential permit for construction is coming soon. In reality, the EIS triggered a series of loose deadlines over the coming months. How much longer do we have to wait? Many steps remain before we get to a final decision.

The schedule for a decision on Keystone XL is laid out in Executive Order 13337, which delegates decision making authority on cross-border energy infrastructure to the Department of State. Here's what to expect.

STEP 1: REQUEST COMMENT.

On February 5th, the Department of State will officially request the views of other federal agencies to assist in making a determination of whether building the pipeline is in the national interest. Per EO 13337, the State Department must request comment from the Departments of Defense, Justice, Interior, Commerce, Transportation, Energy, and Homeland Security, and the EPA, (let's call them the Big Eight) but can make a similar request of any agency deemed necessary. The Secretary of State can also request comment from state, tribal, local government officials, and foreign governments.

STEP 2: GET THOSE COMMENTS!

Though the executive order stipulates that the agencies respond within 90 days, agencies can request additional information from State before submitting their views. The time it takes State to respond to any information request will extend the comment period. (Though not a requirement in the executive order, State is also opening a concurrent 30-day period for public comment. This may also be extended.)

STEP 3: REQUEST MORE INFORMATION.

After receiving all these comments, State may determine that it needs more information from TransCanada, Keystone XL's hopeful builders. There is no time limit placed on either issuing this request or receiving the response from TransCanada.

STEP 4: MAKE A DETERMINATION.

Once Secretary Kerry has comments from other federal departments and agencies, state, tribal, and local officials, foreign governments, the general public, and TransCanada, he has to determine whether building the pipeline "would serve the national interest." There is no time limit placed on making this determination.

STEP 5: GRANT A PRESIDENTIAL PERMIT.

(Or not). Whatever Secretary Kerry decides, he would now either prepare a permit for Keystone XL and tell his peers at the Big Eight or notify the Big Eight that he denies a permit for the project. There is no time limit placed on preparing the permit or issuing this notification.

STEP 6: SECOND-GUESSING.

Once the Big Eight gets a green or red light from State, they have 15 days to notify Secretary Kerry if they agree or disagree with his determination. If even one department disagrees, the State Department will refer the application package to the president.

STEP 7: AN EXECUTIVE DECISION.

If (really, when) the Keystone XL application makes it to President Obama's desk, the White House will make the final decision. There is no time limit placed on issuing this decision.

Optimistically, we could see a resolution on Keystone XL in as little as four months. Pessimistically, we may have to wait another 5 years, 4 months, and 16 days. There are tealeaves to read, however. We should expect the decision to drag out if other agencies make burdensome information requests of State before submitting their views, State extends the public comment period significantly, or State requests additional information from TransCanada. All these would be signs that the decision is not yet largely resolved within the administration.

We should have a good sense of how much longer we'll be waiting on a Keystone decision within the next month.