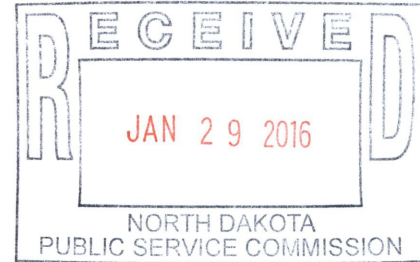


January 29, 2016

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480



**RE: NuStar Pipeline Operating Partnership L.P.'s Consolidated Application for a Certificate of Corridor Compatibility and Route Permit, and Waiver Application
Case No. PU-15-674**

Dear Mr. Nitschke:

Enclosed for filing in the above-referenced matter please find an original and ten (10) copies of NuStar Pipeline Operating Partnership L.P.'s proposed Findings of Fact, Conclusions of Law, and Order. PDF versions of the proposed Findings of Fact, Conclusions of Law, and Order, and this letter, were filed via e-mail with the Commission today. A Word version of the enclosed document was also e-mailed to Zachary Pelham and Julie Prescott.

If you have questions, please let me know.

Sincerely,

A handwritten signature in dark ink that reads "Mollie M. Smith".

MOLLIE M. SMITH

MMS/rg/57926006
Enclosures

cc: Zachary Pelham (*with enclosure – via E-mail*)
Julie Prescott (*with enclosure – via E-mail*)
Michael Dillinger (*with enclosure – via E-mail*)
Christopher Jimenez (*with enclosure – via E-mail*)

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
www.fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth
Minneapolis, MN
55402-1425

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PU-15-674 Filed: 1/29/2016 Pages: 9
Proposed Findings of Fact, Conclusions of Law, and Order

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

NuStar Pipeline Operating Partnership L.P.
8-Inch Refined Products Pipeline – Cass County
Siting Application

Case No. PU-15-674

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

February __, 2016

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk.

Mollie M. Smith, Attorney at Law, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402, and Michael P. Dillinger, NuStar Senior Counsel, 19003 IH-10 West, San Antonio, Texas 78257, on behalf of NuStar Pipeline Operating Partnership L.P.

Zachary E. Pelham, Special Assistant Attorney General, 314 E. Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the North Dakota Public Service Commission.

Allen C. Hoberg, Administrative Law Judge, Office of Administrative Hearings, 2911 N. 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On September 17, 2015, NuStar Pipeline Operating Partnership L.P. (NuStar) filed with the North Dakota Public Service Commission (the Commission) a consolidated application for a Certificate of Corridor Compatibility and Route Permit (the Application) for an approximately 7.3-mile-long, 8-inch refined petroleum products pipeline and associated facilities to be located in Cass County, North Dakota (the Project).

Also on September 17, 2015, NuStar filed an application for waiver of certain procedures and time schedules set forth in North Dakota Century Code Sections 49-22-07.2, 49-22-08, 49-22-08.1, and 49-22-13, and North Dakota Administrative Code Chapter 69-06-06 and Section 69-06-01-02, requiring separate filings and applications for a certificate of corridor compatibility and a route permit, separate notice of such applications, separate hearings on such applications, and certain time schedules.

On November 4, 2015, the Commission deemed the Application complete, conditioned on receiving copies of the environmental and cultural studies and location information for the portion of the Project within the Cenex Fargo Terminal site (now referred to as the Cenex Prosper Terminal site) at least ten business days prior to the public hearing, and issued a Notice of Filings and Public Hearing scheduling a hearing for January 21, 2016, at 9:00 am CST at the Harry D. McGovern Alumni Center, 1241 N. University Drive, Fargo, North Dakota.

The Notice of Filings and Public Hearing identified the following issues to be considered with respect to the Waiver Application:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice of Filings and Public Hearing identified the following issues to be considered with respect to the Application:

1. Will the location and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On January 6, 2016, NuStar filed a Motion to Amend the Consolidated Application to include a route and corridor adjustment where the pipeline exits the proposed Cenex Prosper Terminal site. On the same date, NuStar filed copies of environmental and cultural resource inventory reports for the route and corridor adjustment and NuStar's facility locations within the Cenex Prosper Terminal site, concurrence letters from the State Historical Society of North Dakota, and the site plan for the Cenex Prosper Terminal.

On January 21, 2016, the hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all the evidence presented, the Commission makes the following:

Findings of Fact

1. NuStar is a Delaware limited partnership authorized to do business in the state of North Dakota since January 5, 2001, as evidenced by the corporate papers filed with the Commission on September 16, 2015 (*see* Case No. PU-15-673).

Size, Type, and Preferred Location of Facility

2. The Project will consist of approximately 7.3 miles of new, 8-inch diameter pipeline and associated facilities to be located in Cass County, North Dakota. The Project will originate at NuStar's proposed Fargo Pump Station within the proposed Cenex Prosper Terminal site, to be located approximately 1.3 miles southeast of Prosper, North Dakota, and terminate at NuStar's proposed Mapleton Junction, located approximately 2.0 miles southeast of Mapleton, North Dakota.

3. At the public hearing, NuStar presented testimony and exhibits in support of a motion to amend its Application to include a route and corridor adjustment identified after filing the Application. NuStar testified that the location of NuStar's proposed Fargo Pump Station within the Cenex Prosper Terminal site had not been determined as of the date the Application was filed and, once the site plan was prepared, exiting the pump station and Cenex Prosper Terminal from the south and installing the pipeline along the south side of 32nd Street SE was the best route from a design and constructability standpoint. The revised proposed corridor and route are depicted in Hearing Exhibit No. 3.

4. At the public hearing, NuStar provided a copy of an amendment of option agreement for easement and memorandum of option agreement for easement, executed by the landowners affected by the route adjustment, and e-mail correspondence to demonstrate the landowners' approval of the route adjustment (*see* Hearing Exhibit Nos. 5 and 6).

5. The maximum operating pressure for the pipeline will be 1,480 pounds per square inch gauge, and the maximum operating temperature will be 100 degrees Fahrenheit. The pipeline will be capable of a maximum flow rate of approximately 64,000 barrels per day (bpd), but will have an initial operational flow rate of approximately 24,000 bpd.

6. The Fargo Pump Station will consist of metering equipment, a pump station, a pig trap launcher, a pump control building, and supervisory control and data acquisition (SCADA) system and communication equipment. The Mapleton Junction facilities will consist of an interconnect line and valve to connect the Project to NuStar's existing North System Pipeline, a pig trap receiver, a control building, and SCADA system and communication equipment.

7. Three mainline valves will be located along the pipeline: one block valve at the Fargo Pump Station; one block valve at the Mapleton Junction; and one in-line check valve located south of the Maple River.

8. The temporary construction right-of-way will typically be 70 feet wide, but will be expanded in some areas, such as river, road, wetland, and railroad crossings. The permanent right-of-way will be no more than 50 feet wide.

9. The total cost of the Project is estimated to be approximately \$12 million.

Study of Preferred Location

10. The proposed corridor and route are within the larger study area analyzed by NuStar. NuStar testified that all portions of the proposed corridor and route were field surveyed, and NuStar provided field survey documentation for the proposed corridor and route (*see* Hearing Exhibit Nos. 1, 10, 12, and 14).

11. NuStar evaluated a 1.0-mile-wide corridor (0.5-mile on either side of the proposed centerline) between, and including, the Fargo Pump Station site and the Mapleton Junction site. In that area, NuStar collected environmental data, including information on cultural resources, natural resources, soils, land use, wetlands and waterbodies, noxious weeds, trees and shrubs, and protected species and habitats.

12. NuStar conducted a Class III cultural resource inventory and various natural resource field surveys on the proposed corridor, which includes a 300-foot-wide area extending south from 32nd Street SE along the proposed route adjustment, a 200-foot-wide area centered on the proposed route with wider areas for additional temporary workspaces along the remainder of the route, and the facility sites (Survey Area). The Survey Area, identified as the proposed corridor, is depicted in Hearing Exhibit No. 3.

13. The following agencies were contacted by NuStar and provided comments regarding the Project: U.S. Army Corps of Engineers (USACE); Grand Forks Air Force Base; North Dakota Parks and Recreation Department (NDPRD); State Historical Society of North Dakota (SHSND); North Dakota State Water Commission (SWC); North Dakota Department of Trust Lands (NDTL); North Dakota Department of Transportation (NDDOT); North Dakota Department of Health (NDDOH); and Cass County Weed Control Board. Copies of the responses are provided in Appendix E of Hearing Exhibit No. 1 and in Hearing Exhibit Nos. 15 and 16. Input provided includes the following:

- (a) The USACE stated that a Section 404 permit is required for any discharge of dredge or fill material in waters of the United States.
- (b) The Grand Forks Air Force Base stated that it has no intercontinental ballistic missile launch sites or launch control facilities within 1,200 feet of the Project site.
- (c) The NDPRD recommended that the Project be accomplished with minimal impacts, all efforts be made to avoid disturbance of critical habitats, and impacted areas be revegetated with native species. The NDPRD also stated that there are no documented occurrences in its database of plant or

animal species of concern or other significant ecological communities within a one-mile radius of the Project area. The NDPRD noted that the Project crosses a Recreation Trail Project snowmobile trail administered by the NDPRD, and provided a map depicting the location of the snowmobile trail.

- (d) With respect to the Class III cultural resources inventory reports, the SHSND concurred with the determinations that no significant sites will be affected by the Project. The SHSND also found NuStar's Unanticipated Discovery Plan to be acceptable.
- (e) The SWC stated that floodplains are present in the Project area, noted that floodplain permitting is done at the local level, and requested that NuStar work closely with the local floodplain administrators. The SWC also discussed its network of observation/monitor water wells and gaging stations within the State, provided a map of such infrastructure in the Project area, and asked to be informed if any such infrastructure may be affected or is damaged by the Project. The SWC also stated that waste materials must be disposed of properly, and no sole-source aquifers have been designated in North Dakota.
- (f) The NDTL confirmed the location of the Project in relation to NDTL mineral interests.
- (g) The NDDOT stated that the Project should have no effect on the NDDOT's highways, and noted the Project may only cross, and not parallel, I-94. The NDDOT also stated that if any work is to be done within highway right-of way, appropriate permits and risk management documents would need to be obtained from the Department of Transportation District Engineer.
- (h) The NDDOH stated that it believes that environmental impacts from construction of the Project will be minor and can be controlled by proper construction methods, and provided construction-related comments and guidelines.
- (i) The Cass County Weed Control Officer requested information related to NuStar's weed control plans and grass seed mix sources.

Siting Criteria

14. The Commission established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in evaluating the suitability of granting a certificate of corridor compatibility and route permit. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

15. NuStar evaluated the Project with respect to the Exclusion Area, Avoidance Area, Selection, and Policy criteria of the Commission.

16. A transmission facility route must not be sited within an Exclusion Area. Exclusion areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor unless there is no reasonable alternative.

17. No Exclusion Areas are located within the proposed corridor or crossed by the proposed route.

18. A transmission facility may not be sited within an Avoidance Area, unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes. Economic considerations alone are not sufficient to establish no reasonable alternative.

19. No Avoidance Areas are located within the proposed corridor or crossed by the proposed route.

20. In accordance with the Commission's Selection Criteria, a transmission facility shall be designated only when it is demonstrated that any significant adverse effects that will result from the location, construction, and operation of the transmission facility as they relate to the Selection Criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum.

21. NuStar has analyzed the impacts of the Project in relation to all of the relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.

Mitigation to Minimize Impact

22. NuStar has agreed to a number of steps to mitigate the impact of the Project, as indicated by the Certification Relating to Order Provisions – Transmission Facility Siting, dated January 20, 2016, which is attached to this Order.

23. NuStar testified that a SCADA system will be installed as part of the Project, which will monitor pressure, flow, and temperature 24 hours per day, 7 days per week at a

control center, and the control center will have the ability to remotely shut-down the pipeline and associated facilities.

24. NuStar testified that it will retain inspectors to ensure compliance with environmental and safety requirements during Project construction.

25. NuStar testified that it will participate in the North Dakota One-Call Excavation System.

26. NuStar testified that the design, construction, and operation of the Project will be in accordance with the United States Department of Transportation regulations governing the transportation of refined petroleum products, including those set forth in 49 C.F.R. Part 195.

From the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

Conclusions of Law

1. The Commission has jurisdiction over the subject matter of these applications under North Dakota Century Code Chapter 49-22.

2. NuStar is a utility as defined in North Dakota Century Code Section 49-22-03(13).

3. The Project proposed by NuStar is a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).

4. NuStar's motion to amend the Application complies with the requirements of North Dakota Century Code Chapter 28-32, and North Dakota Administrative Code Sections 69-02-02-07(1) and 69-02-02-07.1.

5. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

6. The location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.

7. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

8. The Project is of such length, design, location, and purpose that it will produce minimal adverse effects, as defined under North Dakota Century Code Section 49-22-07.2; therefore, it is appropriate for the Commission to waive those certain procedures and time schedules as requested in the waiver application under North Dakota Century Code 49-22-07.2.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

The Commission orders:

1. NuStar's motion to amend its applications for a certificate of corridor compatibility, a route permit, and waiver of procedures and time schedules is granted.
2. NuStar's application for waiver of procedures and time schedules, as amended, is granted.
3. Certificate of Corridor Compatibility No. ___ is issued to NuStar Pipeline Operating Partnership L.P. designating a corridor for the construction, operation, and maintenance of approximately 7.3 miles of 8-inch diameter pipeline and associated facilities for the transmission of refined petroleum products in Cass County, North Dakota. For purposes of the Certificate, the designated corridor is the proposed corridor depicted in Hearing Exhibit No. 3.
4. Route Permit No. ___ is issued to NuStar Pipeline Operating Partnership L.P. designating a route for the construction, operation, and maintenance of approximately 7.3 miles of 8-inch diameter pipeline and associated facilities for the transmission of refined petroleum products in Cass County, North Dakota. For purposes of the Permit, the designated route is the proposed route depicted in Hearing Exhibit No. 3.
5. The January 20, 2016 Certification Relating to Order Provisions – Transmission Facility Siting (Certification) is incorporated by reference and attached to this Order.
6. To the extent there are any conflicts or inconsistencies between NuStar's applications in this proceeding and the Certification, the Certification provisions control.
7. NuStar is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or a different transmission facility than was specified in the applications within the corridor granted in this proceeding.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian Kalk
Commissioner