
New US Ambassador to Canada Faces Energy Minefields

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rticle are not to be associated with the views of Flaster Greenberg PC.

President Biden last week nominated David Cohen of Philadelphia to become the new Ambassador to Canada for the United States. Mr. Cohen, a long time power player in Democratic Party politics, is the Senior Advisor to the CEO of Comcast, the cable television and communications giant, prior to which he was also the Senior Executive Vice President and chief lobbyist also for Comcast, where he has been for the last 20 years. Before that, he was the Chief of Staff to Ed Rendell when Mr. Rendell was the Mayor of Philadelphia. Cohen is also the Chair of the Board of Trustees at my alma mater, the University of Pennsylvania, and was formerly head of one of Philadelphia's largest and most prestigious law firms, Ballard Spahr. He is an extraordinarily capable and well-connected person.

Over the next few years, he may need all that talent and connection. Despite deep rooted affinity between the two countries, there now are numerous points of contention, with the leading one being energy.

In November 2015, the Obama Administration ordered a halt to the construction of the Keystone XL pipeline, which would transport oil from Northern Alberta to the Gulf of Mexico where it can be exported. While the Trump Administration reversed that policy, President Biden has reinstated the Obama era hold, potentially killing the pipeline for good.

The stated reason for the American objection was the potential environmental damage, especially to the Sandhills of Nebraska, and especially the Ogallala Aquifer, which provides fresh water to many parts of the midwest. This claim would be stronger were it not for the fact that dozens of other pipelines currently traverse the same aquifer. For Canadians, and especially those in western Canada, it means that part of their economic lifeline has been cut off, all by supposedly Canada's greatest friend and partner.

An even bigger issue now is an attempt by Michigan to stop the use of Enbridge Line 5. This pipeline starts in northern Wisconsin, traverses Michigan and ends in Sarnia, Ontario. While it serves many American markets as well, the bulk of the oil and gas emanate in Canada and are transported back into Canada, crossing the United States only due to geography.

Michigan Governor Gretchen Whitmer ordered Line 5 closed, claiming that it

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endangers the Great Lakes where it crosses the Straits of Mackinac.

Enbridge ignored the order, and the parties are now in both federal and Michigan state court.

For Canada, this attempt by an American governor to stop an international pipeline is intolerable. Not only would a shutdown of Line 5 cause a huge

disruption to Canadian energy supplies both in Ontario and continuing through Quebec and the Canadian maritime provinces, it also would cut off all jet fuel used by Canada's largest airport in Toronto.

While the Canadian government has tread lightly on this next issue, interference with the pipeline may potentially also violate an international treaty signed by Canada and the United States in 1977 called the "Agreement Concerning Transit Pipelines," which governs the international transshipment of energy through each other's country and, without getting too legalistic, may supersede the authority of the Michigan governor to act unilaterally.

The Canadians were further angered when the Biden Administration withdrew its objections to the controversial Nord Stream 2 pipeline in the Baltic Sea from Russia to Germany. President Biden notes how despite his personal opposition to that project, he did not want to adversely affect bilateral

relations between the United States and Germany. This resulted in a face-saving gesture last week, in which the United States dropped sanctions which were preventing completion of the project.

Many viewed President Biden's

move as a surrender to German Chancellor Angela Merkel. The pipeline will increase Germany's dependence on Russian gas and increase incentives for Russia to drill for natural gas in the environmentally sensitive Arctic, with few safeguards. Neither of these concerns, however, ultimately stopped the Biden Administration from allowing the pipeline to continue.

Canada has received no such consideration. Despite being the United States' largest trading partner, arguably its closest military ally, and maintaining the world's longest undefended border, President Biden has either picked fights with the Canadians or stood back while state Governors did so. In its legal brief filed in one of the

lawsuits in the Enbridge matter, Canada stated bluntly that shutting down Line 5 would "harm the relationship between Canada and the United States (and) cause fuel price spikes and layoffs." "The proposed shutdown would cause a massive and potentially permanent disruption to Canada's economy and energy security."

It is into this environment that, should he be confirmed, Mr. Cohen will take up his post in Ottawa. As always, this position will be one of the most important Ambassadorships in the United States Foreign Service. Now, though, the role will require extreme skill, diplomacy, and finesse, as the two neighbors now are in bilateral disputes more serious than any in the last century.

ATTORNEYS MENTIONED

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