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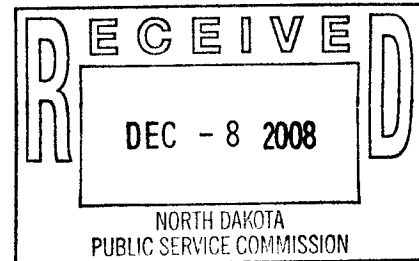
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December 3, 2008

Attn.: Ilona Jeffcoat-Sacco, Esq.  
Public Utility Commission  
600 E. Boulevard Avenue, Department 408  
Bismarck, ND 58505-0480



RE: Case No. PU-08-194

Dear Ms. Jeffcoat-Sacco:

Thank you for forwarding the Staff Memo concerning Case No. PU-08-194. We were aware of *Western Gas Processors*, Case No. 9961, and *Williston Basin v. Koch*, Case No. PU-552-92-442, and consequently discussed in our response brief the differences between the carriers' situations in those cases and NuStar situation. The *Amoco Gathering Line, Dunn County* matter, Case No. 9981, is new to us, and we have not been able to locate it online. From the staff summary, it appears to be a case in which the same company owned both the product being moved and the transmission system, unlike NuStar's situation of moving product for another party and indicating to others that it is available to serve other customers, as well. See paragraph 3, parts (b) and (d) of Fargo's Response, quoting from NuStar's Form 10-K filing, which is part of the record before the Commission. Nevertheless, the City of Fargo would welcome the opportunity to review the file of the newly referred-to case to see if it presents issues which should be discussed before the Commission makes its ruling.

The covering email to the Staff Memo indicates that the question before the Commission is one of fact, rather than law. In light of this, Fargo would call the Commission's attention to an issue of disputed fact which the Commission will have to resolve without the benefit of sworn testimony or affidavit. Fargo asserts that however many customers NuStar has now, it holds itself out to the public on its own web site and in its Form 10-K as willing to have additional customers, provided they meet the specification for users of the Pipeline in issue. See page 15, Form 10-K attached to NuStar's Application here, and paragraph 3(d) of Fargo's response.

Fargo especially notes that NuStar itself indicates to the public that there exist not only the Tesoro Refinery at Mandan but also two other originations for the Pipeline. One of these originations is Magellan Midstream Partners, LP, which in turn holds itself out as having a terminal in Fargo, North Dakota. *See* Exhibit B to Fargo's Response.

The presence of a Magellan terminal in Fargo, if true, contradicts the representation of NuStar's counsel at page 1 of its Reply that Magellan Midstream Partners, LP is operative in Roseville, Minnesota and thus beyond the jurisdiction of the Commission in North Dakota.

The parties have not requested a hearing in this matter, but if the outcome hinges on which party's attorney has provided the more accurate factual description of the Pipeline's originations and NuStar's representations about the Pipeline, it may be necessary to place sworn factual material before the Commission.

NuStar and Fargo are plainly not on equal footing with respect to investigating the factual significance of NuStar's investment representations in its SEC Form 10-K, which clearly intimate that NuStar would welcome additional customers, *vis-à-vis* NuStar's counsel's representation that Tesoro is its only customer. Is NuStar engaged only in the business of providing transport to Tesoro Mandan, or is it engaged in the business of providing transport to anyone who meets its criteria for moving product through the Pipeline?

For tax purposes, one is often entitled to deduct the expenses of a business in which one is engaged even in an unprofitable year; likewise one may be engaged in the business of moving product for the public even if one's marketing has yielded only one customer.

The problem with waiting for NuStar to secure the additional customers it apparently would like to have before requiring a Certificate of Public Necessity is that the public has no way of knowing if and when future contracts are entered into, as there is no public notice requirement with respect to such contracts. That is surely why this Commission stated that the relevant public is that which would *potentially* be able to use a common pipeline carrier service (not only those who *actually* use the service). *See Williston Basin Interstate Pipeline Company v. Koch Industries, Inc.*, Case No. 552-92-442.

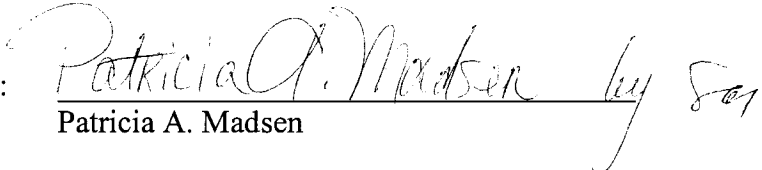
Perhaps it would be best for the record if NuStar would designate a corporate official who could respond under oath at a telephone deposition to questions about the issues raised by the factual discrepancies concerning NuStar's operating goals and its current operations.

Ilona Jeffcoat-Sacco, Esq.  
December 3, 2008  
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It may be that the finance, regulatory affairs and information technology folks at NuStar are not communicating well, and that a definitive answer could be obtained whether NuStar is in the business of moving petroleum products only for Tesoro, or instead for anyone who can meet its specs. This would not answer the legal issues raised in the briefing to date, but it would create a better factual record than the conflicting representations of counsel and various web sites, while limiting expenses. If anything startling emerged in deposition, the parties and the Commission could revisit the question whether further fact-finding is required to resolve the Motion to Withdraw.

Yours very truly,

DUNCAN OSTRANDER & DINGESS, P.C.

By:   
Patricia A. Madsen

PAM:sas  
Enclosure  
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