

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
WILLIAM J. DELMORE
DANIEL NAGLE

*Also Licensed in Minnesota

 MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

February 9, 2009

RECEIVED

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PUBLIC SERVICE COMMISSION

DARRELL NITSCHKE
EXECUTIVE SECRETARY & DIRECTOR
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT 408
BISMARCK ND 58505-0480

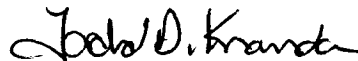
Re: NuStar Pipeline Operating Partnership, LP
Case No: PU-08-194
Our File No. 12607

Dear Mr. Nitschke:

Enclosed for filing is an original and seven copies of the Supplemental 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



33 **PU-08-194** Filed: 2/9/2009 Pages: 4
Supplemental Brief of NuStar

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)

**SUPPLEMENTAL BRIEF OF NUSTAR PIPELINE
OPERATING PARTNERSHIP, LP**

This supplemental brief is submitted by NuStar for the purpose of commenting on the holding in North Dakota Public Service Commission (PSC) case Williston Basin v. Amerada Hess Corporation, Case No. PU-522-92-524 that was recently brought to the attention of the parties by PSC legal staff.

It is NuStar's position that the Amerada Hess case supports the proposition that NuStar is not a public utility under N.D.C.C. § 49-03.1-05(2) because NuStar is not engaged or employed in this state to furnish its products or services to the public generally. Amerada Hess also supports NuStar's position that NuStar is not required to obtain a Certificate of Public Convenience and Necessity (PCN) from the Commission under N.D.C.C. 49-03.1-01 before beginning construction or operation of the North Product System.

In Amerada Hess, Williston Basin filed a complaint against Amerada Hess alleging, among other matters, that Amerada Hess was required to obtain a PCN before construction and operation of Amerada Hess's proposed natural gas pipeline.

In the present case, no complaint was filed against NuStar by the PSC or Fargo, but the issue is still the same: Whether or not NuStar is required to obtain a PCN for its North Product System Pipeline before operation of the pipeline.

Amerada Hess intended to purchase gas at the wellhead from third party producers by a percentage of proceeds contract. A portion of the cost of purchase in a percentage of proceeds contract is for transportation. About ten percent of the gas at the tailgate of the Tioga plant was

not owned by Amerada Hess.

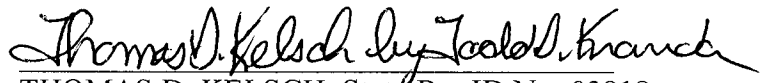
The PSC found that Amerada Hess, while a common carrier, did not hold itself out to serve the public generally or that it proposed to be so engaged or employed.

The PSC concluded that Amerada Hess was not required to have a PCN. However, the PSC, in Conclusions of Law #7, held that Amerada Hess may be required to secure a PSC in the future if it changes its operations.

NuStar is not transporting its own petroleum products. Amerada Hess transported 90% of its own products and 10% gas owed by others. This distinction does not affect the application of the Amerada Hess case as precedence in the NuStar case. NuStar, as shown in the Affidavit of Joe Graham, is employed in furnishing its services to only one party, Tesoro. It has no contract with any other party to transport petroleum products and has not been approached to provide services to any other party. This undisputed fact shows that NuStar is “not engaged or employed in this state to furnish its product or services to the public generally.”

As in Amerada Hess, if NuStar were to change its operations and start providing its services to the public generally, at that time NuStar may be required to obtain a PCN. Until and if that would occur, NuStar is not required to have a PCN, and NuStar should be permitted to withdraw its application of PCN.

Dated this 9th day of February, 2009.



THOMAS D. KELSCH, State Bar ID No. 03918
KELSCH, KELSCH, RUFF & KRANDA
Attorneys for NuStar Pipeline Operating
Partnership, LP
103 Collins Avenue, P.O. Box 1266
Mandan, North Dakota 58554-7266
(701) 663-9818

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 9 day of February, 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:

Supplemental 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
600 E BOULEVARD, DEPT 408
BISMARCK ND 58505-0480

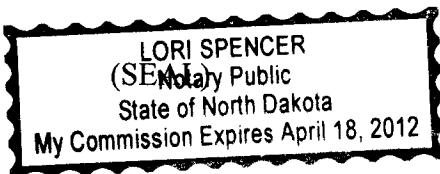
JOHN M DINGESS
ATTORNEY AT LAW
3600 S YOSEMITE ST
DENVER CO 80237-1829

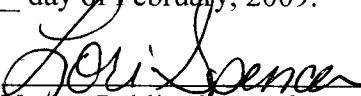
ERIK R JOHNSON
ATTORNEY AT LAW
505 BROADWAY ST N - STE 206
FARGO ND 58102

PATRICIA MADSEN
ATTORNEY AT LAW
3600 S YOSEMITE ST
DENVER CO 80237-1829


MELISSA K SCHNEIDER

Subscribed and sworn to before me this 9 day of February, 2009.




Notary Public, State of North Dakota