

PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA

NUSTAR PIPELINE OPERATING PARTNERSHIP L.P. )  
NORTHERN PRODUCT SYSTEM ) Case No. PU-08-194  
PUBLIC CONVENIENCE AND NECESSITY )

**FORTHWITH  
MOTION FOR CONTINUANCE OF HEARING  
SCHEDULED FOR JUNE 25, 2009**

Commissioners Tony Clark, Kevin Cramer, and Brian Kalk

APPEARANCES

Al Wahl, Office of Administrative Hearings, 1707 North 9<sup>th</sup> Street, Bismarck ND 58501, and/or 138 East Edmonton Drive, Bismarck ND 58501, as Procedural Hearing Officer

Illona Jeffcoat-Sacco, Chief Counsel, Public Service Commission, State Capitol, Bismarck ND 58505 on behalf of the Public Service Commission

Thomas D. Kelsch, Arlen M. Ruff and Todd D. Kranda, Kelsch, Kelsch, Ruff & Kranda, 103 Collins Avenue, P. O. Box 1266, Mandan ND 58554-7266, as Attorneys for NuStar Pipeline Operating Partnership L.P.

Erik R. Johnson, Erik R. Johnson & Assoc., Ltd., 505 Broadway, Suite 206, Fargo ND 58102, as Fargo City Attorney

John M. Dingess, Patricia Madsen, Duncan, Ostrander & Dingess, P.C., 3600 So. Yosemite St., Suite 500, Denver CO 80237-1829, as Special Counsel to the City of Fargo

The City of Fargo (Fargo) hereby requests a continuance of the hearing presently set to occur before the Commission tomorrow morning, June 25, 2009. As grounds for such motion, Fargo states as follows:

1. Fargo submitted a draft Statement of Stipulated Facts to counsel for NuStar on June 1, 2009.

2. NuStar responded with a counter-draft this morning, June 24, 2009, the day before the hearing and less than six hours before Fargo's counsel need to depart for the airport.

3. The changes NuStar proposes to Fargo's draft are substantial. Less than six hours is not sufficient time to review, analyze, confer with Fargo's consultants, confer with NuStar's counsel, confer with Mr. Wahl about witness appearances, and catch the flight to Bismarck at 4:52 p.m. MDT.

4. NuStar does not cite sources and has not provided comments or explanations as to its proposed changes.

5. Given adequate time, Fargo believes that a Statement of Stipulated Facts could be developed. Less than six hours is not adequate.

6. On information and belief, Fargo's attorneys believe that counsel for NuStar are dealing with significant medical issues in their office which may explain the lateness of the response.

7. At approximately 10:10 a.m. MDT (11:10 a.m. CDT) via e-mail to Mr. Kelsch, Fargo's counsel asked whether NuStar would join in a motion to continue. A true and correct copy of this motion was transmitted via e-mail at approximately 10:48 a.m. MDT (11:48 a.m. CDT). Fargo's counsel left telephone messages concerning the Motion at approximately 11:20 a.m. MDT (12:20 a.m. CDT). We are unable to say whether NuStar joins in this Motion.

On the grounds stated above, Fargo requests that the Commission vacate the hearing set for tomorrow morning, June 24, 2009, and reset the matter at a later time. Fargo and NuStar can then confer with Judge Wahl on a firm schedule for the development of a Statement of Stipulated Facts, or for decisions concerning the appearance of witnesses, or both.

DATED: this 24<sup>th</sup> day of June, 2009.

/s/ John M. Dingess  
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JOHN M. DINGESS, No. 6123  
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