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January 30, 2009

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PUBLIC SERVICE COMMISSION

DARRELL NITSCHKE
EXECUTIVE SECRETARY & DIRECTOR
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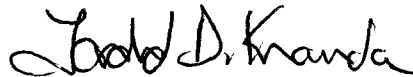
Re: NuStar Pipeline Operating Partnership, LP
Case No: PU-08-194
Our File No. 12607

Dear Mr. Nitschke:

Enclosed for filing is an original and seven copies of the Post Informal Hearing Brief of NuStar Pipeline Operating Partnership, LP which has been served on the parties as shown on the Affidavit of Service. For your convenience, an electronic copy has also been sent to dnitschk@nd.gov.

If you have any questions, please feel free to contact me.

Sincerely,



Todd D. Kranda

TDK:ms

Encs

c: NuStar Pipeline Operating Partnership, LP



31 PU-08-194 Filed: 2/2/2009 Pages: 7
Post Informal Hearing Brief

NuStar Pipeline Operating Partnership, L.P.
KelschKelschRuff&Kranda, Todd Kranda

**THE STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

NUSTAR PIPELINE OPERATING PARTNERSHIP, LP) CASE NO. PU-08-194
NORTHERN PRODUCT SYSTEM)
PUBLIC CONVENIENCE AND NECESSITY)

**POST INFORMAL HEARING BRIEF OF
NUSTAR OPERATING PARTNERSHIP, LP**

Statement of the Case

On April 23, 2008, NuStar Pipeline Operating Partnership, LP (NuStar), at the request of the North Dakota Public Service Commission staff, applied for a Certificate of Public Convenience and Necessity (PCN) for NuStar's North Product System.

The North Product System was originally constructed by Amoco Oil Company (Amoco) in 1958 as a proprietary pipeline to transport petroleum products from Amoco's Mandan, North Dakota refinery to the BN Railroad at Mandan, North Dakota and to Jamestown, North Dakota and on to locations in the State of Minnesota.

On May 21, 2008, the North Dakota Public Service Commission filed a Notice of Opportunity for Hearing in Case No. PU-08-194, and in the Notice it stated that the issues to be considered were:

1. Need for the service
2. Fitness and ability of the applicant to provide service
3. Effect on other public utilities providing similar service
4. Adequacy of the proposed service
5. Technical, financial and managerial ability of the applicant to provide service

On June 25, 2008, the City of Fargo (Fargo) filed a Petition to Intervene and a Request for a Hearing in Case No. PU-08-194.

In its Petition to Intervene, Fargo recited issues and concerns that went beyond the five factors to be considered by the Public Service Commission in granting or denying a PCN pursuant to N.D.C.C. § 49-03.1-04. A number of the issues in Fargo's Petition to Intervene

involved pipeline transmission, siting factors and statutes that are not relevant nor material to a PCN action.

After NuStar received Fargo's Petition to Intervene and Request for a Hearing, NuStar retained local legal counsel to represent it in this matter and conducted legal research into North Dakota's statutes, case law, and past Public Service Commission precedent.

After completing the research, NuStar determined that it was not required by North Dakota law to have a PCN for its North Product System.

On July 31, 2008, NuStar filed a request to withdraw its application for PCN.

Issue: Whether NuStar is engaged or employed in the State of North Dakota to furnish its products or services to the public generally?

Legal Argument

The narrow issue before the Public Service Commission is whether, under North Dakota law, NuStar is legally required to obtain a PCN.

N.D.C.C. § 49-03.1-01 governs who is to secure a PCN:

“Certificates of public convenience and necessity-Who to secure. No public utility shall begin construction or operation of a public utility plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation.”

The North Product System pipeline was constructed and has been in operation since 1958. In this case, NuStar is not beginning construction or operation of the North Product System pipeline, so NuStar is not legally required to obtain a PCN.

On December 2, 2008, the Public Service Commission legal staff issued a memorandum to the Commission. In this memorandum, Commission staff advised that North Dakota Century Code Chapter 49-19 imposes regulations on common carrier pipelines. A different chapter, Chapter 49-31 N.D.C.C., is the PCN law which governs NuStar's application for PCN in this

case.

Commission staff identified the issue as to whether NuStar is required to have a PCN to be the following question of fact:

“Issue: Whether NuStar is engaged or employed in the State of North Dakota to furnish its products or services to the public generally?”

On December 3, 2008, the Commission decided it could benefit from an informal hearing on the PCN.

On January 9, 2009, NuStar filed the Affidavit of Joseph Graham in Support of NuStar’s Motion to Withdraw its Application for PCN.

On January 14, 2009, the Commission held an informal hearing on NuStar’s request for withdrawal of PCN, at which time NuStar and Fargo appeared with their legal counsel. In addition, Joseph Graham also appeared in person at the hearing.

N.D.C.C. § 49-03.1-01 only required a “public utility” to obtain a PCN. N.D.C.C. § 49-03.1-02 defines a public utility as:

“‘Public utility’ includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words ‘public utility’ as used in this chapter do not apply to electric public utilities, telecommunications companies that are not incumbent telecommunications companies under chapter 49-21, or motor carriers of persons or property for hire.”

Fargo filed a Submission of Supplemental Legal Authority with the Commission. Much of the supplemental legal authority is from jurisdictions other than North Dakota, which have different laws than North Dakota. In North Dakota, the Public Service Commission only has such authority as is conferred upon it by the legislature. Grafton v. Ottetail Power Co., 86 N.W.2d 197 (ND 1957).

Statutes and case law from other states have no application or precedential value in North

Dakota or in this case.

Fargo also compares public utilities to common carriers. As indicated in the Commission staff's memorandum, North Dakota defines and treats public utilities and common carriers differently. They are regulated by different chapters of the North Dakota Century Code and have different legal definitions. N.D.C.C. Chapter 49-03.1 only requires public utilities to have a PCN. North Dakota law does not require common carriers to have a PCN. As such, Fargo's references to common carrier statutes have no relevance as to whether NuStar is a public utility.

NuStar is not furnishing its services to the public generally.

1. NuStar provides transportation services in North Dakota to a single entity (Tesoro) (Graham Affidavit, #8)
2. NuStar is not aware of any other potential customer who has expressed a desire or need to transport refined products in the North Product System pipeline. (Graham Affidavit, #12)

In Williston Basin v. Koch Industries, PU-552-92-422, the Public Service Commission found that, while the Koch pipeline was a common carrier, it was not a public utility because it was not engaged or employed in the State to furnish its products or services to the public generally. Under the facts, Koch gathers compressed natural gas from approximately 1,100 producer wells, then transports Koch owned gas plus the gas owned by in-kind owners (which amounted to five to ten percent of the residue gas). In addition, Koch had an exchange agreement with KN Energy whereby Koch would take KN's Bowden gas to satisfy its customer obligations.

Under these facts, the Commission found the preponderance of the evidence did not establish that Koch is engaged or employed to furnish its services to the public generally or that it proposed to be so engaged or employed.

In Western Gas Processors, Case 9981, Western entered into an agreement with several

oil producers for gathering casing head gas produced by the oil wells. Western transported the gas and, after processing, sold it to MDU, the sole purchaser of the output of the product.

The Commission found that Western was not selling its products or services to the public generally and determined that the Commission did not have jurisdiction to require a PCN.

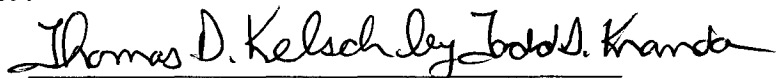
NuStar is providing services to one customer only, Tesoro refinery. The North Product System pipeline was built to transport refined petroleum products from one source, the Mandan refinery. Unless another refinery is built along the North Product System line, there will not likely ever be any more than one entity using the North Product System.

Conclusion

By its definition and by practice, NuStar is not engaged or employed, or proposing to be engaged or employed in offering its services to the public generally. Therefore, the Public Service Commission has no jurisdiction to require NuStar to obtain a PCN.

Finally, there is no value to hold a formal hearing on this matter due to the fact that the Commission has no jurisdiction. NuStar could not be required to appear or attend such a formal hearing on the PCN application. The only remedy the Commission would have would be to deny the PCN which NuStar is no longer seeking.

Dated this 30th day of January, 2009.



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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

NUSTAR PIPELINE OPERATING PARTNERSHIP, LP) CASE NO. PU-08-194
NORTHERN PRODUCT SYSTEM)
PUBLIC CONVENIENCE AND NECESSITY)

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that on the 30 day of January, 2009, the undersigned deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above-captioned action:

Post Informal Hearing Brief of NuStar Pipeline Operating Partnership, LP

That a copy of the above document(s) was securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

ILLONA JEFFCOAT-SACCO
ATTORNEY AT LAW
PUBLIC SERVICE COMMISSION
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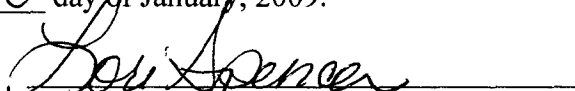
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MELISSA K SCHNEIDER

Subscribed and sworn to before me this 30 day of January, 2009.


Notary Public, State of North Dakota

