

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-17-51

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April __, 2017

Appearances

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus.

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 February 24, 2016, in Case No. PU-15-674, the Commission issued Certificate of Corridor Compatibility No. 181 and Route Permit No. 193 to NuStar Pipeline Operating Partnership L.P. (NuStar) for the construction, operation, and maintenance of approximately 7.3 miles of 8-inch refined petroleum products pipeline and associated facilities in Cass County, North Dakota.

On January 30, 2017, NuStar filed an application to amend the designated corridor and route to include a site for a terminal with storage tanks, pumps, and associated facilities in Section 4, Township 139 North, Range 50 West in Mapleton Township, Cass County, North Dakota (Project).

Also on January 30, 2017, NuStar filed an application for waiver of procedures and time schedules established under 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 Section 69-06-01-02 and Chapter 69-06-06, requiring separate filings, separate notices, and separate hearings on such applications.

On February 16, 2017, the Commission deemed the application for an amended certificate of corridor compatibility and an amended route permit complete, and issued a Notice of Filings and Notice of Opportunity for Hearing (Notice), inviting interested parties to comment or request a hearing in writing by March 22, 2017. The Notice stated the Commission can determine the matter without a hearing.

The Notice identified the following issues to be considered with respect to the application for waiver of procedures and time schedules:

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 identified the following issues to be considered with respect to the application for corridor and route adjustment:

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 February 23, 2017, the North Dakota Department of Health filed comments and recommendations in which it stated that it believes environmental impacts from construction of the Project will be minor and can be controlled by proper construction methods. No other comments, and no requests for hearing, were received by the Notice of Opportunity deadline of March 22, 2017.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and 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 (*see* Case No. PU-15-673).

Size, Type, and Preferred Location of Facility

2. The Project will be located in an area approximately 1,486 feet by 913 feet within an approximately 69.68 acre parcel of land described as Lot 1, Block 1, Kindred I94 Exit Subdivision in Section 4, Township 139 North, Range 50 West, Cass County, North Dakota. The Project is located approximately six miles south of the point of interconnection of NuStar's 8-inch Laurel Interconnect Pipeline to the existing Cenex pipeline system, and approximately one mile north of NuStar's Mapleton Junction site.

3. The Project, referred to as the Mapleton Terminal, will be a refined products storage and distribution terminal, which may include installation of the following facilities: up to six aboveground storage tanks, with a capacity of up to 145,000 barrels each and a height of up to 55 feet; up to one aboveground storage tank with a capacity of up to 10,000 barrels and a height of up to 44 feet (to be used as a pressure relief valve outlet); tank booster and other pumps; a mainline booster pump and associated components; piping to/from pipeline and facility components; pig traps at pipeline interconnect; meters; MCC building; control building; pump building; office building; maintenance shed; electrical equipment, including terminal power; supervisory control and data acquisition equipment; communications equipment; a stormwater storage pond; lighting; fencing; and associated site improvements and facilities.

4. NuStar initially plans to construct one 50,000 barrel aboveground storage tank and a portion of the other facilities. NuStar plans to begin construction of the initial phase of terminal construction on or about June 1, 2017, and to have the initial phase in-service by November 30, 2017. Future phases will be constructed and placed in-service, as needed.

Study of Preferred Location

5. The Project is within the one-mile-wide Study Area evaluated by NuStar in its application for a certificate of corridor compatibility and a route permit.

6. NuStar conducted natural resource field surveys on all of Lot 1 in Section 4, Township 139 North, Range 50 West (Survey Area). One wetland is present within the Survey Area, but construction activities will not impact the wetland. No trees/saplings/shrubs, noxious weeds, or threatened or endangered species or habitat were observed in the Survey Area.

7. NuStar conducted a Class III cultural resources inventory on the Survey Area. No cultural resources will be affected by construction and operation of the Project within the Survey Area.

Siting Criteria

8. The Commission established criteria pursuant to North Dakota Century Code Section 49-22-05.1 to guide the Commission in the corridor and route suitability evaluation and designation process. 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.

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

10. 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.

11. No Exclusion Areas are located within the Survey Area.

12. 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.

13. No Avoidance Areas are located within the Survey Area.

14. 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.

15. 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.

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 part of a transmission facility as defined in North Dakota Century Code Section 49-22-03(12).
4. 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.
5. The location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.
6. 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.
7. 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.
8. 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 application for waiver of procedures and time schedules is granted.
2. First Amended Certificate of Corridor Compatibility No. 181 is issued to NuStar, designating a corridor for the construction, operation, and maintenance of approximately 7.3 miles of 8-inch diameter pipeline and associated facilities, including the Mapleton Terminal, for the storage and transmission of refined petroleum products in Cass County, North Dakota. For

purposes of the Certificate, the designated corridor is adjusted to include the Adjusted Corridor shown in Exhibit A to the Dillinger Affidavit, filed on January 30, 2017.

3. First Amended Route Permit No. 193 is issued to NuStar, designating a route for the construction, operation, and maintenance of approximately 7.3 miles of 8-inch diameter pipeline and associated facilities, including the Mapleton Terminal, for the storage and transmission of refined petroleum products in Cass County, North Dakota. For purposes of the Permit, the designated route is adjusted to include the Adjusted Route shown in Exhibit A to the Dillinger Affidavit, filed on January 30, 2017.

4. Except to the extent superseded by this Supplemental Order, NuStar is required to comply with all provisions of the Commission's February 24, 2016 Findings of Fact, Conclusions of Law and Order, including the Certification Relating to Order Provisions – Transmission Facility Siting, issued in Case No. PU-15-674.

5. 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

Julie Fedorchak
Commissioner

Randy Christmann
Chairman

Brian Kroshus
Commissioner